



# FAMILY LAW

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## PRACTICAL SKILLS SERIES

**2023 Edition**

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### **Editor-in-Chief**

**Mark Gruber, J.D., LL.M.**

Gruber, Colabella, Liuzza, Thompson & Hiben

### **Co-Author**

**Natalie L. Thompson, Esq.**

Gruber, Colabella, Liuzza, Thompson & Hiben

### **Contributor**

“Tax Aspects of Divorce” written by

**Paul M. Gazaleh, CPA/ABV**

Gazaleh Consulting

## ABOUT THE AUTHORS

**Mark Gruber, J.D., L.L.M.**, is an attorney certified by the New Jersey Supreme Court as a matrimonial attorney. He is a fellow and past president of the American Academy of Matrimonial Lawyers with years of divorce litigation experience, and is certified by the academy as a divorce arbitrator and mediator. Gruber is a frequent NJICLE lecturer and noted author of many publications and articles. He is the senior partner in the firm Gruber, Colabella, Liuzza, Thompson & Hiben, with offices in Hopatcong, New Jersey.

- Certified by the N.J. Supreme Court as a Matrimonial Law Attorney
- NJ Chapter Delegate to the National Board of Governors of the American Academy of Matrimonial Attorneys - March 2019 to present
- Former Master, Worrall F. Mountain American Inn of Court
- Institute of Continuing Legal Education Lecturer: Domestic Violence, Domestic Torts, Family Law Skills and Methods Instructor
- Trustee, Jersey Battered Women's Service – 1983 to 1985
- Trustee, Sussex County Bar Association – 1992 to 1995
- Chair, Family Law Committee of Sussex County Bar Association – 1998 to 2018
- Host of cable television show Law Talk – 1985 to 2013
- WOR-TV Panelist, Domestic Violence
- Recipient of the ICLE Alfred C. Clapp Award - Legal Educator of the Year

**Natalie L. Thompson Esq.**, is a partner at the law firm of Gruber, Colabella, Liuzza, Thompson & Hiben, where she has worked since Sept. 2001. She has been a member of the bar since 2000. She was the former law clerk to the Honorable Thomas N. Lyons, J.S.C., from Sept. 2000 through Aug. 2001, and concentrates her practice in the area of family law.

## ABOUT THE CONTRIBUTORS

**Paul M. Gazaleh, CPA/ABV**, is the founder and principle in Gazaleh Consulting. He has analyzed and valued closely held businesses for over 20 years, is a CPA accredited in business valuation, and has been court appointed to value closely held businesses. He is a frequent speaker on topics such as writing business plans, valuing closely held businesses and taxes.

## ACKNOWLEDGEMENT

To encourage the study, improve the practice, elevate the standards, and advance the cause of matrimonial law, to the end that the welfare of the family and society be preserved.—American Academy of Matrimonial Lawyers.

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# INTRODUCTION

Marriages and relationships similar to marriage give rise to rights and obligations to all involved. Every relationship is unique, and when differences arise those differences are controlled by the New Jersey Superior Court, Chancery Division, Family Part. Civil family actions expressly include all actions in which the principle claim is unique to and arises out of a family or family-type relationship. The materials that follow are designed as a basic level introduction to divorce, family-type matters and related actions in New Jersey

The family court is governed by the New Jersey Court Rules. Those rules apply to all New Jersey courts, appellate practice, civil practice, Special Civil Part, tax court, and Family Part.

The substantive law that will be discussed throughout these materials is governed by the New Jersey statutes.





# INITIAL CLIENT INTERVIEW

## A. INITIAL CLIENT INTERVIEW

Approach the first meeting with your client as a job interview. Your client has a need for your services and wants to be certain that you are the right attorney for the job. Remember, the prospective client's life is in turmoil and he or she is worried about the future, seeing his or her children, alimony, selling a home, and moving away from neighborhoods and friends. Everyone knows someone who has gone through divorce or separation, and everyone is aware of the great expense and anguish that could result in a divorce unless it is handled properly. Most people are suspicious of attorneys and suspicious of the system. The fear that most new clients have is a fear of the unknown. At the initial client interview, you should alleviate that fear through education. You are holding yourself out to the prospective client as having special training and knowledge. Impart the knowledge upon the prospective client at the initial client interview. It is only after the client is aware of the procedural and substantive law of divorce that he or she can rationally make informed decisions on how best to proceed.

Have your prospective client complete a matrimonial client information worksheet prior to your interview. The following is a sample:

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**  
**FAMILY LAW INTAKE FORM**

**Date:** \_\_\_\_\_

**Source of Referral:** \_\_\_\_\_

**Attorney's Initials:** \_\_\_\_\_

**YOUR INFORMATION**

Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Tel. Nos.:(Work) \_\_\_\_\_ (Home) \_\_\_\_\_ (Cell) \_\_\_\_\_

Email: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Religion: \_\_\_\_\_

Social Security No. \_\_\_\_\_ Driver's License No.: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Employer Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

How long employed? \_\_\_\_\_ Gross Pay \$ \_\_\_\_\_ Net Pay \$ \_\_\_\_\_

Title or Occupation: \_\_\_\_\_

Educational Background:

Work Experience:

**INFORMATION ON SPOUSE/SIGNIFICANT OTHER**

Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Description: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Eye Color: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Religion: \_\_\_\_\_

Social Security No. \_\_\_\_\_ Driver's License No.: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

How long employed? \_\_\_\_\_ Gross Pay \$ \_\_\_\_\_ Net Pay \$ \_\_\_\_\_

Title or Occupation: \_\_\_\_\_

Educational Background:

Work Experience:

**INFORMATION ON PRESENT MARRIAGE/CIVIL UNION**

Date of Marriage/Civil Union: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Ceremony: Civil      Religious      Certificate Available

Maiden Name: \_\_\_\_\_

Prior Divorces: \_\_\_\_\_

Prior Proceedings (Support, Domestic Violence, etc.):

**CHILDREN OF PRESENT MARRIAGE/CIVIL UNION**

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Please include any additional children on a separate piece of paper, or within the body of your return email.

**CHILDREN OF YOURS, YOUR SPOUSE'S or SIGNIFICANT OTHER'S  
FROM A PRIOR RELATIONSHIP**

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Please include any additional children on a separate piece of paper, or within the body of your return email.

**GROUNDS FOR DIVORCE**

Separation Date: \_\_\_\_\_

Irreconcilable Differences: \_\_\_\_\_

Adultery: \_\_\_\_\_ Habitual Drunkenness: \_\_\_\_\_

Other: \_\_\_\_\_

Mental Cruelty (describe):

Personal Injury or other claims against spouse (rape, intentional infliction of  
emotional distress, assault, etc.):

**STATEMENT OF ASSETS**

<u>Description</u>	<u>Ownership</u> <u>Husband / Wife / Joint</u> <u>( H / W / J )</u>	<u>Value</u>
<b>A. Real Property</b>		
1. _____	<input type="text" value="Select"/>	\$ _____
2. _____	<input type="text" value="Select"/>	\$ _____
3. _____	<input type="text" value="Select"/>	\$ _____
4. _____	<input type="text" value="Select"/>	\$ _____
<b>B. Bank Account Name, Acct. Type &amp; Acct. Number, &amp;/or Certificates of Deposit</b>		
1. _____	<input type="text" value="Select"/>	\$ _____
2. _____	<input type="text" value="Select"/>	\$ _____
3. _____	<input type="text" value="Select"/>	\$ _____
4. _____	<input type="text" value="Select"/>	\$ _____
<b>C. Vehicles</b>		
1. _____	<input type="text" value="Select"/>	\$ _____
2. _____	<input type="text" value="Select"/>	\$ _____
3. _____	<input type="text" value="Select"/>	\$ _____
4. _____	<input type="text" value="Select"/>	\$ _____
<b>D. Stocks and Bonds</b>		
1. _____	<input type="text" value="Select"/>	\$ _____
2. _____	<input type="text" value="Select"/>	\$ _____
3. _____	<input type="text" value="Select"/>	\$ _____
4. _____	<input type="text" value="Select"/>	\$ _____

<u>Description</u>	<u>Ownership</u> (H/W/J)	<u>Value</u>
<b>E. Pension, Profit Sharing, Retirement Plan(s), IRS's, 401K's, etc.</b>		
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____
4. _____	_____	\$ _____

<b>F. Businesses, Partnerships, Professional Practices</b>		
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____
4. _____	_____	\$ _____

<b>G. Other</b>		
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____
4. _____	_____	\$ _____

**STATEMENT OF LIABILITIES**

<u>Description</u>	<u>Ownership</u> (H/W/J)	<u>Monthly Payment</u>	<u>Total Owed</u>
<b>A. Mortgage in Real Estate</b>			
1. _____	_____	\$ _____	\$ _____
2. _____	_____	\$ _____	\$ _____
3. _____	_____	\$ _____	\$ _____
4. _____	_____	\$ _____	\$ _____

	<u>Description</u>	<u>Ownership ( H / W / J )</u>	<u>Monthly Payment</u>	<u>Total Owed</u>
<b>B. Other Long-Term Debts</b>				
1.	_____	_____	\$ _____	\$ _____
2.	_____	_____	\$ _____	\$ _____
3.	_____	_____	\$ _____	\$ _____
4.	_____	_____	\$ _____	\$ _____
5.	_____	_____	\$ _____	\$ _____
<b>C. Revolving Charges</b>				
1.	_____	_____	\$ _____	\$ _____
2.	_____	_____	\$ _____	\$ _____
3.	_____	_____	\$ _____	\$ _____
4.	_____	_____	\$ _____	\$ _____
5.	_____	_____	\$ _____	\$ _____
<b>D. Other Short-Term Debts</b>				
1.	_____	_____	\$ _____	\$ _____
2.	_____	_____	\$ _____	\$ _____
3.	_____	_____	\$ _____	\$ _____
4.	_____	_____	\$ _____	\$ _____
<b>E. Contingent Liabilities</b>				
1.	_____	_____	\$ _____	\$ _____
2.	_____	_____	\$ _____	\$ _____
3.	_____	_____	\$ _____	\$ _____
4.	_____	_____	\$ _____	\$ _____
5.	_____	_____	\$ _____	\$ _____

**FOR ATTORNEY'S USE ONLY**

Attorney's Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Custody/Removal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Child Support Analysis: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Alimony Analysis: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Equitable Distribution: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pre-Marital Assets: \_\_\_\_\_



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Inheritances: \_\_\_\_\_

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Debts: \_\_\_\_\_

---

---

Experts: \_\_\_\_\_

---

---

Unusual Circumstances: \_\_\_\_\_

---

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Fee Quote: \_\_\_\_\_

Payment Plan/Guarantor: \_\_\_\_\_

Source of Referral: \_\_\_\_\_

Change of Will: \_\_\_\_\_

## **B. COMPLEMENTARY DISPUTE RESOLUTION PROGRAMS/COUNSELING**

The Court Rules impose an obligation upon attorneys to become familiar with available complementary dispute resolution (CDR) programs and inform their clients of them during the initial consultation with the client. R. 1:40 provides:

### **RULE 1:40. COMPLEMENTARY DISPUTE RESOLUTION PROGRAMS**

#### **1:40-1. Purpose, Goals**

Complementary Dispute Resolution Programs (CDR) provided for by these rules are available in the Superior Court and Municipal Courts and constitute an integral part of the judicial process, intended to enhance its quality and efficacy. Attorneys have a responsibility to become familiar with available CDR programs and inform their clients of them.

#### **1:40-2. Modes and Definitions of Complementary Dispute Resolution**

Complementary Dispute Resolution Programs (CDR) conducted under judicial supervision in accordance with these rules, as well as guidelines and directives of the Supreme Court, and the persons who provide the services to these programs are as follows:

(a) “Adjudicative Processes” means and includes the following:

(1) Arbitration: A process by which each party and/or its counsel presents its case to a neutral third party, who then renders a specific award. The parties may stipulate in advance of the arbitration that the award shall be binding. If not so stipulated, the provisions of Rule 4:21A-6 (Entry of Judgment; Trial De Novo) shall be applicable.

(2) Settlement Proceedings: A process by which the parties appear before a neutral third party or panel of such neutrals, who assists them in attempting to resolve their dispute by voluntary agreement.

(3) Summary Jury Trial: A process by which the parties present summaries of their respective positions to a panel of jurors, which may then issue a non-binding advisory opinion as to liability, damages, or both.

(b) “Evaluative Processes” means and includes the following:

(1) Early Neutral Evaluation (ENE): A pre-discovery process by which the attorneys, in the presence of their respective clients, present their factual and legal contentions to a neutral evaluator, who then provides an assessment of the strengths and weaknesses of each position and, if settlement does not ensue, assists in narrowing the dispute and proposing discovery guidelines.

(2) Neutral Fact Finding: A process by which a neutral, agreed upon by the

parties, investigates and analyzes a dispute involving complex or technical issues, and who then makes non-binding findings and recommendations.

(c) “Facilitative Process” means and includes mediation, which is a process by which a mediator facilitates communication between parties in an effort to promote settlement without imposition of the mediator’s own judgment regarding the issues in dispute.

(d) “Hybrid Process” means and includes:

(1) Mediation-arbitration: A process by which, after an initial mediation, unresolved issues are then arbitrated.

(2) Mini-trial: A process by which the parties present their legal and factual conditions to either a panel of representatives selected by each party, or a neutral third party, or both, in an effort to define the issues in dispute and to assist settlement negotiations. A neutral third party may issue an advisory opinion, which shall not, however, be binding, unless the parties have so stipulated in writing in advance.

(e) “Other CDR Programs” means and includes any other method or technique of complementary dispute resolution permitted by guideline or directive of the Supreme Court.

(f) “Neutral”: A “neutral” is an individual who provides a CDR process. A “qualified neutral” is an individual included on any roster of neutrals maintained by the Administrative Office of the Courts or an Assignment Judge. Neutral evaluators, neutral fact finders, and settlement program panelists are not required to comply with the training requirements of Rule 1:40-12 or to be on any roster of neutrals maintained by the Administrative Office of the Courts or an Assignment Judge.

(g) Roster Mediator; Non-Roster Mediator: A roster mediator is an individual included on any roster of mediators maintained by the Administrative Office of the Courts or an Assignment Judge. A non-roster mediator is an individual who provides mediation, but is not listed on any roster of mediators maintained by the Administrative Office of the Courts or an Assignment Judge. The parties may agree to use a roster mediator or a nonroster mediator.

### **1:40-3. Organization and Management**

(a) Vicinage Organization and Management. Pursuant to these rules and Supreme Court guidelines, the Assignment Judge of each vicinage shall have overall responsibility for CDR programs, including their development and oversight, continuing relations with the Bar to secure the effectiveness of these programs, and mechanisms to educate judges, attorneys, staff, and the public on the benefits of CDR. The Assignment Judge shall appoint a CDR coordinator to assist in the oversight, coordination and management of the vicinage CDR programs. The Assignment Judge shall maintain, pursuant to these rules, all required rosters of neutral third parties except

- the roster of statewide civil, general equity, and probate action mediators, which shall be maintained by the Administrative Office of the Courts.
- (b) Statewide Organization and Management. The Administrative Office of the Courts shall have the responsibility
- (1) to promote uniformity and quality of CDR programs in all vicinages;
  - (2) to monitor and evaluate vicinage CDR programs and assist CDR Coordinators in implementing them;
  - (3) to serve as a clearinghouse for ideas, issues, and new trends relating to CDR, both in New Jersey and in other jurisdictions;
  - (4) to develop CDR pilot projects to meet new needs;
  - (5) to monitor training and continuing education programs for neutrals; and
  - (6) to institutionalize relationships relating to CDR with the bar, universities, the Marie L. Garibaldi ADR Inn of Court, and private providers of CDR services. The Administrative Office of the Courts shall maintain the statewide roster of civil, general equity, and probate action mediators.

#### **1:40-4. Mediation—General Rules**

- (a) Referral to Mediation. Except as otherwise provided by these rules, a Superior Court or Municipal Court judge may require the parties to attend a mediation session at any time following the filing of a complaint.
- (b) Compensation and Payment of Mediators Serving in the Civil and Family Economic Mediation Programs. The real parties in interest in Superior Court, except in the Special Civil Part, assigned to mediation pursuant to this rule shall equally share the fees and expenses of the mediator on an ongoing basis, subject to court review and allocation to create equity. Any fee or expense of the mediator shall be waived in cases, as to those parties exempt, pursuant to R. 1:13-2(a). Subject to the provisions of Guidelines 2 and 15 in Appendix XXVI, Guidelines for the Compensation of Mediators, if the parties select a mediator from the court's rosters of civil and family mediators, the parties may opt out of the mediation process after the mediator has expended two hours of service, which shall be allocated equally between preparation and the first mediation session, and which shall be at no cost to the parties. As provided in Guideline 7 in Appendix XXVI, fees for roster mediators after the first two free hours shall be at the mediator's market rate as set forth on the court's mediation roster. As provided in Guideline 4 in Appendix XXVI, if the parties select a non-roster mediator, that mediator may negotiate a fee and need not provide the first two hours of service free.

- (c) Evidentiary Privilege. A mediation communication is not subject to discovery or admissible in evidence in any subsequent proceeding except as provided by the New Jersey Uniform Mediation Act, N.J.S.A. 2A:23C-1 to -13. A party may, however, establish the substance of the mediation communication in any such proceeding by independent evidence.
- (d) Confidentiality. Unless the participants in a mediation agree otherwise or to the extent disclosure is permitted by this rule, no party, mediator, or other participant in a mediation may disclose any mediation communication to anyone who was not a participant in the mediation. A mediator may disclose a mediation communication to prevent harm to others to the extent such mediation communication would be admissible in a court proceeding. A mediator has the duty to disclose to a proper authority information obtained at a mediation session if required by law or if the mediator has a reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm. No mediator may appear as counsel for any person in the same or any related matter. A lawyer representing a client at a mediation session shall be governed by the provisions of RPC 1.6.
- (e) Limitations on Service as a Mediator.
  - (1) No one holding a public office or position or any candidate for a public office or position shall serve as a mediator in a matter directly or indirectly involving the governmental entity in which that individual serves or is seeking to serve.
  - (2) The approval of the Assignment Judge is required for service as a mediator by any of the following:
    - (A) police or other law enforcement officers employed by the State or by any local unit of government;
    - (B) employees of any court; or
    - (C) government officials or employees whose duties involve regular contact with the court in which they serve.
  - (3) The Assignment Judge and the Administrative Office of the Courts shall also have the discretion to request prior review and approval of the Supreme Court of prospective mediators whose employment or position appears to either the Assignment Judge or the Administrative Office of the Courts to require such review and approval.
- (f) Mediator Disclosure of Conflict of Interest.
  - (1) Before accepting a mediation, a mediator shall:
    - (A) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable person would consider likely to affect the impartiality of the mediator,

including a financial or personal interest in the outcome of the mediation or an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(B) disclose any such known fact to the mediation parties as soon as is practicable before accepting a mediation.

- (2) If a mediator learns any fact described in subparagraph (f)(1)(A) after accepting a mediation, the mediator shall disclose it as soon as is practicable.
- (3) After entry of the order of referral to mediation, if the court is advised by the mediator, counsel, or one of the parties that a conflict of interest exists, the parties shall have the opportunity to select a replacement mediator or the court may appoint one. An amended order of referral shall then be prepared and provided to the parties. All data shall be entered into the appropriate Judiciary case management system.

**(g) Conduct of Mediation Proceedings.** Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures of the process. Mediators may require the participation of persons with negotiating authority. An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of representation or participation given before the mediation may be rescinded. Non-party participants shall be permitted to attend and participate in the mediation only with the consent of the parties and the mediator. Multiple sessions may be scheduled. Attorneys and parties have an obligation to participate in the mediation process in good faith and with a sense of urgency in accordance with program guidelines.

**(h) Termination of Mediation.**

- (1) The mediator or a party may adjourn or terminate the session if
  - (A) a party challenges the impartiality of the mediator,
  - (B) a party continuously resists the mediation process or the mediator,
  - (C) there is a failure of communication that seriously impedes effective discussion, or
  - (D) the mediator believes a party is under the influence of drugs or alcohol.
- (2) The mediator shall terminate the session if
  - (A) there is an imbalance of power between the parties that the mediator cannot overcome,
  - (B) there is abusive behavior that the mediator cannot control, or
  - (C) the mediator believes continued mediation is inappropriate or inadvisable for any reason.

- (i) Final Disposition. If the mediation results in the parties' total or partial agreement, said agreement must be reduced to writing, signed by each party, and furnished to each party. The agreement need not be filed with the court, but both roster and non-roster mediators shall report the status of the matter to the court by submission of the Completion of Mediation form. If an agreement is not reached, the matter shall be referred back to court for formal disposition

#### **1:40-5. Mediation in Family Part Matters**

##### **(a) Mediation of Custody and Parenting Time Actions**

- (1) Screening and Referral. All complaints or motions involving a custody or parenting time issue shall be screened to determine whether the issue is genuine and substantial, and if such a determination is made, the matter shall be referred to mediation for resolution in the child's best interests. However, no matter shall be referred to mediation if there is in effect a preliminary or final order of domestic violence entered pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.). In matters involving domestic violence in which no order has been entered or in cases involving child abuse or sexual abuse, the custody or parenting time issues shall be referred to mediation provided that the issues of domestic violence, child abuse or sexual abuse shall not be mediated in the custody mediation process. The mediator or either party may petition the court for removal of the case from mediation based upon a determination of good cause.
- (2) Conduct of Mediation. In addition to the general requirements of Rule 1:40-4, the parties shall be required to attend a mediation orientation program and may be required to attend an initial mediation session. Mediation sessions shall be closed to the public. The mediator and the parties should consider whether it is appropriate to involve the child in the mediation process. The mediator or either party may terminate a mediation session in accordance with the provisions of Rule 1:40-4(h).
- (3) Mediator Not to Act as Evaluator. The mediator may not subsequently act as an evaluator for any court-ordered report nor make any recommendation to the court respecting custody and parenting time.

##### **(b) Mediation of Economic Aspects of Dissolution Actions.**

- (1) Referral to ESP. The CDR program of each vicinage shall include a post-Early Settlement Panel (ESP) program for the mediation of the economic aspects of dissolution actions or for the conduct of a post-ESP alternate Complementary Dispute Resolution (CDR) event consistent with the provisions of this rule and R. 5:5-6 [and Appendix XIX of these Rules]. However, no matter shall be referred to mediation if a temporary or final restraining order is in effect in the matter pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.).

- (2) Designation of Mediator of Economic Aspects of Family Law Matters. A credentials committee comprised of representatives from the Supreme Court Committee on Complementary Dispute Resolution shall be responsible for reviewing and approving all mediator applications. Applicants must complete an application form posted on the Judiciary's Internet website ([www.judiciary.state.nj.us](http://www.judiciary.state.nj.us) or [www.njcourtsonline.com](http://www.njcourtsonline.com)). Mediators who meet the training requirements set forth in this rule, and any other approved criteria developed by the Family Court Programs Subcommittee on the Committee on Complementary Dispute Resolution shall be added to the Roster of Approved Mediators. The roster shall be maintained by the Administrative Office of the Courts and shall be posted on the Judiciary's Internet web site.
- (3) Exchange of Information. In mediation of economic aspects of Family actions, parties are required to provide accurate and complete information to the mediator and to each other, including but not limited to tax returns, Case Information Statements, and appraisal reports. The court may, in the Mediation Referral Order, stay discovery and set specific times for completion of mediation.
- (4) Timing of Referral. Parties shall be referred to economic mediation or other alternate CDR event following the unsuccessful attempt to resolve their issues through ESP. At the conclusion of the ESP process, parties shall be directed to confer with appropriate court staff to expedite the referral to economic mediation in accordance with the following procedures:
  - A. Parties may conference with the judge or the judge's designee.
  - B. Court staff shall explain the program to the parties and/or their attorneys.
  - C. Parties shall be provided with the roster of approved mediators for selection.
  - D. After a mediator has been selected, court staff shall attempt immediate contact to secure the mediator's acceptance and the date of initial appointment. If court staff is unable to contact the mediator for confirmation, the order of referral shall state that the mediator and the date of initial appointment remain tentative until confirmation is secured. Staff will attempt to confirm within 24 hours and send an amended order to the parties and/or their attorneys.
  - E. If a mediator notifies the court that he or she cannot take on any additional cases, court staff will so advise the parties at the time of selection so that an alternate mediator can be selected.
  - F. The court shall enter an Economic Mediation Referral Order stating the name of the mediator, listing the financial documents to be shared between the parties and with the mediator, indicating the allocation



of compensation by each party if mediation extends beyond the initial two hours, stating the court's expectation that the parties will mediate in good faith, defining the mediation time frame, and identifying the next court event and the date of that event.

G. The referral order, signed by the judge, shall be provided to the parties before they leave the courthouse. Amended orders with confirmed appointments shall be faxed to the parties and/or their attorneys the next day, replacing the tentative orders.

H. If the parties are unable to agree upon and select a mediator, the judge will appoint one. Staff shall then follow the above procedures as applicable.

I. Referral to economic mediation shall be recorded in the Family Automated Case Tracking System (FACTS).

- (5) Adjournments. Adjournment of events in the mediation process shall be determined by the mediator after conferring with the parties and/or attorneys, provided that any such adjournment will not result in the case exceeding the return date to the court. If an adjournment would cause delay of the return date to the court, a written adjournment request must be made to the judge who has responsibility for the case or the judge's designee.

#### **1:40-9. Civil Arbitration**

The CDR program of each vicinage shall include arbitration of civil actions in accordance with Rule 4:21A.

#### **1:40-10. Relaxation of Court Rules and Program Guidelines**

These rules, and any program guidelines may be relaxed or modified by the court in its discretion if it determines that injustice or inequity would otherwise result. Factors to be considered in making that determination include but are not limited to (1) the incapacity of one or more parties to participate in the process, (2) the unwillingness of one or more parties to participate in good faith, (3) the previous participation by the parties in a CDR program involving the same issue, and (4) any factor warranting termination of the program pursuant to Rule 1:40-4(h).

#### **1:40-11. Non-Court Dispute Resolution**

With the approval of the Assignment Judge or the Assignment Judge's designee, the court, while retaining jurisdiction, may refer a matter to a non-court administered dispute resolution process on the condition that any such mediation process will be subject to the privilege and confidentiality provisions of Rule 1:40-4(c) and (d). The Assignment Judge or designee may approve such referral upon the finding that it will not prejudice the interests of the parties.

## **1:40-12. Mediators and Arbitrators in Court-Annexed Programs**

### **(a) Mediator Qualifications.**

- (1) Generally. Unless otherwise specified by these rules, no special occupational status or educational degree is required for mediator service and mediation training. An applicant for listing on a roster of mediators maintained by either the Administrative Office of the Courts or the Assignment Judge shall, however, certify to good professional standing. An applicant whose professional license has been revoked shall not be placed on the roster, or if already on the roster shall be removed therefrom.
- (2) Custody and Parenting Time Mediators. The Assignment Judge, upon recommendation of the Presiding Judge of the Family Part, may approve persons or agencies to provide mediation services in custody and parenting time disputes if the mediator meets the following minimum qualifications: (A) a graduate degree or certification of advanced training in a behavioral or social science; (B) training in mediation techniques and practice as prescribed by these rules; and (C) supervised clinical experience in mediation, preferably with families. In the discretion of the Assignment Judge relevant experience may be substituted for either a graduate degree or certification, or clinical experience, or both.
- (3) Civil, General Equity, and Probate Action Roster Mediators. Mediator applicants to be on the roster for civil, general equity, and probate actions shall have: (A) at least a bachelor's degree; (B) at least five years of professional experience in the field of their expertise in which they will mediate; (C) completed the required mediation training as defined in subparagraph (b)(5) within the last five years; and (D) except for retired or former New Jersey Supreme Court justices, retired Superior Court judges, retired Administrative Law judges, retired or former federal court judges, and retired judges from other states who presided over a court of general jurisdiction or appellate court, evidence of completed mediation or co-mediation of a minimum of two civil, general equity or probate cases within the last year. Applicants who had the required training over five years prior to their application to the roster must complete the six-hour family or civil supplemental mediation course as defined in subparagraph (b)(8) of this rule.
- (4) Special Civil Part Settlers. In addition to mediators on the civil roster, those judicial law clerks who have been trained in complementary dispute resolution (CDR) settlement techniques pursuant to R. 1:40-12(b)(6), court staff and volunteers who have completed the 18-hour course of mediation training approved by the Administrative Office of the Courts may settle Small Claims actions. In the discretion of

the Assignment Judge, such persons may also settle landlord-tenant disputes and other Special Civil Part actions, provided that they complete additional substantive and procedural training in landlord-tenant law of at least five hours, with such training to be approved by the Administrative Office of the Courts.

- (5) Municipal Court Volunteer Mediators. Individuals may serve as volunteer mediators in municipal court mediation programs. To serve as municipal court mediators and volunteer their time, effort and skill to mediate minor disputes in municipal court actions, such individuals (A) must be approved by the Assignment Judge or designee in the vicinage in which they intend to serve, (B) must meet the basic dispute resolution training required by R. 1:40-12(b)(1), and (C) must have satisfied any continuing training requirements under R. 1:40-12(b)(2).
- (6) Family Part Economic Mediators. To be listed on the approved roster, mediators of economic issues in family disputes shall meet the applicable requirements set forth below for attorneys and non-attorneys and shall complete the required training set forth in paragraph (b) of this Rule:
  - (i) Attorneys
    - a. Juris Doctor (or equivalent law degree)
    - b. Admission to the bar for at least seven years
    - c. Licensed to practice law in the state of New Jersey
    - d. Practice substantially devoted to matrimonial law
  - (ii) Non-Attorneys
    - a. Advanced degree in psychology, psychiatry, social work, business, finance, or accounting, or a CPA or other relevant advanced degree deemed appropriate by the credentials committee,
    - b. At least seven years of experience in the field of expertise, and
    - c. Licensed in New Jersey if required in the field of expertise
  - (iii) Any retired Superior Court judge with experience in handling dissolution matters.

**(b) Mediator Training Requirements.**

- (1) General Provisions. All persons serving as mediators shall have completed the basic dispute resolution training course as prescribed by these rules and approved by the Administrative Office of the Courts. Volunteer mediators in the Special Civil Part and Municipal Court mediators shall have completed 18 classroom hours of basic mediation skills complying with the requirements of subparagraph (b)(3) of this

rule. Mediators on the civil, general equity, and probate roster of the Superior Court shall have completed 40 classroom hours of basic mediation skills complying with the requirements of subparagraph (b) (5) of this rule and shall be mentored in at least two cases in the Law Division—Civil Part or Chancery Division—General Equity or Probate Part of the Superior Court for a minimum of five hours by a civil roster mentor mediator who has been approved in accordance with the “Guidelines for the Civil Mediation Mentoring Program” promulgated by the Administrative Office of the Courts. Family Part mediators shall have completed a 40-hour training program complying with the requirements of subparagraph (b)(4) of this rule and, unless otherwise exempted in this rule, at least five hours being mentored by a family roster mentor mediator in at least two cases in the Family Part. In all cases it is the obligation of the mentor mediator to inform the litigants prior to mediation that a second mediator will be in attendance and why. If either party objects to the presence of the second mediator, the second mediator may not attend the mediation. In all cases, the mentor mediator conducts the mediation, while the second mediator observes. Mentored mediators are provided with the same protections as the primary mediator under the Uniform Mediation Act. Retired or former New Jersey Supreme Court justices and Superior Court judges, retired or former Administrative Law judges, retired or former federal court judges, and retired judges from other states who presided over a court of general jurisdiction or appellate court, child welfare mediators, and staff/law clerk mediators are exempted from the mentoring requirements except as required to do so for remedial reasons. Mediators already serving on the Civil mediator roster prior to September 1, 2015 are exempted from the updated training requirements. Family Roster mediators who wish to serve on the Civil Roster, must complete the six-hour supplemental Civil Mediation training and must comply with the Civil roster mentoring requirement of five hours and two cases in the Civil Part.

- (2) Continuing Training. Commencing in the year following admission to one of the court’s mediator rosters, all mediators shall annually attend four hours of continuing education and shall file with the Administrative Office of the Courts or the Assignment Judge, as appropriate, an annual certification of compliance. To meet the requirement, this continuing education shall include instruction in ethical issues associated with mediation practice, program guidelines and/or case management and should cover at least one of the following: (A) case management skills; and (B) mediation and negotiation concepts and skills.

- (3) Mediation Course Content—Basic Skills. The 18-hour classroom course in basic mediation skills and complementary dispute resolution (CDR) settlement techniques, shall, by lectures, demonstrations, exercises and role plays, teach the skills necessary for mediation practice, including but not limited to conflict management, communication and negotiation skills, the mediation process, and addressing problems encountered in mediation and other CDR resolution processes.
- (4) Mediation Course Content—Family Part Actions. The 40-hour classroom course for family action mediators shall include basic mediation skills as well as at least 22 hours of specialized family mediation training, which should cover family and child development, family law, dissolution procedures, family finances, and community resources. In special circumstances and at the request of the Assignment Judge, the Administrative Office of the Courts may temporarily approve for a one-year period an applicant who has not yet completed the specialized family mediation training, provided the applicant has at least three years of experience as a mediator or a combination of mediation experience and service in the Family Part, has co-mediated in a CDR program with an experienced family mediator, and certifies to the intention to complete the specialized training within one year following the temporary approval. Economic mediators in family disputes shall have completed 40 hours of training in family mediation in accordance with this rule.
- (5) Mediation Course Content—Civil, General Equity, and Probate Actions. The 40-hour classroom course for civil, general equity and probate action mediators shall include basic and advanced mediation skills as well as specialized civil mediation training as approved by the Administrative Director of the Courts.
- (6) Training Requirements for Judicial Law Clerks. Judicial law clerks serving as third-party neutral settlers shall first have completed a six-hour complementary dispute resolution (CDR) settlement techniques training course prescribed by the Administrative Office of the Courts.
- (7) Co-mediation; Mentoring; Training Evaluation. In order to reinforce mediator training, the vicinage CDR coordinator shall, insofar as practical and for a reasonable period following initial training, assign any new mediator who is either an employee or a volunteer to co-mediate with an experienced mediator and shall assign an experienced mediator to mentor a new mediator. Using evaluation forms prescribed by the Administrative Office of the Courts, the vicinage CDR coordinator shall also evaluate the training needs of each new mediator during the first year of the mediator's qualifications and shall periodically assess the training needs of all mediators.

- (8) Mediation Course Content—Supplemental Mediation Training for Civil and Family Mediators. Applicants to the roster who have been trained in a 40-hour out-of-state mediation training or who took the 40-hour New Jersey mediation training more than five years prior to applying to the roster, and who otherwise qualify under this rule, must further attend a six-hour supplemental course approved by the Administrative Office of the Courts. There shall be two distinct supplemental courses, one for family mediators and one for civil mediators. The courses shall include, but are not limited to, training in facilitative methods, case management techniques, procedural requirements for an enforceable mediated settlement, NJ Rules and mediator ethics, Guidelines for Mediator Compensation (see Appendix XXVI to these Rules), the Uniform Mediation Act (N.J.S.A. 2A:23C-1 to -13), and mediation case law.
- (c) Arbitrator Qualification and Training. Arbitrators serving in judicial arbitration programs shall have the minimum qualifications prescribed by Rule 4:21A-2 and must be annually recommended for inclusion on the approved roster by the local arbitrator selection committee and approved by the Assignment Judge or designee. All arbitrators shall attend initial training of at least three classroom hours and continuing training of at least two hours in courses approved by the Administrative Office of the Courts.
- (1) New Arbitrators. After attending the initial training, a new arbitrator shall attend continuing training after two years. Thereafter, an arbitrator shall attend continuing training every four years.
- (2) Roster Arbitrators. Arbitrators who have already attended the initial training and at least one continuing training shall attend continuing training every four years.
- (3) Arbitration Course Content—Initial Training. The three-hour classroom course shall teach the skills necessary for arbitration, including applicable statutes, court rules and administrative directives and policies, the standards of conduct, applicable uniform procedures as reflected in the approved procedures manual and other relevant information.
- (4) Arbitration Course Content—Continuing Training. The two-hour continuing training course should cover at least one of the following: (a) reinforcing and enhancing relevant arbitration skills and procedures, (b) ethical issues associated with arbitration, or (c) other matters related to court annexed arbitration as recommended by the Arbitration Advisory Committee.

- (d) Training Program Evaluation. The Administrative Office of the Courts shall conduct periodic assessments and evaluations of the CDR training programs to ensure their continued effectiveness and to identify any needed improvements.

## **C. DIVORCE MEDIATION**

Many attorneys, psychologists and social professionals have picked up on the national trend of divorce mediation. For a fee, usually paid by both parties in advance, the divorce mediator will gather information, obtain positions from each side and facilitate the parties in reaching their own agreement. From there, the mediation process begins. If the parties agree on a settlement, the mediator drafts a memorandum of understanding and advises each of the parties to retain separate counsel to review the proposal and draft a formal agreement in light of all the legal and tax ramifications. Many clients prefer to have an attorney counsel them outside of the mediation process while the mediation process is on-going. In that fashion, the client will have the benefit of the mediation process, but will also have the benefit of independent counsel.

The selection of a mediator is important. It is wise to advise clients to select a divorce mediator with substantial experience in mediation and substantial experience and knowledge in the area of divorce litigation.

Parties to private family mediation are well advised to enter into an agreement or consent order for the mediation process. The agreement to mediate can be as simple and direct as agreeing to mediate certain issues, designating a mediator, and defining or allocating the cost of mediation. Additional provisions in an agreement to mediate may include issues of confidentiality, discovery, and employment of experts for appraisal purposes. More often, the agreement to mediate, and the balance of the related issues to mediation, are contained in the retainer agreement with the mediator.

The agreement with the mediator is an important document for both the mediator and the parties to mediation. It should include what issues are to be mediated, the method by which the mediator's fees will be computed and paid (including costs and disbursements on the initial retainer), confidentiality and the withdrawal of the mediator.

The goal of the mediator is to facilitate an understanding between the parties to the mediation. There is a divergence of practice among mediators. One school of mediators will simply prepare a memorandum of understanding, which is nonbinding. That school of mediators believes it would create a conflict of interest and potential ethical or malpractice issues if the mediator were to prepare a final settlement agreement between the parties. Those mediators include provisions in their mediation, retainers, or agreements that limit their role to preparation of a memorandum of

understanding, and that the parties to mediation should take the memorandum of understanding to their own separate counsel for advice and preparation of a final agreement. A second school of mediators prepare agreements for the parties to sign.

R. 1:40-4(c) shields all disclosures made by a party during mediation from being admitted against that party in any civil, criminal or quasi-criminal proceeding. However, the parties may consent to waive the confidentiality requirement. Even though a party may discover information that would be barred in a subsequent proceeding, that party is free to establish the substance of mediation communication by independent evidence. Further, a mediator has the duty to disclose to the proper authorities information obtained at a mediation session, on the reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm.

Mediation of economic issues in divorce cases is now mandatory if cases are not resolved after the early settlement panel. The first two hours are free; thereafter, the parties pay the mediator's normal rate. No matter can be referred to mediation if a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act.

#### **5:5-6. Participation in Mandatory Post-MESP Mediation or in a Mandatory Post-MESP Complementary Dispute Resolution Event**

- (a) **Mandatory Post-MESP Events.** Each vicinage shall establish a program for the post-Matrimonial Early Settlement Program (“MESP”) mediation of the economic aspects of divorce consistent with the procedures set forth in these Rules. In any matter in which a settlement is not achieved at the time of the MESP, an order for mediation or other post-MESP Complementary Dispute Resolution (“CDR”) event shall be entered. The order shall provide that the litigants may select a mediator from the statewide-approved list of mediators or select an individual to conduct a post-MESP CDR event. Litigants shall be permitted to select another individual who will conduct a post-MESP mediation event, provided such selection is made within seven days.
- (b) **Mandatory Two Hour Minimum Participation.** Unless good cause is shown why a particular matter should not be referred to this post-MESP program, litigants shall be required to participate in the program for no more than two hours, consisting of one hour of preparation time by the mediator or other individual conducting the alternate CDR event and one hour of time for the mediation or other CDR event. The litigants will not be charged a fee for the mandatory first two hours of mediation. Participation after the first two hours shall be voluntary.
- (c) **Allocation of Fees After Two Hour Minimum.** If litigants consent to continue the mediation process, the Economic Mediation Referral Order will determine the distribution of costs for each party for the additional



hours. If the litigants choose to participate in an alternate post-MESP CDR event, the fee shall be set by the individual conducting the session. The litigants shall share the cost equally unless otherwise determined by the court. The litigants are required to participate in at least one session of such alternate post-MESP CDR event.

Upon conclusion of an unsuccessful MESP, the attorneys are required to select a mediator and schedule the first mediation. The court will enter an order accordingly. The attorneys are encouraged to attend the mediation, but are not required to do so. The attorneys and/or parties are required to submit to the mediator, in advance of the mediation, accurate and complete information, including, but not limited to, tax returns, case information statements, and appraisal reports. The practice has developed whereby the attorneys submit their matrimonial early settlement panel proposals to the mediator. The court may stay the discovery and set times for completion of mediation.

## **D. DIVORCE ARBITRATION**

Divorce arbitration is the voluntary process where the parties agree to submit one or more disputed issues to a neutral third party for a final and binding decision. Typically, both parties are represented in the arbitration by separate counsel.

The attorneys for the parties first narrow down and define the issues to be resolved by the arbitrator. The parties then engage the arbitrator and agree upon the subjects to be decided, the timing, the costs, the schedule, and other details. A plan, similar to a pre-trial order, is developed in preparation for the arbitration hearing. The arbitration hearing may be relatively informal, controlled by the arbitrator, with somewhat relaxed Rules of Evidence, or may be as formal as a trial. Practitioners are well advised to negotiate all terms of an arbitration agreement, including the applicability/non-applicability of statute or case law and scope of review. The arbitrator hears the positions of both parties, determines the facts, applies the law, and makes a binding decision, which becomes the substance of the divorce judgment. The parties then present the award to the court for a confirmation and a judgment of divorce. Arbitrations are confidential and private. Neither the proceedings nor the records are available to the general public. An arbitrator has the same immunity as a judge of the state acting in a judicial capacity.

There is limited appellate review because arbitration awards are only set aside if procured by corruption, fraud or undue means; the award displays evident partiality or corruption in the arbitrator; the arbitrator refuses to hear pertinent material evidence or committed other prejudicial misbehaviors; or the arbitrator exceeded or imperfectly executed his powers. (See N.J.S.A. 2A:24-8.) For more information concerning arbitration, see N.J.S.A. 2A:24-1 (Arbitration and Award), and also see N.J.S.A. 2A:23A-1 (New Jersey Procedure for Alternative Procedure for Dispute Resolution Act).

An arbitrator must make a record of the award and sign, or otherwise authenticate the award. The notice of the award must be given to each of the parties and must be made within the time specified by the agreement. See N.J.S.A. 2A:23B-19.

After an arbitration award, a party to the proceeding may apply to the arbitrator to modify or correct the award, if there was a mathematical miscalculation; an evident mistake in the description of a person, thing or property referred to in the award; or the arbitrator makes an award on a claim not submitted to the arbitrator. See N.J.S.A. 2A:23B-20 and N.J.S.A. 2A:23B-24. The application must be made within 20 days of notice of the award, and the other party to the arbitration proceeding has 10 days, after receipt of notice, to object to the application.

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## SIGNIFICANT CASES

### ***Faherty v. Faherty*, 97 N.J. 99 (1984)**

Arbitration clause and property settlement agreement are enforceable as a matter of public policy; divorce arbitration is enforceable as to child support and alimony; as to arbitration of child custody, the court will order a *de novo* review of an arbitration award unless, on its face, the award could not adversely affect the child.

### ***DeLorean v. DeLorean*, 211 N.J. Super. 432 (Ch. Div. 1986)**

Parties' agreement to arbitrate a pre-nuptial agreement was binding. The arbitrator's award would not be set aside because it was rendered while a matrimonial case was pending and the arbitration conducted without the authorization or knowledge of the court. A pre-nuptial agreement is permitted and encouraged.

### ***Addesa v. Addesa*, 392 N.J. Super. 58 (App. Div. 2007)**

The mediator in a private mediation should not be deposed, and his files should not be subject to discovery in connection with an attack on a privately mediated property settlement agreement (PSA). The PSA should not have been set aside based upon the mediator's testimony.

### ***Hogoboom v. Hogoboom*, 393 N.J. Super. 509 (App. Div. 2007)**

Relying on N.J.S.A. 2A:23B-23, the court determined that parties are required to first seek review of arbitrator's decision in the trial court. In that case, the parties' arbitration agreement provided that an appeal of the arbitrator's decision could be taken on the same basis as an appeal of an order of judgment of the superior court.

### ***Fawzy v. Fawzy*, 199 N.J. 456 (2009)**

The issue was whether parties to a matrimonial action may agree to submit questions regarding child custody and parenting time to binding arbitration. The court held that within the constitutionally protected sphere of parental autonomy is the right of parents to choose the forum

in which their disputes over child custody and rearing will be resolved, including arbitration. The court found that it may not disrupt an arbitrator's decision on issues of custody absent harm to the child. In the absence of harm to the child, the parties are limited to the remedies provided by the Arbitration Act.

***Johnson v. Johnson*, 411 N.J. Super. 161 (App. Div. 2009)**

In some circumstances, *Fawzy* can be applied retroactively. In order to determine whether a new rule should be applied retroactively or prospectively, three factors had to be considered:

- 1) the purpose of the rule and whether it would be furthered by a retroactive application;
- 2) the degree of reliance placed on the old rule by those who administered it, and;
- 3) the effect a retroactive application would have on the administration of justice.

***Johnson v. Johnson*, 204 N.J. 529 (2010)**

*Fawzy* does not require verbatim transcript where arbitration has created a full record of the evidence presented and the reasons for the award.

***Manger v. Manger*, 417 N.J. Super. 370 (App. Div. 2010)**

In the absence of an express designation in an agreement, the Uniform Arbitration Act governs an arbitration in a matrimonial proceeding.

***Curran v. Curran*, 453 N.J. Super. 315 (App. Div. 2018)**

Clause in arbitration agreement which allowed litigant the right to appeal to Appellate Division was illegal, but did not void the remainder of the agreement to arbitrate.

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## **E. MEDIATION OF CUSTODY AND VISITATION ACTIONS**

There exists a separate provision in the rules for the mediation of custody and visitation actions. All complaints or motions involving custody or visitation will be screened by the court to determine whether the issues are genuine. If genuine, the matter will be referred to mediation for resolution in the child's best interests. See R. 1:40-5. The custody mediation process is to be no longer than six months, unless extended on good cause shown, pursuant to R. 5:8-6.

## F. MARRIAGE COUNSELING

It is also incumbent upon the family lawyer to advise clients of marriage counseling alternatives. It is common practice to give clients the names and telephone numbers of several marriage counselors in the vicinity. In cases where there is insufficient income, a client can be directed toward the mental health clinic of a local hospital, which will customarily set the fee based on a sliding scale, depending upon income.

## G. RETAINER AGREEMENT

Divorce litigation and the high emotions that accompany it have generated an abundance of fee disputes. The courts have enacted a separate rule for attorneys in divorce actions, which requires a written retainer agreement. R. 5:3-5 requires the attorneys in connection with family actions to provide a written retainer agreement, which must be signed by the attorney and the client and a copy given to the client along with a statement of the client's rights and responsibilities.

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

- (a) Retainer Agreements. Except where no fee is to be charged, every agreement for legal services to be rendered in a civil family action shall be in writing signed by the attorney and the client, and an executed copy of the agreement shall be delivered to the client. The agreement shall have annexed thereto the Statement of Client Rights and Responsibilities in Civil Family Actions in the form appearing in Appendix XVIII of these rules and shall include the following:
- (1) a description of legal services anticipated to be rendered;
  - (2) a description of the legal services not encompassed by the agreement, such as real estate transactions, municipal court appearances, tort claims, appeals, and domestic violence proceedings;
  - (3) the method by which the fee will be computed;
  - (4) the amount of the initial retainer and how it will be applied;
  - (5) when bills are to be rendered, which shall be no less frequently than once every ninety days, provided that services have been rendered during that period; when payment is to be made; whether interest is to be charged, provided, however, that the running of interest shall not commence prior to thirty days following the rendering of the bill; and whether and in what manner the initial retainer is required to be replenished;

- (6) the name of the attorney having primary responsibility for the client's representation and that attorney's hourly rate; the hourly rates of all other attorneys who may provide legal services; whether rate increases are agreed to, and, if so, the frequency and notice thereof required to be given to the client;
  - (7) a statement of the expenses and disbursements for which the client is responsible and how they will be billed;
  - (8) the effect of counsel fees awarded on application to the court pursuant to paragraph (c) of this rule;
  - (9) the right of the attorney to withdraw from the representation, pursuant to paragraph (e) of this rule, if the client does not comply with the agreement; and
  - (10) the availability of Complementary Dispute Resolution (CDR) programs including but not limited to mediation and arbitration.
- (b) **Limitations on Retainer Agreements.** During the period of the representation, an attorney shall not take or hold a security interest, mortgage, or other lien on the client's property interests to assure payment of the fee. This Rule shall not, however, prohibit an attorney from taking a security interest in the property of a former client after the conclusion of the matter for which the attorney was retained, provided the requirements of R.P.C. 1.8(a) shall have been satisfied. Nor shall the retainer agreement include a provision for a non-refundable retainer. Contingent fees pursuant to R. 1:21-7 shall only be permitted as to claims based on the tortious conduct of another, and if compensation is contingent, in whole or in part, there shall be a separate contingent fee arrangement complying with R. 1:21-7. No services rendered in connection with the contingent fee representation shall be billed under the retainer agreement required by paragraph (a) of this rule, nor shall any such services be eligible for an award of fees pursuant to paragraph (c) of this rule.
- (c) **Award of Attorney Fees.** Subject to the provisions of R. 4:42-9(b), (c), and (d), the court in its discretion may make an allowance, both pendente lite and on final determination, to be paid by any party to the action, including, if deemed to be just, any party successful in the action, on any claim for divorce, dissolution of civil union, termination of domestic partnership, nullity, support, alimony, custody, parenting time, equitable distribution, separate maintenance, enforcement of agreements between spouses, domestic partners, or civil union partners and claims relating to family type matters. All applications or motions seeking an award of attorney fees shall include an affidavit of services at the time of initial filing, as required by paragraph (d) of this rule. A pendente lite allowance may include a fee based on an evaluation of prospective services likely to be performed and

the respective financial circumstances of the parties. The court may also, on good cause shown, direct the parties to sell, mortgage, or otherwise encumber or pledge assets to the extent the court deems necessary to permit both parties to fund the litigation. In determining the amount of the fee award, the court should consider, in addition to the information required to be submitted pursuant to R. 4:42-9, the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

- (d) Affidavit of Services Provided. All applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated in RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought. If the court is requested to consider paraprofessional services in making a fee allowance, the affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorneys' services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client. For purposes of this rule, "paraprofessional services" shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks that are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform.

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## SIGNIFICANT CASES

### *Delaney v. Dickey*, 244 N.J. 466, 496 (2020)

Professional and fiduciary obligation imposed on an attorney to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation requires that the attorney discuss with the client the basic advantages and disadvantages of a provision in a retainer agreement that mandates the arbitration of a future fee dispute or malpractice claim against the attorney.

## **H. 5:3-5(e) WITHDRAWAL FROM REPRESENTATION**

- (1) An attorney may withdraw from representation ninety (90) days or more prior to the scheduled trial date on the client's consent in accordance with R. 1:11-2(a)(1). If the client does not consent, the attorney may withdraw only on leave of court as provided in subparagraph (2) of this rule.
- (2) Within ninety (90) days of a scheduled trial date, an attorney may withdraw from a matter only by leave of court, on motion with notice to all parties. The motion shall be supported by the attorney's affidavit or certification setting forth the reasons for the application and shall have annexed the written retainer agreement. In deciding the motion, the court shall consider, among other relevant factors, the terms of the written retainer agreement and whether either the attorney or the client has breached the terms of that agreement; the age of the action; the imminence of the scheduled trial; the complexity of the issues; the ability of the client to timely retain substituted counsel; the amount of fees already paid by the client to the attorney; the likelihood that the attorney will receive payment of any balance due under the retainer agreement if the matter is tried; the burden on the attorney if the withdrawal application is not granted; and the prejudice to the client or to any other party.
- (3) Upon the filing of a motion or cross-motion to be relieved as counsel, the court, absent good cause, shall sever all other relief sought by the motion or cross-motion from the motion to be relieved as counsel. The court shall first decide the motion to be relieved and, in the order either granting or denying the motion to be relieved, shall include a scheduling order for the filing of responsive pleadings and the return date for all other relief sought in the motion or cross-motion.

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### **SIGNIFICANT CASES**

*Matter of Adoption of Child by C.J.*, 463 N.J. Super. 254, 257, 231 A.3d 765, 767 (App. Div. 2020)

An attorney has an obligation to inform the court if he or she is not able to handle an assigned matter professionally due to a lack of expertise and inability to obtain sufficient knowledge to represent the client effectively and is also unable to retain a substitute attorney knowledgeable in the area.

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**

**FAMILY LAW ENGAGEMENT AND RETAINER AGREEMENT**

\_\_\_\_\_ vs. \_\_\_\_\_

1. I, the undersigned, agree to retain **GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN** (herein **GCLT&H**) to represent my interest in the above captioned matter.
  
2. I agree to pay **GCLT&H** at the following hourly rates:

a)	Mark Gruber	\$450.00 per hour;
b)	Chris H. Colabella	\$400.00 per hour;
c)	Natalie L. Thompson	\$375.00 per hour;
d)	Racquel G. Hiben	\$375.00 per hour;
e)	Kristen C. Montella	\$350.00 per hour;
f)	Samuel C. Colabella	\$325.00 per hour;
g)	Paralegal	\$200.00 per hour;
h)	Legal Assistant	\$100.00 per hour.
i)	Daniel P. Agatino	\$400.00 per hour;
j)	Rachel Alexander	\$400.00 per hour;
k)	C. William Bowkley, Jr.	\$350.00 per hour.
  
3. I agree to pay \$\_\_\_\_\_ as an initial retainer. **This is not a one time or set fee. You will be billed hourly.** You will be refunded any retainer or replenishment retainer in excess of your final bill. There will be a \$500.00 minimum opening file fee if you terminate our representation prior to incurring \$500.00 of legal fees. **If using a credit or debit card for payment, there will be an additional 2% convenience fee charge and a \$2 fee per e-check payment.** At any time that your outstanding balance with the firm is below a credit balance of \$1,000.00, you agree to replenish the retainer with a refresher retainer in the same amount of the initial retainer set forth herein, or such other amount determined by the attorney. In the event that your matter or any part of it does not settle, and it appears that certain issues will have to be tried, any outstanding balance must be paid in full at least 20 days prior to the trial date. In addition, no later than 10 days prior to the trial date, you will be required to provide a trial retainer to be determined by the firm in an amount necessary to complete the trial. The firm will not await fees awarded by the Court from third parties. This means that you will have to pay your legal fees when incurred or, otherwise, make arrangements with our billing department for monthly payments.
  
4. I also agree to pay **\$TBD** monthly/weekly as an additional retainer.
  
5. You will pay the above rates for the covering attorney if your primary attorney is unable to attend to your matter.
  
6. You will be billed 4% on all new charges as an administrative fee for cost of postage, overnight delivery, photocopying, telephone and faxing; courier charges will be billed separately.



7. If notice of reasonable fee increase is given, I agree to pay the increase or relieve **GCLT&H** as counsel.
8. All fees are my responsibility regardless of whether other persons agree or are ordered to pay them. My attorney is not under obligation to sue for or collect fees awarded to me.
9. I authorize my attorney to deduct his or her fees from funds held in trust or otherwise and further, I authorize my attorney to charge my debit or credit card as notated in Section 18. I agree that **GCLT&H** has an attorneys' lien pursuant to N.J.S.A. 2A:13-5 on the proceeds of equitable distribution for any outstanding balance of legal fees.
10. I agree to pay all fees before the conclusion of my case, unless otherwise agreed. **GCLT&H** may withdraw from representation, if I do not comply with this Agreement. This retainer does not obligate **GCLT&H** to initiate any appeals. A separate Retainer Agreement will be required before any appeals are filed on my behalf.
11. You will be billed monthly. Interest at the rate of 1.25% per month will be charged on the unpaid balance, if payment is not received within 30 days of invoice date. Collection costs and reasonable attorney's fees will be charged, if collection of fees is necessary. *Failure to pay legal fees as agreed will be considered consent for **GCLT&H** to withdraw as my attorneys.*
12. I understand and acknowledge that should **GCLT&H** bring suit against me for fees due under this Agreement, and after the requisite Pre-Action Notice required by The Rules Governing the Courts of New Jersey, I shall be responsible for all costs of suit and attorney's fees associated with such collection suit, with my minimum responsibility being \$500.00 for the costs of suit and attorney's fees for the filing of same. I agree that the fees set forth in this agreement are reasonable attorney fees.
13. At the end of our representation, you agree to retrieve your file within fourteen (14) days. The firm will scan the relevant documents from your file which the firm, in its discretion, will determine and discard all other non-essential documents. If you do not retrieve your file from the firm as agreed, you authorize the firm to properly dispose of the file after scanning and digitally saving the relevant portions thereof.
14. Anticipated legal services will be limited to issues directly related to divorce, custody and equitable distribution, including pleadings, preparation, negotiations, motions, required court appearances and trial and drafting of Marital Settlement Agreement. Legal services not encompassed by this Agreement are real estate transactions, municipal court appearances, tort claims, appeals, and domestic violence proceedings, preparation and implementation of Qualified Domestic Relations Orders, and all legal services arising after the entry of Judgment of Divorce including, but not limited to, motions for reconsiderations, and motions for new trial unless specifically agreed.
15. A minimum of .2 hours will be billed for any legal action taken on your case.
16. Representation terminates upon settlement and/or judgment and does not include any post-settlement or post-judgment matters.

17. Complimentary Dispute Resolution (CDR), including, but not limited to Mediation and Arbitration are available to assist in resolving your matter. I acknowledge receiving CDR materials.
18. I acknowledge receiving a copy of the **STATEMENT OF CLIENT RIGHTS AND RESPONSIBILITIES**.

19. **OTHER:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

X \_\_\_\_\_  
**Signature of Client**

\_\_\_\_\_ **GRUBER, COLABELLA, LIUZZA,  
 THOMPSON & HIBEN  
 (Attorney of Primary Responsibility)**

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**If required:**

Guarantor Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Must be personally signed by Guarantor)

Fee Guaranteed by: \_\_\_\_\_  
 Print Guarantor Name

**GCLT&H Initiating Attorney (Circle One)**

- |                           |                           |                               |
|---------------------------|---------------------------|-------------------------------|
| Mark Gruber, Esq.         | Racquel G. Hiben, Esq.    | Daniel P. Agatino, Esq.       |
| Chris H. Colabella, Esq.  | Kristen C. Montella, Esq. | Rachel Alexander, Esq.        |
| Natalie L. Thompson, Esq. | Samuel Colabella, Esq.    | C. William Bowkley, Jr., Esq. |

**COMPLETE THE FOLLOWING:**

Name: \_\_\_\_\_

Work No. \_\_\_\_\_

Address: \_\_\_\_\_

Home No. \_\_\_\_\_

\_\_\_\_\_

Cell No. \_\_\_\_\_

\_\_\_\_\_

E-Mail: \_\_\_\_\_

SS No. \_\_\_\_\_

Drivers License No. \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Referral Source: \_\_\_\_\_

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Name of Guarantor: \_\_\_\_\_

Work No. \_\_\_\_\_

Address of Guarantor: \_\_\_\_\_

Home No. \_\_\_\_\_

\_\_\_\_\_

Cell No. \_\_\_\_\_

\_\_\_\_\_

E-Mail: \_\_\_\_\_

SS No. \_\_\_\_\_

Driver's License No. \_\_\_\_\_

Date of Birth: \_\_\_\_\_

**Credit Card Information**

Credit Card \_\_\_\_\_

Amount \$ \_\_\_\_\_

Account No. \_\_\_\_\_

Expiration Date \_\_\_\_\_

3-digit CSV (on back of card, above signature) \_\_\_\_\_

Name on Card \_\_\_\_\_

Signature of Cardholder Authorizing GCLT&H to process payment \_\_\_\_\_

***Billing address if different than client address above:***

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

\_\_\_\_\_

**STATEMENT OF CLIENT RIGHTS AND RESPONSIBILITIES IN CIVIL  
FAMILY ACTIONS**

**A. CLIENT'S RIGHTS**

1. Clients have the right to have their attorneys diligently advocate their interests within the bounds of the law and legal ethics.
2. Clients have the right to have the fee arrangement fully and completely explained prior to entering into any agreement for services.
3. Clients have the right to have a written retainer agreement describing the financial terms of the relationship between the client and attorney.
4. Clients have the right to refuse to enter into an unacceptable fee arrangement or modification of a fee arrangement.
5. Clients have the right to be provided information as to the attorney(s) who will be primarily responsible for their matter and all other legal staff who will be working on the matter as well as information as to the costs for those individuals.
6. Clients have the right to be provided bills on a regular basis, itemized as to the charges and time spent on each activity.
7. Clients have the right to be informed of and be present at any Court proceeding involving their case unless otherwise directed by the Court.
8. Clients have the right to be provided copies of all documents presented to the Court by any party in their matter unless otherwise ordered by the Court.
9. Clients have the right to be afforded access to their attorneys.
10. Clients have the right to make the final decision as to whether, when, and how to settle their cases and as to economic and other positions to be taken with respect to issues in the case.

**B. CLIENT RESPONSIBILITIES**

1. Clients shall provide full and accurate information to their attorneys regarding their matter.
2. Clients shall be available to participate in a timely fashion regarding their matter and to respond reasonably to requests from their counsel.
3. Clients shall advise their attorneys promptly of any change in their lives that might reasonably be expected to affect the handling of their matter.
4. Clients shall pay for the legal services rendered on their behalf within the time period set forth in the retainer agreement.
5. Clients shall be required to review diligently all bills submitted by their attorneys and within a reasonable time to raise any objections regarding billing.
6. Clients shall not take any position in their matter for any improper purpose, such as to delay the proceeding or intentionally to increase the cost to other litigants.
7. Clients shall not seek to use their attorneys for any improper means.
8. Clients must recognize and be responsible for the costs associated with any action initiated or requested by the client.
9. Clients shall provide sufficient time for their attorneys to explain to them the financial costs and other ramifications of a potential action in this matter and reasonably to consider the advice of their attorneys.

# SUBSTANTIVE LAWS AND PROCEDURAL RULES

## A. CAUSE OF ACTION FOR DIVORCE AND ANNULMENT AND PROOFS

The process of divorce is initiated by the filing of a complaint for divorce in the New Jersey Superior Court, Chancery Division, Family Part, on either fault or no fault grounds.

### 1. No Fault Divorce

N.J.S.A. 2A:34-2(d):

Separation, provided that the husband and wife have lived separate and apart in different habitations for a period of at least eighteen or more consecutive months, and there is no reasonable prospect of reconciliation provided further that after the eighteen month period there shall be a presumption that there is no reasonable prospect of reconciliation.

Or, while technically a ‘fault’ ground, most attorneys utilize irreconcilable differences as a quasi-‘no fault’ cause of action.

N.J.S.A. 2A:34-2(i):

Irreconcilable differences which have caused the breakdown of the marriage for a period of six months and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation.

No fault grounds are more accurately classified as 18 months separation in separate residences where the parties have not engaged in sexual relations with one another during that period of time. The complaint cannot be filed until after the 18-month period. This is because the state

of New Jersey has an interest in preserving family life and has created an 18-month ‘cooling off’ period when the parties do not have fault grounds. In reality, most people choose not to wait 18 months due to the desire to terminate the relationship and move on quickly. The irreconcilable differences statute does not require that the parties live separate or apart. The only requirement is that the irreconcilable differences existed for six months prior to the filing of the complaint. Many people are surprised to learn they may live together after commencing divorce on one of the fault grounds, or based upon irreconcilable differences.

## 2. Fault Grounds

a. *Extreme Mental or Physical Cruelty*: Commonly defined as behavior considered so extremely mentally cruel that it becomes unreasonable to live together as husband and wife.

**2A:34-2(c)**. Extreme cruelty, which is defined as including any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; provided that no complaint for divorce shall be filed after three months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim.

Other states label this cause ‘irreconcilable differences.’ Most superior court judges hold the modern view that if a marriage is dead, a divorce should be granted. Thus, it is not usually difficult to establish a basis of extreme mental cruelty when one considers the subjective nature of the criteria. There is technically a three-month waiting period between the last act complained of and the filing of the complaint for divorce. Extreme mental or physical cruelty can take many forms.

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### SIGNIFICANT CASES

*Friedman v. Friedman*, 37 N.J. Super. 52 (App. Div. 1955)

The court’s focus will be upon the past and future effects upon the health and life of the plaintiff.

*Kram v. Kram*, 94 N.J. Super. 539 (Ch. Div. 1967), *rev’d on other grounds*, 98 N.J. Super. 274 (App. Div. 1967), *cert. granted*, 51 N.J. 273 (1968), *aff’d*, 52 N.J. 545 (1968)

Defines extreme cruelty as that degree of cruelty, either actually inflicted or reasonably inferred, which endangers the life or health of the aggrieved party or renders his or her life one of such extreme discomfort and wretchedness as to incapacitate him or her, physically or mentally, from discharging the marital duties.

b. *Adultery*: [N.J.S.A. 2A:34-2(a)] People are obsessed with attempting to establish adultery. It need not be corroborated and may be proven by circumstantial evidence. However, most judges still require corroboration. Circumstantial evidence can be shown by establishing: 1) the inclination to commit adultery, such as a close intimate relationship with another person, and 2) the opportunity for adultery. Proof that the co-respondent (the person committing adultery with one of the parties) is known to be a co-worker and confidante and the co-respondent was observed entering the defendant's residence in the evening and exiting later the following morning is usually sufficient. Ordinarily, a private investigator or unbiased witness is necessary to prove a circumstantial case. The co-respondent must receive notice that he or she has been named in the complaint for divorce and the co-respondent has the right to intervene if desired.

Gay and lesbian relationships will constitute adultery under the statute.

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## SIGNIFICANT CASES

### *Hight v. Hight*, 129 N.J. Eq. 15 (1941)

Convincing evidence of both inclination and opportunity is required to establish adultery by circumstantial evidence.

### *Nardone v. Nardone*, 134 N.J. Super. 478 (Ch. Div. 1975)

Condonation to adultery is not a defense.

### *S.B. v. S.J.B.*, 258 N.J. Super. 151 (Ch. Div. 1992)

Wife's lesbian relationship constituted adultery.

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c. *Desertion*: [N.J.S.A. 2A:34-2(b)] Willful and continued desertion for the term of 12 or more months, which may be established by satisfactory proof that the parties have ceased to cohabit as man and wife.

d. *Constructive Desertion*: Can take many forms. Constructive desertion is the separation by the will of the offended spouse, justified by acts of cruelty which preceded it. Thus, if separation is due to the conduct of the husband calculated to cause the wife to leave him, the husband is considered the deserter. Thus, constructive desertion is where an existing cohabitation is put to an end by the misconduct of one of the parties amounting in itself to a ground for divorce.

The withdrawal of the sexual relationship by either party amounts to desertion and the continued use of contraceptives by either against the will of the other amounts to the same thing.

Generally, constructive desertion is usually pleaded when there is a willful refusal of one party to have sexual relations with the other party for a period of 12 or more months prior to the filing of the complaint for divorce.

e. *Habitual Drunkenness or Drug Habituation*: [N.J.S.A. 2A:34-2(e)] Voluntarily induced addiction or habituation to any narcotic drug as defined in the New Jersey Controlled Dangerous Substances Act, P.L. 1970. c. 226, or habitual drunkenness for a period of 12 or more consecutive months subsequent to marriage and next preceding the filing of the complaint.

This is established when a pattern of drinking habitually is demonstrated. The test is not the total number of days, weeks or months a defendant was drunk, but whether, viewed in its entirety, the association with alcohol during that period was sufficiently persistent and substantial to undermine and destroy the basic precepts on which a marriage is founded. Ordinarily, extreme mental and physical cruelty accompany habitual drunkenness. The same is applied to drug habituation.

f. *Imprisonment*: [N.J.S.A. 2A:34-2(g)] Imprisonment of the defendant for 18 or more consecutive months after marriage, provided that where the action is not commenced until after the defendant's release, the parties have not resumed cohabitation following such imprisonment.

g. *Institutionalization*: [N.J.S.A. 2A:34-2(f)] Institutionalization for mental illness for a period of 24 or more consecutive months subsequent to marriage and next preceding the filing of the complaint.

The gravamen of action for divorce based on commitment for mental illness is inability of the institutionalized party to be a working partner in the marriage. Weekend leaves from a mental hospital granted to the husband as part of program of rehabilitation did not interrupt the period of consecutive institutionalization asserted by the wife as a ground for divorce.

h. *Deviant Sexual Behavior*: [N.J.S.A. 2A:34-2(h)] Deviant sexual conduct voluntarily performed by the defendant without the consent of the plaintiff.

i. *Irreconcilable Differences*: [N.J.S.A. 2A:34-2(i)] Irreconcilable differences that have caused the breakdown of the marriage for a period of six months and that make it appear that the marriage should be dissolved and that there is no prospect of reconciliation.



### 3. Civil Union Divorce

#### 2A:34-2.1. Grounds for Dissolution of Civil Unions

The dissolution of a civil union may be adjudged for the following causes:

- a. voluntary sexual intercourse between a person who is in a civil union and an individual other than the person's partner in a civil union couple;
- b. willful and continued desertion for a period of 12 or more consecutive months, which may be established by satisfactory proof that the parties have ceased to cohabit as partners in a civil union couple;
- c. extreme cruelty, which is defined as including any physical or mental cruelty that endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; except that no complaint for termination shall be filed until after three months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;
- d. separation, provided that the partners in a civil union couple have lived separate and apart in different habitations for a period of at least 18 or more consecutive months and there is no reasonable prospect of reconciliation; and provided further that, after the 18-month period, there shall be a presumption that there is no reasonable prospect of reconciliation;
- e. voluntarily induced addiction or habituation to any narcotic drug, as defined in section 2 of the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-2) or in N.J.S.2C:35-2 of the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al., or habitual drunkenness for a period of 12 or more consecutive months subsequent to establishment of the civil union and next preceding the filing of the complaint;
- f. institutionalization for mental illness for a period of 24 or more consecutive months subsequent to establishment of the civil union and next preceding the filing of the complaint; or
- g. imprisonment of the defendant for 18 or more consecutive months after establishment of the civil union, provided that where the action is not commenced until after the defendant's release, the parties have not resumed cohabitation following the imprisonment.

## 4. Annulment

Annulment is not divorce in terms of terminating a marriage. Annulment voids a marriage from the beginning as though it never existed.

### 2A:34-1. Causes for Judgments of Nullity

(1) Judgments of nullity of marriage may be rendered in all cases, when:

- a. Either of the parties has another wife, husband, partner in a civil union couple or domestic partner living at the time of a second or other marriage.
- b. The parties are within the degrees prohibited by law. If any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.
- c. The parties, or either of them, were at the time of marriage physically and incurably impotent, provided the party making the application shall have been ignorant of such impotency or incapability at the time of the marriage, and has not subsequently ratified the marriage.
- d. The parties, or either of them, lacked capacity to marry due to want of understanding because of mental condition, or the influence of intoxicants, drugs, or similar agents; or where there was a lack of mutual assent to the marital relationship; duress; or fraud as to the essentials of marriage; and has not subsequently ratified the marriage.
- e. The demand for such a judgment is by the wife or husband who was under the age of 18 years at the time of the marriage.
- f. Allowable under the general equity jurisdiction of the Superior Court.

(2) Judgments of nullity of a civil union may be rendered in all cases, when:

- a. Either of the parties has another wife, husband, partner in a civil union couple or domestic partner living at the time of establishing the new civil union.
- b. The parties are within the degrees prohibited by the law from entering into a marriage or establishing a civil union or domestic partnership. If any such civil union shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.
- c. The parties, or either of them, lacked capacity to enter into a civil union due to want of understanding because of mental condition, or the influence of intoxicants, drugs, or similar agents; or where there was a lack of mutual assent to the civil union; duress; or fraud as to the essentials of a civil union; and has not subsequently ratified the civil union.
- d. The demand for such a judgment is by the party who was under the age of 18 years at the time of the civil union.
- e. Allowable under the general equity jurisdiction of the Superior Court..

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## SIGNIFICANT CASES

***Houlihan v. Honepa*, 46 N.J. Super. 583 (Ch. Div. 1957)**

Plaintiff's testimony in an annulment case must be corroborated.

***Williams v. Witt*, 98 N.J. Super. 1 (App. Div. 1967)**

Intention never to have children, in order to constitute a ground for annulment, must antedate the marriage, for it is the implied promise to have children, coupled with the intent not to fulfill it, that constitutes fraud going to an essential element of the marriage.

***Faustin v. Lewis*, 85 N.J. 507 (1981)**

Wife's marriage, entered into for the sole purpose of securing permanent residence in the United States, established a statutory ground for judgment of nullity providing there was a lack of mutual consent to marital relationship and the marriage had not been subsequently ratified.

***V.J.S. v. M.J.B.*, 249 N.J. Super. 318 (Ch. Div. 1991)**

Annulment is established only when there is proof of extreme nature going to one of the essentials of marriage.

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**Mark Gruber, Esq./ID # \_\_\_\_\_**  
**Filing Attorney, Esq./ID # \_\_\_\_\_**  
**GRUBER, COLABELLA, LIUZZA,**  
**THOMPSON & HIBEN**  
 41 Lakeside Boulevard  
 Hopatcong, New Jersey 07843  
 Tel. No. (973) 398-7500  
 Fax No. (973) 398-2592  
 Attorneys for Plaintiff

	:	SUPERIOR COURT OF NEW JERSEY
<b>MARY THOMAS,</b>	:	CHANCERY DIVISION:FAMILY PART
Falsely known as Mary Smith	:	MORRIS COUNTY
	:	
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-14-000-22
vs.	:	
	:	<b><u>CIVIL ACTION</u></b>
<b>JOHN SMITH,</b>	:	
	:	
	:	<b>COMPLAINT FOR ANNULMENT</b>
Defendant.	:	
	:	

Plaintiff, Mary Thomas, falsely known as Mary Smith, residing at 15A Broad Street, Morristown, Morris County, New Jersey, by way of Complaint says:

**FIRST COUNT**

1. On August 26, 2018, a formal ceremony of marriage took place between the plaintiff and defendant at Our Savior Church, Elizabeth, New Jersey.
2. She was a bona fide resident of the County of Morris, State of New Jersey when this cause of action arose and has ever since for more than one year next preceding the commencement of this action continued to be such a bona fide resident.
3. The defendant resides at 100 Main Street, Newton, County of Sussex, State of New Jersey.

4. At the time of the formal ceremony of marriage on August 26, 2018, the defendant John Smith was lawfully married to Nancy Smith. Said marriage between the defendant and Nancy Smith has never been dissolved or annulled and was and continues to be in full force and effect. When the ceremony took place the plaintiff had no knowledge of the defendant's existing marriage, nor did the defendant reveal the same to the plaintiff.

5. There were no children born of this purported marriage between plaintiff and defendant.

6. There were no previous actions between the parties respecting this alleged marriage.

**WHEREFORE**, Plaintiffs demands judgment:

- (a) Declaring the purported marriage a nullity;
- (b) Compelling the defendant to pay alimony to the plaintiff;
- (c) Directing the defendant to pay counsel fees;
- (d) For such further relief as the Court may deem equitable and just.

### **SECOND COUNT**

1. Plaintiff repeats each and every allegation of the First Count of the Complaint as if set forth at length herein.

2. The parties acquired by deed the real property located at 100 Main Street, Newton, Sussex County, New Jersey.

**WHEREFORE**, Plaintiff demands judgment as to the Second Count:

- (a) That a fair partition of the lands be made among the plaintiff and the defendant and any other persons entitled to share their end according to their respective rights and interest.
- (b) If actual partition cannot be made without great prejudice to the respective parties or, as practical, that the lands be sold and the balance be divided

between Plaintiff and Defendant according to their respective rights and interests.

- (c) For such further relief as the court may deem equitable and just.

**CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

I hereby certify that to the best of my information, knowledge and belief that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, that no other action or arbitration proceeding is contemplated, and I am not aware of any other person who should be joined in this matter.

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**  
Attorneys for Plaintiff

**Dated:**

\_\_\_\_\_  
**Mark Gruber, Esq.**

**CERTIFICATION OF VERIFICATION AND NON-COLLUSION  
PURSUANT TO R. 5:4-2(C)**

I, **MARY THOMAS**, being of full age, hereby certify:

1. I am the Plaintiff in the foregoing Complaint.
2. The allegations in the Complaint are true to the best of my knowledge, information and belief. The said Complaint is made in true and good faith and without collusion for the causes set forth therein.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

\_\_\_\_\_  
**Mary Thomas, Falsely known as  
Mary Smith**

**Dated:**

[Insurance Certification omitted]

## 5. Divorce from Bed and Board

An infrequently utilized cause of action for a limited divorce is found in N.J.S.A. 2A:34-3. It is similar to legal separation and is known as a divorce from bed and board or, in Latin, *a mensa et thoro*, as opposed to the traditional divorce known as divorce from the bonds of matrimony, *vinculo matrimonii*. The divorce from bed and board requires a mutual application and must be based upon one of the enumerated grounds for a divorce from the bonds of matrimony.

N.J.S.A. 2A:34-3 is set forth below:

- a. Divorce from Bed and Board may be adjudged for the same causes as divorce from Bonds of Matrimony whenever both parties petition or join in requesting such relief and they, or either of them, present sufficient proof of such cause or causes to warrant the entry of a Judgment of Divorce from the Bonds of Matrimony, provided further that in the case of a reconciliation, thereafter, the parties may apply for a revocation or suspension of the judgment, and provided further that the granting of a Bed and Board divorce shall in no way prejudice either party from, thereafter, applying to the court for a conversion of said divorce to a divorce from the Bonds of Matrimony, which application shall be granted as a matter of right.
- b. Legal separation from a partner in a civil union couple may be adjudged for the same causes as dissolution of a civil union whenever both parties petition, or join in requesting such relief and they, or either of them, present sufficient proof of such cause or causes that warrant the entry of a judgment of dissolution of a civil union, provided further that in the case of a reconciliation, thereafter, the parties may apply for a revocation or suspension of judgment, and provided further that the granting of a legal separation from a partner in a civil union couple shall in no way prejudice either party from, thereafter, applying to the court for a conversion of said legal separation from a partner in a civil union couple, to a dissolution of a civil union, which application shall be granted as a matter of right.

Either party can convert a divorce from bed and board in the future to that of a divorce from the bonds of matrimony.

A form of judgment of divorce from bed and board is attached.

## 6. Jewish Divorce ‘Get’

Some observant Jews adhere to their religious beliefs that they cannot remarry in the Jewish faith without obtaining a Jewish divorce known as a ‘get.’ There is authority to suggest that, if there is the promise to cooperate in obtaining a get, or the parties have signed a religious contract known as a ketuba, which requires them to obtain a get, the court can enforce that agreement. However, in the absence of such an agreement, there is only one unreported case, which held that it would be an impermissible judicial involvement in the matter of a religious practice. That unreported case is known as *Lowry v. Lowry*, Appellate Division Docket No. A-0472-10T4. However, the case does cite the reported case of *Abdelhak v. Jewish Press, Inc.*, 411 N.J. Super. 211 (App. Div. 2009), which held that, “the court must refrain from becoming entangled in issues of religious faith and doctrine.”

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### SIGNIFICANT CASES

#### ***Aflalo v. Aflalo*, 295 N.J. Super. 527 (Ch. Div. 1996)**

Wife seeking dissolution of marriage was not entitled to order compelling husband to grant wife Jewish bill of divorce known as “get,” as such an order would violate husband’s right to free exercise of religion.

#### ***Odatalla v. Odatalla*, 355 N.J. Super. 305 (2002)**

The First Amendment did not preclude the authority in dissolution proceeding to enforce ‘mahr’ agreement, which was contained within Islamic marriage license and had provision that “postponed” at time of marriage \$10,000 dower due wife, under separation of church and state doctrine. (In Islam, a mahr is a mandatory payment in the form of money or possession paid or promised to be paid by the groom or the groom’s brother to the bride at the time of marriage.) The court held that the mahr agreement was enforceable based upon neutral principles of law and not on religious policy or theories since no doctrinal issue was involved, agreement was not void simply because it was entered into during an Islamic ceremony of marriage, and agreement was contract between two consenting adults that did not contravene statute or interests of society.

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Mark Gruber, Esq./ID# \_\_\_\_\_  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

_____	:	SUPERIOR COURT OF NEW JERSEY
<b>JOHN SMITH,</b>	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO.: FM-19-377-19
vs.	:	
	:	<u>CIVIL ACTION</u>
<b>MARY SMITH,</b>	:	
	:	
<i>Defendant.</i>	:	DUAL JUDGMENT OF DIVORCE FROM
	:	BED & BOARD WITH MARITAL SETTLEMENT
_____	:	AGREEMENT ATTACHED

**THIS MATTER** coming on to be heard on **October 3, 2019**, before the Honorable James A. Farber, J.S.C., in the presence of Mark Gruber, Esq. of the law firm of Gruber, Colabella, Liuzza, Thompson & Hiben, Attorneys for the Plaintiff, **John Smith**; and Larry Lawyer, Esq., Attorney for Defendant, **Mary Smith**; and the Court having read and considered the Complaint and Counterclaim and proofs; and it appearing that Plaintiff and Defendant were married on August 5, 1999, in a religious ceremony in East Orange, New Jersey; and the parties having pleaded and proved a cause of action for divorce from Bed & Board under the statute in such case made and provided; and the Plaintiff having been a bona fide resident of the State of New Jersey for more than one year next preceding the commencement of this action; and jurisdiction having been acquired over the Defendant pursuant to the Rules governing the Courts;

**THEREUPON, IT IS** on this **3rd** day of **October 2019**, by the Superior Court of New Jersey, Chancery Division, **ORDERED AND ADJUDGED**; and the said Court by virtue of the power and authority of this Court and of the acts of the legislature in such case made and provided does hereby **ORDER AND ADJUDGE** that the said Plaintiff, **John Smith**, and the said Defendant, **Mary Smith**, be divorced from Bed & Board, pursuant to N.J.S.A. 2A:34-3 for the causes stated in the Complaint and Counterclaim, and the said parties and each of them be freed and discharged from the obligations thereof; and

**IT IS FURTHER ORDERED** that, the Marital Settlement Agreement fully executed on October 3, 2019 and annexed hereto as Exhibit "J-1" is hereby made a part of this Dual Judgment of Divorce from Bed & Board shall not merge with, but shall survive this Dual Judgment of

Divorce from Bed & Board, and the parties are hereby directed to comply with the terms of said Agreement. The Court has not taken testimony as to the merits of the Agreement, but finds that it was entered into freely and voluntarily by the parties.

**IT IS FURTHER ORDERED** that, the parties will have no contact with one another and shall be restrained from each other's residences and places of employment.

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**J.S.C.**

We hereby consent to the form and entry of the within Order.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**

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Mark Gruber, Esq.  
Attorney for Plaintiff

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John Smith, Plaintiff

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Larry Lawyer, Esq.  
Attorney for Defendant

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Mary Smith, Defendant

## **B. OTHER CAUSES OF ACTION**

The entire controversy doctrine, as well as recent cases, (see *Tevis v. Tevis*, 79 N.J. 422 (1979)) may require that other causes of action between the parties be brought in conjunction with the divorce complaint. A failure to bring these other actions may act as a bar to the subsequent assertion of the claim. These claims may also be subject to the two-year statute of limitation of N.J.S.A. 2A:14-2.

### **1. Personal Injury**

A personal injury action arising between the parties must be pleaded if a recovery is to be obtained. These personal injury actions can take almost any form, including, but not limited to, assault, battery, rape, negligence, intentional infliction of emotional distress, and outrageous conduct and behavior.

### **2. Wiretap**

It has been recognized in New Jersey that a violation of the Wiretap Law, N.J.S.A. 2A:156A-1 *et seq.*, gives rise to a cause of action. While it generally is acceptable to record a conversation to which one's a party, it is a violation of the wiretap statute to intercept another person's wire, electronic or oral communication.

It may be a violation of the wiretapping laws to intercept any of the following types of communication: email, retrieving pager messages, wiretapping the home phone, eavesdropping on cellular or cordless phones, or retrieving records from internet conversations in chat rooms or private cybersex chat rooms. Violations of the wiretapping laws may result in both criminal and civil penalties.

#### **2A:156A-3. Interception, disclosure or use of wire or oral communications; violation; penalty**

Except as otherwise specifically provided in this act, any person who:

- a. Purposely intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication; or
- b. Purposely discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or
- c. Purposely uses or endeavors to use the content of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having

reason to know, that the information was obtained through the interception of a wire, electronic or oral communication; shall be guilty of a crime of the third degree. Subsections b. and c. of this section shall not apply to the contents of any wire, electronic or oral communication, or evidence derived therefrom, that has become common knowledge or public information.

Civil damages are provided by statute and include actual damages, punitive damages and reasonable attorney's fees.

**2A:156A-24. Civil action for unlawful interception, disclosure or use of wire or oral communication; damages; attorney's fees**

Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of this act shall have a civil cause of action against any person who intercepts, discloses or uses or procures any other person to intercept, disclose or use, such communication; and shall be entitled to recover from any such person:

- a. Actual damages, but not less than liquidated damages computed at the rate of \$100.00 a day for each day of violation, or \$1,000.00, whichever is higher;
- b. Punitive damages; and
- c. A reasonable attorney's fee and other litigation costs reasonably incurred.

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## SIGNIFICANT CASES

***M.G. v. J.C.*, 254 N.J. Super. 470 (Ch. Div. 1991), rev'd in part, *Smith v. Whitaker*, 313 N.J. Super. 165 (1998)**

Where a husband recorded a wife and her female lover's telephone conversations and attempted to use them as leverage for a custody fight, the wife was awarded \$10,000 compensatory damages, \$50,000 punitive damages and \$5,000 in counsel fees. The *M.G.* standard for award of punitive damages was relaxed and set forth in *Smith* at 190.

***Scott v. Scott*, 277 N.J. Super. 601 (Ch. Div. 1994)**

Where a husband tapped the telephone lines of the marital home on three occasions, the wife was awarded \$3,000 compensatory damages, \$4,500 for punitive damages and \$750 for counsel fees. The husband's intoxication was not accepted as a defense.

***Cacciarelli v. Boniface*, 325 N.J. Super. 133 (Ch. Div. 1999)**

It is not a violation of the wiretap statute for a parent to tape a child's conversation with the other parent.

*White v. White*, 344 N.J. Super. 211 (Ch. Div. 2001)

New Jersey Wiretap Act was not meant to extend to email retrieved by the recipient and then stored, but protects only those electronic communications that are in the course of transmission or are backup to that course of transmission.

*Segal v. Lynch*, 413 N.J. Super. 171 (App. Div.), certif. denied, 203 N.J. 96 (2010)

The Appellate Division ruled that no cause of action exists for the tort of intentional infliction of emotional distress when a parent intentionally alienates a child from the natural bond and affection that should exist with the other parent.

*Friedman v. Martinez*, 242 N.J. 449, 231 A.3d 719 (2020)

Learning that one has been viewed in a private moment, because of the intentional efforts of another, under circumstances that would be highly offensive to a reasonable person, satisfies the elements and purpose of tort of intrusion upon seclusion arising from surreptitious placement of a recording device in a private space, and the absence of a recording can go to issue of damages.

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### **3. Constructive Trusts, Transmutation, Quasi-Contract, Unjust Enrichment**

These actions are more commonly known as general equitable remedies. They are available in the appropriate circumstances in divorce actions. In *Kozłowski v. Kozłowski*, 164 N.J. Super. 164 (Ch. Div. 1978), *aff'd* 80 N.J. 378 (1979), the court upheld the common law principle that “unjust enrichment of one party at the expense of the other will not be tolerated” and constructive trusts, along with other equitable remedies, may be utilized together to grant the necessary relief. Thus, where title to property that would otherwise be subject to equitable distribution is conveyed to a third person without consideration, the other person may be named as a defendant in the action and a constructive trust imposed upon the asset.

## **C. CHILD CUSTODY AND REMOVAL**

### **1. Definition of Custody**

There are many types of custody arrangements that have been created by parents and recognized by the courts. Custody should be thought of as a two-tiered concept. The first tier is the decision-making responsibilities of the parents. This is often called ‘legal custody.’ Legal custody usually takes two forms—joint legal custody or sole custody. Joint legal custody requires both parents to confer and agree upon major decisions concerning the child or children’s health, education, welfare and safety. Sole legal custody confers upon one parent that decision-making process

without any input from the other parent. By agreement, parents can create hybrids of these two generally accepted concepts. In New Jersey there is a presumption of joint legal custody.

The second tier of custody is the physical custody of the child or children. In many instances, one parent usually receives the primary residential custody of the child or children. In those cases, the child or children would reside with the primary residential custodian, who would be responsible for their supervision, lodging and day-to-day decisions, while the non-physical custodial parent would have rights of visitation or rights of physical custody based upon a schedule to be agreed upon or ordered by the court. ‘Visitation’ is a term being phased out by the Legislature and courts, because when a parent is with a child it is not a visit. Instead, the term ‘parenting time’ more accurately describes time spent with a child. The parties are free to agree upon, and the attorneys are free to request, that the court order any type of physical custody arrangement that serves the best interests of the children. Shared residential custody arrangements are common whereby the children spend approximately equal amounts of time with both parents based upon the parents’ and the children’s schedules. Those schedules can include alternating days, alternating weeks, alternating months, or any combination thereof.

Considering the parents are separated or about to be separated, the real issue of custody is that of the physical custody of the children. Except in rare cases where one parent is incapable of parenting and supervising a child, the law provides an unbiased, equal right to the physical custody of the children. Parents possessing basic skills of parenthood will ordinarily have physical custody of their children on alternating weekends, alternating holidays, and large blocks of time from summer vacations and other school closings. Thus, a contested physical custody dispute centers around those evenings prior to school days, which are Sunday through Thursday evening. When one considers the parents’ work schedules, the children’s extra-curricular activities, and the children’s own social schedules, a contested physical custody dispute may involve only a very few hours during a very few evenings each week. When explained to clients in this fashion, a negotiated or mediated settlement is easily facilitated.

## **2. Statutory Criteria for Custody**

N.J.S.A. 9:2-4 provides the criteria the court must consider in awarding the legal and physical custody of the children.

### **9:2-4. Legislative findings and declarations; parents’ right to custody equal; custody order; factors; guardian ad litem; agreement as to custody**

The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:

- a. joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;
- b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or
- c. Any other custody arrangement as the court may determine to be in the best interests of the child.

In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

- d. The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.
- e. In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.
- f. The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

Psychologists are routinely engaged or appointed by the court to conduct ‘best interests evaluations.’ The mental health professional is free to incorporate any relevant factor bearing upon custody. The issue of custody can be multi-faceted, which lends itself to varying expert opinions. The mental health professionals often utilize the term ‘bonding’ as an important factor.

The Prevention of Domestic Violence Act creates a presumption for a custody award in favor of the non-abusive parent. N.J.S.A. 2C:25-29b(11).

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## SIGNIFICANT CASES

### ***Cosme v. Figueroa*, 258 N.J. Super. 333 (Ch. Div. 1992)**

A parent’s right to the care and companionship of his or her children is protected by the First, Ninth and 14th amendments of the U.S. Constitution.

### ***Feldman v. Feldman*, 378 N.J. Super. 83 (App. Div. 2005)**

Primary parent has the right to determine religious upbringing.

### ***Grover v. Terlaje*, 379 N.J. Super. 400 (App. Div. 2005)**

Statutory presumption in favor of awarding custody of a child to the non-abusive parent relates to legal as well as physical custody, although the presumption weakens as time passes without any conduct that can be said to jeopardize the non-abusive parent of the child.

### ***Faucett v. Vasquez*, 411 N.J. Super. 108 (App. Div. 2009)**

The parental presumption does not apply when one parent seeks modification of a previously entered court order regarding custody solely because of the other parent’s impending military deployment. When the military deployment is likely to last a year or more and the application is contested, the parent seeking modification, having demonstrated a *prima facie* case of changed circumstances that affect the child’s welfare, is entitled to a plenary hearing if material facts remain disputed. Thereafter, the moving parent must demonstrate that temporary modification is in the child’s best interest.

### ***J.D. v. M.A.D.*, 429 N.J. Super. 34 (App. Div. 2012)**

The trial court was reversed when it granted the defendant in a domestic violence action temporary custody of the parties’ children and exclusive possession of the marital home as a violation of N.J.S.A. 2C:25-29(b)(11).

### ***R.K. v. F.K.*, 437 N.J. Super. 58 (2014)**

During a divorce trial, the court should decide custody under a best interest’s analysis that gives weight to the factors set forth in N.J.S.A. 9:2-4, including but not limited to “the history of



domestic violence.” The trial court erred by relying upon Domestic Violence Act’s presumption that the best interests of the child were served by an award of custody to the non-abusive parent.

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### **3. Child’s Name Change**

The surname of the children is governed by the ‘best interest’ standard and has been held to be free of gender-based notions of parental rights. The Supreme Court of New Jersey, in *Gubermat v. Dermer*, 140 N.J. 120 (1995), held that there is a presumption favoring the custodial parent’s original choice of surnames. However, upon separation or divorce the non-custodial parent may overcome that presumption by demonstrating by a preponderance of evidence that it is in the child’s best interest to utilize the non-custodial parent’s name. The Supreme Court specifically held that the preference some courts accord to paternal surnames is unacceptable.

In *Emma v. Evans*, 215 N.J. 197 (2013), the New Jersey Supreme Court rejected the presumption that the primary parent or custodial parent had a rebuttable presumption in changing the child’s name. Rather, it is the best interest of the child standard in name change disputes that will govern.

### **4. Procedures for Determining Custody**

a. *Custody/Visitation Mediation*. The Court Rules provide mandatory mediation of custody and visitation issues after it is determined that the issues of custody and visitation are genuine and substantial. R. 1:40-5.

In the event mediation is successful in resolving any or all of the disputed issues of custody or visitation, the practice is to incorporate the mediation agreement into a court order and submit the same to the court for filing. Areas of unresolved disputes may be reserved for the trial.

b. *Probation Department Best Interests Investigation*. In the event mediation is unsuccessful and there remain any further genuine and substantial issues of custody, the court, upon application of either party or upon its own initiative, may require an investigation by the county probation office into the character and fitness of the parties, the economic condition of the family, and the financial ability of the party to pay alimony, support or both. See R. 5:8-1.

#### **5:8-1. Investigation Before Award**

In family actions in which the court finds that either the custody of children or parenting time issues, or both, are a genuine and substantial issue, the court shall refer the case to mediation in accordance with the provisions of R. 1:40-5. During the mediation process, the parties shall not be required to

participate in custody evaluations with any expert. The parties may, however, agree to do so. The mediation process shall last no longer than two months from the date it commences or is ordered to commence, whichever is sooner. As set forth in R. 5:8-6, the court, on good cause shown, may extend the time period. The date for conclusion of mediation shall be set forth in any Case Management Order(s). If the mediation is not successful in resolving custody issues, the court may before final judgment or order require an investigation to be made by the Family Division of the character and fitness of the parties, the economic condition of the family, the financial ability of the party to pay alimony or support or both, and the parties' homes, which shall be limited to a factual description of the home where the child will reside or visit, appropriate child safety precautions in the home, number of household members and their relationship to the child, and criminal record checks for both parties. Any recommendations as to character and fitness of the parties must be made by mental health professionals qualified by licensure, experience, and training. In other family actions the court may, if the public interest so requires, order such an investigation. The court may continue any family action for the purpose of such investigation, but shall not withhold the granting of any temporary relief by way of alimony, support or pendente lite orders pertaining to parenting issues under R. 5:5-4 and R. 5:7-2 where the circumstances require. Such investigation of the parties shall be conducted by the Family Division, which shall file its report with the court no later than 45 days after its receipt of the judgment or order requiring the investigation, unless the court otherwise provides. If one of the parties lives outside the county of venue but still within New Jersey, then the Family Division in the county of residence shall conduct the investigation of that party and forward the report to the Family Division in the county of venue within the time frame set forth above.

The probation report, once completed (must be no later than 45 days after the judgment or order requiring the investigation, unless otherwise noted), will be furnished to each of the parties. The report, pursuant to the rule, will be confidential except as otherwise provided. The report may be received as direct evidence of the facts contained therein, subject to cross-examination. R: 5:8-4. Most counties' probation departments do not have the financial resources to complete reports related to custody and parenting time issues.

#### **5:8-4. Filing of Reports**

The written report of an investigation made pursuant to this rule shall be filed with the court, shall be furnished to the parties, and shall thereafter be filed in the office of the Family Division. The report shall be regarded as confidential, except as otherwise provided by rule or by court order. The report shall be received as direct evidence of the facts contained therein which

are within the personal knowledge of the Family Division personnel who made the investigation and report, subject to cross-examination.

c. *Custody and Visitation Plans.* The rules require that the parties submit a custody/visitation plan no later than 75 days after the last responsive pleading. R. 5:8-5 provides as follows:

**5:8-5. Custody and Parenting Time/Visitation Plans, Recital in Judgment or Order**

(a) In any family action in which the parties cannot agree to a custody or parenting time/visitation arrangement, the parties must each submit a Custody and Parenting Time/Visitation Plan to the court no later than seventy-five (75) days after the last responsive pleading, which the court shall consider in awarding custody and fixing a parenting time or visitation schedule.

Contents of Plan. The Custody and Parenting/Time Visitation Plan shall include but shall not be limited to the follow factors:

- (1) Address of the parties.
  - (2) Employment of the parties.
  - (3) Type of custody requested with the reasons for selecting the type of custody.
    - (a) Joint legal custody with one parent having primary residential care.
    - (b) Joint physical custody.
    - (c) Sole custody to one parent, parenting time/visitation to the other.
    - (d) Other custodial arrangement.
  - (4) Specific schedule as to parenting time/visitation including, but not limited to, weeknights, weekends, vacations, legal holidays, religious holidays, school vacations, birthdays and special occasions (family outings, extracurricular activities and religious services).
  - (5) Access to medical school records.
  - (6) Impact if there is to be a contemplated change of residence by a parent.
  - (7) Participation in making decisions regarding the child(ren).
  - (8) Any other pertinent information.
- (b) The court shall set out in its order or judgment fully and specifically all terms and conditions relating to the award of custody and proper support for the children.
- (c) Failure to comply with the provisions of the Custody and Parenting Time/Visitation Plan may result in the dismissal of the non-complying party's pleadings or the imposition of other sanctions, or both. Dismissed pleadings shall be subject to reinstatement upon such conditions as the court may order.

d. *Preference of Child/Children.* An integral part of the custody determination is often the preference of the child or children. Depending upon the maturity and ability to express a preference, the court may conduct an *in camera* interview with a child or children. R. 5:8-6 provides that upon the court's own initiative, or upon the request of a litigant, the court shall interview children. The rule did provide that the court interview children seven years or older. A recent amendment made the judge's interview with the child discretionary regardless of the child's age. A stenographic or recorded record shall be made of the interview and transcript provided to counsel and parties upon request and upon payment of costs. The transcript may not be revealed to the children or to third persons without court order.

### **5:8-6. Trial of Custody Issue**

Where the court finds that the custody of children is a genuine and substantial issue, the court shall set a hearing date no later than six months after the last responsive pleading. The court may, in order to protect the best interests of the children, conduct the custody hearing in a family action prior to a final hearing of the entire family action. As part of the custody hearing, the court may on its own motion or at the request of a litigant conduct an *in camera* interview with the child(ren). In the absence of good cause, the decision to conduct an interview shall be made before trial. If the court elects not to conduct an interview, it shall place its reasons on the record. If the court elects to conduct an interview, it shall afford counsel the opportunity to submit questions for the court's use during the interview and shall place on the record its reasons for not asking any question thus submitted. A stenographic or recorded record shall be made of each interview in its entirety. Transcripts thereof shall be provided to counsel and the parties upon request and payment for the cost. However, neither parent shall discuss nor reveal the contents of the interview with the children or third parties without permission of the court. Counsel shall have the right to provide the transcript or its contents to any expert retained on the issue of custody. Any judgment or order pursuant to this hearing shall be treated as a final judgment or order for custody.

Frequently, children will tell both parents they want to live with them. However, when asked by the judge, the children usually state they want both of their parents to reside together, not be divorced, so the family can stay together.

e. *Appointment of Counsel/Guardian Ad Litem:* Where the court concludes that a child's best interests are not being sufficiently protected by the attorneys for the parties, the court may appoint counsel to represent the child or children. The appointment may be made upon the application of either party or the child in a custody or visitation dispute. R. 5:8A permits the appointment, as well as an award of counsel fees and costs, to be assessed against either or both parties at the conclusion of the matter.

### **Rule 5:8A. Appointment of Counsel for Child**

In all cases where custody or parenting time/visitation is an issue, the court may, on the application of either party or the child or children in a custody or parenting time/visitation dispute, or on its own motion, appoint a counsel on behalf of the child or children. Counsel shall be an attorney licensed to practice in the courts of the State of New Jersey and shall serve as the child's lawyer. The appointment of counsel should occur when the trial court concludes that a child's best interest is not being sufficiently protected by the attorneys for the parties. Counsel may, on an interim basis or at the conclusion of the litigation, apply for an award of fees and costs with an appropriate affidavit of services, and the trial court shall award fees and costs, assessing same against either or both of the parties.

The court may also appoint a guardian *ad litem* to represent the best interests of the child or children if the circumstances warrant such an appointment. The guardian *ad litem*'s responsibility is to file a written report with the court after interviewing the children, the parties, and other persons possessing relevant information, and after obtaining relevant documentary evidence. The guardian *ad litem* may also obtain independent experts. R. 5:8B also provides that the guardian *ad litem* may seek fees for his or her appointment.

### **Rule 5:8B. Appointment of Guardian Ad Litem**

(a) **Appointment.** In all cases in which custody or parenting time/visitation is an issue, a guardian *ad litem* may be appointed by court order to represent the best interests of the child or children if the circumstance warrant such an appointment. The services rendered by a guardian *ad litem* shall be to the court on behalf of the child. A guardian *ad litem* may be appointed by the court on its own motion or on application of either or both of the parents. The guardian *ad litem* shall file a written report with the court setting forth findings and recommendations and the basis thereof, and shall be available to testify and shall be subject to cross-examination thereon. In addition to the preparation of a written report and the obligation to testify and be cross-examined thereon, the duties of a guardian may include, but need not be limited to, the following:

1. Interviewing the children and parties.
2. Interviewing other persons possessing relevant information.
3. Obtaining relevant documentary evidence.
4. Conferring with counsel for the parties.
5. Conferring with the court, on notice to counsel.
6. Obtaining the assistance of independent experts, on leave of court.
7. Obtaining the assistance of a lawyer for the child (Rule 5:8A) on leave of court.

8. Such other matters as the guardian ad litem may request, on leave of court.

(b) **Objection or Refusal of Appointment.** A proposed guardian ad litem shall have the right to consent or to decline to serve as such, notice of such decision to be in writing to the court with copies to counsel. The parties shall have the right to object to the person appointed as guardian ad litem on good cause shown.

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

(d) **Fee.** The hourly rate to be charged by the guardian ad litem shall be fixed in the initial appointing order and the guardian ad litem shall submit informational monthly statements to the parties. The court shall have the power and discretion to fix a retainer in the appointing order and to allocate final payment of the guardian ad litem fee between the parties. The guardian ad litem shall submit a certification of services at the conclusion of the matter, on notice to the parties, who will thereafter be afforded the right to respond prior to the court fixing the final fee.

The court-appointed counsel's services are to the child. The attorney for the child should act as an independent legal advocate for the best interests of the child and take an active part in the hearing ranging from subpoenaing and cross-examining witnesses.

By comparison, the court-appointed guardian *ad litem*'s services are to the court on behalf of the child. The guardian *ad litem* acts as an independent fact finder, investigator, and evaluator regarding what furthers the best interests of the child. If the purpose of the appointment is for independent investigation and fact finding, the guardian *ad litem* should be appointed rather than an attorney for the child. The guardian *ad litem* may be an attorney, social worker, mental health professional, or other appropriate person.

f. *Parent Coordinator:* In high-conflict cases where parents are unable to easily make joint decisions or follow a parenting plan or order, a parent coordinator can be selected by agreement or by order of the court. The parent coordinator's role is typically one of mediation concerning a wide range of parenting disputes. Parent Coordinators can be attorneys, mental health professionals, or professionals with both qualifications. The terms of appointment are negotiated and often include the following provisions:

1. selection of parent coordinator
2. allocation of fees
3. scope of duties
4. access to speak directly with the children
5. procedure for making parenting issue recommendations
6. duty to report to the court in future litigation, including recommendations for counsel fees against the non-compliant or bad faith parent.

On March 5, 2007, the Supreme Court approved the operational details of a Parenting Coordinator Pilot Program for implementation in the following four vicinages: Bergen, Middlesex, Morris/Sussex and Union. However, effective Nov. 26, 2012, the pilot programs were terminated by the administrative director of the courts. See the attached notice and suggested, but not required, forms. Note that the parent coordinator may be appointed by consent or upon application to the court. Parent coordinators must be qualified similar to other experts, per court rule.

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## **SIGNIFICANT CASES**

### ***Milne v. Goldenberg*, 428 N.J. Super. 184 (App. Div. 2012)**

The parties can agree upon a parent coordinator who is an attorney only by consent. If the court appoints a parent coordinator, the judge must comply with the Supreme Court-established guidelines.

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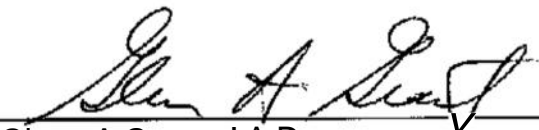
## Notice to the Bar

### Parenting Coordinators – Conclusion of Pilot Program: Continuing Authority to Appoint in individual Cases

On the recommendation of both the Conference of Family Presiding Judges and the Supreme Court Family Practice Committee, the Parenting Coordinator Pilot Program in Bergen, Middlesex, Morris/Sussex and Union vicinages is terminated effective November 26, 2012. All standardized forms promulgated in connection with that pilot program are rescinded as of that date, including the standardized order of appointment, the parent coordinator registration form, and the standardized case information form. Additionally, the roster of parenting coordinators posted on the judiciary website will be removed also as of that date.

While the Parenting Coordinator Pilot Program will be ending, Family Judges may continue to appoint Parenting Coordinators in specific cases in any vicinage (except in cases having a domestic violence temporary or final restraining order if effect). Parenting Coordinators so appointed will need to be qualified to serve either by consent of the parties or by the court in the same manner as other experts. While there are no specifically required forms of order of appointment, the two model orders appended to this notice are provided for guidance. One model order would be for use in consent situations; the other when the Parenting Coordinator is appointed on motion by the court or a party.

Questions regarding this material may be directed to Harry T. Cassidy, Assistant Director for Family Practice, Administrative Office of the Courts, by e-mail at [Harry.Cassidy@judiciary.state.nj.us](mailto:Harry.Cassidy@judiciary.state.nj.us) or by phone at 609-984-4228 .



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Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Dated: November 13, 2012



Attorney(s) for \_\_\_\_\_

Superior Court of New Jersey  
Chancery Division - Family Part  
County of \_\_\_\_\_

Docket Number: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

**Civil Action**

**Order Appointing  
Parenting Coordinator  
(Consent)**

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

**IT IS ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_, ORDERED AS FOLLOWS:**

1. APPOINTMENT: \_\_\_\_\_, located at  
\_\_\_\_\_ is appointed as Parenting Coordinator for the term of  
\_\_\_\_\_ to \_\_\_\_\_.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

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

Model Order Promulgated by AJ Memo (11/13/2012), CN 11667

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

3. NO CONFIDENTIALITY: All communications from the parties and/or their lawyers to the Parenting Coordinator and/or from the Parenting Coordinator to the parties and/or their lawyers shall not be deemed confidential, but rather shall be admissible in evidence, under New Jersey Rules of Evidence and Rules of Court.
4. RECOMMENDATIONS: If the Parenting Coordinator can not foster agreement regarding the issues assigned to him/her, then he/she will make recommendations to the parties (and their respective attorneys) directly. If either party objects to the recommendation, and refuses to be bound by the same, either party may apply to the court pursuant to the Rules for determination of the issues. In connection with any such application, either party may submit the Parenting Coordinator's recommendation and any additional relevant evidence, in accordance with the Rules of Court. The court may assess counsel fees pursuant to the Rules in connection with said application. The parties shall provide notice to the Parenting Coordinator of any application to the court related to recommendations the Coordinator has made.
5. SOURCES OF INFORMATION: Except as set forth herein, each party is ordered to provide the Parenting Coordinator with all requested information including the signing of all releases requested for non privileged collateral contacts. The Parenting Coordinator may have contact with any professional for the children. If the parties agree, the Parenting Coordinator may have access to any other individual the parenting coordinator deems necessary to perform the coordinator's duties. If the parties disagree as to whether the Coordinator should have access to any specific person or whether a parent has to sign an authorization pertaining to him or herself, then the Court shall determine the issue on application.

6. SCOPE: The Parenting Coordinator may make recommendations to the parties about issues identified in the Order of Appointment.
7. PROTOCOL: Consistent with this Rule, the Parenting Coordinator may determine the protocol of all communications, interviews, and sessions including who shall or may attend the meetings.
8. COMMUNICATION: The parties and their attorneys shall have the right to initiate or receive oral one-sided communication with the Parenting Coordinator but the fact of such communication shall be made known to the other party contemporaneously with its occurring through confirmatory written memorialization. Any party or counsel may communicate in writing with the Parenting Coordinator provided that copies are provided to the other party and counsel simultaneously. Copies of any documents, tape recordings or other electronic material that one party gives to the Parenting Coordinator must also be given contemporaneously to the other party or his/her attorney.
9. ALLOCATION OF FEES: The Parenting Coordinator's reasonable and customary fees shall be paid by the parties as follows: plaintiff \_\_\_\_% and defendant \_\_\_\_%. In the event of a request for reallocation of fees and costs, the Parenting Coordinator may submit recommendations concerning this issue.
10. PARENTING COORDINATOR'S RETAINER AGREEMENT: The parenting coordinator's retainer agreement shall mirror the terms of this Order of Appointment. The parenting coordinator's retainer agreement shall not provide any authority beyond that set forth in this Order of Appointment.
11. RETAINER: The parties will pay to the Parenting Coordinator a joint retainer in the percentages referred to above, or as may be modified by the Court.

12. TESTIMONY: All testimony by the Parenting Coordinator in connection with these proceedings or other proceedings involving any or all of the participants in this proceeding shall be deemed expert testimony if qualified and shall be paid accordingly.
13. COOPERATION OF THE PARTIES: In the event the Parenting Coordinator believes either party has been recalcitrant and/or non-cooperative and thereby has interfered with the parenting coordinating process, that view shall be communicated in writing to the parties and their attorneys, who may then petition the court for appropriate relief, including, but not limited to, sanctions, counsel fees, and the remedies set forth in *Rule 5:3-7*.
14. TERMINATION/GRIEVANCE: During the term of the Parenting Coordinator's appointment, the Coordinator may withdraw from service at any time, on ten days notice to the parties and the court, if she/he determines resignation to be in the best interests of the children or she/he is unable to serve out the term set forth in this order. A party having a complaint or grievance shall discuss the matter with the Parenting Coordinator in person in an attempt to resolve it before pursuing it in any other manner. If the issue remains unresolved, the aggrieved party shall submit a written letter detailing the complaint or grievance to the Parenting Coordinator with a copy to the other party, both attorneys (if any), and to the attorney for the child(ren) or Guardian ad Litem if one is in place. The Parenting Coordinator shall within ten (10) days provide a written response to both parties and the attorneys. The Parenting Coordinator at his/her discretion may schedule a meeting or conference call with the attorneys or with the attorneys and the parties in an effort to resolve the complaint. In situations where the grievance or complaint is not resolved by this process, the dissatisfied party may request a court hearing to address and resolve the issues that have been raised.

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J.S.C.

Attorney(s) for \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

v.

\_\_\_\_\_  
Defendant.

Superior Court of New Jersey  
Chancery Division - Family Part  
County of \_\_\_\_\_  
Docket Number: \_\_\_\_\_

**Civil Action**

**Order Appointing  
Parenting Coordinator  
(On Motion)**

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

**IT IS ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_, ORDERED AS FOLLOWS:**

1. APPOINTMENT: \_\_\_\_\_, located at \_\_\_\_\_ is appointed as Parenting Coordinator for the term of \_\_\_\_\_ to \_\_\_\_\_.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

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

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

3. NO CONFIDENTIALITY: All communications from the parties and/or their lawyers to the Parenting Coordinator and/or from the Parenting Coordinator to the parties and/or their lawyers shall not be deemed confidential, but rather shall be admissible in evidence, under New Jersey Rules of Evidence and Rules of Court.
4. RECOMMENDATIONS: If the Parenting Coordinator can not foster agreement regarding the issues assigned to him/her, then he/she will make recommendations to the parties (and their respective attorneys) directly. If either party objects to the recommendation, and refuses to be bound by the same, either party may apply to the court pursuant to the Rules for determination of the issues. In connection with any such application, either party may submit the Parenting Coordinator's recommendation and any additional relevant evidence, in accordance with the Rules of Court. The court may assess counsel fees pursuant to the Rules in connection with said application. The parties shall provide notice to the Parenting Coordinator of any application to the court related to recommendations the Coordinator has made.
5. SOURCES OF INFORMATION: Except as set forth herein, each party is ordered to provide the Parenting Coordinator with all requested information including the signing of all releases requested for non privileged collateral contacts. The Parenting Coordinator may have contact with any professional for the children. If the parties agree, the Parenting Coordinator may have access to any other individual the parenting coordinator deems necessary to perform the coordinator's duties. If the parties disagree as to whether the Coordinator should have access to any specific person or whether a parent has to sign an authorization pertaining to him or herself, then the Court shall determine the issue on application.

6. SCOPE: The Parenting Coordinator may make recommendations to the parties about issues identified in the Order of Appointment.
7. PROTOCOL: Consistent with this Rule, the Parenting Coordinator may determine the protocol of all communications, interviews, and sessions including who shall or may attend the meetings.
8. COMMUNICATION: The parties and their attorneys shall have the right to initiate or receive oral one-sided communication with the Parenting Coordinator but the fact of such communication shall be made known to the other party contemporaneously with its occurring through confirmatory written memorialization. Any party or counsel may communicate in writing with the Parenting Coordinator provided that copies are provided to the other party and counsel simultaneously. Copies of any documents, tape recordings or other electronic material that one party gives to the Parenting Coordinator must also be given contemporaneously to the other party or his/her attorney.
9. ALLOCATION OF FEES: The Parenting Coordinator's reasonable and customary fees shall be paid by the parties as follows: plaintiff \_\_\_\_% and defendant \_\_\_\_%. In the event of a request for reallocation of fees and costs, the Parenting Coordinator may submit recommendations concerning this issue.
10. PARENTING COORDINATOR'S RETAINER AGREEMENT: The parenting coordinator's retainer agreement shall mirror the terms of this Order of Appointment. The parenting coordinator's retainer agreement shall not provide any authority beyond that set forth in this Order of Appointment.
11. RETAINER: The parties will pay to the Parenting Coordinator a joint retainer in the percentages referred to above, or as may be modified by the Court.
12. TESTIMONY: All testimony by the Parenting Coordinator in connection with these proceedings or other proceedings involving any or all of the participants in this proceeding shall be deemed

expert testimony if qualified and shall be paid accordingly.

13. COOPERATION OF THE PARTIES: In the event the Parenting Coordinator believes either party has been recalcitrant and/or non-cooperative and thereby has interfered with the parenting coordinating process, that view shall be communicated in writing to the parties and their attorneys, who may then petition the court for appropriate relief, including, but not limited to, sanctions, counsel fees, and the remedies set forth in *Rule 5:3-7*.
  
14. TERMINATION/GRIEVANCE: During the term of the Parenting Coordinator's appointment, the Coordinator may withdraw from service at any time, on ten days notice to the parties and the court, if she/he determines resignation to be in the best interests of the children or she/he is unable to serve out the term set forth in this order. A party having a complaint or grievance shall discuss the matter with the Parenting Coordinator in person in an attempt to resolve it before pursuing it in any other manner. If the issue remains unresolved, the aggrieved party shall submit a written letter detailing the complaint or grievance to the Parenting Coordinator with a copy to the other party, both attorneys (if any), and to the attorney for the child(ren) or Guardian ad Litem if one is in place. The Parenting Coordinator shall within ten (10) days provide a written response to both parties and the attorneys. The Parenting Coordinator at his/her discretion may schedule a meeting or conference call with the attorneys or with the attorneys and the parties in an effort to resolve the complaint. In situations where the grievance or complaint is not resolved by this process, the dissatisfied party may request a court hearing to address and resolve the issues that have been raised.

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J.S.C.



g. *Trial of the Custody Issue*: Where the court finds that custody of children is a genuine and substantial issue, the court shall set a hearing date no later than six months after the last responsive pleading. See R. 5:8-6.

## **5. Removal of Children from the State of New Jersey**

Children who are natives of the state of New Jersey or who have resided in New Jersey for five years may not be removed from the jurisdiction without the consent of both parents or an appropriate court order. These laws apply to separated or divorcing parents. N.J.S.A. 9:2-2 provides:

When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated, or living separate, and such children are natives of this state, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the Court, upon cause shown, shall otherwise order. The Court, upon application of any person on behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this section.

The Code of Criminal Justice provides criminal sanctions for unlawfully removing a child from the state. N.J.S.A. 2C:13-4 provides, in part, as follows:

A person, including a parent, guardian, or other lawful custodian, is guilty of interference with custody if he: (1) takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or visitation of the minor child; or (2) after being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and visitation rights to a minor child, takes, detains, entices, or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody or visitation, or to evade the jurisdiction of the courts of this State; ....

Interference of custody is a crime of the third degree, but the presumption of non-imprisonment set forth in subsection (e) of N.J.S.A. 2C:44-1 for a first offense of a crime of the third degree shall not apply. However, if the child is taken, detained, enticed or concealed outside the United States, or for more than 24 hours, interference with custody is a crime of the second degree.

A crime of the third degree may lead to imprisonment for three to five years and a fine of up to \$15,000, or both. A crime of the second degree carries a specific term of incarceration from between five and 10 years and a fine of up to \$150,000, or both. See N.J.S.A. 2C:43-3 and N.J.S.A. 2C:43-6.

The cases that address removal have evolved substantially over time. In a New Jersey Supreme Court decision entitled *Holder v. Polansky*, 111 N.J. 344 (1988), the Court established the following tests for removal:

1. The custodial parent must first establish any sincere, good faith reason to move out-of-state;
2. The court must then determine whether the move will be inimical to the best interests of the children or adversely affect the visitation rights of the non-custodial parent;
3. If the move will require substantial change in the visitation schedule, proofs concerning the prospective advantages of the move, the integrity of the motives of the party, and the development of a reasonable visitation schedule must be determined; and
4. Whether the non-custodial parent could relocate [*Rampolla v. Rampolla*, 269 N.J. Super. 300 (App. Div. 1983)].

The Supreme Court addressed the issue again, holding that in *Baures v. Lewis*, 167 N.J. 91 (2001), the custodial parent bears the initial burden of showing that:

1. A good faith reason for the move exists; and
2. The child will not suffer from the move.

Once the custodial parent has met its initial burden, the non-custodial parent must then show the move is not being made in good faith or is inimical to the child's interests. The *Baures* court set forth a list of factors to be considered when making the determination of whether the move is harmful to the child.

In light of *Baures* and the cases that followed, it appeared that the courts of New Jersey were becoming more keenly aware of the right of the custodial parent to move freely within the United States and requests by a custodial parent to relocate from the state were routinely granted. However, the Supreme Court in *Bisbing v. Bisbing* 230 N.J. Super 409 (2017) determined that removal of children from the state of New Jersey is governed by N.J.S.A. 9:2-2 which requires a showing of "cause." Thus, a parent wishing to permanently relocate out of state with his or her child, despite the other parent's opposition to the interstate move, must establish cause. The court held that cause under N.J.S.A. 9:2-2 in all contested relocation disputes in which the parents share legal custody is by the "best interests" standard. The court reversed the criteria in *Baures* relative to establishing harm to a child in order to defeat a request by one parent to remove a child from the state. The best interest criteria is now the test in all removal cases where the parties have joint legal custody, regardless of the physical custodial arrangement. The court's logic adopts more recent scholarly debate among social scientists who have studied the impact of relocation on children following divorce and found that relocation may adversely affect children in many different ways. The *Bisbing* decision also recognizes our legislative policy of giving parents equal rights in custody proceedings.

In post-judgment applications for removal, the moving parent must demonstrate a change of circumstances to justify modification of a prior agreement or court order regarding custody. It is yet to be determined whether the factors in *Baures* will have an impact on the *Bisbing* decision. Arguably, the following *Baures* factors can still be introduced in the dispute to establish “best interests”:

- a. reasons for move;
- b. reasons given for opposition;
- c. past history of dealings between parties insofar as it bears on reasons advanced by both parties for supporting and opposing move;
- d. whether the child will receive education, health and leisure opportunities at least equal to what is available here;
- e. any special needs or talents of the child that require accommodation and whether such accommodation or its equivalent is available in the new location;
- f. whether a visitation and communication schedule can be developed that will allow the non-custodial parent to maintain a full and continuous relationship with the child;
- g. the likelihood that the custodial parent will continue to foster the child’s relationship with the non-custodial parent if the move is allowed;
- h. the effect of the move on the extended family relationships here and in the new location;
- i. if the child is of age, his or her preference;
- j. whether the child is entering his or her senior year in high school, at which point he or she should generally not be moved until graduation, without his or her consent;
- k. whether the non-custodial parent has the ability to relocate; and
- l. any other factor bearing on the child’s best interest.

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## **SIGNIFICANT CASES**

### ***Pfeiffer v. Ilson*, 318 N.J. Super. 13 (App. Div. 1999)**

A plenary hearing is not always required for removal applications when there are no issues of fact in dispute.

### ***Costa v. Costa*, 440 N.J. Super. 1, (App. Div. 2015)**

One parent’s relocation to another country does not constitute changed circumstance to warrant modification of legal custody that does not require parents to be close in geographic proximity.

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## 6. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

The act was adopted by New Jersey in 2004 and replaced the Uniform Child Custody Jurisdiction Act (UCCJA), which was first enacted in 1979 to alleviate jurisdictional custody disputes. Its purpose is to avoid forum shopping and interstate custody conflicts, and to foster cooperation among the states. The UCCJEA is designed to grant custody jurisdiction initially to the home state, unless the home state declines jurisdiction, in which event the courts of both states consider the other independent jurisdictional criteria:

- (1) **Home State Jurisdiction.** A child is a resident for six months prior to the action, or had been a resident for six months, but for the removal of the child from New Jersey by a parent claiming custody;
- (2) **Inconvenient Forum.** A state is an inconvenient forum under the circumstances in that a court of another state is a more appropriate forum. Relevant factors include whether domestic violence has occurred and is likely to continue in the future, and which state could best protect the parties and the child; the length and time the child has resided outside the state; the distance between the court in this state and the court in the state that would assume jurisdiction; the relevant financial circumstances of the parties; any agreement of the parties as to which state should assume jurisdiction; the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child; the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence, and the familiarity of the court of each state with the facts and issues of the pending litigation;
- (3) **Conduct of a Party.** A court can decline jurisdiction if the person invoking the jurisdiction has engaged in unjustifiable conduct; and
- (4) **Emergency Jurisdiction.** A child is physically present in the state and has been abandoned or is in need of protection due to actual or threatened abuse, mistreatment, or neglect. Relief under this section is usually limited to the immediate protection of the child.

The act permits only one state to exercise jurisdiction. When two or more states compete, the judges of the states must communicate with one another and make findings of and establish jurisdiction.

### 2A:34-53. Short title

This act shall be known and may be cited as the “Uniform Child Custody Jurisdiction and Enforcement Act.”

## **2A:34-54. Definitions**

As used in this act

“Abandoned” means left without provision for reasonable and necessary care or supervision.

“Child” means an individual who has not attained 18 years of age.

“Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include a provision relating to child support or other monetary obligation of an individual.

“Child custody proceeding” means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under article 3 of this act.

“Commencement” means the filing of the first pleading in a proceeding.

“Court” means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

“Home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

“Initial determination” means the first child custody determination concerning a particular child.

“Issuing court” means the court that makes a child custody determination for which enforcement is sought under this act.

“Issuing state” means the state in which a child custody determination is made.

“Modification” means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation or any other legal or commercial entity.

“Person acting as a parent” means a person, other than a parent, who:

- a. has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and
- b. has been awarded legal custody by a court or claims a right to legal custody under the laws of this State.

“Physical custody” means the physical care and supervision of a child.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Tribe” means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

“Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

#### **2A:34-55. Proceedings governed by other law**

This act does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

#### **2A:34-56. Application to Indian tribes**

- a. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C.1901 et seq., is not subject to this act to the extent that it is governed by the Indian Child Welfare Act.
- b. A court of this State shall treat a tribe as if it were a state of the United States for purposes of articles 1 and 2 of this act.
- c. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this act shall be recognized and enforced under the provisions of article 3 of this act.

#### **2A:34-57. International application of act**

- a. A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying articles 1 and 2 of this act if the foreign court gives notice and an opportunity to be heard to all parties before making child custody determinations.
- b. A child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act shall be recognized and enforced under article 3 of this act.
- c. A court of this State need not apply this act if the child custody law of a foreign country violates fundamental principles of human rights or does not base custody decisions on evaluation of the best interests of the child.

### **2A:34-58 Effect of custody determination**

A child custody determination made by a court of this State that had jurisdiction under this act binds all persons who have been served in accordance with the laws of this State or notified in accordance with section 8 of this act or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

### **2A:34-59. Priority**

If a question of existence or exercise of jurisdiction under this act is raised in a child custody proceeding, the question, upon request of a party, shall be given priority on the calendar and handled expeditiously.

### **2A:34-60. Notice of persons outside state**

- a. Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for the service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.
- b. Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.
- c. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

### **2A:34-61. Appearance and limited immunity**

- a. A party to a child custody proceeding, including a modification proceeding, or a petitioner or a respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating in the proceeding.
- b. A party who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.
- c. The immunity granted by subsection a. of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this act committed by an individual while present in this State.

### **2A:34-62. Communication between courts**

- a. A court of this State may communicate with a court in another state concerning a proceeding arising under this act.
- b. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, the parties shall be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
- c. Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of that communication.
- d. Except as provided in subsection c. of this section, a record shall be made of a communication under this section. The parties shall be informed promptly of the communication and granted access to the record.
- e. For the purposes of this section, “record” means information that is inscribed on a tangible medium or that which is stored in an electronic or other medium and is retrievable in perceivable form.

### **2A:34-63. Taking testimony in another state**

- a. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.
- b. A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.
- c. Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

### **2A:34-64. Cooperation between courts; preservation of records**

- a. A court of this State may request the appropriate court of another state to:
  - (1) hold an evidentiary hearing;
  - (2) order a person to produce or give evidence under procedures of that state;
  - (3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;



- (4) forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.
- b. Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection a. of this section.
- c. Travel and other necessary and reasonable expenses incurred under subsections a. and b. of this section may be assessed against the parties according to the laws of this State.
- d. A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of these records.

**2A:34-65. Initial child custody jurisdiction**

- a. Except as otherwise provided in section 16 of this act, a court of this State has jurisdiction to make an initial child custody determination only if:
  - (1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;
  - (2) a court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under section 19 or 20 of this act and:
    - (a) the child and the child's parents, or the child and at least one parent or a person acting as a parent have a significant connection with this State other than mere physical presence; and
    - (b) substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;
  - (3) all courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under section 19 or 20 of this act; or
  - (4) no state would have jurisdiction under paragraph (1), (2) or (3) of this subsection.
- b. Subsection a. of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

- c. Physical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination.
- d. A court of this State may assume temporary emergency jurisdiction in accordance with section 16 of this act.

**2A:34-66. Exclusive, continuing jurisdiction**

a. Except as otherwise provided in section 16 of this act, a court of this State that has made a child custody determination consistent with section 13 or 15 of this act has exclusive, continuing jurisdiction over the determination until:

(1) a court of this State determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) a court of this State or a court of another state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in this State.

b. A court of this State which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 13 of this act.

**2A:34-67. Jurisdiction to modify determination**

Except as otherwise provided in section 16 of this act, a court of this State may not modify a child custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under paragraph (1) or (2) of subsection a. of section 13 of this act and:

a. the court of the other state determines it no longer has exclusive, continuing jurisdiction under section 14 of this act or that a court of this State would be a more convenient forum under section 19 of this act; or

b. a court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

**2A:34-68. Temporary emergency jurisdiction**

a. A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

b. If there is no previous child custody determination that is entitled to be enforced under this act, and if no child custody proceeding has been commenced in a court of a state having jurisdiction under sections 13 through 15 of this act, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 13 through 15 of this act. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 13 through 15 of this act, a child custody determination made under this section becomes a final determination if:

(1) it so provides; and

(2) this State becomes the home state of the child.

c. If there is a previous child custody determination that is entitled to be enforced under this act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 13 through 15 of this act, any order issued by a court of this State under this section must specify in the order a period of time adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 13 through 15 of this act. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

d. A court of this State which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made, by a court of a state having jurisdiction under sections 13 through 15 of this act, shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to sections 13 through 15 of this act, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

#### **2A:34-69. Notice; opportunity to be heard; joinder**

a. Before a child custody determination is made under this act, notice and an opportunity to be heard in accordance with the standards of section 8 of this act shall be given to all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

- b. This act does not govern the enforceability of a child custody determination made without notice and an opportunity to be heard.
- c. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this act are governed by the law of this State as in child custody proceedings between residents of this State.

### **2A:34-70. Simultaneous proceedings**

- a. Except as otherwise provided in section 16 of this act, a court of this State may not exercise its jurisdiction under this article if at the time of the commencement of the proceeding a proceeding concerning the custody of the child had been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under section 19 of this act.
- b. Except as otherwise provided in section 16 of this act, a court of this State, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 21 of this act. If the court determines that a child custody proceeding was previously commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.
- c. In a proceeding to modify a child custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:
  - (1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;
  - (2) enjoin the parties from continuing with the proceeding for enforcement; or
  - (3) proceed with the modification under conditions it considers appropriate.

### **2A:34-71. Inconvenient forum**

A court of this State that has jurisdiction under this act to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the court's own motion, request of another court or motion of a party.

b. Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) the length of time the child has resided outside this State;
- (3) the distance between the court in this State and the court in the state that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which state should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
- (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each state with the facts and issues of the pending litigation.

c. If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

d. A court of this State may decline to exercise its jurisdiction under this act if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

### **2A:34-72. Jurisdiction declined by reason of conduct**

a. Except as otherwise provided in section 16 of this act or by other law of this State, if a court of this State has jurisdiction under this act because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

- (1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
- (2) a court of the state otherwise having jurisdiction under sections 13 through 15 of this act determines that this State is a more appropriate forum under section 19 of this act; or
- (3) no other State would have jurisdiction under sections 13 through 15 of this act.

b. If a court of this State declines to exercise its jurisdiction pursuant to subsection a. of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 13 through 15 of this act.

c. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection a. of this section, it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be inappropriate. The court may not assess fees, costs, or expenses against this State except as otherwise provided by law other than this act. No fees, costs or expenses shall be assessed against a party who is fleeing an incident or pattern of domestic violence or mistreatment or abuse of a child or sibling, unless the court is convinced by a preponderance of evidence that such assessment would be clearly appropriate.

d. In making a determination under this section, a court shall not consider as a factor weighing against the petitioner any taking of the child or retention of the child from the person who has rights of legal custody, physical custody or visitation, if there is evidence that the taking or retention of the child was to protect the petitioner from domestic violence or to protect the child or sibling from mistreatment or abuse.

### **2A:34-73. Information to be submitted to court**

a. Unless a party seeks an exception to disclosure of information as provided by subsection e. of this section, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:

- (1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number of the proceeding, and the date of the child custody determination, if any;
- (2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court and the case number and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

b. If the information required by subsection a. of this section is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.

c. If the declaration as to any of the items described in subsection a. of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

d. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

e. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

#### **2A:34-74. Appearance of parties and child**

a. In a child custody proceeding in this State, the court may order a party to a child custody proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear physically with the child.

b. If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 8 of this act include a statement directing the party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to the party.

c. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

d. If a party to a child custody proceeding who is outside this state is directed to appear under subsection b. of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

### **2A:34-75. Definitions**

As used in this article:

“Petitioner” means a person who seeks enforcement of a child custody determination or enforcement of an order for the return of the child under the Hague Convention on the Civil Aspects of International Child Abduction.

“Respondent” means a person against whom a proceeding has been commenced for enforcement of a child custody determination or enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction.

### **2A:34-76. Enforcement under Hague Convention**

Under this article, a court of this State may enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

### **2A:34-77. Duty to enforce**

a. A court of this State shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this act or the determination was made under factual circumstances meeting the jurisdictional standards of this act and the determination has not been modified in accordance with this act.

b. A court of this State may utilize any remedy available under other law of this State to enforce a child custody determination made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

### **2A:34-78. Temporary visitation**

a. A court of this State which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(1) a visitation schedule made by a court of another state; or

(2) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

b. If a court of this State makes an order under paragraph (2) of subsection a. of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in article 2 of this act. The order remains in effect until an order is obtained from the other court or the period expires.

### **2A:34-79. Registration of child custody determination**

a. A child custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the Superior Court in this State:



- (1) a letter or other document requesting registration;
- (2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
- (3) except as otherwise provided in section 21 of this act, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

b. On receipt of the documents required by subsection a. of this section, the registering court shall:

- (1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
- (2) serve notice upon the persons named pursuant to paragraph (3) of subsection a. of this section and provide them with an opportunity to contest the registration in accordance with this section.

c. The notice required by paragraph (2) of subsection b. of this section shall state that:

- (1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;
- (2) a hearing to contest the validity of the registered determination shall be requested within 20 days after service of notice; and
- (3) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

d. A person seeking to contest the validity of a registered order shall request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

- (1) the issuing court did not have jurisdiction under article 2 of this act;
- (2) the child custody determination sought to be registered has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2 of this act; or
- (3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 8 of this act in the proceedings before the court that issued the order for which registration is sought.

e. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

f. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter which could have been asserted at the time of registration.

### **2A:34-80. Enforcement of registered determination**

a. A court of this State may grant any relief normally available under the law of this State to enforce a registered child custody determination made by a court of another state.

b. A court of this State shall recognize and enforce, but may not modify, except in accordance with article 2 of this act, a registered child custody determination of another state.

### **2A:34-81. Simultaneous proceedings**

If a proceeding for enforcement under this article has been or is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under article 2 of this act, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

### **2A:34-82. Expedited enforcement of child custody determination**

a. A petition under this article shall be verified. Certified copies of all orders sought to be enforced and of the order confirming registration, if any, shall be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

b. A petition for enforcement of a child custody determination shall state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this act and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective

orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known; and

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought: and

(6) if the child custody determination has been registered and confirmed under section 27 of this act, the date and place of registration.

c. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any orders necessary to ensure the safety of the parties and the child. The hearing shall be held on the next judicial day following service of process unless that date is impossible. In that event, the court shall hold the hearing on the first day possible. The court may extend the date of hearing at the request of the petitioner.

d. An order issued under subsection c. of this section shall state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under section 34 of this act, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child custody determination has not been registered and confirmed under section 27 of this act, and that

(a) the issuing court did not have jurisdiction under article 2 of this act;

(b) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2 of this act; or

(c) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 8 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under section 27 of this act, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article 2 of this act or federal law.

### **2A:34-83. Service of petition and order**

Except as otherwise provided in section 33 of this act, the petition and order shall be served, by any method authorized by the law of this State, upon the respondent and any person who has physical custody of the child.

### **2A:34-84. Hearing and order**

a. Unless the court enters a temporary emergency order pursuant to section 16 of this act, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

(1) the child custody determination has not been registered and confirmed under section 27 of this act, and that

(a) the issuing court did not have jurisdiction under article 2 of this act;

(b) the child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article 2 of this act or federal law; or

(c) the respondent was entitled to notice, but notice was not given in accordance with the standards of section 8 of this act in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child custody determination for which enforcement is sought was registered and confirmed under section 27 of this act, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article 2 of this act or federal law.

b. The court shall award the fees, costs, and expenses authorized under section 34 of this act and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

c. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

d. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.

### **2A:34-85. Warrant to take physical custody of child**

a. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is likely to suffer serious imminent physical harm or removal from this State.

b. If the court, upon the testimony of the petitioner or other witness, finds that the child is likely to suffer serious imminent physical harm or be imminently removed from this State, it may issue a warrant to take physical custody of the child. The petition shall be heard on the next judicial day after the warrant is executed. The warrant shall include the statements required by subsection b. of section 30 of this act.

- c. A warrant to take physical custody of a child shall:
- (1) recite the facts upon which a conclusion of serious imminent physical harm or removal from the jurisdiction is based;
  - (2) direct law enforcement officers to take physical custody of the child immediately;
  - (3) provide for the placement of the child pending final relief.
- d. The respondent shall be served with the petition, warrant and order immediately after the child is taken into physical custody.
- e. A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by the exigency of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
- f. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian. After the issuance of any temporary or permanent order determining custody or visitation of a minor child, a law enforcement officer having reasonable cause to believe that a person is likely to flee the State with the child or otherwise by flight or concealment evade the jurisdiction of the courts of this State may take a child into protective custody and return the child to the parent having lawful custody, or to a court in which a custody hearing concerning the child is pending.
- g. After the issuance of any temporary or permanent order determining custody or visitation of a minor child, a law enforcement officer having reasonable cause to believe that a person is likely to flee the State with the child or otherwise by flight or concealment evade the jurisdiction of the courts of this State may take a child into protective custody and deliver the child to a court in which a custody hearing concerning the child is pending.

### **2A:34-86. Costs, fees and expenses**

- a. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.
- b. The court may not assess fees, costs, or expenses against a state except as otherwise provided by law other than this act.

### **2A:34-87. Recognition and enforcement**

A court of this State shall accord full faith and credit to an order made consistently with this act which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court authorized to do so under article 2 of this act.

### **2A:34-88. Appeals**

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 16 of this act, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

### **2A:34-89. Role of prosecutor or other appropriate public official**

a. In a case arising under this act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this article or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (1) an existing child custody determination;
- (2) a request from a court in a pending child custody case;
- (3) a reasonable belief that a criminal statute has been violated; or
- (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

b. A prosecutor or other appropriate public official acts on behalf of the court and may not represent any party to a child custody determination.

### **2A:34-90. Role of law enforcement**

At the request of a prosecutor or other appropriate public official acting under section 37 of this act, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or other appropriate public official with responsibilities under section 37 of this act.

### **2A:34-91. Costs and expenses**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under section 37 or 38 of this act.

### **2A:34-92. Application and construction**

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

### **2A:34-93. Severability**

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

### **2A:34-94. Transitional provision**

A motion or other request for relief made in a child custody or enforcement proceeding which was commenced before the effective date of this act is governed by the law in effect at the time the motion or other request was made.

### **2A:34-95. Notice of penalties for order violation**

Every order of a court involving custody or visitation shall include a written notice, in both English and Spanish, advising the persons affected as to the penalties provided in N.J.S.A. 2C:13-4 for violating that order.

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## **SIGNIFICANT CASES**

### ***Sajjad v. Cheema*, 428 N.J. Super. 160 (App. Div. 2012)**

The custody of a child of an international marriage must include a determination of the child's home state, as defined in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

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## **7. Parental Kidnapping Prevention Act (PKPA)**

This uniform act is also known as the Full Faith and Credit Given to Child Custody Determinations Act. 28 USCA § 1738A et seq. It was enacted to patch problems among states whose UCCJA statutes resulted in inconsistent and continuing conflict. The PKPA, as a federal statute, pre-empts and superseded the UCCJA.

The PKPA contains many similar provisions of the UCCJA, most notably the four criteria of jurisdiction. However, the PKPA grants initial jurisdiction to the "home state" regardless of the

“significant contacts.” In an effort to avoid conflicting state’s modification decrees, the PKPA created the concept of “continuing jurisdiction” when: 1) that state made a prior custody determination: 2) has jurisdiction by state law, and 3) the child or at least one of the parents is a resident.

Other provisions of the PKPA include a national parent/child locator system, provisions for the exchange of information among the states, and more restrictive provisions for a sister state to modify the custody decree or a sister state.

### **§ 1738A. Full faith and credit given to child custody determinations**

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g) and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term

(1) “child” means a person under the age of eighteen;

(2) “contestant” means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) “custody determination” means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) “home state” means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) “modification” and “modify” refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court;

(6) “person as acting a parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) “physical custody” means actual possession and control of a child

(8) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or possession of the United States; and

(9) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.



(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

- (1) it has jurisdiction to make such a child custody determination; and
- (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.
- (g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.
- (h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

## 8. Hague Convention

In 1976, 23 nations agreed to draft a treaty to deter international child abduction. On July 1, 1988, the convention was incorporated into U.S. law and many other countries now participate. It applies to wrongful removals or retention of children after the date the treaty became effective between the two countries involved. The list of participating countries can be accessed at:

<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/abductions/hague-abduction-country-list.html>

The Hague Convention is a civil law mechanism available for left-behind parents to seek the return of a child. The countries who are party to a treaty agree that a child who has been removed to or retained in another country in violation of the left-behind parent's rights, shall be promptly returned to the country of habitual residence.

An application to return a child must be made within one year of the abduction.

The court in a country where the child was taken to may refuse to order a child returned if there is:

1. A grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation in his or her country of habitual residence;
2. If the child objects to being returned and has reached an age and degree of maturity at which the court can take account of the child's view; or
3. If the return of the child would violate fundamental principles of human rights and freedoms of the country where the child is being held.

Each country interprets these exceptions differently.

A copy of the convention, as well as an application for return of the child under the convention, follows in this text.

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## **SIGNIFICANT CASES**

### ***Innes v. Carrascosa*, 391 N.J. Super. 453 (App. Div. 2007)**

Upon husband's filing of complaint, wife removed child to Spain and sought custody there. Appellate Division held that New Jersey initially possessed and maintained throughout the matter both personal and subject matter jurisdiction. There is no obligation under the Hague Convention for New Jersey court to recognize the determinations made by the Spanish court.

### ***F.H.U. v. A.C.U.*, 427 N.J. Super. 354 (App. Div. 2012)**

A petition for the return of a child under The Hague Convention may be filed more than one year after wrongful removal even when the child is well settled. The court may equitably toll the deadline when concealment prevents the petitioner from timely commencing an action.

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# HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention, Firmly convinced that the interests of children are of paramount importance in matters relating to their custody, Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access, Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions—

## CHAPTER I—SCOPE OF THE CONVENTION

### Article 1

The objects of the present Convention are—

- a. to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b. to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States.

### Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

### Article 3

The removal or the retention of a child is to be considered wrongful where—

- a. it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b. at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph ‘a’ above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

## **Article 4**

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights.

The Convention shall cease to apply when the child attains the age of 16 years.

## **Article 5**

For the purposes of this Convention—

- a. 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- b. 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

## **CHAPTER II—CENTRAL AUTHORITIES**

### **Article 6**

A Contracting State shall designate a Central Authority to Discharge the duties which are imposed by the Convention upon such authorities. Federal States, States with more than one system of Law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

### **Article 7**

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention. In particular, either directly or through any intermediary, they shall take all appropriate measures-

- a. to discover the whereabouts of a child who has been wrongfully removed or retained;
- b. to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c. to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d. to exchange, where desirable, information relating to the social background of the child;
- e. to provide information of a general character as to the law of their State in connection with the application of the Convention;

- f. to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- g. where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h. to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i. to keep other each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

## **CHAPTER III—RETURN OF CHILDREN**

### **Article 8**

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

- a. information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- b. where available, the date of birth of the child;
- c. the grounds on which the applicant's claim for return of the child is based;
- d. all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by—

- e. an authenticated copy of any relevant decision or agreement;
- f. a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- g. any other relevant document.

## **Article 9**

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

## **Article 10**

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

## **Article 11**

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children. If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

## **Article 12**

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

### **Article 13**

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

- a. the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- b. there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

### **Article 14**

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

### **Article 15**

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

### **Article 16**

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under the Convention is not lodged within a reasonable time following receipt of the notice.



### **Article 17**

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

### **Article 18**

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

### **Article 19**

A decision under this Convention concerning the return of the child shall not be taken to be determination on the merits of any custody issue.

### **Article 20**

The return of the child under the provision of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

## **CHAPTER VI—RIGHTS OF ACCESS**

### **Article 21**

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of such rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

### **Article 22**

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

## **Article 23**

No legalization or similar formality may be required in the context of this Convention.

## **Article 24**

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English. However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

## **Article 25**

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

## **Article 26**

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice. Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

## **Article 27**

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

## **Article 28**

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

## **Article 29**

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

## **Article 30**

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

## **Article 31**

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

- a. any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b. any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

## **Article 32**

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

### **Article 33**

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

### **Article 34**

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

### **Article 35**

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States. Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

### **Article 36**

Nothing in this Convention shall prevent two or more Contracting State, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provision of this Convention which may imply such a restriction.

## **CHAPTER VI—FINAL CLAUSES**

### **Article 37**

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

### **Article 38**

Any other State may accede to the Convention. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

### **Article 39**

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

### **Article 40**

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

### **Article 41**

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

## **Article 42**

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservations shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

## **Article 43**

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38. Thereafter the Convention shall enter into force—

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

## **Article 44**

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

## **Article 45**

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following-

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;
2. the accession referred to in Article 38;
3. the date on which the Convention enters into force in accordance with Article 43;
4. the extensions referred to in Article 39;
5. the declarations referred to in Articles 38 and 40;
6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
7. the denunciation referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.



U. S. Department of State

OMB CONTROL NO. 1405-0076  
EXPIRES: 04-30-2022  
Estimated Burden - 1 Hour\*

# APPLICATION UNDER THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

FILL OUT ALL SECTIONS ON BOTH SIDES

Provide information below to the extent that it is available.

This is an application for the  Return of  Access to the child/children listed below. (Select only one)

I. FIRST CHILD SUBJECT OF APPLICATION			
Child's Name (Last, First, MI)		Date of Birth (mm-dd-yyyy)	Place of Birth
Address (Habitual Residence at Time of Removal or Retention)		U.S. SSN	Passport/Identity Card Country Number
Address of Child's Current Location (If Known)		Telephone Number of Child's Current Location (If Known)	Citizenship(s)
Height	Weight	Color of Hair	Color of Eyes
Name of Child's Father (if not Listed in Section II or III)		Name of Child's Mother (if not Listed in Section II or III)	
II. APPLICANT (PERSON SEEKING RETURN OF/ACCESS TO CHILD/CHILDREN)			
Name (Last, First, MI)		Date of Birth (mm-dd-yyyy)	Place of Birth
Relationship to Child/ren	Citizenship(s)	U.S. SSN	Passport/Identity Card Country Number
Current Address		Telephone Number	Email Address
Preferred Language		Occupation	
Name, Address, and Telephone Number of Legal Advisor			
III. PERSON ALLEGED TO HAVE WRONGFULLY REMOVED OR RETAINED THE CHILD/CHILDREN			
Name (Last, First, MI)		Date of Birth (mm-dd-yyyy)	Place of Birth
Relationship to Child/ren	Citizenship(s)	U.S. SSN	Passport/Identity Card Country Number
Occupation, Name, and Address of Employer (If Known)			Known Aliases
Address and Telephone Number of Current Location			
Height	Weight	Color of Hair	Color of Eyes



<b>IV. ADDITIONAL CHILD/CHILDREN Subject of Application</b>			
Child's Name <i>(Last, First, MI)</i>		Date of Birth <i>(mm-dd-yyyy)</i>	Place of Birth
Address <i>(Habitual Residence at Time of Removal or Retention)</i>		U.S. SSN	Passport/Identity Card Country Number
Address and Telephone Number of Child's Current Location <i>(If Known)</i>			Citizenship(s)
Height	Weight	Color of Hair	Color of Eyes
Name of Child's Father <i>(if not Listed in Section II or III)</i>		Name of Child's Mother <i>(if not Listed in Section II or III)</i>	
Child's Name <i>(Last, First, MI)</i>		Date of Birth <i>(mm-dd-yyyy)</i>	Place of Birth
Address <i>(Habitual Residence at Time of Removal or Retention)</i>		U.S. SSN	Passport/Identity Card Country Number
Address and Telephone Number of Child's Current Location <i>(If Known)</i>			Citizenship(s)
Height	Weight	Color of Hair	Color of Eyes
Name of Child's Father <i>(if not Listed in Section II or III)</i>		Name of Child's Mother <i>(if not Listed in Section II or III)</i>	
Child's Name <i>(Last, First, MI)</i>		Date of Birth <i>(mm-dd-yyyy)</i>	Place of Birth
Address <i>(Habitual Residence at Time of Removal or Retention)</i>		U.S. SSN	Passport/Identity Card Country Number
Address and Telephone Number of Child's Current Location <i>(If Known)</i>			Citizenship(s)
Height	Weight	Color of Hair	Color of Eyes
Name of Child's Father <i>(if not Listed in Section II or III)</i>		Name of Child's Mother <i>(if not Listed in Section II or III)</i>	
Child's Name <i>(Last, First, MI)</i>		Date of Birth <i>(mm-dd-yyyy)</i>	Place of Birth
Address <i>(Habitual Residence at Time of Removal or Retention)</i>		U.S. SSN	Passport/Identity Card Country Number
Address and Telephone Number of Child's Current Location <i>(If Known)</i>			Citizenship(s)
Height	Weight	Color of Hair	Color of Eyes
Name of Child's Father <i>(if not Listed in Section II or III)</i>		Name of Child's Mother <i>(if not Listed in Section II or III)</i>	
Child's Name <i>(Last, First, MI)</i>		Date of Birth <i>(mm-dd-yyyy)</i>	Place of Birth
Address <i>(Habitual Residence at Time of Removal or Retention)</i>		U.S. SSN	Passport/Identity Card Country Number
Address and Telephone Number of Child's Current Location <i>(If Known)</i>			Citizenship(s)
Height	Weight	Color of Hair	Color of Eyes
Name of Child's Father <i>(if not Listed in Section II or III)</i>		Name of Child's Mother <i>(if not Listed in Section II or III)</i>	

**V. CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION**

Date of Wrongful Removal or Retention (*mm-dd-yyyy*)  
*Use approximate date if exact date unknown*

Place of Wrongful Removal or Retention

Circumstances of Abduction (Additional sheets may be attached)

**VI. FACTUAL AND LEGAL JUSTIFICATION FOR THE REQUEST**

**Habitual Residence -**  
*(Please provide details related to the child's place of habitual residence.)*

**Basis of Applicants' Custody Rights**  
**Required documentation, please select at least one**

Supporting Documentation *(Please check applicable boxes and attach.)*

- Law/Statute Relating to Custody for Child's Residence at Time of Alleged Removal or Retention
- Court Order in Effect at Time of Alleged Removal or Retention
- Legally Binding Agreement
- Other \_\_\_\_\_

Are civil proceedings currently in progress? *(If yes, please provide details.)*

**VII. PROPOSED ARRANGEMENTS FOR RETURN TRAVEL OF CHILD/CHILDREN**

How will child return (i.e. flight)? Will you or someone you designate as a power of attorney accompany the child? Please provide as many details as possible.

**VIII. OTHER PERSONS WITH ADDITIONAL INFORMATION RELATING TO THE WHEREABOUTS OF THE CHILD/CHILDREN**

Preferably, in country of child's current location. Please include, name, relationship to child/parent, address, and contact information.

**IX. SUPPORTING DOCUMENTATION AND OTHER RELEVANT INFORMATION**

Parents married?  Yes  No If so, date: \_\_\_\_\_ If yes, marriage certificate must be attached.

Parents divorced?  Yes  No If so, date: \_\_\_\_\_ If yes, divorce decree must be attached.

Custody Order existing at time of removal or retention? If so, please provide a copy of the order.

Applicant Signature (*Sign in Blue Ink*)

Date (*mm-dd-yyyy*)

### PRIVACY ACT STATEMENT

**AUTHORITY:** The information solicited on this form is requested under the authority of the International Child Abduction Remedies Act, Public Law 100-300, codified at 22 U.S.C. 9001 et. seq..

**PURPOSE:** The primary purpose for soliciting the information is to evaluate applicants' claims under the Hague Convention on the Civil Aspects of International Child Abduction, inform applicants about available legal remedies, and locate abducted children.

Furnishing your social security number, as well as the other information requested on this form, is voluntary. The social security number may be used, if necessary, to authenticate the identities of individuals that are listed in the applicant claim.

**ROUTINE USES:** The information will be used to assist in facilitating operations under the Convention and may be provided to governments of member countries, bar associations and legal aid services, local police, social service agencies, attorneys, and parents. This information may also be released on a need-to-know basis to other government agencies, including foreign agencies, having statutory or other lawful authority to gain access to such information. More information on the Routine Uses for the system can be found in the System of Records Notice State-05, Overseas Citizens Services Records and the Department's Prefatory Statement of Routine Uses.

**DISCLOSURE:** Providing the information requested on this form, including the child's social security number, is voluntary. Failure to submit this form or to provide all the requested information may result in delay in the processing of your application.

### PAPERWORK REDUCTION ACT STATEMENT

\*Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. You do not have to provide this information requested if the OMB approval has expired. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: CA/OCS/L, 2201 C St., NW, SA-17; 10th Floor, U.S. Department of State, Washington, DC 20522-1710.

## 9. Grandparent Visitation

For many years the courts have allowed grandparents to petition for visitation time with their grandchildren. This right was given by statute and recognized by case law. More recently, the courts have been exceptionally careful in allowing this type of action to go forward, because of the intrusion it causes on a parent's fundamental right to raise his or her child(ren). A grandparent must establish that actual harm will come to the child if visitation is not awarded. See *Moriarity v. Bradt*, 177 N.J. 84 (2003).

**Important Practice Note:** The court, in *Wilde v. Wilde*, 341 N.J. Super. 381 (App. Div. 2001), found the following statute “unconstitutional as applied.”

### **N.J.S.A. 9:2-7.1. Visitation rights for grandparents, siblings**

l. a. A grandparent or any sibling of a child residing in this State may make application before the Superior Court, in accordance with the Rules of Court, for an order for visitation. It shall be the burden of the applicant to prove by a preponderance of the evidence that the granting of visitation is in the best interests of the child.

b. In making a determination on an application filed pursuant to this section, the court shall consider the following factors:

- (1) The relationship between the child and the applicant;
- (2) The relationship between each of the child's parents or the person with whom the child is residing and the applicant;
- (3) The time which has elapsed since the child last had contact with the applicant;
- (4) The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
- (5) If the parents are divorced or separated, the time sharing arrangement which exists between the parents with regard to the child;
- (6) The good faith of the applicant in filing the application;
- (7) Any history of physical, emotional or sexual abuse or neglect by the applicant; and
- (8) Any other factor relevant to the best interests of the child.

c. With regard to any application made pursuant to this section, it shall be prima facie evidence that visitation is in the child's best interest if the applicant had, in the past, been a full-time caretaker for the child.

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## SIGNIFICANT CASES

### ***Troxel v. Troxel*, 530 U.S. 57 (2000)**

The court must give substantial weight to a decision by a custodial parent regarding whether visitation with a third party is appropriate, as the due process clause of the 14th Amendment protects the fundamental right of parents to make decisions regarding the care, custody and control of their children.

### ***Wilde v. Wilde*, 341 N.J. Super. 381 (App. Div. 2001)**

Before seeking the court's assistance, grandparents must make substantial efforts to repair problems with child's parent(s). Grandparents should not threaten litigation before visitation has been denied with finality. The court, in *Wilde*, held that N.J.S.A. 9:2-7.1 was unconstitutional as applied.

### ***Moriarity v. Bradt*, 177 N.J. 84 (2003)**

Grandparents seeking visitation under New Jersey's grandparents visitation statute must prove by a preponderance of the evidence that denial of visitation being sought would result in harm of the child.

### ***Mizrahi v. Cannon*, 375 N.J. Super. 221 (App. Div. 2005)**

Grandparents seeking visitation under N.J.S.A. 9:2-7.1 in the wake of *Moriarity* must establish that denying visitation would wreak a particular identifiable harm, specific to the child, to justify interference with a parent's fundamental due process right to raise a child free from judicial interference and supervision.

### ***Tortorice v. Vanartsdalen*, 422 N.J. Super. 242 (App. Div. 2011)**

Maternal grandmother's status as psychological parent of child did not afford her a fundamental right to autonomy in child-rearing decisions for purposes of dispute over visitation with child's paternal grandparents, and, thus, a best interest analysis applied to the dispute rather than an avoidance of harm standard.

### ***W.M. v. D.G.*, 467 N.J. Super. 216, 251 A.3d 386 (App. Div. 2021)**

Unlike a child's legal parents, third parties, such as grandparents, who have a close relationship, with a child have no inherent rights to custody of that child; likewise, a court order granting custody to grandparent or other third party does not bestow parental rights upon that third party.

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## 10. Same-Sex Relationship Custody Issues

Custody disputes between individuals involved in same-sex relationships arise where one partner is the biological parent and the other party has been a psychological parent to the child(ren). Since there are no statutes that specifically address this type of case, the courts treat these cases in the same manner as any other third party bringing a custody claim. The Supreme Court of New Jersey dealt with this issue in *V.C. v. M.J.B.*, 163 N.J. 200 (2000). In that case, the Court found that for a third party to become a “psychological parent,” he or she must show the following:

- (1) the biological or adoptive parent consented to, and fostered petitioner’s formation and establishment of a parent-like relationship with the child;
- (2) the petitioner and the child lived together in the same household;
- (3) the petitioner assumed the development, including contributing toward the child’s support, without expectation of financial compensation; and
- (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

Once a third party has been determined to be a psychological parent to a child, he or she stands in parity with the legal parent and custody and parenting time issues are to be determined on a best interests standard, giving weight to the statutory factors of N.J.S.A. 9:2-4.

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### SIGNIFICANT CASES

*A. F. v. D.L.P.*, 339 N.J. Super. 312 (2001)

Biological mother’s former romantic partner’s request for visitation was denied as partner could not meet test for psychological parents.

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## 11. Modification of Custody Arrangements

Once custody has been established, it is always modifiable based upon the best interests of the child and a showing of changed circumstances.

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### SIGNIFICANT CASES

*Hand v. Hand*, 391 N.J. Super. 102 (App. Div. 2007)

A moving party must make a *prima facie* showing of a genuine and substantial factual dispute regarding the welfare of the child in order to have a hearing on custody.

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## D. CHILD SUPPORT

It is the law that both parents contribute to the support of children they bring into this world. New Jersey has promulgated guidelines for the court's use in determining the amount of child support. As a result, the Family Part judges now set child support in a uniform fashion throughout the state. A collateral benefit of the guidelines is that it takes much of the dispute away from the determination of the amount of child support. The theory behind the guidelines is that parents in different income levels spend a certain percentage of their combined incomes or a specific amount of money toward raising their child or children. The statistics were generated by socio-economic studies. R. 5:6A governs the use of guidelines. The rule applies to initial determinations of child support, as well as modifications. The court may modify the guidelines or disregard the guidelines only when good cause is shown or otherwise provided in Appendix IX-A 21.

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### SIGNIFICANT CASES

***Monmouth Cty. Div. of Social Services for DM v. GDM*, 308 N.J. Super. 83 (Ch. Div. 1997)**

Child support cannot be waived in return for no visitation. It is against public policy.

***Herd v. Herd*, 307 N.J. Super. 501 (App. Div. 1998)**

Non-means-tested benefits for dependent child is deducted from basic support if child's benefit does not reduce parent's payment.

***Paulino v. Ramirez*, 311 N.J. Super. 420 (Ch. Div. 1998)**

Life insurance can be required in non-dissolution cases to insure child support.

***White v. White*, 313 N.J. Super. 637 (Ch. Div. 1998)**

Establishes a child's right to intervene for college expenses post judgment, when the child was emancipated at the time of the judgment of divorce.

***L.D. v. K.D.*, 315 N.J. Super. 71 (Ch. Div. 1998)**

Drug-dependent child over 18 is unemancipated if pursuing GED in drug program.

***Dorfman v. Dorfman*, 315 N.J. Super. 511 (App. Div. 1998)**

Court must find parent is intentionally unemployed or underemployed without cause before imputing income.

***Hudson v. Hudson*, 315 N.J. Super. 577 (App. Div. 1998)**

Current spouse's income is irrelevant in determining college contribution.



*In re Estate of Kolacy*, 332 N.J. Super. 593 (Ch. Div. 2000)

Twins conceived through in vitro fertilization 18 months after father's death were considered legal heirs.

*Ordukaya v. Brown*, 357 N.J. Super. 231 (App. Div. 2003)

When parties agree to support that is less than that provided for under the guidelines, the worksheet showing the correct amount of support must be attached. The parties must also establish good cause for deviating from the guidelines.

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## **1. Child Support Guidelines for Net Combined Income of \$187,200 or Below**

Child support guidelines are mandatory in all cases for the initial application or modification of child support when the combined net income of the parents is \$187,200 or less. Recognizing that both parents are responsible for the financial needs of their children, New Jersey's guidelines were developed to provide a fair and uniform method of establishing child support. They reflect the marginal cost of raising children. The guidelines are derived from the Consumer Expenditure Survey (CEX), which is a source of national data on household expenditures and how they vary by family composition, size, geographic location and socio-economic characteristics.

The guidelines create a rebuttal presumption. R. 5:6A permits the court to modify or disregard them where good cause is shown. Good cause may be established as set forth in Appendix IX-A(3) or other relevant factors, which may make the guidelines inapplicable if an injustice would result.

### **Rule 5:6A. Child Support Guidelines**

The guidelines set forth in Appendix IX of these Rules shall be applied when an application to establish or modify child support is considered by the court. The guidelines may be modified or disregarded by the court only where good cause is shown. Good cause shall consist of a) the considerations set forth in Appendix IX-A, or the presence of other relevant factors which may make the guidelines inapplicable or subject to modification, and b) the fact that injustice would result from the application of the guidelines. In all cases, the determination of good cause shall be within the sound discretion of the court.

A completed child support guidelines worksheet in the form prescribed in Appendix IX of these Rules shall be filed with any order or judgment that includes child support that is submitted for the approval of the court. If a proposed child support award differs from the award calculated under the child support guidelines, the worksheet shall state the reason for the deviation and the amount of the award calculated under the child support guidelines.

## **2. Child Support Guidelines for Net Combined Income Exceeding \$187,200**

Appendix IX-A of the Court Rules specifically provides that when the combined net family income exceeds \$187,200, the court shall apply the guidelines up to that amount and supplement the guidelines award with an additional support amount based on the remaining family income and the factors enumerated in N.J.S.A. 2A:34-23a.

## **3. Modification of Child Support Awards**

To modify support, one party must establish a *prima facie* showing of changed circumstances. In general, there is a proposition against the retroactive modification of child support. The effective date of a revised child support order is, therefore, the date on which the motion to modify support was made. There is an exception, which is found in N.J.S.A. 2A:17-56.23, which provides that relief may be granted while an application for modification is pending, but only from the date the notice of motion was mailed either directly or through the appropriate agent. The written notice must state that a change of circumstances has occurred and that a motion for modification of the order will be filed within 45 days. If the motion is not filed within 45 days, modification shall only be retroactive to the date the motion is filed with the court. The only exception to modification not being retroactive is emancipation.

Child support orders or agreements entered utilizing the child support guidelines will be reviewed every three years by statute, unless otherwise agreed. N.J.S.A. 2A:17-56-9A.

## **4. Emancipation**

On Jan. 19, 2016, a new law with regard to emancipation (termination of child support) was signed into law by Governor Chris Christie, N.J.S.A. 2A:17-56.67. This law establishes an age of emancipation. Previously, there was no set age for emancipation, which was determined based upon the circumstances of each case. This law has established 19 as an age when a child support and/or medical support obligation will end. The law, however, provides for a continuation of child/medical support up to the age of 23 in those cases where a dependent is still in high school; attending college, vocational or graduate school full time; is disabled; if the parents reached a separate agreement; or, if continued support was granted by the court.

Although the law was signed on Jan. 19, 2016, the effective date was set at Feb. 1, 2017. Parents with children ages 19 to 22 prior to July 31, 2017, received the first notice of child support termination on or after Feb. 1, 2017, indicating a child support end date of Aug. 1, 2017 (rather than on the child's 19<sup>th</sup> birthday). A first notice of child support termination will be sent 180 days before the child's 19<sup>th</sup> birthday for dependents who turn 19 after Aug. 1, 2017.

The notice of child support termination, however, will not affect those cases in which a judgment of divorce or support order specifies an end date other than the dependent's 19<sup>th</sup> birthday. However, a notice of child support termination may still be sent. In that event, the custodial

parent will be asked to mail in a copy of the judgment of divorce or order that provides for a termination date other than the 19<sup>th</sup> birthday.

In the event no judgment of divorce or other support order exists, and a notice of child support termination is received by the custodial parent, the custodial parent may make a request for an administrative continuation of child support, based upon the factors set forth above. In the event the request is not made, a second notice of child support termination will be sent out 90 days before the dependent's 19<sup>th</sup> birthday. If no continuation is requested after that notice, the child support will end as of the dependent's 19<sup>th</sup> birthday. A notice will be mailed to the parents. Any child support arrears owed as of the child's 19<sup>th</sup> birthday will continue to be collected.

The law only provides for emancipation. Therefore, if there are younger children for whom child support is being paid, the payor will need to file an application or a motion to adjust the child support amount to account for the emancipation of the 19 year old.

In the event a judgment of divorce or support order provides for some termination date beyond the dependent's 19<sup>th</sup> birthday, a final notice of child support termination will be sent 90 days before the dependent's 23<sup>rd</sup> birthday.

## **5. Uniform Summary Support Orders (USSO) and Filing Requirements**

The sole and shared parenting worksheets must be filed with each child support order along with the co-parenting plan required by the rule. Not only must the court approve the initial child support award, but it must also approve any deviation from the appendix tables. In this fashion, when a later modification is sought, the court and the parents will have sufficient information to review the application.

In addition to providing the child support guidelines, there is a requirement to utilize a uniform summary support order (USSO) in all family matters in which a child support obligation is created. This requirement also applies to the modification or enforcement in any family case where child support is created or modified. This includes dissolution cases (FM), domestic violence matters (FV), and non-dissolution matters (FD). See the following memorandum of Nov. 15, 2011, from the acting administrative director of the courts to all judges and Family Division administrators and managers. Attached is the USSO with New Jersey uniform support notices.

## **6. Appendix IX to the Amendments to the Child Support Guidelines**

Appendix IX to the amendments to the child support guidelines is included in this text as follows:

- a. **Appendix IX-A:** Considerations in the Use of the Child Support Guidelines
- b. **Appendix IX-B:** Use of the Child Support Guidelines
- c. **Appendix IX-C:** Child Support Guidelines Sole-Parenting Worksheet

- d. **Appendix IX-D:** Child Support Guidelines Shared-Parenting Worksheet
- e. **Appendix IX-E:** Net Child Care Expense Worksheet
- f. **Appendix IX-F:** Schedule of Child Support Awards
- g. **Appendix IX-H:** Combined Income Tax Withholding Tables

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## SIGNIFICANT CASES

### ***Newburgh v. Arrigo*, 88 N.J. 529 (1982)**

In order to determine if a child should be deemed emancipated, the court must consider “whether the child has moved beyond the sphere of influence and responsibility exercised by a parent” and obtains an independent status of his own.

### ***Arribi v. Arribi*, 186 N.J. Super. 116 (App. Div. 1982)**

A payor may not find himself in and choose to remain in a position where he has diminished or no earning capacity and expect to be relieved of the obligation to support his family.

### ***Bencivenga v. Bencivenga*, 254 N.J. Super. 328 (App. Div. 1992)**

Movant must only establish a *prima facie* case of changed circumstances in order to modify child support order.

### ***Martinetti v. Hickman*, 261 N.J. Super. 508 (App. Div. 1993)**

Right to child support belongs to child not custodial parent and, therefore, cannot be waived by the custodial parent.

### ***Mahoney v. Pennell*, 285 N.J. Super. 638 (App. Div. 1995)**

Statute that bars retroactive modification of child support does not apply to retroactive termination of support obligation based upon emancipation.

### ***Patetta v. Patetta*, 358 N.J. Super. 90 (App. Div. 2003)**

The parental duty of child support beyond the age of 18 may not be waived or terminated by a property settlement agreement absent proof of emancipation.

### ***Dolce v. Dolce*, 383 N.J. Super. 11 (App. Div. 2006)**

Where parties’ PSA clearly sets forth the events that will trigger emancipation, a child will not be deemed emancipated by operation of law simply because he reached the age of 18.

### ***Larbig v. Larbig*, 384 N.J. Super. 17 (App. Div. 2006)**

Trial court’s determination to deny defendant a plenary hearing on his motion to reduce child support and alimony based upon the self-employed defendant’s alleged drop in income 20 months after the judgment of divorce was upheld based upon defendant’s ability to control his

own income and the short amount of time since the entry of the divorce. Defendant was unable to show his change in circumstances was not temporary.

***Lozner v. Lozner*, 388 N.J. Super. 471 (App. Div. 2006)**

Court may consider extenuating factors to determine whether an adjustment of the child support guidelines is warranted, including the educational expense for either parent to improve earning capacity. This will include repayment obligations for student loans.

***Forrestall v. Forrestall*, 389 N.J. Super. 1 (App. Div. 2006)**

Neither the contribution of father's employer to his 401k plan nor the *corpus* of plan was income to father for purposes of calculating his child support obligation.

***R.A.C. v. P.J.S., Jr.*, 192 N.J. 81 (2007)**

The Parentage Act establishes a 23-year statute of repose for actions to determine the existence or nonexistence of a parent-child relationship, commencing from the date of the child's birth.

***Lissner v. Marburger*, 394 N.J. Super. 393 (Ch. Div. 2007)**

To modify child support based upon the retirement of the payor, the court must consider the following factors: 1) the benefits to the retiring parent, based upon his or her age, health, timing, finances, assets, reasons for retiring and whether the parent can control disbursement of retirement payments to enable him or her to maintain support for the children despite retirement; 2) the impact on the child of reduced support based on his or her needs, age, health, assets and standard of living to which he or she has grown accustomed, and any proffered advantages to the child from the parent's retirement; 3) the fairness of the decision based on the obligor's motivation, good faith, and voluntariness of the retirement; and 4) other factors.

***Gotlib v. Gotlib*, 399 N.J. Super. 295 (App. Div. 2008)**

Former wife's failure to comply with provisions in judgment of divorce requiring her to submit medical reimbursement requests for children on the first day of each month and to consult with former husband prior to incurring such expenses could not be imputed to children. Former husband's obligation to pay unreimbursed medical expenses was an essential benefit to the parties' children, and thus the payments belonged to the children and were not subject to waiver by the actions of former wife.

***Strahan v. Strahan*, 402 N.J. Super. 298 (App. Div. 2008)**

Custodial parent cannot, through the guise of the incidental benefits of child support, gain a benefit beyond that which is merely incidental to a benefit being conferred on the child, and that is especially true where the custodial parent is not entitled to alimony.

***Centanni v. Centanni*, 408 N.J. Super. 78 (App. Div. 2008)**

Statute providing that no payment or installment of an order for child support shall be retroactively modified by the court does not bar the modification of child support retroactive to the date of death of any of the parties' children.

***Donnelly v. Donnelly*, 405 N.J. Super. 117 (App. Div. 2009)**

What constitutes a temporary change in income for purposes of modifying child support and alimony obligations should be viewed more expansively when urged by a self-employed obligor, who is in a better position to present an unrealistic picture of his or her actual income than a W-2 earner.

***Martin v. Martin*, 410 N.J. Super. 1 (Ch. Div. 2009)**

Former wife seeking increase in child support was not entitled to court review based upon passage of three years since time of entry of current child support order; wife failed to establish a substantial change of circumstances since the time of the last order. N.J.S.A. 2A:17-56.9a; R. 5:6B.

***Jacoby v. Jacoby*, 427 N.J. Super. 109 (App. Div. 2012)**

A child living on a college campus after graduating high school does not automatically trigger a reduction in child support. The court should not resort to the child support guidelines, but rather should utilize the factors listed in the statute governing awards of alimony, maintenance, and child support.

***Elrom v. Elrom*, 439 N.J. Super. 424 (App. Div. 2015)**

In assessing a party's capacity to earn, a court must examine the party's field of expertise, employment and salary history, and job availability, along with the needs of the children and how those needs impact a party's ability to earn.

***Llewelyn v. Schewchuk*, 440 N.J. Super. 207 (App. Div. 2015)**

A child is permitted to pursue an action against her parents for support despite both parents' agreement that the child is emancipated as the right to support belongs to the child.

***Kakstys v. Stevens*, 442 N.J. Super. 501 (Ch. Div. 2015)**

A trial court may award child support retroactive to the filing of the complaint for divorce, regardless of whether a *pendente lite* motion was filed, without violating the anti-retroactivity statute.

***Ferrer v. Colon*, 463 N.J. Super. 12, 228 A.3d 1272 (Ch. Div. 2019)**

Income would not be imputed to unmarried mother based on available overtime, without regard to her past earnings from overtime and second job income, and, instead, income would be calculated using her salary and amount based on average of her past earnings from overtime and second jobs.

***S.K. v. P.D.*, 462 N.J. Super. 324, 226 A.3d 83 (Ch. Div. 2019)**

Legal father who was later determined not to be child's biological father failed to show equitable basis to vacate child support arrears; legal father failed to pay support obligation and arrears were result of that failure and, as such, vacating arrears would leave him in better position than he would have been had he timely paid support obligation, allowing him to benefit from his own wrongdoing.

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**GLENN A. GRANT, J.A.D.**  
Acting Administrative Director of the Courts

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**DIRECTIVE #21-19**

**[Supersedes Directive #12-88]**

[Questions or comments may be directed to  
(609) 815-3810]

**TO: Assignment Judges  
Trial Court Administrators**

**FROM: Glenn A. Grant, J.A.D.** 

**DATE: November 21, 2019**

**SUBJECT: Temporary Child Support Orders, Use of the Uniform Summary  
Support Order (USSO)**

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This Directive supersedes Directive #12-88, Temporary Child Support Orders (issued on November 10, 1988), and promulgates revised procedures for temporary child support orders and the use of the Uniform Summary Support Order (USSO). Similar to Directive #12-88, this Directive requires that Family Division judges enter a temporary child support order any time a complex case is referred for full review by a Child Support Hearing Officer (CSHO). This process is to ensure that families have support while their matters are awaiting the judicial hearing. Therefore, all Family Division judges must ratify, modify, or reject any temporary support order recommended by a CSHO. In the instance where a judge rejects a CSHO recommendation, a temporary support order still must be entered. Adhering to the above instruction will ensure compliance with the federal expedited process standards contained in 45 C.F.R. 303.101(b)(4).

Additionally, this Directive incorporates the requirement for entry of a Uniform Summary Support Order (USSO) in Family matters whenever a child support obligation is established, modified, or enforced. This is applicable to all support orders, including temporary orders, and to all case types, including dissolution (FM), domestic violence (DV), and non-dissolution (FD) matters.

In child support establishment, modification, or enforcement proceedings, the USSO is available electronically through New Jersey Kids Deserve Support (NJKiDS),

the child support automated computer system. When there is an order establishing support in a dissolution matter, the parties in that matter will be required to create a separate USSO along with the final judgment of dissolution when it is the first order establishing support in the matter that is payable through the court. NJKiDS does not currently support the creation of an electronic USSO before the case has been established in the system. However, an electronic tillable version is available to the public at njcourts.com and for staff on the InfoNet under the Forms tab in the Family Forms section.

Questions concerning this directive may be directed to Family Practice at 609-815-2900 ext. 55350 or Probation Services at 609-815-3810.

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### **EDITOR'S NOTE**

\*2019 Update – This Superseding Directive updates the procedures set forth in Directive #12-88. This Directive focuses on the use of the Uniform Summary Support Order (USSO) for all case types and for all establishment, modification, and enforcement proceedings. It also clarifies that in instances where a judge rejects a child support hearing officer recommendation, a temporary order must still be entered.

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cc: Chief Justice Stuart Rabner  
Family Presiding Judges  
Steven D. Bonville, Chief of Staff  
AOC Directors and Assistant Directors  
Clerks of Court  
Special Assistants to the Administrative Director  
Larry Ashbridge, Chief, Child Support Enforcement Services  
Vicinage Probation Division ManagersA/CPOs  
Family Division Managers  
Finance Division Managers  
Vicinage Assistant Probation Division ManagersA/CPOs, Child Support



GLENN A. GRANT, J.A.D.  
Acting Administrative Director of the Courts

www.nicourts.com • Phone: 609-984-0275 • Fax: 609-984-696

### MEMORANDUM

**To:** Assignment Judges  
Family Part Presiding Judges  
Trial Court Administrators  
Family Division Managers

**From:** Glenn A. Grant

**Subj.** Uniform Summary Support Orders (USS Orders) in all Family Matters  
Where a Child Support Obligation is Created – Paper Order; NJKIDS

**Date:** November 15, 2011

This memorandum sets out the requirement to use a Uniform Summary Support Order ("USS Orders in all Family matters in which a child support obligation is created. in some instances – such as initial dissolution orders for support (see below) – that will require preparation of a paper USS order.

Whenever a child support obligation is established, modified, or enforced in any Family case, a Uniform Summary Support Order ("USS Order") should be created. This requirement to create such orders is applicable to dissolution cases (FM), domestic violence matters (FV), as well as non-dissolution (FD) matters. While the requirement to use the USS Order at the outset of the support obligation in FD and FV matters already is set forth in the Rules and Manuals, this memorandum extends that requirement to dissolution (FM) cases in which child support is involved. Specifically, the parties in FM matters will be required to create a separate USS Order along with a final judgment of dissolution when this is the first order establishing support in the matter that is payable through the court. That USS Order is created outside the context of NJKIDS. Subsequent support orders for the enforcement or modification of the support obligation in such matters should be created electronically on NJKids.

The Conference of Family Presiding Judges suggested the establishment of a policy to use the Uniform Summary Support Order (USS Order) as a separate order to provide for child support related issues in a dissolution case (FM docket). This USS Order will be complementary to any other order addressing non-support relief in such

cases. This practice is supported by the use of the statewide child support computer system, New Jersey Kids Deserve Support (NJKiDS).

Child support services are provided in accordance with the federal Title IV-D program through a partnership with the Division of Family Development (DFD) in the Department of Human Services. Child Support obligations are established, modified and enforced through NJKiDS. The NJKids application, however, does not currently support the creation of an electronic USS Order before the child support case has been established on the system. Therefore the USS Order that this memo requires be created to address child support obligations in dissolution cases (FM) will need to be a manual or paper order, rather than electronic. However, even though such USS orders will be in paper form, they will serve as the basis for the establishment of the child support case on NJKiDS and can subsequently be transmitted to the Probation Division for enforcement as an alternative to the current practice of including the support provisions in a separate, lengthy Property Settlement Agreement

For all enforcement and modification of child, spousal or medical support, judges are able to electronically sign a USS Order, through NJKiDS, which is then automatically mailed to the litigants and maintained indefinitely in electronic format. The USS Order is then accessible to judges and staff in the Family, Probation and Finance Divisions. This saves time, enables the prompt creation of support obligations, reduces future requirements for records retention, and ensures that orders are readily accessible.

Any case on NJKiDS in which the child support amount is based on the Child Support Guidelines should produce a USS Order. The Judiciary is continuing to work with DFD to expand access by the bar and the public to the Guidelines application. We also will work towards improving the bar's and the public's access to the USS Order in an electronic format that can be forwarded to the Court, and that can be retained electronically once signed by the judge. I will keep you advised of our collaborative progress in this area. Until that feature is available, however, I ask that judges and staff use the NJKiDS system for the generation of the USS Order whenever possible, but to create the USS Order manually when that is not possible.

Questions concerning this memorandum may be directed to Harry T. Cassidy, Assistant Director for Family Practice, or to Richard Narcinl, Chief, Child Support Enforcement.

GAG.

c: Chief Justice Start Rabner  
Steven D. Bonville, Chief of Staff  
Robert W. Smith, Director  
AOC Directors and Assistant Directors  
Richard Narcinl, Chief, Child Support Enforcement  
Geraldine Washington, Chief, Family Practice Division

<b>Plaintiff</b>	<b>VS</b>	<b>Defendant</b>	<b>Superior Court of New Jersey Chancery Division – Family Part Civil Action Order</b>	
<input type="checkbox"/> Obligor	<input type="checkbox"/> Oblige	<input type="checkbox"/> Obligor	<input type="checkbox"/> Oblige	County _____
<b>Hearing Date</b> _____		<b>Welfare / U.I.F.S.A. #</b> _____		Docket # _____
				CS # _____
With appearance by: <input type="checkbox"/> <b>PL</b> <input type="checkbox"/> <b>Atty for PL</b> _____ <input type="checkbox"/> <b>DEF</b> <input type="checkbox"/> <b>Atty for DEF</b> _____				
<input type="checkbox"/> <b>IV-D Atty</b> _____ <input type="checkbox"/> <b>County Probation Division</b> _____				
This matter having been opened to the court by: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> County Welfare Agency <input type="checkbox"/> Probation Division <input type="checkbox"/> Family Division for an <b>ORDER</b> for: <input type="checkbox"/> <b>Paternity</b> <input type="checkbox"/> <b>Support</b> <input type="checkbox"/> <b>Visitation</b> <input type="checkbox"/> <b>Custody</b> <input type="checkbox"/> <b>Enforcement</b> <input type="checkbox"/> <b>Modification/Increase/Decrease</b> <input type="checkbox"/> <b>Termination/Continuation</b> <input type="checkbox"/> <b>Status Review</b>				
<b>1. State with Continuing Exclusive Jurisdiction:</b>				
	<b>Child's Name</b>	<b>Birth Date</b>	<b>Child's Name</b>	<b>Birth Date</b>
<b>2A.</b>			<b>2E.</b>	
<b>2B.</b>			<b>2F.</b>	
<b>2C.</b>			<b>2G.</b>	
<b>2D.</b>			<b>2H.</b>	
<b>3.</b> <input type="checkbox"/> <b>PATERNITY</b> of child(ren) (# above) _____ is hereby established and an <b>ORDER</b> of paternity is hereby entered.				
<b>4.</b> <input type="checkbox"/> A Certificate of Parentage has been filed for child(ren) # _____ above.				
<b>5.</b> <input type="checkbox"/> <b>It Is Hereby ORDERED That:</b> The obligor shall pay support to the New Jersey Family Support Payment Center in the amount of:				
[ ]	+	[ ]	+	[ ]
=	[ ]	<b>payable</b>	[ ]	<b>effective</b>
[ ]	[ ]	[ ]	[ ]	[ ]
<b>Child Support</b>		<b>Spousal Support</b>	<b>Arrears Payment</b>	<b>Total</b>
			<b>Frequency</b>	<b>Date</b>
<b>NOTE: Child support is subject to a biennial cost-of-living adjustment in accordance with R. 5:6B</b>				
<b>6.</b> <input type="checkbox"/> Child Support Guidelines Order <input type="checkbox"/> Deviation reason: _____				
<b>6A.</b> <input type="checkbox"/> Worksheet attached.				
<b>7.</b> <input type="checkbox"/> Support order shall be administered and enforced by the Probation Division in the county of Venue, _____.				
<b>8.</b> <input type="checkbox"/> <b>ARREARS</b> calculated at establishment hearing are based upon amounts and effective date noted above and total \$ _____.				
<b>9.</b> <input type="checkbox"/> <b>ARREARS</b> indicated in the records of the Probation Division, are \$ _____ as of _____.				
<b>10.</b> <input type="checkbox"/> <b>GROSS WEEKLY INCOMES</b> of the parties, as defined by the Child Support Guidelines, upon which this <b>ORDER</b> is based: <b>OBLIGEE \$</b> _____ <b>OBLIGOR \$</b> _____				
<b>11.</b> <input type="checkbox"/> <b>INCOME WITHHOLDING</b> is hereby <b>ORDERED</b> on current and future income sources, including: Name of Income Source: _____ Address of Income Source: _____ _____ _____				
<b>OBLIGOR SHALL</b> , however, make payments <b>AT ANY TIME</b> that the full amount of support and arrears is not withheld.				
<b>12.</b> <input type="checkbox"/> <b>Medical Support</b> coverage as available at reasonable cost shall be provided for the <input type="checkbox"/> <b>child(ren)</b> <input type="checkbox"/> <b>spouse</b> , by <input type="checkbox"/> Obligor <input type="checkbox"/> Oblige <input type="checkbox"/> Both The parties shall pay unreimbursable health care expenses of the child(ren) which exceed \$250.00 per child per year as follows: _____ % Obligor _____ % Oblige <b>Pursuant to R 5:6A the obligee shall be responsible for the first \$250.00 per child per year.</b> If coverage is available, Medical Insurance I.D. card(s) as proof of coverage for the child(ren)/spouse shall be provided immediately upon availability to the Probation Division by the: <input type="checkbox"/> Oblige <input type="checkbox"/> Obligor				
<b>12A.</b> <input type="checkbox"/> Insurance currently provided by a non-party: _____				
<b>12B.</b> <input type="checkbox"/> Health insurance benefits are to be paid directly to the health care provider by the insurer.				
<b>13.</b> <input type="checkbox"/> <b>GENETIC TESTING</b> to assist the court in determining paternity of the child(ren) (# _____) is hereby <b>ORDERED</b> . The county welfare agency or the foreign jurisdiction in the county of residence of the child shall bear the cost of said testing, without prejudice to final allocation of said costs. If defendant is later adjudicated the father of said child(ren), defendant shall reimburse the welfare agency for the costs of said tests, and pay child support retroactive to _____.				
<b>13A.</b> <input type="checkbox"/> Issues of reimbursement reserved. <b>13B.</b> <input type="checkbox"/> Issue of retroactive order reserved.				

14.  This matter is hereby **RELISTED** for a hearing on \_\_\_\_\_ before \_\_\_\_\_. A copy of this **ORDER** shall serve as the summons for the hearings. **No further notice for appearance shall be given.** Failure to appear may result in a default order, bench warrant, or dismissal. Reason for relist: \_\_\_\_\_

15.  **AN EMPLOYMENT SEARCH MUST BE CONDUCTED BY THE OBLIGOR.** Written records of at least # \_\_\_\_\_ employment contacts per week must be presented to the Probation Division. If employed, proof of income and the full name and address of employer must be provided immediately to the Probation Division.

16.  **SERVICE** upon which this order is based:  **Diligent Effort**  
 **Personal Service**  **Certified Mail:**  **Refused**  **Regular Mail (not returned)**  
**Date:** \_\_\_\_\_  **Signed by:** \_\_\_\_\_  **Returned Unclaimed**  **Other** \_\_\_\_\_

17.  **A BENCH WARRANT** for the arrest of the obligor is hereby **ORDERED.** The obligor was properly served with notice for court appearance on \_\_\_\_\_, and failed to appear. (Service noted above). An amount of \$ \_\_\_\_\_ shall be required for release.  
 **THE OBLIGOR IS HEREBY INCARCERATED** in the \_\_\_\_\_ County Jail until the obligor pays \$ \_\_\_\_\_ or until further notice of this court. The obligor was found to be not indigent and had the ability to pay the support order for reasons indicated below.

18.  **EFFECTIVE** \_\_\_\_\_ **FUTURE MISSED PAYMENT(S)** numbering \_\_\_\_\_ or more may result in the issuance of a warrant, without further notice.

19.  **A LUMP SUM PAYMENT OF \$** \_\_\_\_\_ must be made by the obligor by \_\_\_\_\_ or a bench warrant may be issued without further notice.

20.  This complaint / motion is hereby **DISMISSED:** (reason) \_\_\_\_\_.

21.  Order of Support is hereby **TERMINATED** effective \_\_\_\_\_, as \_\_\_\_\_. Arrears accrued prior to effective date, if any, shall be paid at the rate and frequency noted on page number one of this **ORDER.**

22.  **THIS ORDER IS ENTERED BY DEFAULT.** The  obligor  obligee was properly served to appear for a hearing on \_\_\_\_\_ and failed to appear. **22A.**  Affidavit of Non-Military Service is filed.

23.  It is further **ORDERED:**  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Except as Provided Herein, All Prior Orders of the Court Remain in Full Force and Effect.**

I hereby declare that I understand all provisions of this **ORDER** recommended by a Hearing Officer and I waive my right to an immediate appeal to a Superior Court Judge:

**Plaintiff** \_\_\_\_\_ **Defendant** \_\_\_\_\_

**Attorney for Plaintiff** \_\_\_\_\_ **Attorney for Defendant** \_\_\_\_\_

24.  **INTAKE CONFERENCE BY AUTHORIZED COURT STAFF:**  
 **PROBATION PREPARED CHILD SUPPORT ORDER**

25.  The parties request the termination of all Title IV-D services and consent to direct payment of support. They are advised that all monitoring, collection, enforcement and location services available under Title IV-D of the Social Security Act are no longer in effect. I understand I may reapply for Title IV-D services.

\_\_\_\_\_ obligee \_\_\_\_\_ obligor

26.  Copies provided at hearing to  obligee  obligor **26A.**  Copies to be mailed to  obligee  obligor

**TAKE NOTICE that the attached New Jersey Uniform Support Notices are incorporated into this Order by reference and are binding on all parties.**

So **Recommended** to the Court by the Hearing Officer:

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ H.O. \_\_\_\_\_ Signature \_\_\_\_\_

So **Ordered** by the Court:

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Judge \_\_\_\_\_ Signature \_\_\_\_\_, J.S.C.



New Jersey Judiciary  
**New Jersey Uniform Support Notices**

**TAKE NOTICE that the following provisions are to be considered part of this order and are binding on all parties:**

1. You must continue to make all payments until this court order is changed by another court order. The obligee and obligor shall notify the appropriate Probation Division of any change of address, employment status and health care coverage for themselves and the child(ren) within 10 days of the change. Notices are sent to the last address provided. Not providing this information is a violation of this Order. (*R. 5:7-4A(d)*).
2. Child support shall terminate by operation of law when a child marries, dies or enters military service. Child support shall also terminate on the child's 19<sup>th</sup> birthday unless another age is specified in a court order, which shall not extend beyond the child's 23<sup>rd</sup> birthday. (*N.J.S.A. 2A:17-56.67 et seq.*)
3. You must file a motion or application to the Family Division in the county in which the order was entered in order for the court to consider a change in the support order. Contact the Family or Probation Division for instructions. It is important to request a change as soon as possible after your income or the child(ren)'s status changes. In most cases, if you delay making your request and you are the obligor, you will have to pay the original amount of support until the date of your written request.
4. Payments must be made to the New Jersey Family Support Payment Center, P.O. Box 4880, Trenton, NJ 08650, unless the court directs otherwise. (*R. 5:7-4(d)*). Payments may be made by money order, check, direct debit from your checking account, or credit card. Gifts, other purchases, or in-kind payments made directly to the obligee or child(ren) will not fulfill the support obligation. Credit for payments made directly to the obligee or child(ren) may not be given without a court order.
5. No payment or installment 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*. (*R. 5:7-4A(d)*).
6. The amount of child support and/or the addition of a health care coverage provision in cases receiving services under Title IV-D of the Social Security Act 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, as appropriate, or upon motion or application to the court. (*N.J.S.A. 2A: 17-56.9a; R. 5:7-4A(d)*).
7. 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. (*R. 5:7-4A(d)*).
8. Social Security numbers are collected and used in accordance with section 205 of the Social Security Act (42 *U.S.C.* 405) to obtain individual's income, employment, and benefit information on individuals through computer matching programs with federal and state agencies, and 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.). Disclosure of an individual's Social Security number for Title IV-D purposes is mandatory. (*R. 5:7-4A(d)*).
9. The United States Secretary of State shall refuse to issue or renew a passport to any person certified as owing a child support arrearage exceeding the statutory amount. In addition, the U.S. Secretary of State may take action to revoke, restrict or limit a passport previously issued to an individual owing such a child support arrearage. (42 *U.S.C.* 652(k)).
10. Failure to appear for a hearing to establish or to enforce an order, or failure to comply with the support provisions of this order may result in incarceration. If you fail to appear, a default order may be entered against you or a warrant may be issued for your arrest (*R. 5:7-4A(d)*).
11. Any payment or installment for child support shall be fully enforceable and entitled to full faith and credit and shall be a judgment by operation of law on and after the date it is due (*N.J.S.A. 2A: 17-56.23.a; R. 5:7-4A(d)*). Any non-payment of child support has the effect of a lien against your property. This lien may affect your ability to obtain credit or to sell your property. **Failure to remit timely payment automatically results in the entry of a judgment against the obligor and post-judgment interest may be charged.** Any party to whom the child support is owed has the right to request assessment of post-judgment interest at the rate prescribed by *Rule 4:42-11(a)* before the judgment may be satisfied. (*R. 5:7-4A(d)*).

## New Jersey Uniform Support Notices

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12. 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. (*R. 5:7-4A(a)(3)*). The child support provisions of the order 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. (*R. 5:7-4A(b)*).
13. Any 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:
  - 1) a child support arrearage accumulates that is equal to or exceeds the amount set by statute, or
  - 2) the obligor fails to provide health care coverage for the child as ordered by the court, or
  - 3) 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. (*R. 5:7-5*).
14. The driver's license held or applied for by the obligor may be denied, suspended, or revoked if
  - 1) a child support arrearage accumulates that is equal to or exceeds the amount set by statute, or
  - 2) the obligor fails to provide health care coverage for the child as ordered by the court. 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. (*R. 5:7-5*).
15. The name of any delinquent obligor and the amount of overdue child support owed will be reported to consumer credit reporting agencies as a debt owed by the obligor, subject to all procedural due process required under State law. (*N.J.S.A. 2A:17-56.21*).
16. Child support arrears may be reported to the Internal Revenue Service and the State Division of Taxation. Tax refunds and homestead rebates due the obligor may be taken to pay arrears (*N.J.S.A. 2A:17-56.16*).
17. Child support arrears shall be paid from the net proceeds of any lawsuit, settlement, civil judgment, civil arbitration award, inheritance or workers' compensation award to a prevailing party or beneficiary before any monies are disbursed. (*N.J.S.A. 2A:17-56.23b*).
18. Periodic or lump sum payments from State or local agencies, including lotteries, unemployment compensation, workers' compensation or other benefits, may be seized or intercepted to satisfy child support arrearages. (*N.J.S.A. 2A:17-56.53*).
19. If you owe past due child support, your public or private retirement benefits, and assets held in financial institutions may be attached to satisfy child support arrearages. (*N.J.S.A. 2A:17-56.53*).
20. A person under a child support obligation, who willfully fails to provide support, may be subject to criminal penalties under State and Federal law. Such criminal penalties may include imprisonment and/or fines. (*N.J.S.A. 2C:24-5; N.J.S.A. 2C:62-1; 18 U.S.C.A. 22*).
21. If this order contains any provision concerning custody and/or parenting time, both parties are advised: Failure to comply with the custody provisions of this court order may subject you to criminal penalties under *N.J.S.A. 2C:13-4*, **Interference with Custody**. Such criminal penalties include, but are not limited to, imprisonment, probation, and/or fines.  
Si usted deja de cumplir con las cláusulas de custodia de esta orden del tribunal, puede estar sujeto (sujeta) a castigos criminales conforme a *N.J.S.A. 2C:13-4*, **Interference with Custody**, (**Obstrucción de la Custodia**). Dichos castigos criminales incluyen pero no se limitan a encarcelamiento, libertad, multas o una combinación de los tres.

**New Jersey Rules of Court Appendix IX-A**  
**CONSIDERATIONS IN THE USE OF CHILD SUPPORT GUIDELINES**  
(Includes Amendments through those effective September 1, 2021)

**1. Philosophy of the Child Support Guidelines**

These guidelines were developed to provide the court with economic information to assist in the establishment and modification of fair and adequate child support awards. The premise of these guidelines is that (1) child support is a continuous duty of both parents, (2) children are entitled to share in the current income of both parents, and (3) children should not be the economic victims of divorce or out-of-wedlock birth. The economic data and procedures of these guidelines attempt to simulate the percentage of parental net income that is spent on children in intact families. While it is acknowledged that the expenditures of two household divorced, separated, or non-formed families are different from intact-family households, it is very important that the children of this State not be forced to live in poverty because of family disruption and that they be afforded the same opportunities available to children in intact families with parents of similar financial means as their own parents.

**2. Use of the Child Support Guidelines as a Rebuttable Presumption**

In accordance with Rule 5:6A, these guidelines must be used as a rebuttable presumption to establish and modify all child support orders. The guidelines must be applied in all actions, contested and uncontested, in which child support is being determined including those involving pendente lite (temporary) support, interstate support (Uniform Interstate Family Support Act (UIFSA)), domestic violence, foster care, divorce, non-dissolution, and public assistance (Temporary Assistance to Needy families or TANF). A rebuttable presumption means that an award based on the guidelines is assumed to be the correct amount of child support unless a party proves to the court that circumstances exist that make a guidelines-based award inappropriate in a specific case. The guidelines may be disregarded or a guidelines-based award adjusted if a party shows, and the court finds, that such action is appropriate due to conflict with one of the factors set forth in sections 4, 7, 10, 13, 14, 15 or 20 of Appendix IX-A, or due to the fact that an injustice would result due to the application of the guidelines in a specific case. The determination of whether good cause exists to disregard or adjust a guidelines-based award in a particular case shall be decided by the court.

**3. Deviating from the Child Support Guidelines**

If the court finds that the guidelines are inappropriate in a specific case, it may either disregard the guidelines or adjust the guidelines-based award to accommodate the needs of the children or the parents' circumstances. If the support guidelines are not applied in a specific case or the guidelines-based award is adjusted, the reason for the deviation and the amount of the guidelines-based award (before any adjustment) must be specified in writing on the guidelines worksheet or in the support order. Such findings

clarify the basis for the support order if appealed or modified in the future. If the guidelines are found to be inapplicable in a particular case, the court should consider the factors set forth in N.J.S.A. 2A:34-23 or N.J.S.A. 9:17-53 when establishing the child support award.

#### **4. The Income Shares Approach to Sharing Child-Rearing Expenses**

New Jersey statutes and case law provide that both parents are responsible for the financial needs of their children. In intact families, the income of both parents is pooled and spent for the benefit of all household members including the children. Each parent's contribution to the combined income of the family represents their relative sharing of household expenses. For example, if the parents have equal incomes, they are assumed to share all expenditures for the family equally (50%). This same income sharing principle is used to determine how the parents will share a child support award. In dissolved or nonformed families, however, the parents share only the expenses for the child (i.e., the Appendix IX-F support schedules are based on the marginal or added cost of a child or children to an adult couple). In sole-parenting situations, the custodial parent's share of the child-rearing expenses is assumed to be spent directly on the child through daily living expenses. The non-custodial parent's share of child-rearing costs represents the support order that is paid to the custodial parent for the benefit of the child. In situations involving PAR Time (formerly referred to as visitation), both parents make direct expenditures for the child while the child resides in their homes. To accommodate duplicated and shifting expenses associated with a child who shares time with parents who live separately, the Appendix IX-F sole-parenting awards may need to be adjusted to reflect each parent's assumed level of marginal spending on the child.

#### **5. Economic Basis for the Child Support Guidelines**

At the foundation of the child support guidelines are estimates of what parents in intact families spend on their children. Determining the *cost* of raising a child is difficult because most goods and services purchased by families are shared by adults and children. Economists estimate that approximately 65% of household spending is for pooled items (e.g., a car, a washing machine, or a box of laundry detergent used in common by all household members). Even for goods that are privately consumed (e.g., clothing, food), expenditure surveys are not detailed enough to link individual household members (adults or children) to a particular expenditure. Together, pooled and privately consumed goods account for about 90% of total household expenditures. Since most expenditures on children cannot be observed directly, economists use an indirect method of determining child-rearing costs known as marginal-cost estimation. Marginal-cost estimation attempts to find the added cost of a child to a family by comparing the expenditures of families considered equally well-off economically and have different numbers of children. For example, if two families (one with and one without a child) are equally well-off, the additional expenses of the family with a child are assumed to be the marginal cost of the child.



Selecting a Standard of Well-Being - Before estimating the marginal cost of children, a standard of well-being must be defined. Different marginal cost estimation methods use different standards of well-being. Although several standards have been used in the past, no consensus has emerged as to which provides the most credible result. Two of the most widely used marginal-cost estimation methods, Rothbarth and Engel, employ the standards of well-being described below.

Engel - The standard of well-being is the proportion of household income spent on food. Thus, if two families spend the same percentage of their income on food, they are considered equally well-off.

Rothbarth - This standard of well-being is based on how parents adjust their spending on adult goods due to the presence of a child. In other words, well-being is measured by comparing excess-income (i.e., after necessary expenditures for the family) available to purchase adult goods such as adult clothing, alcohol, tobacco, and entertainment.

Consumer Expenditure Data - Once an estimation technique is chosen, the household expenditure data to which it is applied must be selected. Typically, economists use data from the Consumer Expenditure Survey (CEX). The CEX is the most detailed source of national data on household expenditures and how they vary by family composition, size, geographic location and socioeconomic characteristics. The CEX collects expenditure information for hundreds of household consumption items including food, housing, clothing, transportation, education, child care, health care, and entertainment. The CEX is a cross-sectional survey designed to represent the civilian, non-institutional population in the United States. Approximately 5,000 families participate in the CEX each quarter. CEX results are published annually, however, the results are generally three years old by the time they are available for public use. The CEX is considered the best available source of information for determining the cost of children using marginal-cost estimation techniques.

The Betson Analysis - In September 1990, Dr. David Betson of the University of Notre Dame published child-rearing estimates based on his analysis of pooled CEX data from 1980 through the first quarter of 1987, a variety of estimation techniques, and alternative definitions of the standard of well-being. As did previous studies, Dr. Betson's analysis resulted in a wide range of estimates of expenditures on children. Dr. Betson, like other economists, believes that the true range of marginal expenditures on children lies at some interval between the Engel and Rothbarth estimates.

The Engel estimates, which are close to per capita (i.e., equal shares), clearly overstate the marginal cost of children and, thus, represent the upper bound of spending on children. Economists know that the Engel estimates are incorrect, but do not have the same information about the Rothbarth estimates. Thus, the Rothbarth estimates may represent the true level of marginal spending on children or the theoretical lower bound of that spending. Dr. Betson concluded that the Rothbarth method produced the best set of estimates on the marginal cost of children because it has the least empirical flaws and those that do exist have a minimal effect on the resulting estimates.

Estimating Spending on Children - The CEX does not have a direct measure of spending on children, so the expenditures on children are measured indirectly. The cost of raising children is estimated by comparing total spending in households without children to total spending in households with one, two, and three children in all income categories covered by the tables. Although this may be an indicator of the marginal increase in household spending when children are added, it does not give a complete picture since income constraints may also force adults to spend less on themselves to share what income is available with their child(ren). To measure the impact children make on adult household spending, economists Michael and Lazear have ascertained that measuring the change in expenditures on adult clothing gives the best estimate of expenditures on children in the household. This particular "estimator," which is a derivative of the Rothbarth methodology adopted to current use by Dr. William Rodgers, III, Chief Economist of the John J. Heldrich Center for Workforce Development, Edward Bloustein School of Planning and Public Policy, at Rutgers University, is along with the marginal increases in overall household spending, analyzed to arrive at the overall cost of child rearing as reflected in the awards table. The CEX data is also adjusted to account for the variety of educational levels, ethnic backgrounds, and other factors specific to the population of New Jersey.

Development of Child Support Award Schedules - Dr. Rodgers' 2012 study estimates parental expenditures on one, two, and three children as a percentage of total household outlays. To do this, Rodgers uses the estimation method developed in the Lazear and Michael treatise (1988) and transforms the Rothbarth parameters into a schedule of child support obligations by using the following steps:

- a. converting child-related spending as a proportion of consumption to a proportion of net income;
- b. updating estimates to 2011;
- c. adjusting the schedule to reflect New Jersey's higher cost of living as measured by the "Consumer Price Index - All Urban Consumers" (CPI-U);
- d. deducting the cost of child care and unreimbursed health care expenses that exceed \$ 250 per child per year (these expenses are added to the basic obligation);
- e. extrapolating the estimates to families with four, five, and six children;
- f. computing marginal proportions between income intervals so that the support schedule can be constructed in ten dollars increments;
- g. using the Rothbarth and marginal proportions to create the relationship between support obligations and combined net weekly income; and
- h. using median regression to smooth (remove remaining kinks/discrete jumps) the relationship.

## **6. Economic Principles Included in the Child Support Guidelines**

a. There is no absolute cost of raising children. The cost of raising children is inferred from the amount that parents' spend on their children. A child's marginal cost is

the amount of spending above what the parents would spend if they did not have a child.

b. Larger households have lower per-person costs due to economies of scale and the sharing of family goods (i.e., unit prices decrease as quantities and sharing increase).

c. Total spending on children increases with family size but at a decreasing rate. Support awards increase with the number of children in the family.

d. When a family's total outlays rise, child-related spending increases roughly in the same proportion. In the Rodgers study's analysis, as one moves from the lowest to highest of the 22 income intervals, the average increase in total outlays is 7%, 6%, and 7% for one child, two children, and three children. The comparable average increases in the expenditures on children are 7%, 7%, and 9%.

e. As a family's income increases, child-related expenditures increase because parents use a portion of their disposable income to improve their children's quality of life. From the Lazear and Michael model, the change (derivative) in child-related expenditures with respect to family income has two components. The second portion of the derivative is the positive impact that income has on total expenditures.

f. Child-related expenditures as a percentage of family consumption are relatively constant across most of the income scale.

g. As income increases, total family consumption spending declines as a proportion of net income since income items such as savings, personal insurance, and gifts increase with family income. Families at lower level of the income ladder have consumption spending that may exceed 100% of net income. In contrast, high-income families may spend only 60% to 75% of net income on consumption items.

h. As a family's income increases, child-related expenditures as a proportion of family income decline, even though these expenditures as a percentage of a family's consumption spending remain fairly constant. The difference between spending as a proportion of family income and a proportion of consumption is due to the effect of income taxes, savings and charitable contributions. Income allocated to these items is not available for consumption spending.

i. Due to economies of scale, the sharing of family goods and the redistribution of adult spending, as the number of children increases, the additional cost of each child has a less than proportionate increase. Dr. Rodgers estimates that child-related expenditures for two children are less than twice as much as child-related expenditures for one child. For two children, the average cost across the 22 income intervals is 1.7 more than one child. Also, the child-related expenditures for three children are less than three times as much as one child. This study average is 2.2 more than one child. These

estimates lie in the range of those reported in the 2004 Policy Studies report for New Jersey.

## **7. Assumptions Included in the Child Support Guidelines**

a. Intact Family Spending Patterns as the Standard for Support Orders - Support guidelines based on spending patterns of intact families provide an adequate level of support for children. Child-rearing expenditures of single parents provide little guidance for setting adequate child support awards since single-parent households generally have less money to spend compared with intact families. The fact that single parents actually do spend less income on children compared with two-parent families does not mean that they should spend less if the other parent has the means to increase total spending on the children through support payments. Also, the level of spending by single parents on their children has no relation to adequacy or the needs of the children but is a function of the total amount of income available to those parents.

b. Standard of Living - Although these support guidelines attempt to approximate the same level of marginal spending on children before divorce or separation, the resulting child support awards do not guarantee that the children's standard of living will remain the same if one of those events occurs. Usually, the children's standard of living will decline since the child support award (based on marginal spending) is being added to a much smaller level of base household expenditures. Less total money is available in the primary household of the child after divorce or separation since the other parent's income is no longer available. Less money means a decline in household expenditures which results in a lower standard of living. Additionally, some economies of scale are lost when one parent leaves the household.

c. Marginal-Cost Estimation - For determining child support obligations, marginal-cost estimation techniques, which provide the additional cost of children based on intact-family spending patterns, are more appropriate than average-cost methods that divide spending between all family members equally (per capita).

d. The Rothbarth Marginal Cost Estimator - The Rothbarth marginal cost estimation techniques (e.g., Betson and Lazear and Michael) provide the most accurate estimates of parental expenditures on children in dual-parent families. Dr. Rodgers' 2012 analysis of the 2000 to 2011 micro data of the Consumer Expenditure Survey provides the most current and reliable estimates of child-related expenditures in dual-parent families.

e. National versus New Jersey Spending on Children - Because the Rothbarth estimates are for the U.S. and it is well known that New Jersey's income distribution is very different from the U.S. income distribution, Dr. Rodgers uses U.S. Census data to equate the income of New Jersey and U.S. families and constructs proportions to smooth the schedule or remove discrete jumps in obligation as net income rises. This follows the same principle as in the 2004 Policy Studies Report for New Jersey. The

2010 U.S. and New Jersey income distribution in the American Community Survey was used to adjust the Rothbarth estimates.

f. NCP/PAR Time - The awards in the support schedules represent spending on children by intact families. In an intact family, the children reside in one household and no NCP/PAR Time is needed. This is similar to child support actions in which one parent has sole physical custody of a child and there is no NCP/PAR Time. The awards in the Appendix IX-F support schedules represent situations in which the child is with the custodial parent 100% of the time. Although the Appendix IX-F awards are not reduced for NCP/PAR Time, they may be adjusted, if these factors are present in a specific case, through worksheet calculations. For further information and assumptions related to NCP/PAR Time adjustments and their related assumptions, see paragraphs 13 and 14 respectively.

g. Effect of a Child's Age - Dr. Rodgers' 2012 study does not provide estimates on child-rearing expenditures by children's age groups. The Appendix IX-F awards represent the average cost of raising a child from age zero through 17 years (i.e., the total marginal cost averaged over 18 years). Studies have shown that expenditures are higher than the average for teen-aged children and lower than the average for preteen children.

h. Self-Support Reserve - The self-support reserve is a factor in calculating a child support award only when one or both of the parents have income at or near the poverty level. The self-support reserve is 150% of the U.S. poverty guideline for one person. It attempts to ensure that the obligor has sufficient income to maintain a basic subsistence level and the incentive to work so that child support can be paid. A child support award is adjusted to reflect the self-support reserve only if payment of the child support award would reduce the obligor's net income below the reserve and the custodial parent's (or the Parent of the Primary Residence's) net income minus the custodial parent's share of the child support award is greater than 150% of the poverty guideline. The latter condition is necessary to ensure that custodial parents can meet their basic needs so that they can care for the children. As of January 13, 2021, the self-support reserve is \$ 372 per week (This amount is 150% of the poverty guideline for one person).

i. Income Tax Withholding - For wage earners, income tax withholding rates provide an accurate estimate of after-tax income available to pay weekly support obligations. Income tax withholding may differ from end-of-year tax obligations due to the parent's filing status and the number of dependents, deductions and credits reported or claimed by each parent.

j. Spending of Child Order - These guidelines assume that the obligee is spending the support award for the benefit of the child or children.

k. Sharing of Child-Rearing Expenses - These guidelines assume that the parents are sharing in the child-rearing expenses in proportion to their relative incomes.

To the extent that this is not true (i.e., if one parent is paying all costs associated with housing for the child from his or her own income) and can be proven to the court, a guidelines-based support award may require adjustment.

## **8. Expenses Included in the Child Support Schedules**

The awards in the Appendix IX-F child support schedules represent the average amount that intact families spend on their children (i.e., the marginal amount spent on the children). The Appendix IX-F support awards include the child's share of expenses for housing, food, clothing, transportation, entertainment, unreimbursed health care up to and including \$ 250 per child per year, and miscellaneous items. Specific items included in each category are listed below. Note: The fact that a family does not incur a specific expense in a consumption category is not a basis for a deviation from the child support guidelines. The Appendix IX-F awards are based on the percentage of income spent on children by a large number of families in a variety of socioeconomic situations. The use of averages reflects the diversity of spending by parents. To qualify for a deviation based on average costs, a parent must show that the family's marginal spending on children for all items related to a consumption category differs from the average family (e.g., there are no housing costs).

Housing - Mortgage principal and interest payments or home equity loans, property taxes, insurance, refinancing charges, repairs, maintenance, rent, parking fees, property management or security fees, expenses for vacation homes, lodging while out of town, utilities, fuels, public services, domestic services, lawn care, gardening, pest control, laundry and dry cleaning (non-clothing), moving and storage, repairs on home, furniture, major appliances, purchase or rental of household equipment of tools, postage, laundry or cleaning supplies, cleaning and toilet tissues, household and lawn products, stationary, all indoor and outdoor furniture, floor coverings, all small appliances and housewares (except personal care appliances), all household textiles (e.g., linens, drapes, slip covers, sewing materials, etc.), and miscellaneous household equipment (e.g., clocks, luggage, light fixtures, computers and software, decorating items, etc.). The net purchase price of a home is not included as expenditures in this category.

Food - All food and non-alcoholic beverages purchased for home consumption or purchased away from home (including vending machines, restaurants, tips, school meals and catered affairs). Non-food items (e.g., tissue papers, alcoholic beverages, cigarettes) are not included.

Clothing - All children's clothing (including school uniforms), footwear (except special footwear for sports), diapers, repairs or alterations to clothing and footwear, storage, dry cleaning, laundry, watches, and jewelry.

Transportation- All costs involved with owning or leasing an automobile including monthly installments toward principal cost, finance charges (interest), lease

payments, gas and motor oil, insurance, maintenance and repairs. Also, included are other costs related to transportation such as public transit, parking fees, license and registration fees, towing, tolls, and automobile service clubs. The net outlay (purchase price minus the trade-in value) for a vehicle purchase is *not* included. Transportation also does not include expenses associated with a motor vehicle purchased or leased for the intended primary use of a child subject to the support order.

Unreimbursed Health Care Up to and Including \$ 250 Per Child Per Year - Unreimbursed health-care expenditures (e.g., medical and dental) up to and including \$ 250 per child per year *are* included in the schedules. Such expenses are considered ordinary and may include items such as non-prescription drugs, co-payments or health care services, equipment or products. The parent's cost of adding a child to health insurance policy is not included in the schedules.

Entertainment - Fees, memberships and admissions to sports, recreational, or social events, lessons or instructions, movie rentals, televisions, mobile devices, sound equipment, pets, hobbies, toys, playground equipment, photographic equipment, film processing, video games, and recreational, exercise or sports equipment.

Miscellaneous Items - Personal care products and services (e.g., hair, shaving, cosmetics), books and magazines, school supplies, cash contributions, personal insurance, and finance charges (except those for mortgage and vehicle purchases).

Note: Tuition for children (i.e., for private, parochial, or trade schools, or other secondary schools, or post-secondary education) are not included in the child support schedules and may be treated as a supplemental expense.

## **9. Expenses That May Be Added to the Basic Child Support Obligation –**

Because some child-related expenses represent large or variable expenditures or are not incurred by typical intact families, it is not appropriate to include them in the Appendix IX-F basic child support awards. The items listed below are not included in the Appendix IX-F child support awards. If incurred in a particular case, these expenses should be added to the basic support obligation.

a. Child-Care Expenses - The average cost of child care, including day camp in lieu of child care, is not factored into in the schedules. The net cost (after tax credits) of work-related child care should be added to the basic obligation if incurred.

b. Health Insurance for the Child - The parent's marginal cost of adding a child to a health insurance premium is not included in the support schedules and should be added to the basic obligation if incurred.

c. Predictable and Recurring Unreimbursed Health Care Expenses In Excess of \$ 250 Per Child Per Year - Unreimbursed health-care expenses for a child in excess of \$ 250 per child per year are not included in the schedules. Such expenses should be added to the basic obligation if they are predictable and recurring. Health-care expenses for a child that exceed \$ 250 per child per year that are not predictable and recurring should be shared by the parents in proportion to their relative incomes as incurred (i.e., the sharing of these expenses should be addressed in the general language of the order or judgment). Health care costs that are not included in the support award should be paid directly to the parent who made or will make the expenditure or directly to the provider of the health care (also, see N.J.S.A. 2A:34-23b).

d. Other Expenses Approved by the Court - These are predictable and recurring expenses for children that may not be incurred by average or intact families such as private elementary or secondary education, special needs of gifted or disabled children, and visitation transportation expenses. The addition of these expenses to the basic obligation must be approved by the court. If incurred, special expenses that are not predictable and recurring should be shared by the parents in proportion to their relative incomes (i.e., the sharing of these expenses should be addressed in the general language of the order or judgment). Special expenses not included in the award should be paid directly to the parent who made or will make the expenditure or to the provider of the goods or services.

## **10. Adjustments to the Support Obligation**

The factors listed below may require an adjustment to the basic child support obligation.

a. Other Legal Dependents of Either Parent - These guidelines include a mechanism to apportion a parent's income to all of his or her legal dependents regardless of the timing of their birth or family association (i.e., if a divorced parent remarries and has children, that parent's income should be shared by all children born to that parent). Legal dependents include adopted or natural children of either parent who are less than 18 years of age or more than 18 years of age and still attending high school or other secondary school. Stepchildren are not considered legal dependents unless a court has found that the stepparent has a legal responsibility for the stepchildren. When considering the use of this adjustment, the following principles shall apply:

(1) where there is not an order requiring either parent to pay support for the other dependent this adjustment shall be used only if the income, if any, of the other parent of the secondary family is provided to or ascertainable by the court;

(2) where there is not an order requiring either parent to pay support for the other dependent, if the other parent in the secondary family is voluntarily unemployed or underemployed, the court shall impute income



to that person (see paragraph 12) to determine the serial family parent's obligation to the children in the secondary family;

(3) this adjustment may be applied to other dependents born before or after the child for whom support is being determined;

(4) this adjustment may be requested by either or both parents (custodial and/or non-custodial);

(5) the adjustment may be applied when the initial award is entered or during subsequent modifications of the support order.

b. **Multiple Family Obligations.** In some cases, one individual may be obligated to pay child support to multiple families. When the court adjudicates a case involving an obligor with multiple family obligations, it may be necessary to review all past orders for that individual. If the court has jurisdiction over all matters, it may either average the orders or fashion some other equitable resolution to treat all supported children fairly under the guidelines. If multiple orders reduce the obligor's income to an amount below the self-support reserve, the orders should be adjusted to distribute the obligor's available income equitably among all children while taking into consideration both the obligee's share of the child support obligation and the obligor's self-support reserve. If other jurisdictions' tribunals ordered the obligor to pay child support for a different family, the New Jersey court may consider that fact for the purpose of maintaining the obligor's self-support reserve.

c. **Government Benefits Paid to or for Children -** Government benefits for children fall into three categories. The treatment of each type of benefit is related to its purpose and eligibility standards.

(1) Means-tested benefits have eligibility standards based on the fact that the child or parent has minimal income and requires government assistance. This includes, but is not limited to, Temporary Assistance to Needy Families (TANF), Deficit Reduction Act (DEFRA), Refugee Assistance, rent subsidies, food stamps (SNAP), and Supplemental Security Income for the Aged, Blind or Disabled (SSI), kinship guardian subsidies. Means-tested benefits for the child are meant to provide for minimal subsistence and are excluded as income (not counted for either parent).

(2) Derivative benefits have eligibility standards that are based on the contribution (e.g., work history, military service, disability or retirement) of one of the parties, without regard to family income. This includes but is not limited to Social Security Disability, Social Security Retirement, Black Lung, and Veteran's Administration benefits. Such payments are either deducted from a parent's government benefit or paid in addition to the parent's benefit. These child benefits are earned benefits that are meant to replace the lost earnings of the parent in the event of disability or

retirement. The derivative child benefits shall be counted in the weekly net income of the parent whose contribution is the source of the benefits and applied as a credit to that parent's child support obligation. If the amount of the support obligation after deducting the benefits is zero, then the child support obligation is satisfied and no support award should be ordered while the child is receiving the benefits.

(3) Other benefits are obtained without regard to means tests or contribution (e.g., work history, military service, disability, or retirement) of either party. This includes, but is not limited to, adoption subsidies and Social Security benefits based on the work history of a non-party relative, such as a stepparent, grandparent or deceased parent. This type of government benefit is not meant to replace lost earnings of a party, but to supplement the child's household income. Such benefits are counted as income for the parent who actually receives the benefits (usually the custodial parent).

## **11. Defining Income**

These guidelines are based on the combined net income of the parents. Generally, net income is gross income minus income taxes, mandatory union dues, mandatory retirement, previously ordered child support orders, and, when appropriate, a theoretical child support obligation for other dependents. See Appendix IX-B for a detailed definition of income and taxes as they relate to the child support guidelines.

## **12. Imputing Income to Parents.**

The fairness of a child support award resulting from the application of these guidelines is dependent on the accurate determination of a parent's net income. If the court finds that either parent is, without just cause, voluntarily underemployed or unemployed, it shall impute income to that parent according to the following priorities:

- a. impute income based on potential employment and earning capacity using the parent's work history, occupational qualifications, educational background, and prevailing job opportunities in the region. The court may impute income based on the parent's former income at that person's usual or former occupation or the average earnings for that occupation as reported by the New Jersey Department of Labor (NJDOL);
- b. if potential earnings cannot be determined, impute income based on the parent's most recent wage or benefit record (a minimum of two calendar quarters) on file with the NJDOL (note: NJDOL records include wage and benefit income only and, thus, may differ from the parent's actual income); or
- c. if a NJDOL wage or benefit record is not available, impute income based on the full-time employment (40 hours) at the prevailing New Jersey minimum wage.

In determining whether income should be imputed to a parent and the amount of such income, the court should consider: (1) what the employment status and earning capacity of that parent would have been if the family had remained intact or would have formed, (2) the reason and intent for the voluntary underemployment or unemployment, (3) the availability of other assets that may be used to pay support, and (4) the ages of any children in the parent's household and child-care alternatives. The determination of imputed income shall not be based on the gender or custodial position of the parent. Income of other household members, current spouses, and children shall not be used to impute income to either parent except when determining the other-dependent credit. When imputing income to a parent who is caring for young children, the parent's income share of child-care costs necessary to allow that person to work outside the home shall be deducted from the imputed income. For further information on imputing income, see *Strahan v. Strahan*, 402 N.J. Super. 298 (App. Div. 2008), *Caplan v. Caplan*, 182 N.J. 250 (2005), *Gertcher v. Gertcher*, 262 N.J. Super. 176 (Ch.Div. 1992), *Bencivenga v. Bencivenga*, 254 N.J. Super. 328 (App. Div. 1992), *Thomas v. Thomas*, 248 N.J. Super. 33 (Ch.Div. 1991), *Arribi v. Arribi*, 186 N.J. Super. 116 (Ch.Div. 1982), *Lynn v. Lynn*, 165 N.J. Super. 328 (App. Div. 1979), *Mowery v. Mowery*, 38 N.J. Super. 92 (App. Div. 1955).

### **13. Adjustments for PAR Time (formerly Visitation Time)**

a. For the purpose of these guidelines, visitation is a level of parental participation in child-rearing that is less than the substantial equivalent of two or more overnights with the child each week (approximately 28% of overnights excluding vacations and holidays). Overnight means the majority of a 24-hour day (i.e., more than 12 hours). The sharing of parenting responsibilities above this time threshold may qualify for a shared-parenting child support award (see paragraph 14). For non-custodial parents (NCP) who participate in child-rearing responsibilities on a regular basis but for less than the substantial equivalent of two or more overnights per week, it is assumed that:

(1) fixed costs (e.g., housing-related expenses) for the child *are not* incurred by the NCP;

(2) variable costs (e.g., food, transportation, and some entertainment) for the time spent with the child *are* incurred by the NCP; and

(3) variable costs represent 37% of the total child-related expenditures.

b. Regular PAR Time - If a parenting plan that sets forth a visitation schedule is filed with the court or a PAR Time schedule is ordered, or the non-custodial parent exercises regular PAR Time with the child, the court may reduce an Appendix IX-F sole-parenting support award to accommodate variable expenses (food and transportation) incurred by the non-custodial parent during PAR Time periods. In determining if such an adjustment is appropriate, the court should consider whether the non-custodial parent has incurred variable expenses for the child during PAR Time and if PAR Time has

reduced the other parent's variable expenses for the child. If the non-custodial parent exercises PAR Time for more than the substantial equivalent of two or more overnights per week, a shared-parenting award may be appropriate (see paragraph 14).

(1) The reduction in the award shall not exceed the parent's time share (percentage of overnight time with the child) of the variable costs -- food and transportation -- for the child. For example, if the sole-parenting basic support award is \$ 100 and the non-custodial parent spends 20% of the time with the child, the maximum PAR Time credit is \$ 7.40 calculated as: [ $\$ 100$  (basic award)  $\times$  0.37 (variable costs)  $\times$  0.20 (%time)].

(2) Extended PAR Time in excess of five consecutive overnights that represents a single event or intermittent occurrence (e.g., vacation or holiday time) shall not be used to determine the non-custodial parent's annual percentage of overnight time for calculating a regular visitation (see paragraph 13(c)) or a shared-parenting adjustment. Extended PAR Time periods that are part of a regularly scheduled rotation of consecutive weeks between the parents that is set forth in a parenting plan or court order (e.g., a regular schedule that alternates weeks between parents during the year or entire summer) should be included in the calculation of the regular PAR Time adjustment (variable expenses), but shall *not* be included in the determination of qualifying time for a shared-parenting adjustment (fixed expenses) unless the parent shows and the court finds that marginal housing-related costs for the child were incurred in the PAR's household for the extended PAR Time period.

(3) If the custodial parent's household net income (CP net income from all sources including TANF and the net income of other adults in the household) plus the parenting PAR Time-adjusted child support order is less than two times the poverty guideline for the total number of persons in the household, the adjustment for PAR Time expenses shall not be presumptive, but shall be subject to the discretion of the court.

c. Extended PAR Time (Vacation and Holiday Time) - If a child is in the care of a non-custodial parent for five or more consecutive overnights, that parent may request an abatement of the child support order for the extended-PAR Time period. Upon the filing of a motion by the parent seeking the extended-PAR Time abatement, the court shall decide whether the abatement is appropriate, its amount, and how it shall be applied. Alternatively, the amount of an extended-PAR Time abatement may be specified prospectively in an agreement between the parents. The amount of the abatement shall not exceed the variable expenses (food and transportation) incurred for the child during the extended-PAR Time period (i.e., the abatement should not be for the entire award during the vacation period since the custodial parent continues to have fixed and controlled expenses during that time). Variable expenses represent 37% of a basic child support award before any regular-PAR Time adjustments. If child care or other special expenses are included in the order, an abatement for the non-custodial

parent's share of those costs that are not incurred during extended-PAR Time shall be given unless such costs are paid in advance or must be paid during the extended-PAR Time. Extended vacation or holiday time used to calculate a visitation or shared adjustment as permitted in the discretion of the court under paragraph 13(b)(2) or 14(c)(2)(a) does not qualify for the extended-PAR Time abatement under this paragraph.

d. **Non-Compliance with a Parenting Plan** - If an award is adjusted prospectively for PAR Time and the non-custodial parent, over a reasonable period, does not conform with the PAR Time schedule included in a parenting plan or court order, the custodial parent may file an application with the Family Division requesting that the child support order be adjusted to reflect the level of PAR Time that is being exercised. A simple application for this purpose shall be made available to parents by the Family Division of the Superior Court to ensure that the affected children receive the financial support that is needed. If PAR Time was used to adjust the child support award and the court finds that the non-custodial parent, over a reasonable period, failed to comply with the PAR Time schedule specified in the parenting plan or court order, the child support award shall be recalculated to reflect the actual PAR Time that is being exercised. Alternatively, the court may adjust the award to a zero PAR Time level until the non-custodial parent shows that PAR Time is occurring on a regular basis. Where possible, the court shall hear and decide applications to recalculate child support due to a parent's failure to comply with a PAR Time schedule in a summary manner. The determination of the effective date of any modification shall be consistent with N.J.S.A. 2A:17-56.23a unless otherwise ordered by the court. If the court finds that a parent willfully failed to comply with a parenting time provision or entered into such a provision merely to reduce the child support award, it may award counsel fees to a custodial parent in addition to adjusting the amount of child support as provided in this paragraph.

#### **14. Shared-Parenting Arrangements**

a. **The Support Guidelines and Shared Parenting** - The awards in the Appendix IX-F support schedules represent spending on children by intact families. In an intact family, the children reside in one household with both parents (i.e., there is no shifting of children between households as with non-intact families). Thus, the Appendix IX-F awards are appropriate only if the child resides in the custodial parent's household 100% of the time. In shared-parenting situations, each parent incurs expenses for the child while the child is with that parent. To accommodate shared-parenting situations, each parent's income share of the Appendix IX-F support award may be adjusted based on expenses assumed to be duplicated or shifted and the amount of time spent with the child. Although these guidelines are designed to accommodate shared-parenting arrangements when appropriate, shared-parenting adjustments or awards are not presumptive, but are subject to the discretion of the court in accordance with the factors listed in paragraphs 14(c) and 14(d).

b. **Parties Defined.** In shared-parenting situations, a parent's designation is related to the time the child spends in that parent's residence. The parents should be

referred to as the Parent of Primary Residence (PPR) and the Parent of Alternate Residence (PAR). Either the PPR or the PAR may be the obligor of the support order depending on income and the time spent with the child. The designation of PPR and PAR is not related to the gender of either parent or the legal designation of custodial parent. The PPR and PAR are defined as follows:

(1) Parent of Primary Residence (PPR) - The parent with whom the child spends most of his or her overnight time. The primary residence is the home where the child resides for more than 50% of the overnights annually. If the time spent with each parent is equal (50% of overnights each), the PPR is the parent with whom the child resides while attending school. Overnight means the majority of a 24-hour day (i.e., more than 12 hours).

(2) Parent of Alternate Residence (PAR) - This is the parent with whom the child resides when not living in the primary residence.

c. Criteria for Determining a Shared-Parenting Award - The criteria listed below must be met before the shared-parenting worksheet and instructions are used to calculate a shared-parenting award. The existence of these criteria does not make a shared-parenting award presumptive, but permit the calculation of the award so that the court can determine if it is appropriate for a particular family.

(1) A parenting plan that specifies parenting times and responsibilities must be filed with or ordered by the court.

(2) The PAR has or is expected to have the child for the substantial equivalent of two or more overnights per week over a year or more (at least 28% of the time) and the PAR can show that separate living accommodations for the child are provided during such times (i.e., evidence of separate living accommodations maintained specifically for the child during overnight stays).

(a) At the discretion of the court, the determination of qualifying shared-parenting time may include extended-PAR Time periods of five or more consecutive overnights that are part of a regularly scheduled rotation between the parents as set forth in a parenting plan or court order if the PAR shows that marginal housing-related costs were incurred for those periods. Qualifying shared-parenting time shall not include extended PAR Time periods of five or more overnights that represent vacations, holidays, or other periodic events (see Extended Visitation above).

(b) Although a PAR may not be eligible for the shared-parenting adjustment (both fixed and variable expenses) due to limited time

with the child, a regular PAR Time credit (variable expenses only) may be appropriate (see paragraph 13).

d. Unless the parties otherwise agree, the final child support order shall *not* be based on a calculated shared-parenting award if:

(1) the PPR's weekly household net income (including means-tested income such as TANF and the net income of other adults living in the household) plus the shared-parenting child support award is less than two times the U.S. poverty guideline for the number of persons in the household (PPR household income thresholds are shown in table below); or

(2) in any case, the court finds that the net income of the primary household remaining after the calculation of the shared-parenting award is not sufficient to maintain the household for the child. When evaluating the adequacy of the primary household's total income, the court shall consider the cost of living in the region where the child resides (e.g., the average cost of housing, food, and transportation).

When determining the PPR's household income to evaluate the primary household income threshold, the court may impute income to the PPR in accordance with Appendix IX-A, paragraph 12.

e. If a shared-parenting award is inappropriate due to the PPR's limited household income, a sole-custody award shall be calculated.

Shared-Parenting Primary Household Net Income Thresholds  
(2.0 x 2021 Poverty Guideline).

Total Persons in Household	Weekly Net Income	Annual Net Income
2	\$670	\$34,840
3	\$845	\$43,920
4	\$1,019	\$53,000
5	\$1,194	\$62,080
6	\$1,368	\$71,160
7	\$1,543	\$80,240
8	\$1,718	\$89,320

f. Relative Spending on Children and Shared-Parenting Situations

For the purpose of the application of these guidelines to shared-parenting situations, there are three broad categories of expenses incurred for children by their parents: fixed, variable and controlled.

Fixed costs are those incurred even when the child is not residing with the parent. Housing-related expenses (e.g., dwelling, utilities, household furnishings and household care items) are considered fixed costs.

Variable costs are incurred only when the child is with the parent (i.e., they follow the child). This category includes transportation and food.

Controlled costs over which the PPR, as the primary caretaker of the child, has direct control. This category includes clothing, personal care, entertainment, and miscellaneous expenses.

The Appendix IX-F support awards (which represent marginal child-rearing costs) are based on expenditures of intact families that reside in one household. In shared-parenting situations both parents incur fixed and variable expenses for the child while the child resides in their individual households (in a PAR Time situation, it is assumed that the non-custodial parent incurs only variable expenses for the child). It is assumed that controlled expenses for the child are incurred only by the PPR since, generally, that parent manages the day-to-day needs of and expenditures for the child. The Appendix IX-F awards may not be appropriate in shared-parenting situations since they assume that the PPR incurs all expenses for the child and that the PAR has no expenses related to the child. To arrive at a fair support award in shared-parenting situations, the Appendix IX-F awards may need to be adjusted to accommodate each parent's time-adjusted fixed and variable expenses for the child. Since it is assumed that only the PPR incurs controlled expenses, the adjustment formula provides that such costs are shared by the parents in proportion to their relative incomes only, not in proportion to time spent with the children (see note on controlled expenses at paragraph I).

g. Assumptions of the Shared-Parenting Adjustment - The shared-parenting adjustment assumes that:

(1) relative spending on children in the three broad consumption categories is as follows: 38% fixed expenses, 37% variable expenses, and 25% controlled expenses;

(2) the PAR's fixed expenses are equal to:  $[2 \times \text{PAR's percentage of overnights} \times \text{PPR's fixed expenses}]$ . The PAR's fixed costs are pro-rated based on the time the child spends in the alternate household. For example, if the PAR spends 30% of overnights with the child, that parent is assumed to incur 60% of the PPR's fixed costs. The PPR's fixed costs remain static (i.e., the full 38% of the basic obligation; they are not reduced for the time the child is not in the household) since that parent must maintain the primary residence for the child at all times. The parents



have equal fixed expenses only when time sharing is equal (i.e., fixed expenses are the same when the child spends the same amount of time in both households).

(3) variable costs are incurred only when the child is in the parent's household and, thus, are apportioned based on each parent's percentage of overnights with the child. For example, if the child spends 30% of overnights with the PAR, that parent incurs 30% of the variable expenses for the child and the PPR's variable expenses are reduced by an equal proportion;

(4) controlled expenses are incurred by the PPR only and, thus, are apportioned between the parents based on their income shares, not in relation to time spent with the children.

#### h. Calculating the Shared-Parenting Adjustment

Appendix IX-F sole-parenting awards are adjusted for shared-parenting by calculating the PAR's income share of the total two-household expenses (the basic support obligation plus the PAR's time adjusted-fixed expenses) for the child and then deducting the PAR's time-adjusted fixed and variable expenses for the child. This mechanism adjusts the award to accommodate the PAR's fixed and variable expenses incurred while the child is with that parent and the PPR's reduced variable expenses while the child is not in that parent's household. The PAR's income share of the net supplemental expenses (e.g., child care, court-approved special needs) is added to the PAR's adjusted basic obligation. Detailed instructions and a worksheet for calculating shared-parenting awards are provided in Appendices IX-B and IX-D respectively.

#### i. Note on Controlled Expenses

In shared-parenting situations, it is assumed that both parents incur fixed and variable costs. The shared-parenting adjustment formula allocates the total marginal fixed and variable costs between the parents based on their relative incomes and the time spent with the children. Controlled expenses (e.g., clothing, entertainment, and personal care items) are assumed to be incurred by the PPR only (i.e., the PPR is responsible for the day-to-day needs of the child which includes the purchase of these items). Therefore, controlled expenses are shared in proportion to the parents' incomes only -- such expenses are not time adjusted. Thus, no adjustment is made for direct expenditures made by a PAR for controlled items whether they be duplicated in the PAR's household (e.g., clothing) or made only while the child is present (e.g., entertainment). In some family situations, the PAR may incur expenses for some controlled items either by agreement or on a voluntary basis. The adjustment formula does not accommodate these situations because there is either no empirical data that segregates the expense item into specific percentage of consumption (e.g., entertainment) or the expense item is presumed to be with the autonomy of the PPR (e.g., clothing). Additionally, it is not always clear whether the duplication of these

expenses is appropriate or necessary. If a PAR routinely incurs controlled expenses for the child either in addition to or as substitution for a controlled expense item assumed to be unilaterally provided by the PPR, the PAR may rebut the controlled expense assumption when the award is being determined. If such a rebuttal is made, the court must decide whether the dual expenses are appropriate and necessary and, if so, how each controlled expense category should be treated (i.e., how much of the 25% represents the item in contention and whether it should be treated as a variable or fixed expense).

#### j. Non-Compliance with Parenting Plan

If an award is adjusted prospectively for shared-parenting time and the PAR, over a reasonable period, does not conform with the shared-parenting schedule included in a parenting plan or court order, the PPR may file an application with the Family Division requesting that the child support order be adjusted to reflect the level of PAR Time that is being exercised. A simple application for this purpose shall be made available to parents by the Family Division of the Superior Court to ensure that the affected children receive the financial support that is needed. If shared-parenting time was used to adjust the child support award and the court finds that the PAR, over a reasonable period, failed to comply with the shared-parenting schedule, the child support award shall be recalculated to reflect the actual PAR Time that is being exercised. Alternatively, the court may adjust the award to a zero shared-parenting level until the PAR shows that shared-parenting time is actually being exercised. Where possible, the court shall hear and decide applications to recalculate child support due to a parent's failure to comply with a shared-parenting schedule in a summary manner. The determination of the effective date of any modification shall be consistent with N.J.S.A. 2A:17-56.23a unless otherwise ordered by the court. If the court finds that a parent willfully failed to comply with a parenting time provision or entered into such a provision merely to reduce the child support award, it may award counsel fees to a PPR in addition to adjusting the amount of support as provided in this paragraph.

### **15. Split-Parenting Arrangements**

Split-parenting situations are those in which there are multiple children of the relationship and each parent has physical custody of at least one child. To determine the net support obligation in split-parenting situations, a separate sole-parenting award must be calculated considering each parent as the non-custodial parent (obligor) for the number of children in the custody of the other parent. Instead of transferring the calculated awards between parents, the two awards are subtracted. The difference of the two awards is the child support order to be paid by the parent with the higher sole-parenting award. If both parents serve as a PPR for at least one child of the relationship and the children share time with the other parent, the court should adjust each parent's award to accommodate shared-parenting costs in accordance with the principles explained in the PAR Time sections of this Appendix before the two awards are subtracted.

## **16. Child in the Custody of a Third Party**

If the child is in the custody of a third party (e.g., an aunt, uncle, or grandparent), the court shall order both parents to pay their income shares of the sole-parenting award to the third party for the benefit of the child. When a child has been placed in out-of-home care by a child protective services (CPS) agency, including the New Jersey Division of Child Protection and Permanency, on application or motion made at the request of the CPS agency as to one or both parents, the court may order the parent(s) to pay their income shares of the sole-parenting award to that agency.

## **17. Adjustments for the Age of the Children**

The child support schedules are based on child-rearing expenditures averaged across the entire age range of zero through 17 years (total expenditures divided by 18 years). This averaging means that awards for younger children are slightly overstated due to the higher level of expenditures for older children. If an award is entered while the child is very young and continues through age 18, the net effect is negligible. However, initial awards for children in their teens are underestimated by the *averaging* and should be adjusted upward to compensate for this effect. Due to limitations of the CEX and the Rothbarth estimator, a separate marginal cost for teen-aged children could not be estimated. Based on Dr. Thomas Espenshade's 1980 CEX study, the cost of children aged 12 through 17 was 14.6% above the average expenditures. Therefore, if the initial child support order is entered when a child is 12 years of age or older, that order and all subsequent orders shall be adjusted upward by 14.6%. Whenever the 14.6% adjustment is made, it should be noted in the guidelines worksheet or in the support order. This will clarify the basis of the order for future modifications or appeals.

## **18. College or Other Post-Secondary Education Expenses**

These child support guidelines are intended to apply to children who are less than 18 years of age or more than 18 years of age but still attending high school or a similar secondary educational institution. For the reasons set forth below, the Appendix IX-F support schedules shall not be used to determine parental contributions for college or other post-secondary (hereafter college) expenses nor the amount of support for a child attending college. The child support guidelines may be applied in the court's discretion to support for students over 18 years of age who commute to college.

**Duplicate Expenditures** - Many costs associated with college attendance (e.g., room, board, transportation) are included in the Appendix IX-F child support guidelines awards. Thus, a parent who is ordered to pay a guidelines-based child support award and part of the child's college expenses is forced to make duplicate expenditures for the child (i.e., the PAR would be paying a share of the cost of food for the child to the primary household as well as a share of the cost of a meal plan or food allowance while the child is attending college). As a result, the level of total spending on the child would exceed that of intact families in a similar economic situation and the PAR's share of the

total spending on the child would increase beyond his or her income share. Requiring duplicate expenditures for a child is inconsistent with spending patterns of intact families and the economic theory of the child support guidelines.

**Appendix IX-F Awards Represent Intact-Family Spending on Children up to Age 18 -** The proposed Appendix IX-F support awards are based on the marginal cost of children who are less than 18 years of age and living in intact-family situations. The children on whom the support guidelines (average marginal expenditures) are based were minors who had not progressed beyond the high school level. Thus, the Appendix IX-F awards do not include any expenditures related to college attendance.

**Guidelines Awards Are Based on Average Costs -** The proposed Appendix IX-F child support schedules represent total average spending on children (birth through age 18) who are living in an intact-family residence. Since the cost of college attendance is a large, variable expenditure, it is inappropriate to incorporate such an expense in the total average marginal costs of children. Including college costs in the Appendix IX-F support schedules would increase the recommended support awards for all family situations regardless of whether a family has a child who is actually attending college.

**Guidelines Awards Represent Basic Needs -** The Appendix IX-F support schedules represent average marginal expenditures on children for food, housing, transportation, clothing, and miscellaneous items - basic items needed by every child and provided by their parents. Since college education is a discretionary expense, it is inappropriate to commingle such costs with basic needs of children.

When determining whether continued financial support for children attending college and/or parental contributions to college education are appropriate, the court shall consider relevant case law and statutes. In all cases, primary consideration shall be given to the continued support of minor children remaining in the primary residence by reapplying the child support guidelines for those children *before* determining parental obligations for the cost of post-secondary education and/or continued support for a child attending college.

## **19. Determining Child Support and Alimony or Spousal Support Simultaneously**

If child support and alimony, maintenance, or spousal support are being determined simultaneously (for the same family), the court shall determine the amount of alimony, maintenance, or spousal support before applying the child support guidelines, except when the court establishes pendente lite support. When applying the guidelines, the amount of alimony, maintenance or spousal support shall be deducted from the paying parent's income (after adjusting for tax benefits, if any) and added to the recipient's income to determine each parent's gross income. This transfer method reflects the availability of income to each parent for the purpose of paying child support.

## **20. Extreme Parental Income Situations**

Although these guidelines apply to all actions to establish and modify child support awards, extremely low or high parental income situations make the Appendix IX-F awards inappropriate due to the limitations of the economic data. The guidelines listed below apply to extreme parental income situations.

a. **Obligors With Net Income Less Than the U.S. Poverty Guideline.** If an obligor's net income, after deducting that person's share of the total support award, is less than 150% of the U.S. poverty guideline for one person (net income of \$ 372 per week as of January 13, 2021 or as published annually in the Federal Register), the court shall carefully review the obligor's income and living expenses to determine the maximum amount of child support that can reasonably be ordered without denying the obligor the means of self-support at a minimum subsistence level. If an obligee's income minus the obligee's share of the child support award is less than 150% of the poverty guideline, no self-support reserve adjustment shall be made regardless of the obligor's income. In all cases, a fixed dollar amount shall be ordered to establish the principle of the parent's support obligation and to provide a basis for an upward modification should the obligor's income increase in the future. In these circumstances, the support award should be between \$ 5.00 per week and the support amount at \$ 180 combined net weekly income for the appropriate number of children.

b. **Parents with a Combined Net Annual Income In Excess of \$ 187,200.** If the combined net income of the parents is more than \$ 187,200 per year, the court shall apply the guidelines up to \$ 187,200 and supplement the guidelines-based award with a discretionary amount based on the remaining family income (i.e., income in excess of \$ 187,200) and the factors specified in N.J.S.A. 2A:34-23. Thus, the maximum guidelines award in Appendix IX-F represents the minimum award for families with net incomes of more than \$ 187,200 per year. An award for a family with net income in excess of \$ 187,200 per year shall not be less than the amount for a family with a net income of \$ 187,200 per year. Because estimates on the marginal cost of children in intact families with net incomes of more than \$ 187,200 per year are either unreliable or unavailable, the court shall not extrapolate the Appendix IX-F schedules (statistically or by adding amounts from different income ranges) beyond that dollar limit.

## **21. Other Factors that May Require an Adjustment to a Guidelines-Based Award**

At the court's discretion, the following factors may require an adjustment to a guidelines-based child support award:

- a. equitable distribution of property;
- b. income taxes;

- c. fixed direct payments (e.g., mortgage payments);
- d. unreimbursed medical/dental expenses for either parent;
- e. tuition for children (i.e., for private, parochial, or trade schools, or other secondary schools, or post-secondary education);
- f. educational expenses for either parent to improve earning capacity;
- g. single family units (i.e., one household) having more than six children;
- h. cases involving the voluntary placement of children in foster care;
- i. special needs of gifted or disabled children;
- j. ages of the children;
- k. hidden costs of caring for children such as reduced income, decreased career opportunities, loss of time to shop economically, or loss of savings;
- l. extraordinarily high income of a child (e.g., actors, trusts);
- m. substantiated financial obligations for elder care;
- n. substantiated financial obligations for a disabled family member;
- o. the tax advantages of paying for a child's health insurance;
- p. one obligor owing support to more than one family (e.g. multiple prior support orders);
- q. a motor vehicle purchased or leased for the intended primary use of a child subject to the support order;
- r. parties sharing equal parenting time; and
- s. overnight adjustment for multiple children with varying parenting time schedules.

The court may consider other factors that could, in a particular case, cause the child support guidelines to be inapplicable or require an adjustment to the child support award. In all cases, the decision to deviate from the guidelines shall be based on the best interests of the child. All deviations from the guidelines-based award and the amount of the guidelines-based award must be stated *in writing* in the support order or on the guidelines worksheet.

## **22. Stipulated Agreements.**

In accordance with Rule 5:6A, if a child support amount in a stipulated or consent agreement differs from an award calculated using the support guidelines, the parties or their representatives shall state on a child support guidelines worksheet: (a) the amount of support that would have been awarded if calculated using the guidelines and (b) the reason that the stipulated amount differs from the guidelines-based award.

## **23. Modification of Support Awards.**

Before using these guidelines to modify a child support award, the court must find that the circumstances of the parties have changed since the date that the order was entered (see *Lepis v. Lepis*, 83 N.J. 139 (1980) and *Walton v. Visgil*, 248 N.J. Super. 642 (App. Div. 1991)). In applying the guidelines in modification actions, the court shall consider the interrelationship of alimony or other financial factors that may have influenced the original child support amount as well as the principles set forth in existing case law. The adoption of revised child support guidelines is not an automatic basis for the modification of a child support order. To qualify for a modification, a party must file a motion with the court and show a change in circumstances, other than the adoption of revised guidelines, as specified in *Lepis*, *supra*, and other relevant case law. Also, see N.J.S.A. 2A:17-56.9a, *Doring v. Doring*, 285 N.J. Super. 369 (Ch.Div 1995), and R. 5:6B.

## **24. Effect of Emancipation of a Child**

If the guidelines were used to calculate a child support award for two or more children, the emancipation of a child shall not result in a proportionate reduction of the support order (i.e., based on the economic evidence, it is not appropriate to reduce an order for two children by half if one child becomes emancipated). Instead, child support award should be recalculated based upon the current income of the parents and the number of unemancipated children.

## **25. Support for a Child Who has Reached Majority**

These schedules are based on economic estimates of average intact-family expenditures on children from ages zero through 17. These guidelines shall not be used to determine a support obligation for a child who has reached majority (18 years of age) and who is no longer enrolled in high school or other secondary education. After a child reaches majority and completes secondary education, a support obligation, if found by the court to be appropriate, shall be determined in accordance with N.J.S.A. 2A:34-23 and existing case law.

## **26. Health Insurance for Children.**

Unless the parents agree to an alternative health care arrangement, all child support orders shall provide for the coverage of the child's health care needs (i.e.,

medical and dental) and health insurance (when such insurance is available to either parent at a reasonable cost). The parent's marginal cost of adding a child to a health insurance policy shall be added to the basic child support award and deducted from the paying parent's income share of the total child support award (see Appendix IX-B). The following standards shall apply when determining if a health insurance provision is appropriate and which parent should provide health insurance for the child.

a. The cost of health insurance is considered reasonable if it is employment-related or available through a group plan, regardless of the service delivery mechanism, and does not reduce the net income of the obligor below 150% of the poverty guideline for one person (after paying the child support award) or the custodial parent's net household income below 150% of the poverty guideline for the number of persons in the primary household. If sufficient income is not available to pay child support and a health insurance premium without eroding these income reserves, priority shall be given to child support.

b. Health insurance includes fees for service, health maintenance organizations (HMO), preferred provider organizations (PPO) and other types of coverage under which medical services could be provided to the dependent child.

c. When reasonably priced health insurance is available to only one parent, that parent shall be ordered to provide coverage for the child.

d. If health insurance is available to both parents, the parent who can obtain the most comprehensive coverage at the least cost shall be ordered to provide health insurance for the child. Alternatively, both parents may be ordered to provide health insurance if it is available to them at a reasonable cost and the combination of plans provides the most comprehensive coverage.

e. When neither parent has access to health insurance, the parents shall be ordered to share in health expenses in accordance with their relative incomes (see paragraph 9 for the treatment of predictable and recurring unreimbursed health care expenses in excess of \$ 250 per child per year).

f. If the custodial parent and the child receive Medicaid, the non-custodial parent shall be ordered to enroll the child in a health insurance plan if it is available at a reasonable cost.

g. If health care insurance is not available to either parent at the time the support order is established, the court shall require that health insurance coverage be obtained for the child if it becomes available to either parent in the future. The Probation Division shall monitor the availability of health insurance for the child.

**27. Unpredictable, Non-Recurring Unreimbursed Health-Care In Excess of \$ 250 Per Child Per Year**



As stated in paragraph 9, predictable and recurring unreimbursed health care expenses in excess of \$ 250 per child per year should be added to the basic support obligation. However, because the unreimbursed cost, duration, or incidence of some illnesses or health conditions are highly variable or unexpected, it may not be appropriate or practical to add them to the basic support obligation when the support award is being established. To acknowledge the possibility of unpredictable or non-recurring unreimbursed health-care expenditures, the court should order that such expenses, if incurred, be shared in proportion to each parent's relative income (income shares). Such payments should be made directly to the parent who made or will make the health care expenditure or directly to the health care provider (i.e., not through Probation).

## **28. Distribution of Worksheets and Financial Affidavits**

Immediately following the establishment or modification of a child support award, each party shall be provided with a copy of the support order and, if requested, a copy of the child support guidelines worksheet and any financial affidavits used to determine the obligation. The original order, guidelines worksheet, and all financial affidavits shall be maintained in the Family Division case file.

## **29. Background Reports and Publications**

The reports listed below were either used during the development of the New Jersey child support guidelines or document the Supreme Court Family Practice Committee's findings and recommendations regarding the guidelines. Judiciary reports are available at the New Jersey State library and select city, county, and county courthouse libraries. Reports prepared for the U.S. Department of Health and Human Services are available from the U.S. Office of Child Support Enforcement Reference Center.

- a. New Jersey Child Support Institute, Institute for Families, in cooperation with the Office of Child Support Services, Division of Family Development, Department of Human Services, Child Support Guidelines Quadrennial Review: Final Report, 2013.
- b. William M. Rodgers, III, New Jersey Economic Basis for Updated Child Support Schedule, Rutgers, The State University of New Jersey, Fifth Update: January 16, 2013.
- c. Margaret Campbell Haynes, Treatment of Social Security Disability Derivative Benefits, 2011.
- d. New Jersey Child Support Institute, Institute for Families, in cooperation with the Office of Child Support Services, Division of Family Development, Department of Human Services, Child Support Guidelines Working Forum Compendium, Fall 2009.
- e. New Jersey Supreme Court Family Practice Committee, 2007 - 2009 Final Report, January 20, 2009.

- f. New Jersey Supreme Court Family Practice Committee, 2004 - 2007 Final Report, January 12, 2007.
- g. Policy Studies, Inc., New Jersey Economic Basis for Updated Child Support Schedule, Report prepared for the New Jersey Administrative Office of the Courts, March 30, 2004.
- h. New Jersey Administrative Office of the Courts, Supplemental Report of the Supreme Court Family Division Practice Committee on Proposed Amendments to Appendix IX (Child Support Guidelines) of the New Jersey Court Rules, Report to the Supreme Court, October 1996.
- i. New Jersey Administrative Office of the Courts, Final Report of the Supreme Court Family Division Practice Committee on Proposed Revisions to the New Jersey Child Support Guidelines, Rule 5:6A and Appendix IX of the New Jersey Court Rules, Report to the Supreme Court, March 1996.
- j. Policy Studies, Inc., Economic Basis for Updated Child Support Schedules, State of New Jersey, Report prepared for the New Jersey Administrative Office of the Courts, April 1995.
- k. Mark Lino, Expenditures on Children by Families, 1994 Annual Report, U.S. Department of Agriculture, Center for Nutrition Policy and Promotion, Miscellaneous Publication 1528, April 1995.
- l. David M. Betson, Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey, Report to the U.S. Department of Health and Human Services (Office of Assistant Secretary for Planning and Evaluation), University of Wisconsin Institute for Research on Poverty, September 1990.
- m. Lewin/ICF, Estimates of Expenditures on Children and Child Support Guidelines, Report to the U.S. Department of Health and Human Services (Office of Assistant Secretary for Planning and Evaluation), Lewin/ICF, October 1990.
- n. Robert G. Williams, Development of Guidelines for Child Support Orders, Final Report, Report to the U.S. Office of Child Support Enforcement, Policy Studies Inc., September 1987.

**Note:** Adopted May 13, 1997 to be effective September 1, 1997; amended July 10, 1998 to be effective September 1, 1998; amended May 25, 1999 to be effective July 1, 1999; amended April 4, 2000 to be effective immediately; paragraph 10(b) redesignated as paragraph 10(c), new paragraph 10(b) adopted, paragraphs 19 and 21 amended July 5, 2000 to be effective September 5, 2000; paragraphs 7(h), 14(e), 20(a) amended April 2, 2001 to be effective immediately; paragraphs 7(h), 14(e), 20(a) amended March 12, 2002 to be effective immediately; paragraphs 4, 7(f), 9(d), 13(b)-(d), 14(c), 14(f), 14(j), 15 amended July 12, 2002 to be effective September 3, 2002; paragraphs 7(h), 14(e), 20(a) amended March 17, 2003 to be effective immediately; amended March 15, 2004 to be effective immediately; March 14, 2005 to be effective immediately; February 14, 2006 to be effective immediately; July 27, 2006 to be effective September 1, 2006; September 11, 2006 to be effective immediately; February 13, 2007 to be effective immediately; June 15, 2007 to be effective September 1, 2007; March 11, 2008 to be effective immediately; March 24, 2009 to be effective immediately; July 16, 2009 to be effective September 1, 2009; June 14, 2011 to be effective immediately; April 24, 2012 to be effective immediately; June 4, 2013 to be effective

immediately; July 9, 2013 to be effective September 1, 2013; amended April 8, 2014 to be effective immediately; amended April 21, 2015 to be effective May 1, 2015; Amended July 27, 2015 to be effective September 1, 2015; amended April 12, 2016 to be effective May 1, 2016; amended July 28, 2017 to be effective September 1, 2017; amended May 29, 2018 to be effective June 1, 2018; amended May 9, 2019 to be effective June 1, 2019; amended July 29, 2019 to be effective September 1, 2019; amended to be effective June 1, 2020; amended to be effective June 1, 2021; paragraphs 7(h), 20(a), and 26(a) amended July 30, 2021 to be effective September 1, 2021.

**Appendix IX-B**  
**USE OF THE CHILD SUPPORT GUIDELINES – SOLE PARENTING**  
(Includes Amendments Through Those Effective September 1, 2021)

**GENERAL INFORMATION**

**Completion and Filing of the Worksheet**

A child support guidelines worksheet must be completed and made part of the permanent Family Division case file for each child support order established or modified using the child support guidelines.

**Use of Weekly Amounts**

All financial information entered on the worksheets must be based on weekly amounts. For monthly amounts, divide by 4.3. For annual amounts, divide by 52.

**Rounding to Whole Dollars and Percentages**

Dollars and percentages (ratios) should be rounded to whole numbers. Amounts less than 50 cents should be dropped. For example, \$ 340.35 is \$ 340. Increase amounts that are 50 cents or more to the next whole dollar. For example, \$ 540.58 is \$ 541. Percentages (ratios) should be rounded to two decimal places in the same manner. For example, 0.343 is 0.34 and 0.456 is 0.46.

**Defining Parental Roles**

*Sole Parenting -- A Custodial Parent* is a parent who has physical custody of the children and provides for their needs on a day-to-day basis. This parent is generally the obligee of the support order. *A Non-Custodial Parent* is a parent who does not have physical custody of the children on a regular basis but may exercise periodic PAR Time privileges (if time sharing exceeds the substantial equivalent of two or more overnights per week, a shared-parenting situation may exist). This parent is generally the obligor of the support order. See Appendix IX-A, paragraph 13.

*Shared Parenting - A Parent of Primary Residence (PPR)* is a parent who provides a residence for the child for more than 50% of overnights annually or, if sharing is equal, provides the residence for the child while he or she is attending school. The PPR may be either the obligee or obligor depending on the parents' income and amount of time spent with the child. *A Parent of Alternate Residence (PAR)* is a parent who provides an overnight residence for the child when he or she is not with the PPR. See Appendix IX-A, paragraphs 14(b) and 14(c).

**Selection of a Worksheet**

*Sole Parenting* - The Sole-Parenting Worksheet (Appendix IX-C) shall be used in the following cases: no time sharing (i.e., the child resides with a parent 100% of the time), shared parenting (PAR Time) below the substantial equivalent of two or more overnights per week (28% of overnights), split-parenting (i.e., multiple children; at least one child residing with each parent), and shared-parenting situations in which an adjusted award results in the PPR's net household income falling below the PPR household income reserve set forth in Appendix IX-A, paragraph 14(d).

*Shared Parenting* - The Shared-Parenting Worksheet (Appendix IX-D) shall be used if the Parent of Alternate Residence has the child for the substantial equivalent of two or more overnights per week, excluding extended PAR time (e.g., vacations) and has shown that separate living accommodations for the child are provided in the alternate household (see shared parenting standards in Appendix IX-A, paragraph 14(c)).

## LINE INSTRUCTIONS FOR THE SOLE-PARENTING WORKSHEET

### Caption

Enter the names of the parties, the county of venue, the docket number, and the number of children for whom support is being determined. Check-off whether the custodial parent is the plaintiff or defendant.

### Lines 1 through 5 - Determining Income

**Gross Income** - For the purpose of these guidelines, gross income is all earned and unearned income that is recurring or will increase the income available to the recipient over an extended period of time. When determining whether an income source should be included in the child support guidelines calculation, the court should consider if it would have been available to pay expenses related to the child if the family would have remained intact or would have formed and how long that source would have been available to pay those expenses.

**Sources of Income** - Gross income, includes, but is not limited to, income from the following sources:

- a. compensation for services, including wages, fees, tips, and commissions;
- b. the operation of a business minus ordinary and necessary operating expenses (see IRS Schedule C);
- c. gains derived from dealings in property;
- d. interest and dividends (see IRS Schedule B);
- e. rents (minus ordinary and necessary expenses - see IRS Schedule E);
- f. bonuses and royalties;
- g. alimony and separate maintenance payments received from the current or past relationships;
- h. annuities or an interest in a trust;
- i. life insurance and endowment contracts;
- j. distributions from government and private retirement plans including Social Security, Veteran's Administration, Railroad Retirement Board, deferred compensation, Keoughs and IRA's;
- k. personal injury awards or other civil lawsuits;
- l. interest in a decedent's estate or a trust;
- m. disability grants or payments (including Social Security disability);
- n. profit sharing plans;
- o. worker's compensation;
- p. unemployment compensation benefits;
- q. overtime, part-time and severance pay;
- r. net gambling winnings;
- s. the sale of investments (net capital gain) or earnings from investments;
- t. income tax credits (excluding the federal and state Earned Income Credit and the N.J. homestead rebate);

- u. unreported cash payments (if identifiable);
- v. the value of in-kind benefits; and
- w. imputed income (see Appendix IX-A, paragraph 12).

***Income from self-employment or operation of a business.***

- a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Personal income from the operation of a business includes all income sources listed above and potential cash flow resulting from loans taken from the business.
- b. Income and expenses from self-employment or the operation of a business should be carefully reviewed to determine gross income that is available to the parent to pay a child support obligation. In most cases, this amount will differ from the determination of business income for tax purposes.
- c. Specifically excluded from ordinary and necessary expenses, for the purposes of these guidelines, are expenses allowed by the IRS for:
  - (1) the accelerated component of depreciation expenses;
  - (2) first-year bonus depreciation;
  - (3) depreciation on appreciating real estate;
  - (4) investment tax credits;
  - (5) home offices;
  - (6) entertainment;
  - (7) travel in excess of the government rate;
  - (8) non-automobile travel that exceeds standard rates;
  - (9) automobile expenses;
  - (10) voluntary contributions to pension plans in excess of 7% of gross income; and
  - (11) any other business expenses that the court finds to be inappropriate for determining gross income for child support purposes.

***Sporadic Income***

- a. If income from any source is sporadic or fluctuates from year-to-year (e.g., seasonal work, dividends, bonuses, royalties, commissions), the amount of sporadic income to be included as gross income shall be determined by averaging the amount of income over the previous 36 months or from the first occurrence of its receipt whichever time is less.
- b. For overtime pay or income from a second job, the average is based on the prior 12 months or first receipt whichever time is greater.

- c. The court may exclude sporadic income if the party can prove that it will not be available in an equivalent amount in the future.

**Military Pay** - All military pay and allowances shall be included as gross income for determining child support (see *Rose vs. Rose*, 107 S.Ct. 2029 (1987)).

- a. All service members receive Basic Allowance for Quarters (BAQ) and Basic Allowance for Subsistence (BAS) or live in government accommodations and eat at mess halls for free. If BAQ and BAS are not received due to government-provided accommodations and food, the value of such in-kind income may be included in the service member's gross income.
- b. BAQ, BAS, and Variable Housing Allowances (VHS) are considered income for the purposes of determining child support. These forms of income are not subject to tax.

**In-Kind Income** - The fair-market value of goods, services, or benefits received in lieu of wages and in the course of employment shall be included as gross income if they reduce personal living expenses of the recipient regardless of whether they are derived from an employer, self-employment, or the operation of a business. Examples of in-kind goods, services and benefits include vehicles, automobile insurance, free housing, meals, benefits selected under a cafeteria plan, memberships, or vacations. Expense reimbursements are not considered income.

**Alimony, Spousal Support, and/or Separate Maintenance** - Alimony, spousal support, or separate maintenance payments received from a spouse or former spouse in accordance with a court order are considered income to the recipient. If child support and alimony, spousal support, or separate maintenance are being determined simultaneously (for the same family), the court should set the alimony, spousal support, or separate maintenance first and include that amount in the recipient's gross income (on Line 1c or Line 4b) before applying the child support guidelines, except in pendente lite situations. Alimony, spousal support, or maintenance payments that are being paid to former spouses or will be paid in the future (to the spouse in the current action) are deducted from the payor's income (on Line 1b or Line 4a).

The Tax Cut and Jobs Act of 2017 impacted the tax consequences of alimony, spousal support, or separate maintenance, resulting in significantly more cases in which alimony will not be taxable for the recipient or tax-deductible for the payor. There are other reasons that some alimony may not qualify as taxable and deductible under federal law. Alimony that is taxable and deductible will be entered on Lines 1b and 1c. Alimony that is non-taxable and non-deductible will be entered on Lines 4b and 4c.

**Types of Income Excluded from Gross Income** - The following types of income are excluded from gross income:

- a. means-tested income (i.e., based on the fact that the recipient has minimal



income and requires government assistance to live) including, but not limited to, Temporary Assistance to Needy Families (TANF), Deficit Reduction Act (DEFRA), General Assistance, Refugee Assistance, rent subsidies, Supplemental Needs Assistance Program (SNAP), Supplemental Security Income for the Aged, Blind or Disabled (SSI); and Social Security concurrent SSI and Disability or SSI and Retirement benefits (all of the concurrent benefit is excluded);

- b. alimony, spousal support, or separate maintenance payments (the net amount after deducting the tax benefits, if any) to a current or former spouse;
- c. child support received for children of another relationship;
- d. non-income producing assets (e.g., undeveloped real estate, automobiles, jewelry, art, stocks and bonds) unless the court finds that the intent of the investment was to avoid the payment of child support;
- e. income from children, unless the court determines that such income should be included because the child is a professional or has substantial income that reduces the family's living expenses;
- f. income from other household members (e.g., step-parents, grandparents, current spouse) who are not legally responsible for the support of the child for whom support is being established except to determine the other-dependent credit (the income of the current spouse may be included if an other-dependent deduction is requested - see Appendix IX-A, paragraph 10);
- g. for modifications involving retirement income, the pro-rated amount of contributions to a voluntary plan that were previously included in gross income when the current support order was established;
- h. financial assistance for education including loans, grants, scholarships, veteran's education benefits, and awards provided under the National and Community Service Act of 1990 (except post-service benefits); and
- i. federal earned income tax credits.

### ***Collecting and Verifying Income Information***

- a. Prior to the commencement of a hearing to establish or modify child support, the parties shall submit either a Case Information Statement (R. 5:5-2) or a Financial Statement in Summary Support Actions (R. 5:5-3) to the court.
- b. When possible, the court should determine gross income as follows:
  - (1) Prior to June 30 of the current year, use Federal and State income tax returns, W-2 statement(s) and IRS 1099's from the preceding year. If tax documentation is unavailable, use any other available evidence of current earnings (e.g., paystubs, employer wage verifications, or, for the self-employed, statements of business receipts and expenses). If a joint income tax return includes income of a person other than one of the parties involved in the support proceeding (e.g., a current spouse), the taxpayer or that person's attorney shall be responsible for the redaction of the tax return.

- (2) After June 30, use the year-to-date income figure from all documented sources listed above. Divide the total gross income from all sources by the number of employed weeks to determine the weekly gross income.
- (3) If no income documentation is available, income may be determined through testimony or imputed as set forth in Appendix IX-A, para. 10.

*Note on Income Documentation:* The review of a paystub, W-2 form, IRS-1099 form or tax return may not provide all necessary income information for a parent. The accurate determination of income may be dependent on a combination of these documents and testimony. Also, note that a parent may have more than one W-2 wage statement if that person worked for multiple employers during the year.

**Taxable and Non-Taxable Income** - Before determining Net Income, gross income must be separated into taxable and non-taxable portions to ensure that withholding taxes are deducted only from taxable gross income. Generally, the types of income listed below are not subject to tax. Other types of income may be non-taxable depending on the status of the taxpayer or the source of income. For more information on taxable and non-taxable income, refer to IRS Publication 525 (Taxable and Non-Taxable Income) or, for New Jersey income taxes, see N.J.S.A. 54A:6-1 and NJ-WT. The following items are considered income to the parents, but should not be used to calculate withholding or income taxes when determining net income.

#### *1. Income Not Subject to Federal Income Tax*

- a. Accident and health insurance proceeds;
- b. Black-lung benefits;
- c. Child support payments;
- d. Federal Employees Compensation Act payments;
- e. Interest on state or local obligation;
- f. Scholarships and fellowships grants;
- g. Veteran's benefits;
- h. Worker's compensation;
- i. Life insurance proceeds paid due to death of the insured;
- j. Social Security benefits. However, if the taxpayer has income of more than \$ 25,000 if single or \$ 32,000 if married and filing a joint return some of the benefits may be taxable (see IRS Publication 915);
- k. Casualty insurance and other reimbursements; and
- l. Earnings from tax-free government bonds or securities.

#### *2. Income Not Subject to New Jersey State Income Tax*

- a. Federal Social Security benefits;
- b. Railroad Retirement benefits;
- c. Proceeds of life insurance contracts payable by reason of death;
- d. Employee's death benefits;
- e. The value of property acquired by gift, bequest, devise or inheritance

- except income from any such property or if the gift, bequest, devise or inheritance is income;
- f. Amounts received under worker's compensation including income from suits, agreements, accident or health insurance resulting from personal injuries or sickness;
  - g. Compensation paid by the United States for services in the Armed Forces performed by an individual not domiciled in New Jersey;
  - h. Grants or scholarships received from education institutions;
  - i. Payments of up to \$ 10,000 for a married couple filing jointly, \$ 5,000 for a married couple filing separately and \$ 7,500 for a single taxpayer from an annuity, endowment or life insurance contract or payments of any such amount received as pension, disability or retirement benefits for persons at least 62 years old or disabled under Social Security;
  - j. New Jersey Lottery winnings;
  - k. Permanent and total disability benefits under a public or private plan and certain accident/health insurance benefits including Veteran's benefits;
  - l. Unemployment Insurance and Temporary Disability benefits;
  - m. Interest on obligations issued by the State or any county, municipality, school or other governmental body of New Jersey and obligations statutorily free from tax under State or federal law;
  - n. Amounts contributed by an employer on behalf of an employee to a trust which meets the requirements of IRC section 401(K) are not taxable in the year when made;
  - o. Earnings from tax-free government bonds or securities; and
  - p. Income Tax Refunds (state or federal).

*Note on Social Security Taxes:* Social Security tax withholding (FICA) for high-income persons may vary during the year. In the early part of the year, 6.2% is withheld on the first \$ 142,800 of gross earnings (for wage earners in 2021). After the maximum \$ 8,854 is withheld, no additional FICA taxes are withheld. Thus, pay stubs issued early in the year may understate net income, while those issued later in the year may overstate it. To estimate weekly FICA taxes, amortize the annual FICA tax using the number of weeks employed or use the Appendix IX-H combined tax tables. Note that self-employed persons must pay the full FICA tax (12.4%) up to the \$ 142,800 limit on all earned income.

*Note on Medicare Taxes:* 1.45% of gross earnings is withheld for Medicare taxes. Note that self-employed persons must pay the full Medicare tax rate (2.9%) on all earned income. In addition to withholding Medicare tax at 1.45%, a 0.9% Additional Medicare Tax is withheld from wages in excess of \$ 200,000 in a calendar year. The 0.9% Additional Medicare Tax also applies to self-employed persons (there is no employer share of Additional Medicare Tax).

*Analyzing Income Tax Returns* - For assistance in analyzing income tax returns to determine parental income, see American Bar Association, Section of Family Law, The 1040 Handbook: A Guide to Income and Asset Discovery, Sixth Edition, 2014.

Government Benefits for the Child - Government benefits for children fall into three categories. Each is described below along with its treatment in calculating child support.

- a. Means-tested benefits - Benefits based on the fact that the child or parent has minimal income and requires government assistance. This includes, but is not limited to, Temporary Assistance to Needy Families (TANF), Deficit Reduction Act (DEFRA), Refugee Assistance, rent subsidies, food stamps (SNAP), and Supplemental Security Income for the Aged, Blind or Disabled (SSI), kinship guardian subsidies. Means-tested benefits for the child are excluded as income (not counted for either parent).
- b. Derivative benefits - Benefits based on the contribution (e.g., work history, military service, disability, or retirement) of one of the parties is an essential factor in the child's eligibility for the benefit, without regard to family income. This includes but is not limited to Social Security Disability, Social Security Retirement, Black Lung, and Veteran's Administration benefits. The derivative benefit is counted as income (on Line 5) for the parent whose contribution is the source of the benefit. If the benefit is based upon contribution of the Non-Custodial Parent, he or she will also receive a credit for the benefit (on Line 15).
- c. Other benefits - Benefits that are obtained without regard to family income or contribution (e.g., work history, military service, disability, or retirement) of either party. This includes, but is not limited to, adoption subsidies and Social Security benefits based on the work history of a non-party relative, such as a step-parent, grandparent, or deceased parent. This benefit is counted as income (on Line 5) for the parent who actually receives the financial benefit (usually the custodial parent).

### **Line 1 - Gross Taxable Income**

Enter the weekly gross taxable income of each parent in the appropriate Line 1 column. Non-taxable income is entered on Line 4.

### **Line 1a - Mandatory Retirement Contributions**

Enter the weekly mandatory retirement contributions for each parent in the appropriate Line 1a column.

Contributions to retirement or pension plans that are mandatory (i.e., required as a condition of employment) are not considered income for determining child support obligations. Since mandatory pension contributions are generally non-taxable, the amount of such payments must be deducted from gross income before withholding taxes and the Adjusted Gross Taxable Income are calculated. Voluntary payments to Deferred Compensation Plans (e.g., 401K, 414B), Keoughs, and IRA's should not be deducted from gross income. Calculate the weekly amount of mandatory retirement contributions by dividing the year-to-date contributions by the number of weeks employed or by using an average of the prior year's contributions.

### **Line 1b - Tax-Deductible Alimony Paid**

If alimony is tax deductible for the payor of alimony enter the weekly amount of alimony or other form of spousal support that is paid or will be paid to a former spouse in the appropriate Line 1b column.

When established simultaneously with child support (for the same family), the amount of alimony, spousal support, or separate maintenance should be determined before the child support guidelines are applied, except in pendente lite applications. Once the amount of alimony, spousal support, or separate maintenance is set, it is deducted from the payor's gross income and added to the recipient parent's gross income for the purposes of calculating a child support award using the guidelines.

### **Line 1c - Taxable Alimony Received**

If alimony is taxable for the recipient of alimony, enter the weekly amount of alimony or other spousal support that is received or will be received from a former spouse (i.e., includes payments from the current as well as any past relationships) in the appropriate Line 1c column. To determine whether a payment from a former spouse is considered alimony or separate maintenance, see 26 U.S.C. 71.

For non-tax-deductible alimony paid and non-taxable alimony received, see Line 4a and Line 4b.

To determine whether a payment from a former spouse is considered alimony or separate maintenance, see 26 U.S.C. 71.

### **Line 2 - Adjusted Gross Taxable Income**

Subtract mandatory retirement contributions and tax deductible alimony paid from the gross taxable income and add any taxable alimony received to the gross taxable income to obtain the adjusted gross taxable income. Enter each parent's adjusted gross taxable income in the appropriate Line 2 column. [Math: Line 1 - Line 1a - Line 1b + Line 1c]

### **Line 2a - Withholding Taxes**

Enter each parent's combined weekly federal, state, and local withholding taxes in the appropriate Line 2a column.

Once the taxable portion of gross income is determined, the combined federal, state, city (if applicable), Social Security, and Medicare withholding taxes are deducted. As set forth below, four methods are available to determine the amount of combined income tax withholding to be deducted from gross income.

1. Combined Income Tax Withholding Tables (Appendix IX-H) - To use the combined tax withholding tables, the gross taxable income and the number of dependent children eligible for the federal income tax credit (eligible dependents) must be known.

(To determine eligibility, see IRS Form W-4 and 26 U.S.C.A. § 24).

NOTE: The combined tax withholding table may not result in the correct tax withholding amount if significant portions of the parent's income are not subject to FICA/Medicare tax (e.g., alimony, rents, dealings in property, interest income), if wages for federal income tax and the FICA/Medicare tax differ, or if the parent is self-employed (requires payment of the full FICA/Medicare tax rate on 92.35% of income - see IRS Pub. 533 or Schedule SE). Generally, unearned income is not subject to the FICA/Medicare tax. See the notes at the end of the Appendix IX-H combined tax withholding table.

2. End-of-Year Tax Obligations - If the award is being calculated before June 30 of the current year and the prior year's federal and state income tax return forms, and Forms W-2 are available, the tax obligation may be calculated as follows:

- a. add the end-of-year income tax obligation (i.e., total tax) from the federal and state tax return forms, the W-2 Social Security tax withheld, and the W-2 Medicare tax withheld.
- b. divide the sum of the taxes by 52.

3. Year-to-Date Calculation - If the award is being calculated after June 30 of the current year and a check stub (which represents the parent's only income source) is available, add the year-to-date federal, state, Social Security and Medicare withholding taxes and divide the sum by the number of weeks employed.

4. Self-Employed Persons - For persons whose income is derived from self employment or the operation of a business, the court should carefully review personal and business income tax returns (State and federal) and IRS-1099 statements from the most recent tax year to determine the amount of taxes to be deducted from gross income.

Note: the method of determining withholding taxes and each parent's number of eligible dependents and marital status must be documented in the Comments section (Line 6) of the worksheet.

### **Line 2b - Mandatory Union Dues**

Enter each parent's weekly mandatory union dues in the appropriate Line 2b column. Union dues must be mandatory (i.e., required as a condition of employment) to be eligible as a deduction from a parent's adjusted gross income. Calculate the weekly amount of mandatory union dues by dividing the year-to-date dues paid by the number of employed weeks or by using an average of the prior year's dues payments.

### **Line 2c - Child Support Orders for Other Dependents**

Enter the weekly amount of court ordered child support of either parent for other legal dependents in the appropriate Line 2c column.

The child support orders for other dependents are part of an adjustment mechanism to apportion a parent's income to all legal dependents including those born before or after the children for whom support is being determined.

The adjustment requires that three support obligations be considered - (1) the court ordered support for the other dependents in the alternate family, (2) a support obligation that includes the court ordered support for the other dependents, and (3) a support obligation that does not include the court ordered support for the other dependents.

### **Line 2d - Other-Dependent Deduction**

Enter the theoretical weekly child support obligation for other legal dependents (from Line 14 of the Sole-Parenting worksheet prepared for the alternate family) on Line 2d of the worksheet of the parent requesting the adjustment. The Line 14 amount represents the parent's income share of the total marginal costs for the children in the alternate family. The obligation amount for other legal dependents (the other-dependent deduction) should be calculated on a separate Sole-Parenting Worksheet.

The other-dependent deduction is part of an adjustment mechanism to apportion a parent's income to all legal dependents including those born before or after the children for whom support is being determined. Legal dependents include adopted or natural children of either parent who are under 18 years of age or over 18 years of age and still attending high school or other secondary school. No adjustment is provided for stepchildren. Generally, stepchildren are considered the legal responsibility of their natural parents unless the court determines that a stepparent has a legal obligation to support the child.

The adjustment requires that three support obligations be calculated - a theoretical support obligation for the other dependents in the alternate family, a support obligation that includes the other-dependent deduction, and a support obligation that does not include the other-dependent deduction. The deduction and the adjusted support obligation are calculated only if [requested by a serial family parent and] the income of the other parent in the alternate family is provided to the court.

1. The amount of the deduction is the serial parent's theoretical support obligation for the other legal dependents. It requires that a separate Sole-Parenting child support guidelines worksheet be completed (through Line 14) for the children in the alternate family with the serial parent being the theoretical obligor of those children. The deduction is calculated based on the income of the parent claiming the deduction and the income of that person's current spouse.

2. A parent must disclose the gross income of the other parent in the alternate family as a condition to the right to claim this deduction. If the other parent in the secondary family is voluntarily unemployed or underemployed, the court may impute income to that person to determine the parent's obligation to the children in the secondary family.
3. The amount of the deduction shall not be calculated for alternate families having more than six children. In such cases, the court may find that the guidelines are inapplicable and may establish the child support award based on the factors set forth in N.J.S.A. 2A:34-23 and existing case law.

### **Line 3 - Net Taxable Income**

Subtract the combined withholding tax, child support orders for other dependents, mandatory union dues, and the other-dependent deduction\*, if any, from the Adjusted Gross Taxable Income to obtain the Net Taxable Income. (Math: Line 2 - Line 2a - Line 2b - Line 2c - Line 2d). Enter each parent's Net Taxable Income in the appropriate Line 3 column.

**\*If the other-dependent adjustment is applied**, three worksheets must be prepared: (1) one calculating the parent's obligation for other dependents in the secondary family, (2) one calculating a support award after deducting the obligation from the parent's net income, and (3) one calculating the support award as if there were no other dependents (i.e., the obligation without consideration of other dependents). Thus, financial obligations for other dependents are not always deducted when figuring net income. The support award is adjusted for other dependents at the end of the worksheet (Lines 22 through 24).

### **Line 4 - Non-Taxable Income**

Enter each parent's weekly gross non-taxable income in the appropriate Line 4 column. Enter the source or type of non-taxable income in the space provided on Line 4 or in the Comments section of the Worksheet.

### **Line 4a - Non-Taxable-Deductible Alimony Paid**

If alimony is non-tax-deductible for the payor, enter the weekly amount of alimony or other form of spousal support that is paid or will be paid to a former spouse in the appropriate Line 4a column.

When established simultaneously with child support (for the same family), the amount of alimony, spousal support, or separate maintenance should be determined before the child support guidelines are applied, except in *pendente lite* situations. Once the amount of alimony, spousal support, or separate maintenance is set, it is deducted from the payor's gross income and added to the recipient parent's gross income for the purposes of calculating a child support award using the guidelines.



## **Line 4b - Non-Taxable Alimony Received**

If alimony is non-taxable for the recipient, enter the weekly amount of alimony or other spousal support that is received or will be received from a former spouse (i.e., includes payments from the current as well as any past relationships) in the appropriate Line 4b column.

For tax-deductible alimony paid and taxable alimony received, see Line 1b and 1c. To determine whether a payment from a former spouse is considered alimony or separate maintenance, see 26 U.S.C. 71.

## **Line 5 - Government (Non-Means Tested) Benefit for the Child**

Government benefits for children fall into three categories. Each is described below along with its treatment in calculating child support.

- a. Means-tested benefits - Benefits based on the fact that the child or parent has minimal income and requires government assistance. This includes, but is not limited to, Temporary Assistance to Needy Families (TANF), Deficit Reduction Act (DEFRA), Refugee Assistance, rent subsidies, food stamps (SNAP), and Supplemental Security Income for the Aged, Blind or Disabled (SSI), kinship guardian subsidies. Means-tested benefits for the child are excluded as income (not counted for either parent). Leave blank Line 5.
- b. Derivative benefits - Benefits based on the contribution (e.g., work history, military service, disability, or retirement) of one of the parties is an essential factor in the child's eligibility for the benefit, without regard to family income. This includes but is not limited to Social Security Disability, Social Security Retirement, Black Lung, and Veteran's Administration benefits. Enter the weekly amount of the derivative benefit on Line 5 of the parent whose contribution is the source of the benefit (i.e., if the Non-Custodial Parent's work history and disability qualify the child for Social Security benefits, the benefit for the child will be included on Line 5 Non-Custodial Parent). Note, if the benefit is based upon contribution of the Non-Custodial Parent, he or she will also receive a credit for the benefit on Line 15.
- c. Other benefits - Benefits that are given without regard to family income or contribution (e.g., work history, military service, disability, or retirement) of either party. This includes, but is not limited to, adoption subsidies and Social Security benefits based on the work history of a non-party relative, such as a step-parent, grandparent, or deceased parent. Enter the weekly amount of this benefit on Line 5 of the parent who actually receives the financial benefit (usually the custodial parent).

## **Line 6 - Net Income**

Add the Net Taxable Income and the Non-Taxable Income to obtain the weekly Net Income. [Math: Line 3 + Line 4 + Line 5]. Enter each parent's Net Income in the appropriate Line 6 column. Add the net incomes of the parents to obtain the Combined Net Income [Math: Line 6 Custodial Parent + Line 6 Non-Custodial Parent = Line 6 Combined]. Enter the result on Line 6, Combined.

### **Line 7 - Each Parent's Share of Income**

Divide each parent's net income by the combined net income to obtain each parent's percentage share of income. [Math: Line 6 Custodial Parent / Line 6 Combined = Custodial Parent Line 7 Share of Income; Line 6 Non-Custodial Parent / Line 6 Combined = Non-Custodial Parent Line 7 Share of Income]. The sum of the two percentages (ratios) must equal one (the decimal equivalent of 100%). Enter each parent's income share in the appropriate Line 7 column.

### **Line 8 - Basic Child Support Amount**

Look up the Basic Child Support Amount from Appendix IX-F award schedule. Select the appropriate amount for the number of children for whom support is being determined and the Line 6 combined net income of the parents. Enter the Basic Child Support Amount on Line 8.

The parents' combined net income and the number of children for whom support is being determined are used to obtain the basic child support amount from the Appendix IX-F schedules. Appendix IX-F combined net incomes are provided in \$ 10 increments. For incomes that fall between income increments, go to the next higher income increment if the amount is \$ 5.00 or more (e.g., if the combined income is \$ 446, use the award for \$ 450 combined income; if it is \$ 444, use the award for \$ 440).

As explained in Appendix IX-A, the basic child support amount represents average spending on children by intact families (see Appendix IX-A for consumption items included and excluded in the Appendix IX-F basic child support amount).

### **Line 9 - Adding Net Work-Related Child Care Costs to the Basic Obligation**

Calculate net work-related child-care costs using the Appendix IX-E Net Child Care Expense Worksheet. Enter the weekly net child-care cost (from Line 8 of Appendix IX-E Worksheet) on Line 9.

Since child care expenses are excluded from the Appendix IX-F child support schedules, such costs, if incurred by either parent, must be added to the basic support amount.

1. *Qualified Child Care Expenses.* Qualified child care expenses are those incurred to care for a dependent who is under the age of 15 or is physically or mentally handicapped. These expenses must be necessary for the

employment or job search of the parent. Child care expenses should be reasonable and should not exceed the level required to provide quality care for the child(ren) from a licensed source. Only the net cost of child care (after the federal tax credit is deducted) is added to the basic award. It is assumed that the parent paying for child care will apply for and receive the federal child care tax credit at the end of the tax year.

2. *Determining the Net Child Care Cost*

- a. Calculate the Adjusted Gross Income (AGI) of the parent paying for child care by deducting moving expenses, one-half of the self-employment tax, IRA and Keough contributions, penalties on early withdrawal of savings, self-employment health insurance cost, and tax deductible alimony paid from that parent's gross income. If this information is not available, use the parent's gross income (Line 1 + Line 4).
- b. Determine the annual child-care cost.
- c. Complete the Net Child Care Expense Worksheet in Appendix IX-E to find the weekly net child-care cost to be added to the basic support amount.

**Line 10 - Adding Health Insurance Costs for the Child to the Basic Obligation**

Enter the parent's weekly cost of health insurance for the child for whom support is being determined on Line 10. If the parent's weekly marginal cost is unknown at the time of the hearing, use the per capita cost of a family policy at the parent's place of work. Do not include health insurance costs for adults or other dependents.

Since the cost of health insurance for children is excluded from the Appendix IX-F child support schedules, a parent's contributions to a health insurance policy which includes the child for whom support is being determined must be added to the basic support amount. Only the parent's cost of adding the child to the health insurance (medical and dental) policy is added to the basic support amount (i.e., the marginal premium cost to the parent to add the child to the policy). If the parent who is providing the health insurance has no proof of the cost of adding the child to the health insurance policy, the parent's total premium cost should be divided by the number of persons covered by the policy (per capita). The result is then multiplied by the number of children for whom support is being determined to obtain the child's estimated share of the health insurance cost. For example, if the parent's total health insurance cost is \$ 60 per week and there are four persons covered by the policy (the parent, the two children who are the subjects of the support order, and a new spouse), the per capita health insurance cost for the two children is \$ 30 ( $\$ 60 / 4 \text{ persons} = \$ 15$ ) x 2 children = \$ 30). If both parents provide health insurance for the child, each parent's marginal cost of adding the child to the policy should be added together to determine the total health insurance cost for the child. If the cost of the health insurance policy is unknown at the time of the support establishment hearing, the parent may apply for a modification of the support order when such information becomes available.

## **Line 11 - Adding Predictable and Recurring Unreimbursed Health Care to the Basic Obligation**

Enter the weekly unreimbursed cost of any health care, if predictable and recurring, for the child that exceeds \$ 250 per child per year on Line 11.

*Costs under \$ 250 per child per year* - Unreimbursed health care expenses (medical and dental expenses not covered by insurance) up to and including \$ 250 per child per year are included in the Appendix IX-F child support schedules and are assumed to be paid by the custodial parent. Because they are part of the basic child support amount, these ordinary health care expenses are shared in proportion to the relative incomes of the parents.

*Predictable, Recurring Costs above \$ 250 per child per year* - Unreimbursed health care expenses in excess of \$ 250 per child per year are excluded from the child support schedules. If such expenses are predictable and recurring, they should be added to the basic support amount using Line 11. The court should consider the duration and recurring nature of unreimbursed health care expenses prior to adding them to the basic support amount. If both parents provide predictable, recurring unreimbursed health care for the child, the cost to each parent should be added together to determine the total unreimbursed health care costs. Each parent's direct health care expenses for the child above the \$ 250 per child annual threshold are credited against this or her share of the total support award on Line 18.

*Unpredictable, Non-Recurring Costs above \$ 250 per child per year* - Health-care expenses for a child that exceed \$ 250 per child per year that are not predictable and recurring should be shared between the parents in proportion to their relative incomes as incurred. Since these expenses are not included in the support award, the procedure for sharing such costs should be set forth in the general language of the order or judgment.

## **Line 12 - Adding Court-Approved Predictable and Recurring Extraordinary Expenses to the Basic Support Amount**

Enter court-approved predictable and recurring costs for the child on Line 12. If approved by the court, predictable and recurring extraordinary expenses for the child that are not included in the Appendix IX-F child support awards may be added to the basic support amount. Examples of extraordinary expenditures are PAR Time transportation expenses, special diets, and private education costs for gifted or handicapped children. See Appendix IX-A, paragraph 8, for a list of items that are included in the Appendix IX-F awards and an explanation of private education expenses that may be added to the basic support amount.

Extraordinary expenses for a child that are not predictable and recurring should be shared between the parents in proportion to their relative incomes as incurred. Since

these expenses are not included in the support award, the procedure for sharing such costs should be set forth in the general language of the order or judgment.

Each parent's direct spending on court-approved extraordinary expenses for the child are credited against his or her share of the total support award on Line 19.

### **Line 13 - Calculating the Total Child Support Amount**

Add the basic child support amount, net child-care cost, health insurance cost for the child, predictable and recurring unreimbursed health-care costs above \$ 250 per child per year, and court-approved predictable and recurring extraordinary expenses. The result is the Total Child Support Amount. [Math: Line 8 + Line 9 + Line 10 + Line 11 + Line 12]. Enter the total support amount on Line 13.

### **Line 14 - Parental Share of the Total Child Support Obligation**

Multiply each parent's percentage share of income by the total child support amount to find each parent's share of the total child support amount. [Math: Line 7 Custodial Parent x Line 13 Total Support; Line 7 Non-Custodial Parent x Line 13 Total Support]. Enter each parent's share of the total support amount in the appropriate Line 14 column.

### **Line 15 - Credit for Derivative Government Benefits for the Child Based on Contribution of the Non-Custodial Parent**

Enter the weekly amount of the government benefits paid to the custodial parent for the child (if any) that are based on the contribution (work history, military service, disability, or retirement) of the non-custodial parent in the Line 15 NCP column.

NOTE: benefits amount should match the government benefits for the child on Line 5 NCP column.

### **Line 16 - Credit for Child-Care Payments**

Enter payments (if any) for work-related child-care that are being paid by the non-custodial parent directly to the child care provider in the Line 16 NCP column.

NOTE: payments cannot exceed the net work-related child care cost on Line 9.

### **Line 17 - Credit for Payment of Child's Health Insurance Cost**

Enter the non-custodial parent's direct payments (or payroll deductions) toward the marginal cost of adding the child to a health insurance policy in the Line 17 NCP column.

NOTE: payments cannot exceed the parent's cost of health insurance for the child added on Line 10.

### **Line 18 - Credit for Payment of Child's Predictable and Recurring Unreimbursed Health Care**

Enter the non-custodial parent's direct payments (if any) for predictable and recurring unreimbursed health care above \$ 250 per child per year in the Line 18 NCP column.

NOTE: payments cannot exceed predictable and recurring unreimbursed health care expenses added on Line 11.

### **Line 19 - Credit for Payment of Court-Approved Extraordinary Expenses**

Enter the non-custodial parent's direct payments (if any) for predictable and recurring extraordinary court-approved expenses in the Line 19 NCP column.

NOTE: payments cannot exceed predictable and recurring extraordinary court-approved expenses added on Line 12.

### **Line 20 - Adjustment for Parenting Time Variable Expenses**

The court may grant the non-custodial parent an adjustment for parenting time equal to that parent's income share of the child's variable expenses for the percentage of time the child is with that parent. When determining if the adjustment is appropriate, the court should consider whether the non-custodial parent has incurred variable expenses for the child during the parenting time period and if parenting time reduced the other parent's variable expenses for the child. It is assumed that variable costs (food and transportation) for the child account for 37% of the total marginal child-rearing expenditures in intact families. The parenting time adjustment should not exceed the parent's time share of the variable costs for the child.

Complete Lines 20a and 20b before returning to Line 20. Then multiply the basic child support amount (Line 8) by the non-custodial parent's share of overnights with the child (NCP Line 20b). Multiply that product by 0.37 (the presumed variable costs). The result is the maximum NCP parenting time adjustment (the variable cost for the time spent with the child). Enter the amount on Line 20. [Math: Line 8 x NCP Line 20b x 0.37].

NOTE: If the custodial parent's total household net income (from all sources) plus the NCP parenting time-adjusted support award is less than 200% of the poverty guideline for the number of persons in the household, the NCP parenting time adjustment is not presumptive and shall be subject to the court's discretion.

### **Line 20a - Number of Overnights with Each Parent**

Enter the number of overnights the child has with the custodial parent in the Line 20a CP column. Enter the number of overnights the child has with the non-custodial parent in the Line 20a NCP column. Add the total number of overnights to Enter in the Line 20a Combined column.

## **Line 20b – Each Parent’s Share of Overnights with the Child**

Divide the CP Line 20a by the Combined Line 20a. Enter that number in the Line 20b CP column. Divide the NCP Line 20a by the Combined Line 20a. Enter that number in the Line 20b NCP column. The two Line 20a decimals should add up to 1.00.

## **Line 21 - Net Child Support Obligation**

Subtract the non-custodial parent's direct payments for child care, the child's share of the health insurance premium, predictable and recurring unreimbursed health care for the child above \$ 250 per year per child, and predictable and recurring extraordinary court-approved expenses from the paying parent's share of the total support amount. Then, subtract the Line 20 credit, if any, from the non-custodial parent's support amount and the Line 15 credit, if any, for government benefits for the child based on contribution of the NCP. The result is the net child support obligation. [Math: (Line 14 - (Line 15 + Line 16 + Line 17 + Line 18 + Line 19 + Line 20))]. Enter the net obligation on Line 21. Direct payments and credits are subtracted from the total child support amount to find the net child support obligation. Direct payments may be deducted only if the cost was included in the total child support amount. The net child support obligation for the non-custodial parent is the support order that will be paid for the benefit of the children.

## **IF THERE IS NO ADJUSTMENT FOR OTHER DEPENDENTS, GO TO LINE 25**

### **LINES 22, 23 and 24 – Adjusting the Child Support Obligation for Other-Dependents**

1. If either parent has court ordered child support obligations for other dependent children or an adjustment for other legal dependents is applicable, the following amounts must be considered:
  - a. The amount of court ordered child support for other dependents (Line 2c) and the other dependent deduction (Line 2d) (where no support order exists for the dependent) -- using the separate other dependent deduction worksheet;
  - b. A support obligation for the child for whom support is being determined calculated after deducting the total of the other dependent orders and deductions (L2c + L2d); and
  - c. A support order for the child for whom support is being determined calculated without deducting the other dependent orders (Line 2c) and deductions (Line 2d) from the responsible parent's gross income.
2. To ensure that a fair share of the parent's income is available to all his or her legal dependents, the child support obligation for the child for whom support is being determined will be calculated WITH an income deduction for the

court ordered or theoretical support obligations for other dependents. Then, the support for the subject child will be calculated WITHOUT consideration of the court ordered or theoretical support obligation for other dependents. These two calculations will be averaged.

### **Line 22 - Line 21 CS Obligation With Deduction for Other Dependents**

Enter the amount of the net child support obligation (Line 21) from the worksheet that deducted the support obligation for the parent's other dependents from the parent's net income (i.e., with the Line 2c child support order for other dependents and Line 2d other dependent deduction). Note: the Line 2d other dependent deduction is calculated on a separate sole parenting worksheet.

### **Line 23 – Line 21 CS Obligation Without Deduction for Other Dependents**

Enter the amount of the net child support obligation (Line 21) from the worksheet that did not deduct the support obligation for other dependents (Lines 2c and 2d) from the parent's net income. Note: The Line 2d other dependent deduction is calculated on a separate worksheet.

### **Line 24 - Obligation Adjusted for Other Dependents**

Add the Line 22 support obligation that includes deductions for other dependents (Line 2c and Line 2d) and the Line 23 support obligation that does not include deductions for other dependents, then divide the sum by two to obtain the Adjusted Child Support Obligation for the non-custodial parent. (Math:  $(\text{Line 22} + \text{Line 23}) / 2$ ). Enter the result on Line 24.

### **Lines 25, 26 and 27 - Maintaining a Self-Support Reserve**

To ensure that the obligor parent retains sufficient net income to live at a minimum subsistence level and has the incentive to work, that parent's net child support award is tested against 150% of the U.S. poverty guideline for one person. If the NCP's net income after deducting the child support award is less than the self-support reserve, the order should be adjusted. No such adjustment shall occur, however, if the custodial parent's net income minus the custodial parent's child support obligation is less than the self-support reserve. This priority is necessary to ensure that custodial parents can meet their basic needs while caring for the child(ren). The poverty guideline will be disseminated by the AOC each February or when it is published in the Federal Register. The self-support reserve test is applied as follows:

1. Subtract the obligor's child support obligation from that person's net income.
2. If the difference is greater than 150% of the poverty guideline for one person (\$ 372 per week as of January 13, 2021), the self-support reserve is preserved and the obligor's support obligation is the child support order.



3. If the difference is less than 150% of the poverty guideline for one person and the custodial parent's net income is greater than 150% of the poverty guideline, the obligor's child support order is the difference between the obligor's net income and the 150% of the poverty guideline for one person.

In determining whether the application of the self-support reserve is appropriate, the court may need to impute income to a parent as provided in Appendix IX-A. The court should also consider a parent's actual living expenses and the custodial parent's share of the support obligation (see Appendix IX-A, paragraph 20).

### **Line 25 - Self-Support Reserve Test**

Calculate whether the obligor's income will exceed 150% of the poverty level by subtracting the net child support obligation from the non-custodial parent's net income. [Math: Line 6 NCP - Line 21 or Line 24.] Enter the result for the NCP on Line 25. Enter the custodial parent's net income minus the custodial parent's child support obligation (Line 6 minus Line 14) on Line 25. Then,

If the NCP Line 25 amount is less than 150% of the poverty guideline and the CP Line 25 minus the CP Line 14 is greater than 150% of the poverty guideline, Go To Line 26. If the NCP result is greater than 150% of the poverty guideline, Skip Line 26 and Enter the Line 21 or Line 24 non-custodial parent child support obligation on Line 27.

NOTE: If the CP Line 25 minus the CP Line 14 amount is less than 150% of the poverty guideline, there is no NCP self-support reserve adjustment. In this case, the NCP Line 21 or Line 24 amount is the final child support order (Line 27).

### **Line 26 - Maximum Child Support Order**

Subtract the poverty level from the non-custodial parent's net income to find the maximum child support order. [Math: Line 6 Non-Custodial Net Income - 150% of the poverty guideline]. Enter the result on Lines 26 and 27.

### **Line 27 - Child Support Order**

Line 27 is the amount to be paid by the non-custodial parent (the obligor) to the custodial parent (from either Line 25 or Line 26) for the benefit of the children.

**Appendix IX-B**  
**USE OF THE CHILD SUPPORT GUIDELINES – SHARED PARENTING**  
(Includes Amendments Through Those Effective September 1, 2021)

**GENERAL INFORMATION**

**LINE INSTRUCTIONS FOR THE SHARED-PARENTING WORKSHEET**

**CAPTION**

Enter the names of the parties, the county of venue, the docket number, and the number of children for whom support is being determined. Check-off whether the Parent of the Primary Residence is the plaintiff or defendant.

**LINES 1 through 5 - Determining Income**

**Gross Income** - For the purpose of these guidelines, *gross income* is all earned and unearned income that is recurring or will increase the income available to the recipient over an extended period of time. When determining whether an income source should be included in the child support guidelines calculation, the court should consider if it would have been available to pay expenses related to the child if the family would have remained intact or would have formed and how long that source would have been available to pay those expenses.

**Sources of Income** - *Gross income*, includes, but is not limited to, income from the following sources:

- a. compensation for services, including wages, fees, tips, and commissions;
- b. the operation of a business minus ordinary and necessary operating expenses (see IRS Schedule C);
- c. gains derived from dealings in property;
- d. interest and dividends (see IRS Schedule B);
- e. rents (minus ordinary and necessary expenses - see IRS Schedule E);
- f. bonuses and royalties;
- g. alimony and separate maintenance payments received from the current or past relationships;
- h. annuities or an interest in a trust;
- i. life insurance and endowment contracts;
- j. distributions from government and private retirement plans including Social Security, Veteran's Administration, Railroad Retirement, deferred compensation, Keoughs and IRA's;
- k. personal injury awards or other civil lawsuits;
- l. interest in a decedent's estate or a trust;
- m. disability grants or payments (including Social Security disability);
- n. profit sharing plans;

- o. worker's compensation;
- p. unemployment compensation benefits;
- q. overtime, part-time and severance pay;
- r. net gambling winnings;
- s. the sale of investments (net capital gain) or earnings from investments;
- t. income tax credits (excluding the federal and state Earned Income Credit and the N.J. homestead rebate);
- u. unreported cash payments (if identifiable);
- v. the value of in-kind benefits; and
- w. imputed income (see Appendix IX-A, paragraph 12).

***Income from self-employment or operation of a business.***

- a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Personal income from the operation of a business includes all income sources listed above and *potential cash flow* resulting from loans taken from the business.
- b. In general, income and expenses from self-employment or the operation of a business should be carefully reviewed to determine an appropriate level of gross income that is available to the parent to pay a child support obligation. In most cases, this amount will differ from the determination of business income for tax purposes.
- c. Specifically excluded from ordinary and necessary expenses, for the purposes of these guidelines, are expenses allowed by the IRS for:
  - (1) the accelerated component of depreciation expenses;
  - (2) first-year bonus depreciation;
  - (3) depreciation on appreciating real estate;
  - (4) investment tax credits;
  - (5) home offices;
  - (6) entertainment;
  - (7) travel in excess of the government rate;
  - (8) non-automobile travel that exceeds standard rates;
  - (9) automobile expenses;
  - (10) voluntary contributions to pension plans in excess of 7% of gross income; and
  - (11) any other business expenses that the court finds to be inappropriate for determining gross income for child support purposes.

***Sporadic Income***

- a. If income from any source is sporadic or fluctuates from year to year (e.g., seasonal work, dividends, bonuses, royalties, commissions), the amount of sporadic income to be included as *gross income* shall be determined by averaging the amount of income over the previous 36 months or from the first occurrence of its receipt whichever time is less.

- b. For overtime pay or income from a second job, the average is based on the prior 12 months or first receipt whichever time is greater.
- c. The court may exclude sporadic income if the party can prove that it will not be available in an equivalent amount in the future.

**Military Pay** - All military pay and allowances shall be included as gross income for determining child support (see *Rose vs. Rose*, 107 S. Ct. 2029 (1987)).

- a. All service members receive Basic Allowance for Quarters (BAQ) and Basic Allowance for Subsistence (BAS) or live in government accommodations and eat at mess halls for free. If BAQ and BAS are not received due to government-provided accommodations and food, the value of such in-kind income may be included in the service member's gross income.
- b. BAQ, BAS, and Variable Housing Allowances (VHS) are considered income when determining child support. These forms of income are not subject to tax.

**In-Kind Income** - The fair-market value of goods, services or benefits received in lieu of wages and in the course of employment shall be included as gross income if they reduce personal living expenses of the recipient regardless of whether they are derived from an employer, self-employment, or the operation of a business. Examples of in-kind goods, services, and benefits include vehicles, automobile insurance, free housing, meals, benefits selected under a cafeteria plan, memberships, or vacations. Expense reimbursements are not considered income.

**Alimony, Spousal Support, and/or Separate Maintenance** - Alimony, spousal support, or separate maintenance payments received from a spouse or former spouse in accordance with a court order are considered income to the recipient. If child support and alimony, spousal support, or separate maintenance are being determined *simultaneously* (for the same family), the court should set the alimony, spousal support, or separate maintenance first and include that amount in the recipient's income (on Line 1c or 4b) before applying the child support guidelines, except in pendente lite situations. Alimony, spousal support, or maintenance payments being or to be paid to former spouses in the future (to the current spouse) are deducted from the payor's income (on Line 1b or 4a).

The Tax Cut and Jobs Act of 2017 impacted the tax consequences of alimony, spousal support, or separate maintenance, resulting in significantly more cases in which alimony will not be taxable for the recipient or tax-deductible for the payor. There are other reasons that some alimony may not qualify as taxable and deductible under federal law. Alimony that is taxable and deductible will be entered on Lines 1b and 1c. Alimony that is non-taxable and non-deductible will be entered on Lines 4b and 4c.

**Types of Income Excluded from Gross Income** - The following types of income are excluded from gross income:

- a. means-tested income (i.e., based on the fact that the recipient has minimal income and requires government assistance to live) including, but not limited to, Temporary Assistance to Needy Families (TANF), Deficit Reduction Act (DEFRA), General Assistance, Refugee Assistance, rent subsidies, Supplemental Needs Assistance Program (SNAP), Supplemental Security Income for the Aged, Blind or Disabled, and Social Security concurrent SSI and Disability or SSI and retirement benefits (all of the concurrent benefit is excluded);
- b. alimony, spousal support, or separate maintenance payments (the net amount after deducting the tax benefits, if any) to a current or former spouse;
- c. child support received for children of another relationship;
- d. non-income producing assets (e.g., undeveloped real estate, automobiles, jewelry, art, stocks and bonds) *unless* the court finds that the intent of the investment was to avoid the payment of child support;
- e. income from children, unless the court determines that such income should be included because the child is a professional or has substantial income that reduces the family's living expenses;
- f. income from other household members (e.g., step-parents, grandparents, current spouse) who are not legally responsible for the support of the child for whom support is being established except to determine the other-dependent credit (the income of the current spouse may be included if an other-dependent deduction is requested - see Appendix IX-A, paragraph 10);
- g. for modifications involving retirement income, the pro-rated amount of contributions to a voluntary plan that were previously included in gross income when the current support order was established;
- h. financial assistance for education including loans, grants, scholarships, veteran's education benefits, and awards provided under the National and Community Service Act of 1990 (except post-service benefits); and
- i. federal earned income tax credits.

### ***Collecting and Verifying Income Information***

- a. Prior to a hearing to establish or modify child support, the parties shall submit either a Case Information Statement (R. 5:5-2) or a Financial Statement in Summary Support Actions (R. 5:5-3) to the court.
- b. When possible, the court should determine gross income as follows:
  - (1) Prior to June 30 of the current year, use Federal and State income tax returns, W-2 statement(s) and IRS 1099's from the preceding year. If tax documentation is unavailable, use any other available evidence of current earnings (e.g., paystubs, employer wage verifications, or, for the self-employed, statements of business receipts and expenses). If a joint income tax return includes income of a person other than one of the parties involved in the support proceeding (e.g., the current spouse), the taxpayer or that person's attorney shall be responsible for the redaction of the tax return.

- (2) After June 30, use the year-to-date income figure from all documented sources listed above. Divide the total gross income from all sources by the number of employed weeks to determine the weekly gross income.
- (3) If no income documentation is available, income may be determined through testimony or imputed as set forth in Appendix IX-A, para. 10.

*Note on Income Documentation:* The review of a pay stub, W-2 form, IRS-1099 form or tax return may not provide all necessary income information for a parent. The accurate determination of income may be dependent on a combination of these documents and testimony. Also, note that a parent may have more than one W-2 wage statement if that person worked for multiple employers during the year.

Taxable and Non-Taxable Income - Before determining Net Income, gross income must be separated into taxable and non-taxable portions to ensure that withholding taxes are deducted only from taxable gross income. Generally, the types of income listed below are not subject to tax. Other types of income may be non-taxable depending on the status of the taxpayer or the source of income. For more information on taxable and non-taxable income, refer to IRS Publication 525 (Taxable and Non-Taxable Income) or, for New Jersey income taxes, see N.J.S.A. 54A:6-1 or NJ-WT. The following items are considered income to the parents, but should not be used to calculate withholding or income taxes when determining net income.

#### 1. *Income Not Subject to Federal Income Tax*

- a. Accident and health insurance proceeds;
- b. Black-lung benefits;
- c. Child support payments;
- d. Federal Employees Compensation Act payments;
- e. Interest on state or local obligation;
- f. Scholarships and fellowships grants;
- g. Veteran's benefits;
- h. Worker's compensation;
- i. Life insurance proceeds paid due to death of the insured;
- j. Social Security benefits. However, if the taxpayer has income of more than \$ 25,000 if single or \$ 32,000 if married and filing a joint return some of the benefits may be taxable (see IRS Publication 915);
- k. Casualty insurance and other reimbursements; and
- l. Earnings from tax-free government bonds or securities.

#### 2. *Income Not Subject to New Jersey State Income Tax*

- a. Federal Social Security benefits;
- b. Railroad Retirement benefits;
- c. Proceeds of life insurance contracts payable by reason of death;
- d. Employee's death benefits;

- e. The value of property acquired by gift, bequest, devise or inheritance except income from any such property or if the gift, bequest, devise or inheritance is income;
- f. Amounts received under worker's compensation including income from suits, agreements, accident or health insurance resulting from personal injuries or sickness;
- g. Compensation paid by the United States for services in the Armed Forces performed by an individual not domiciled in New Jersey;
- h. Grants or scholarships received from education institutions;
- i. Payments of up to \$ 10,000 for a married couple filing jointly, \$ 5,000 for a married couple filing separately and \$ 7,500 for a single taxpayer from an annuity, endowment or life insurance contract or payments of any such amount received as pension, disability or retirement benefits for persons at least 62 years old or disabled under Social Security;
- j. New Jersey Lottery winnings;
- k. Permanent and total disability benefits under a public or private plan and certain accident and health insurance benefits including Veteran's benefits;
- m. Unemployment Insurance benefits;
- n. Interest on obligations issued by the State or any county, municipality, school or other governmental body of New Jersey and obligations statutorily free from tax under State or federal law;
- o. Amounts contributed by an employer on behalf of an employee to a trust which meets the requirements of IRC section 401(K) are not taxable in the year when made; and
- p. Earnings from tax-free government bonds or securities.

*Note on Social Security Taxes:* Social Security tax withholding (FICA) for high-income persons may vary during the year. In the early part of the year, 6.2% is withheld on the first \$ 142,800 of gross earnings (for wage earners in 2021). After the maximum \$ 8,854 is withheld, no additional FICA taxes are withheld. Thus, pay stubs issued early in the year may understate net income, while those issued later in the year may overstate it. To estimate weekly FICA taxes, amortize the annual FICA tax using the number of weeks employed or use the Appendix IX-H combined tax tables. Note that self-employed persons must pay the full FICA tax (12.4%) up to the \$ 142,800 limit of all earned income.

*Note on Medicare Taxes:* 1.45% of gross earnings is withheld for Medicare taxes. Note that self-employed persons must pay the full Medicare tax rate (2.9%) on all earned income. In addition to withholding Medicare tax at 1.45%, a 0.9% Additional Medicare Tax is withheld from wages in excess of \$ 200,000 in a calendar year. The 0.9% Additional Medicare Tax also applies to self-employed persons (there is no employer share of Additional Medicare Tax).

*Analyzing Income Tax Returns* - For assistance in analyzing income tax returns to determine parental income, see American Bar Association, Section of Family Law, *The 1040 Handbook: A Guide to Income and Asset Discovery*, Sixth Edition, 2014.

Government Benefits for the Child - Government benefits for children fall into three categories. Each is described below along with its treatment in calculating child support.

- a. Means-tested benefits - Benefits based on the fact that the child or parent has minimal income and requires government assistance. This includes, but is not limited to, Temporary Assistance to Needy Families (TANF), Deficit Reduction Act (DEFRA), Refugee Assistance, rent subsidies, food stamps (SNAP), and Supplemental Security Income for the Aged, Blind or Disabled (SSI), kinship guardian subsidies. Means-tested benefits for the child are excluded as income (not counted for either parent).
- b. Derivative benefits - Benefits based on the contribution (e.g., work history, military service, disability, or retirement) of one of the parties is an essential factor in the child's eligibility for the benefit, without regard to family income. This includes but is not limited to Social Security Disability, Social Security Retirement, Black Lung, and Veteran's Administration benefits. The derivative benefit is counted as income (on Line 5) for the parent whose contribution is the source of the benefit. If the benefit is based upon contribution of the Parent of Alternate Residence (PAR), he or she will also receive a credit for the benefit (on Line 22).
- c. Other benefits - Benefits that are obtained without regard to family income or contribution (e.g., work history, military service, disability, or retirement) of either party. This includes, but is not limited to, adoption subsidies and Social Security benefits based on the work history of a non-party relative, such as a step-parent, grandparent, or deceased parent. This benefit is counted as income (on Line 5) for the parent who actually receives the financial benefit (usually the custodial parent).

### **LINE 1 - Gross Taxable Income**

Enter the weekly gross taxable income of each parent in the appropriate Line 1 column. Non-taxable income is entered on Line 4.

### **LINE 1a - Mandatory Retirement Contributions**

Enter weekly mandatory retirement contributions for each parent in the appropriate Line 1a column.

Contributions to retirement or pension plans that are mandatory (i.e., required as a condition of employment) are not considered income for determining child support obligations. Since mandatory pension contributions are generally non-taxable, the amount of such payments must be deducted from gross income before withholding taxes and the Adjusted Gross Taxable Income are calculated. Voluntary payments to Deferred Compensation Plans (e.g., 401K, 414B), Keoughs, and IRA's should not be deducted from gross income. Calculate the weekly amount of mandatory retirement contributions by dividing the year-to-date contributions by the number of weeks employed or by using an average of the prior year's contributions.

### **LINE 1b - Tax Deductible Alimony Paid**



If alimony is tax deductible for the payor of alimony, enter the weekly amount of alimony or other form of spousal support that is paid or will be paid to a former spouse in the appropriate Line 1b column.

When established simultaneously with child support (for the same family), the amount of alimony, spousal support, or separate maintenance should be determined before the child support guidelines are applied, except in *pendente lite* applications. Once the amount of alimony, spousal support, or separate maintenance is set, it is deducted from the payor's gross income and added to the recipient parent's gross income for the purposes of calculating a child support award using the guidelines.

### **LINE 1c - Taxable Alimony Received**

If alimony is taxable for the recipient of alimony enter the weekly amount of alimony or other form of spousal support that is received or will be received from a former spouse (i.e., includes payments from the current as well as any past relationships) in the appropriate Line 1c column.

For non-tax-deductible alimony paid and non-taxable alimony received, see Line 4a and Line 4b.

To determine whether a payment from a former spouse is considered alimony or separate maintenance, see 26 U.S.C. 71.

### **LINE 2 - Adjusted Gross Taxable Income**

Subtract mandatory retirement contributions and tax deductible alimony paid from the gross taxable income and add any taxable alimony received to the gross taxable income to obtain the adjusted gross taxable income. Enter each parent's adjusted gross taxable income in the appropriate Line 2 column. [Math: Line 1 - Line 1a - Line 1b + Line 1c]

### **LINE 2a - Withholding Taxes**

Enter each parent's combined weekly federal, state, and local withholding taxes in the appropriate Line 2a column.

Once the taxable portion of gross income is determined, the combined federal, state, city (if applicable), Social Security, and Medicare withholding taxes are deducted. As set forth below, four methods are available to determine the amount of combined income tax withholding to be deducted from gross income.

1. Combined Income Tax Withholding Tables (Appendix IX-H) - To use the combined tax withholding tables, the gross taxable income and the number of dependent children eligible for the federal income tax credit (eligible dependents) must be known.

(To determine eligibility, see IRS Form W-4 and 26 U.S.C.A. § 24).

NOTE: The combined tax withholding table may not result in the correct tax withholding amount if significant portions of the parent's income are not subject to FICA/Medicare tax (e.g., alimony, rents, dealings in property, interest), if wages for federal income tax and the FICA/Medicare tax differ, or if the parent is self-employed (requires payment of the full FICA/Medicare tax rate on 92.35% of income - see IRS Pub. 533 or Schedule SE). Generally, unearned income is not subject to the FICA/Medicare tax. See the notes at the end of the Appendix IX-H combined tax withholding table.

2. End-of-Year Tax Obligations - If the award is being calculated before June 30 of the current year and the prior year's federal and state income tax return forms, and Forms W-2 are available, the tax obligation may be calculated as follows:

- a. add the end-of-year income tax obligation (i.e., total tax) from the federal and state tax return forms, the W-2 Social Security tax withheld, and the W-2 Medicare tax withheld.
- b. divide the sum of the taxes by 52.

3. Year-to-Date Calculation - If the award is being calculated after June 30 of the current year and a check stub is available (which represents the parent's only income source), add the year-to-date federal, state, Social Security and Medicare withholding taxes and divide the sum by the number of weeks employed.

4. Self-Employed Persons - For persons whose income is derived from self-employment or the operation of a business, the court should carefully review personal and business income tax returns (State and federal) and IRS 1099 statements from the most recent tax year to determine the amount of taxes to be deducted from gross income.

Note: the method of determining withholding taxes and each parent's number of eligible dependents and marital status must be documented in the Comments section (Line 5) of the worksheet.

### **LINE 2b - Mandatory Union Dues**

Enter each parent's weekly mandatory union dues in the appropriate Line 2b column. Union dues must be mandatory (i.e., required as a condition of employment) to be eligible as a deduction from a parent's adjusted gross income. Calculate the weekly amount of mandatory union dues by dividing the year-to-date dues paid by the number of employed weeks or by using an average of the prior year's dues payments.

### **LINE 2c - Child Support Orders for Other Dependents**

Enter the weekly amount of court ordered child support of either parent for other legal dependents in the appropriate Line 2c column.

The child support orders for other dependents are part of an adjustment mechanism to apportion a parent's income to all legal dependents including those born before or after the children for whom support is being determined

The adjustment requires that three support obligations be considered - (1) the court ordered support for the other dependents in the alternate family, (2) a support obligation that includes the court ordered support for the other dependents, and (3) a support obligation that does not include the court ordered support for the other dependents.

### **LINE 2d - Other-Dependent Deduction**

Enter the theoretical weekly child support obligation for other legal dependents (from Line 14 of the Sole-Parenting worksheet prepared for the alternate family) on Line 2d of the worksheet of the parent requesting the adjustment. The Line 14 amount represents the parent's income share of the total marginal costs for the children in the alternate family. The obligation amount for other legal dependents (the other-dependent deduction) should be calculated on a separate Sole-Parenting worksheet.

The other-dependent deduction is part of an adjustment mechanism to apportion a parent's income to all legal dependents including those born before or after the children for whom support is being determined. Legal dependents include adopted or natural children of either parent who are under 18 years of age or over 18 years of age and still attending high school or other secondary school. No adjustment is provided for stepchildren. Generally, stepchildren are considered the legal responsibility of their natural parents unless the court determines that a stepparent has a legal obligation to support the child.

The adjustment requires that three support obligations be calculated - a theoretical support obligation for the other dependents in the alternate family, a support obligation that includes the other-dependent deduction, and a support obligation that does not include the other-dependent deduction. The deduction and the adjusted support obligation are calculated only if the income of the other parent in the alternate family is provided to the court.

1. The amount of the deduction is the serial parent's theoretical support obligation for the children in the alternate family. It requires that a separate Sole-Parenting child support guidelines worksheet be completed (through Line 14) for the children in the alternate family with the parent claiming the deduction being the theoretical obligor of those children. The deduction is calculated based on the income of the parent claiming the deduction and the income of that person's current spouse.
2. A parent must disclose the gross income of the other parent in the alternate family as a condition to the right to claim this deduction. If the other parent in the alternate family is voluntarily unemployed or underemployed, the court

may impute income to that person to determine the parent's obligation to the children in the alternate family.

3. The amount of the deduction shall not be calculated for alternate families having more than six children. In such cases, the court may find that the guidelines are inapplicable and may establish the child support award based on the factors set forth in N.J.S.A. 2A:34-23 and existing case law.

### **LINE 3 - Net Taxable Income**

Subtract the combined withholding tax, child support orders for other dependents, mandatory union dues, and the other-dependent deduction\*, if any, from the Adjusted Gross Taxable Income to obtain the Net Taxable Income. (Math: Line 2 - Line 2a - Line 2b - Line 2c - Line 2d). Enter each parent's Net Taxable Income in the appropriate Line 3 column.

***\*If the other-dependent adjustment is applied***, three worksheets must be prepared: (1) one calculating the parent's obligation for other dependents in the secondary family, (2) one calculating a support award after deducting the obligation from the parent's net income, and (3) one calculating the support award as if there were no other dependents (i.e., the obligation without consideration of other dependents). Thus, financial obligations for other dependents are not always deducted when figuring net income. The support award is adjusted for other dependents using Lines 30 through 32.

### **LINE 4 - Non-Taxable Income**

Enter each parent's weekly gross non-taxable income in the appropriate Line 4 column. Enter the source or type of non-taxable income in the space provided on Line 4 or in the Comments section of the Worksheet.

#### **LINE 4a - Non-Taxable-Deductible Alimony Paid**

If alimony is non-tax-deductible for the payor, enter the weekly amount of alimony or other form of spousal support that is paid or will be paid to a former spouse in the appropriate Line 4a column.

When established simultaneously with child support (for the same family), the amount of alimony, spousal support, or separate maintenance should be determined before the child support guidelines are applied, except in *pendente lite* situations. Once the amount of alimony, spousal support, or separate maintenance is set, it is deducted from the payor's gross income and added to the recipient parent's gross income for the purposes of calculating a child support award using the guidelines.

#### **LINE 4b - Non-Taxable Alimony Received**

If alimony is non-taxable for the recipient, enter the weekly amount of alimony or other spousal support that is received or will be received from a former spouse (i.e., includes payments from the current as well as any past relationships) in the appropriate Line 4b column.

For tax-deductible alimony paid and taxable alimony received, see Line 1b and 1c.

To determine whether a payment from a former spouse is considered alimony or separate maintenance, see 26 U.S.C. 71.

### **LINE 5 - Government (Non-Means Tested) Benefit for the Child**

Government benefits for children fall into three categories. Each is described below along with its treatment in calculating child support.

- a. Means-tested benefits - Benefits based on the fact that the child or parent minimal income and requires government assistance. This includes, but is not limited to, Temporary Assistance to Needy Families (TANF), Deficit Reduction Act (DEFRA), Refugee Assistance, rent subsidies, food stamps (SNAP), and Supplemental Security Income for the Aged, Blind or Disabled (SSI), kinship guardian subsidies. Means-tested benefits for the child are excluded as income (not counted for either parent). Leave blank Line 5.
- b. Derivative benefits - Benefits based on the contribution (e.g., work history, military service, disability, or retirement) of one of the parties is an essential factor in the child's eligibility for the benefit, without regard to family income. This includes but is not limited to Social Security Disability, Social Security Retirement, Black Lung, and Veteran's Administration benefits. Enter the weekly amount of the derivative benefit on Line 5 of the parent whose contribution is the source of the benefit (i.e., if the Non-Custodial Parent's work history and disability qualify the child for Social Security benefits, the benefit for the child will be included on Line 5 Non-Custodial Parent). Note, if the benefit is based upon contribution of the Parent of Alternate Residence (PAR), he or she will also receive a credit for the benefit on Line 22.
- c. Other benefits - Benefits that are given without regard to family income or contribution (e.g., work history, military service, disability, or retirement) of either party. This includes, but is not limited to, adoption subsidies and Social Security benefits based on the work history of a non-party relative, such as a step-parent, grandparent, or deceased parent. Enter the weekly amount of this benefit on Line 5 of the parent who actually receives the financial benefit (usually the custodial parent).

### **LINE 6 - Net Income**

Add the Net Taxable Income and the Non-Taxable Income to obtain the weekly Net Income. [Math: Line 3 + Line 4 + Line 5]. Enter each parent's Net Income in the appropriate Line 6 column.

Add the net incomes of the parents to obtain the Combined Net Income [Math: Line 6 PPR + Line 6 PAR = Line 6 Combined]. Enter the result on Line 6, Combined.

### **LINE 7 - Each Parent's Share of Income**

Divide each parent's net income by the combined net income to obtain each parent's percentage share of income. [Math: Line 6 PPR / Line 6 Combined = PPR Line 7 Share of Income; Line 6 PAR / Line 6 Combined = PAR Line 7 Share of Income]. The sum of the two percentages (ratios) must equal one (the decimal equivalent of 100%). Enter each parent's income share in the appropriate Line 7 column.

### **LINE 8 - Basic Child Support Amount**

Look up the Basic Child Support Amount from the Appendix IX-F award schedule. Select the appropriate amount for the number of children for whom support is being determined and the Line 6 combined net income of the parents. Enter the Basic Child Support Amount on Line 8.

The parents' combined net income and the number of children for whom support is being determined are used to obtain the basic child support amount from the Appendix IX-F schedules. Appendix IX-F combined net incomes are provided in \$ 10.00 increments. For incomes that fall between income increments, go to the next higher income increment if the amount is \$ 5.00 or more (e.g., if the combined income is \$ 446, use the award for \$ 450 combined income; if it is \$ 444, use the award for \$ 440).

As explained in Appendix IX-A, the basic support amount represents average spending on children by intact families (see Appendix IX-A for items included and excluded in the basic support amount).

### **LINE 9 - Number of Overnights with Each Parent**

Enter the number of regular overnights that the child spends or is expected to spend with each parent during a one-year period in the appropriate Line 9 columns. Vacations and holidays with the PAR do not count towards the determination of overnight time. Add the number of overnights with each parent to obtain the total number of overnights. Enter the total overnights in the Line 9 Combined column.

Generally, the sum of the number of overnights with each parent will be 365. If, however, the child spends overnights with a third party (e.g., grandparents) on a predictable and recurring basis, each parent's and the total number of overnights should be adjusted accordingly so that neither parent receives credit for this time. For example, if a child stays with grandparents for 10 overnights each year, which would have

normally been spent with the PPR, the PPR's number of overnights is reduced by 10 and the total number of overnights is reduced to 355 (365 minus 10). If the child would have spent half of the grandparent visitation time (5 of the 10 overnights) with the PAR, both parent's number of overnights is reduced by five. If a child attends summer camp or other overnight care, the parent paying for such care shall be entitled to the credit for the number of overnights.

### **LINE 10 - Each Parent's Share of Overnights with Child**

Divide the number of overnights that the child spends with each parent by the total number of overnights. [Math: Line 9 PPR overnights / Line 9 total overnights; Line 9 PAR overnights / Line 9 total overnights]. Enter each parent's share of overnights in the appropriate Line 10 column. The sum of the shares (ratios) must equal one (the decimal equivalent of 100%).

NOTE: If the PAR's share of overnights with the child is less than the substantial equivalent of two or more overnights per week (28%), STOP! The sole parenting worksheet must be used.

### **LINE 11 - PAR Shared Parenting Fixed Expenses**

In shared-parenting situations, each parent incurs fixed costs (housing expenses) for the child even though the child may not be residing with a particular parent at a given time. Fixed costs include expenses for the dwelling, utilities, household furnishings, and household care items (see Appendix IX-A for a full list of items included in this category). It is assumed that fixed costs represent 38% of the basic support amount.

The PPR's fixed costs remain static (i.e., the full 38% of the basic support amount; they are not reduced when the child is not in the household) since that parent must maintain the primary residence for the child at all times. The PPR's fixed costs are included in the basic support amount. The PAR's fixed expenses are pro-rated based on the amount of time the child spends in the alternate household. The PAR's fixed expenses are assumed to be equal to [2 x PAR's time with the child x PPR's fixed expenses]. For example, if the PAR spends 30% of overnights with the child, that parent is assumed to incur 60% of the PPR's fixed costs. The parents have equal fixed expenses only when time sharing is equal (50% each). The PAR's time-adjusted fixed expenses must be added to the basic support amount (i.e., the basic amount assumes that there is only one household for the child) to determine the total dual-household costs for the child.

To calculate the PAR's time-adjusted fixed expenses:

- (1) Multiply the basic support amount by 38% [Math: Line 8 x 0.38]. The result is the portion of the basic support amount that represents the PPR's fixed expenses.
- (2) Multiply the PPR's fixed expense by two times the PAR's percentage of

overnights [Math: PPR fixed expense x PAR Line 10 x 2]. The result is the PAR's time-adjusted fixed expense for the child. Enter this amount on Line 11.

### **LINE 12 - Shared Parenting Basic Child Support Amount**

Add the basic child support amount and the PAR's shared parenting fixed expenses, then, subtract any government benefits paid to or for the child. The result is the shared parenting basic child support amount. [Math: Line 8 + Line 11]. Enter the shared parenting basic child support amount on Line 12.

The shared parenting basic child support amount includes the costs of the two households in which the child resides, total variable costs (food and transportation) for the child, and other child-rearing costs controlled by the PPR such as clothing, personal care, and entertainment (see Appendix IX-A, paragraph 14(d)).

### **LINE 13 - Each Parent's Share of Shared Parenting Basic Child Support Amount**

Calculate the PAR's share of the shared parenting basic child support amount by multiplying the shared parenting basic child support amount by the PAR's income share. [Math: PAR Line 7 x Line 12].

Enter the PAR's share of the award on Line 13.

Calculate the PPR's share of the shared parenting basic child support amount by multiplying the shared custody basic child support amount by the PPR's income share. [Math: PPR Line 7 x Line 12].

Enter the PPR's share of the award on Line 13.

### **LINE 14 - PAR Shared Parenting Variable Expenses**

*Variable expenses* are incurred only when the child is residing with a parent (i.e., costs that follow the child). This category includes transportation and food). It is assumed that variable costs account for 37% of total spending on a child in an intact family.

Since the PPR has no variable expenses for the child while the child is with the PAR, the shared custody basic child support amount (which assumes that all variable expenses are incurred by the PAR household), must be reduced by the PAR's variable expenses for the child while the child is residing in the PAR's household.

To Calculate the PAR's share of variable expenses for the child:

- (1) Multiply the basic support amount by 37% [Math: Line 8 x 0.37]. This is the portion of the basic support amount that represents variable expenses for the child.
- (2) Multiply the variable expenses by the PAR's percentage of regular overnights



with the child. [Math: variable expense x PAR Line 10]. The result is the PAR's variable expense for the child. Enter this amount on Line 14.

Note: Be careful to calculate variable expenses using the basic child support obligation (Line 8), not the shared parenting basic child support amount (Line 12).

### **LINE 15 - PAR Adjusted Shared Parenting Basic Child Support Amount**

The PAR Adjusted Shared Parenting Basic Child Support Amount represents the PAR's income share of the net support obligation for the child while the child is residing in the primary household. To calculate this amount, subtract the PAR's fixed expenses and the PAR's variable expenses from the PAR's share of the Shared Parenting Basic Child Support Amount. [Math: Line 13 - Line 11 - Line 14]. Note: Line 15 may be a negative number. If so, carry it forward to the supplemental expense calculation.

### **LINES 16 through 20 - Figuring Supplemental Expenses to be Added to the Shared Parenting Basic Child Support Amount**

Figure the amount of supplemental expenses (i.e., those not included in the basic support amount) that must be added to the PAR's basic child support amount.

Supplemental expenses include the net work-related child care cost, the cost of health insurance for a child, unreimbursed predictable and recurring health care expenses above \$ 250 per child per year, and other court-approved predictable and recurring expenses. See Appendix IX-A for a list of child-related expenses that are included in the Appendix IX-F awards. When added to the basic child support amount, supplemental expenses are apportioned between the parents in proportion to their relative incomes (i.e., these expenses are not time shared).

### **LINE 16 - Adding Net Work-Related Child Care Costs**

Calculate net work-related child-care costs using the Appendix IX-E Net Child Care Expense Worksheet. Enter the weekly net child-care cost (from Line 8 of the Appendix IX-E Worksheet) on Line 16. Since child care expenses are excluded from the child support schedules, such costs, if incurred by either parent, must be added to the basic support amount.

1. *Qualified Child Care Expenses.* Qualified child care expenses are those incurred to care for a dependent who is under the age of 15 or is physically or mentally handicapped. These expenses must be necessary for the employment or job search of the parent. Child care expenses should be reasonable and should not exceed the level required to provide quality care for the child(ren) from a licensed source. Only the net cost of child care (after the federal tax credit is deducted) is added to the basic award. It is assumed that the parent paying for child care will apply for and receive the federal child care tax credit at the end of the tax year.

## 2. Determining the Net Child Care Cost

- a. Calculate the Adjusted Gross Income (AGI) of the parent paying for child care by deducting moving expenses, one-half of the self-employment tax, IRA and Keough contributions, penalties on early withdrawal of savings, self-employment health insurance cost, and tax deductible alimony paid from that parent's gross income. If this information is not available, use the parent's gross income (Line 1 + Line 4).
- b. Determine the annual child-care cost.
- c. Complete the Net Child Care Expense Worksheet in Appendix IX-E to find the net weekly child-care cost to be added to the basic amount.

### **LINE 17 - Adding Health Insurance Costs for the Child**

Enter the parent's weekly cost of health insurance for the child for whom support is being determined on Line 17. If the parent's weekly marginal cost is unknown at the time of the hearing, use the per capita cost of a family policy at the parent's place of work. Do *not* include health insurance costs for adults or other dependents.

Since the cost of health insurance is excluded from the child support schedules, a parent's contributions to a health insurance policy which includes the child for whom support is being determined must be added to the basic support award. Only the parent's cost of adding the child to the health insurance (medical and dental) policy is added to the basic support amount (i.e., the marginal premium cost to the parent to add the child to the policy). If the parent who is providing the health insurance has no proof of the cost of adding the child to the policy, the parent's total premium cost should be divided by the number of persons covered by the policy (per capita). The result is then multiplied by the number of children for whom support is being determined to obtain the child's estimated share of the health insurance cost. For example, if the parent's total health insurance cost is \$ 60 per week and there are four persons covered by the policy (the parent, the two children who are the subjects of the support order, and a new spouse), the per capita health insurance cost for the two children is \$ 30 ( $(\$ 60 / 4 \text{ persons} = \$ 15) \times 2 \text{ children} = \$ 30$ ). If both parents provide health insurance for the child, each parent's marginal cost of adding the child to the policy should be added together to determine the total health insurance cost for the child. If the cost of the health insurance policy is unknown at the time of the support establishment hearing, the parent may apply for a modification of the support order when such information becomes available.

### **LINE 18 - Adding Predictable and Recurring Unreimbursed Health Care**

Enter the weekly unreimbursed cost of any health care, if predictable and recurring, for the child that exceeds \$ 250 per child per year on Line 18.

*Costs under \$ 250 per child per year* - Unreimbursed health care expenses (medical and dental expenses not covered by insurance) up to and including \$ 250 per child per year are included in the child support schedules and are assumed to be paid by the PPR. Because they are part of the basic child support order, these ordinary health care expenses are shared in proportion to the relative incomes of the parents.

*Predictable, Recurring Costs above \$ 250 per child per year* - Unreimbursed health care expenses in excess of \$ 250 per child per year are excluded from the child support schedules. If such expenses are predictable and recurring, they should be added to the basic support award using Line 18. The court should consider the duration and recurring nature of unreimbursed health care expenses prior to adding them to the basic support amount. If both parents provide predictable, recurring unreimbursed health care for the child, the cost to each parent should be added together to determine the total unreimbursed health care costs. Each parent's direct health care expenses for the child above the \$ 250 per child annual threshold are credited against his or her share of the total support award on Line 24.

*Unpredictable, Non-Recurring Costs above \$ 250 per child per year* - Health-care expenses for a child that exceed \$ 250 per child per year that are not predictable and recurring should be shared between the parents in proportion to their relative incomes as incurred. Since these expenses are not included in the support award, the procedure for sharing such costs should be set forth in the general language of the order or judgment.

### **LINE 19 - Adding Court-Approved Predictable and Recurring Extraordinary Expenses**

Enter court-approved predictable and recurring costs for the child on Line 19.

If approved by the court, predictable and recurring extraordinary expenses for the child that are not included in the Appendix IX-F child support awards may be added to the basic support amount. Examples of such extraordinary expenditures are PAR transportation expenses, special diets, and private education costs for gifted or handicapped children. See Appendix IX-A, paragraph 8, for a list of items that are included in the Appendix IX-F awards and an explanation of private education expenses that may be added to the basic support amount.

Extraordinary expenses that are not predictable and recurring should be shared between the parents in proportion to their relative incomes as incurred. Since these expenses are not included in the support award, the procedure for sharing such costs should be set forth in the general language of the order or judgment. Each parent's direct spending on court-approved extraordinary expenses for the child are credited against his or her share of the total support award on Line 25.

### **LINE 20 - Total Supplemental Expenses**

Add the net child-care cost, health insurance cost for the child, unreimbursed predictable and recurring health-care costs greater than \$ 250 per child per year, and court-approved predictable and recurring extraordinary expenses. [Math: (Line 16 + Line 17 + Line 18 + Line 19)]. Enter the total supplemental expenses on Line 20.

### **LINE 21 - PAR's Share of the Total Supplemental Expenses**

Multiply the PAR's income share by the total supplemental expenses. [Math: PAR Line 6 x Line 20 total supplemental expenses]. Enter the PAR's share of the total supplemental expenses on Line 21.

### **LINE 22 - Credit for Derivative Government Benefits for the Child Based on Contribution of the Parent of Alternate Residence**

Enter the weekly amount of the government benefits paid to the parent of primary residence for the child (if any) that are based on the contribution (work history, military service, disability, or retirement) of the parent of alternate residence (PAR) in the Line 22 PAR column.

NOTE: Benefits amount should match the government benefits for the child on Line 5 PAR column.

### **LINE 23 - Credit for PAR's Child Care Payments**

Enter the PAR's direct payments for work-related child care for the child for whom support is being determined on Line 23. NOTE: Payments cannot exceed the parent's net work-related child care cost added on Line 16.

### **LINE 24 - Credit for PAR's Payment of Child's Health Insurance Cost**

Enter the PAR's direct payments towards that parent's cost of adding the child to a health insurance policy on Line 24. NOTE: Payments cannot exceed the parent's cost of health insurance for the child added on Line 17.

### **LINE 25 - Credit for PAR's Payment of Unreimbursed Health Care**

Enter the PAR's direct payments for predictable and recurring unreimbursed health care greater than \$ 250 per child per year on Line 25. NOTE: Payments cannot exceed predictable and recurring unreimbursed health care expenses added on Line 18.

### **LINE 26 - Credit for PAR's Payment of Court-Approved Extraordinary Expenses**

Enter the PAR's direct payments for predictable and recurring extraordinary court-approved expenses on Line 26. NOTE: Payments cannot exceed predictable and recurring extraordinary court-approved expenses added on Line 19.

### **LINE 27 - PAR's Total Payments for Supplemental Expenses**

Add the PAR's direct payments toward derivative government benefits for the child, work-related child care, the cost of adding the child to a health insurance policy, the predictable and recurring unreimbursed health care above \$ 250 per child per year, and the predictable and recurring extraordinary court-approved expenses. [Math: Line 22 + Line 23 + Line 24 + Line 25 + Line 26]. Enter the sum of all payments added on Line 27.

### **LINE 28 - PAR's Net Supplemental Expenses**

Subtract the PAR's direct payments for child care, the child's share of the health insurance premium, predictable and recurring unreimbursed health care for the child above \$ 250 per year per child, and predictable and recurring extraordinary court-approved expenses from the PAR's share of the total supplemental expenses. The result is the PAR's net supplemental expenses for the child. [Math: Line 21 - Line 27].

Enter the PAR's share of net supplemental expenses on Line 28.

Direct payments for supplemental expenses are subtracted from the PAR's share of total supplemental expenses before those expenses are added to the PAR's share of the adjusted shared parenting child support amount. Direct payments may be deducted only if the cost was previously included as a supplemental expense.

### **LINE 29 - PAR's Net Child Support Obligation**

Add the PAR's share of the adjusted shared parenting basic child support amount and the PAR's share of the net supplemental expenses to determine the PAR's net child support obligation. [Math: Line 15 + Line 28]. Enter the PAR's net support obligation on Line 29.

The PAR's net obligation is the child support order that will be paid for the benefit of the children while they are residing with the PPR. Theoretically, the PPR also has a support obligation (although not calculated on the shared-parenting worksheet) that is considered to be spent directly on the children during the course of providing for their daily needs.

NOTE: If the PAR's net obligation is a negative number, this amount must be paid by the PPR to the PAR to preserve each parent's income share of the total shared-parenting expenses. In this case, the PPR would be the obligor of the support order.

### **LINES 30, 31 and 32- Adjusting the Child Support Obligation for Other Dependents**

1. If either parent has court ordered child support obligations for other dependent

children or an adjustment for other legal dependents is applicable, the following amounts must be considered:

- a. The amount of court ordered child support for other dependents (Line 2c) and the other dependent deduction Line 2d (where no support order exists for the dependent) - using the separate other dependent deduction worksheet;
  - b. A support obligation for the child for whom support is being determined calculated after the total of the other dependent orders and deductions (L2c + L2d); and
  - c. A support obligation for the child for whom support is being determined calculated without deducting the other dependent orders (Line 2c) and deductions (Line 2d) from the responsible parent's gross income.
2. To ensure that a fair share of the parent's income is available to all his or her legal dependents, the child support obligation for the child for whom support is being determined will be calculated WITH an income deduction for the court ordered or theoretical support obligations for other dependents. Then, the support for the subject child will be calculated WITHOUT consideration of the court ordered or theoretical support obligation for other dependents. These two calculations will be averaged.

### **LINE 30 - Line 29 PAR CS Obligation WITH Deductions for Other Dependents**

Enter the PAR's net child support obligation (Line 29) from the worksheet that deducted the support obligation for the parent's other dependents from the parent's net income (i.e., with the Line 2c child support order for other dependents and Line 2d other dependent deduction). Note: the Line 2d other dependent deduction is calculated on a separate worksheet.

### **LINE 31 - Line 29 PAR CS Obligation WITHOUT Deductions for Other Dependents**

Enter the PAR's net child support obligation (Line 29) from the worksheet that does not deduct the support obligation for other dependents (Line 2c and 2d) from the parent's net income.

### **LINE 32 - Adjusted PAR CS Obligation**

Add the Line 30 support obligation that includes the deductions for other dependents (Lines 2c and 2d) and the Line 31 support obligation that does not include the deductions for other dependents, the divide the sum by two to obtain the Adjusted Child Support Obligation for the paying parent. Math:  $(\text{Line 30} + \text{Line 31}) / 2$ . Enter the result on Line 32.

## **LINES 33 and 34 - Maintaining a Self-Support Reserve**

To ensure that the PAR retains sufficient net income to live at a minimum subsistence level and has the incentive to work, that parent's net child support award is tested against 150% of the U.S. poverty guideline for one person. If the PAR's net income after deducting the child support award is less than the self-support reserve, the order should be adjusted. No such adjustment shall occur, however, if the PPR's net income minus the PPR's child support obligation is less than the self-support reserve. This priority is necessary to ensure that a PPR can meet his or her basic needs while caring for the child(ren). The poverty guideline will be disseminated by the AOC each February or when it is published in the Federal Register. The self-support reserve test is applied as follows:

1. Subtract obligor's child support obligation from that person's net income.
2. If the difference is greater than 150% of the poverty guideline for one person (\$ 372 per week as of January 13, 2021), the self-support reserve is preserved and the obligor's support obligation is the child support order.
3. If the difference is less than 150% of the poverty guideline for one person and the PPR's net income is greater than 150% of the poverty guideline, the obligor's child support order is the difference between the obligor's net income and the 150% of the poverty guideline for one person.

In determining whether the application of the self-support reserve is appropriate, the court may need to impute income to a parent as provided in Appendix IX-A, take into account a parent's actual living expenses, and/or consider the PPR's support obligation to the children (see Appendix IX-A, paragraph 20).

NOTE: In some family situations (e.g., the PPR's income exceeds the PAR's income and shared parenting times are near equal), the PPR may owe child support to the PAR (in such cases, the PAR's obligation is a negative number). If this occurs, the self-support reserve should be tested using the PPR's net income and the absolute value of the PAR's negative obligation. In all cases, the PPR should be given the priority with regard to the self-support reserve.

### **LINE 33 - Self-Support Reserve Test**

Subtract the PAR's net child support obligation from the PAR's net income. [Math: PAR's Line 6 net income - PAR Line 29 or 32 child support obligation.] Note: If Line 29 or 32 is a negative number, the PPR is the obligor of that amount. Enter the PAR's result on Line 33.

Enter the PPR's net income (from Line 6) on Line 33. Then,

*If the PAR's Line 33 is less than 150% of the poverty guideline and the PPR's Line 33 is greater than 150% of the poverty guideline, Go To Line 34.*

*If the PAR's Line 33 is greater than 150% of the poverty guideline, Skip Line 34 and Enter the PAR's Line 29 or 32 child support obligation on Line 35.*

NOTE: If the PPR Line 33 amount is less than 150% of the poverty guideline, there is no PAR self-support reserve adjustment. In this case, the PAR Line 29 or 32 amount is the final child support order (Line 35).

### **LINE 34 - PAR's Maximum Child Support Order**

Subtract 150% of the poverty guideline from the PAR's net income to find the maximum child support order. [Math: Line 6 PAR net income - 150% of the poverty guideline]. Enter the result on Lines 34 and 35.

### **LINE 35 - Child Support Order**

Enter the Line 29, 32 or 34 support amount to be paid by the obligor to the other parent for the benefit of the child. Generally, the obligor will be the PAR. However, in some family situations, the PPR may be the obligor (e.g., if the PAR's obligation is a negative number). In those cases, enter the absolute (positive) value of the PAR's negative obligation (or the self-support reserve maximum amount) in the PPR's Line 35 column. Otherwise, enter the Line 29 PAR's net support obligation, the Line 32 other dependent adjusted obligation (if any), or the Line 34 maximum child support obligation (if any) on the PAR's Line 35.

### **LINE 36 - PPR Household Income Test**

Add the PPR's net income from all sources (including means-tested income such as TANF), the net income of other adults in the primary household, and the PAR shared parenting support order. [Math: PPR Line 6 net income + net income of other adults + PAR Line 35 child support order]. Enter the sum in the PPR's Line 36 column.

Test: If Line 36 is less than the PPR household income threshold for the PPR and the total number of persons in the primary household (see table in Appendix IX-A, paragraph 14), the award must be recalculated, without adjusting for shared-parenting time, using the sole parenting worksheet. If Line 36 exceeds the PPR household income threshold, the Line 35 child support order is appropriate.

NOTE: A PAR may still receive an adjustment for variable expenses when the sole parenting worksheet is used to recalculate the support award. If, however, the PPR's household income plus a PAR time-adjusted support award is still below 200% of the poverty guideline, the application of the variable-expense adjustment is not presumptive (i.e., it is subject to the discretion of the court).



**Note:** Adopted May 13, 1997, effective September 1, 1997. Amended July 10, 1998 to be effective September 1, 1998; May 25, 1999 to be effective July 1, 1999. Revised April 4, 2000 to be effective immediately. Revisions to Line Instructions for Lines 1-5, 1b, and 2b (as to both the Sole-Parenting Worksheet and the Shared-Parenting Worksheet) adopted July 5, 2000 to be effective September 5, 2000. Revisions to Line Instructions for Lines 1-5, 24, 25 and 26, (as to the Sole-Parenting Worksheet) and Lines 1-5, 32 and 33 (as to the Shared-Parenting Worksheet) adopted April 2, 2001 to be effective immediately. Revisions to Line Instructions for Lines 24, 25 and 26, (as to the Sole-Parenting Worksheet) and Lines 32 and 33 (as to the Shared-Parenting Worksheet) adopted March 12, 2002 to be effective immediately. Revisions to Line Instructions for Line 1-5, and 2a (as to both the Sole-Parenting Worksheet and the Shared-Parenting Worksheet) adopted April 20, 2002 to be effective immediately. Amended July 12, 2002 to be effective September 3, 2002; March 17, 2003 to be effective immediately; April 28, 2003 to be effective immediately; March 15, 2004 to be effective immediately; July 28, 2004 to be effective September 1, 2004; March 14, 2005 to be effective immediately; February 14, 2006 to be effective immediately; July 27, 2006 to be effective September 1, 2006; February 13, 2007 to be effective immediately; March 11, 2008 to be effective immediately; March 24, 2009 to be effective immediately; July 16, 2009 to be effective September 1, 2009; June 14, 2011 to be effective immediately; April 24, 2012 to be effective immediately; June 4, 2013 to be effective immediately; July 9, 2013 to be effective September 1, 2013; amended April 8, 2014 to be effective immediately; amended April 21, 2015 to be effective May 1, 2015; amended to be effective September 1, 2015; amended April 12, 2016 to be effective May 1, 2016; amended April 4, 2017 to be effective May 1, 2017; amended May 29, 2018 to be effective June 1, 2018; amended May 9, 2019 to be effective June 1, 2019; amended effective June 1, 2020; amended effective June 1, 2021; amended July 30, 2021, to be effective September 1, 2021.

## Appendix IX-C

### Child Support Guidelines - Sole Parenting Worksheet

Case Name:	v.	County:	
<i>Plaintiff</i>		<i>Defendant</i>	Docket #:
Custodial Parent is the: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant		Number of Children:	
<i>All amounts must be weekly</i>	Custodial	Non-Custodial	Combined
1. Gross Taxable Income	\$	\$	
1a. Mandatory Retirement Contributions (non-taxable)	-\$	-\$	
1b. Tax-Deductible Alimony Paid (Current and/or Past Relationships)	-\$	-\$	
1c. Taxable Alimony Received (Current and/or Past Relationships)	+\$	+\$	
2. Adjusted Gross Taxable Income ((L1 - L1a - L1b) + L1c)	\$	\$	
2a. Federal, State and Local Income Tax Withholding	-\$	-\$	
2b. Mandatory Union Dues	-\$	-\$	
2c. Child Support Orders for Other Dependents	-\$	-\$	
2d. Other Dependent Deduction (from L14 of a separate worksheet)	-\$	-\$	
3. Net Taxable Income (L2 - L2a - L2b - L2c - L2d)	\$	\$	
4. Non-Taxable Income (source: )	+\$	+\$	
4a. Non-Tax-Deductible Alimony Paid (Current and/or Past Relationships)	-\$	-\$	
4b. Non-Taxable Alimony Received (Current and/or Past Relationships)	+\$	+\$	
5. Government (Non-Means Tested) Benefits for the Child	+\$	+\$	
6. Net Income (L3 + L4 + L5)	\$	\$	\$
7. Each Parent's Share of Income (L6 Each Parent ÷ L6 Combined)	0.____	0.____	1.00
8. Basic Child Support Amount (from Appendix IX-F Schedules)			\$
9. Net Work Related Child Care (from Appendix IX-E Worksheet)			+\$
10. Child's Share of Health Insurance Premium			+\$
11. Unreimbursed Health Care Expenses over \$250 per child per year			+\$
12. Court-Approved Extraordinary Expenses			+\$
13. Total Child Support Amount (L8 + L9 + L10 + L11 + L12)			\$
14. Each Parent's Share of Support Obligation (L7 x L13)	\$	\$	
15. Government Benefits for the Child Based on Contribution of NCP		-\$	
16. Net Work-Related Child Care Paid		-\$	
17. Health Insurance Premium for the Child Paid		-\$	
18. Unreimbursed Health Care Expenses Paid (>\$250/child/year)		-\$	
19. Court-Approved Extraordinary Expenses Paid		-\$	
20. Adjustment for Parenting Time Expenses (L8 x L20b for Non-Custodial Parent x 0.37) <i>Note: Not presumptive in some low income situations (see App IX-A., ¶13)</i>		-\$	
20a. Number of Annual Overnights with Each Parent			
20b. Each Parent's Share of Overnights with the Child (L20a for Parent ÷ L20a Combined)	0.____	0.____	1.00
21. Net Child Support Obligation (L14 - L15 - L16 - L17 - L18 - L19 - L20)		\$	

*Continued on Page 2*

**Child Support Guidelines – Sole Parenting Worksheet – Page 2**

***If there is no adjustment for other dependents, go to line 25***

22. Child Support Order <b>WITH</b> Other Dependent Deduction (L2d) and Child Support Orders for Other Dependents (L2c)		\$	
23. Child Support Order <b>WITHOUT</b> Other Dependent Deduction and Child Support Orders for Other Dependents		\$	
24. Adjusted Child Support Order ((L22 + L23) ÷ 2)		\$	
25. Self-Support Reserve Test: (L6 - L21 or L24 for NCP; L6 - L14 for CP) If L25 for NCP is greater than 150% of the federal poverty guideline for one-person ( <i>pg</i> ) L25 for CP is less than <i>pg</i> , enter L21 or L24 amount on L27. If NCP L25 is less than the <i>pg</i> and CP L25 is greater than the <i>pg</i> , go to L26.	\$	\$	
26. Obligor Parent's Maximum Child Support Obligation. (L6 NCP income - 150% of federal poverty guideline for one person). Enter result here and on Line 27.		\$	
27. Child Support Order		\$	

**Comments, Rebuttals, and Justification for Deviations**

- This child support order for this case  was  was not based on the child support guidelines award.
  - If different from the child support guidelines award (Line 27), enter amount ordered:
  - The child support guidelines were not used, or the guidelines award was adjusted because:
  - The following court-approved extraordinary expenses were added to the basic support obligation:
5. Custodial Taxes:       App IX-H       Circ E       Other      # Eligible Dependents:      Marital:
- Non-Custodial Taxes:       App IX-H       Circ E       Other      # Eligible Dependents:      Marital:

Prepared By:	Title:	Date:
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## Appendix IX-D

### Child Support Guidelines - Shared Parenting Worksheet

Case Name:	v.	County:	
<i>Plaintiff</i>	<i>Defendant</i>	Docket #:	
PPR is the: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant		Number of Children:	
<b>All amounts must be weekly</b>	<b>Parent of Primary Residence (PPR)</b>	<b>Parent of Alternate Residence (PAR)</b>	<b>Combined</b>
1. Gross Taxable Income	\$	\$	
1a. Mandatory Retirement Contributions (non-taxable)	-\$	-\$	
1b. Tax-Deductible Alimony Paid (Current and/or Past Relationships)	-\$	-\$	
1c. Taxable Alimony Received (Current and/or Past Relationships)	+\$	+\$	
2. Adjusted Gross Taxable Income ((L1 - L1a - L1b) + L1c)	\$	\$	
2a. Federal, State and Local Income Tax Withholding	-\$	-\$	
2b. Mandatory Union Dues	-\$	-\$	
2c. Child Support Orders for Other Dependents	-\$	-\$	
2d. Other Dependent Deduction (from L14 of a separate worksheet)	-\$	-\$	
3. Net Taxable Income (L2 - L2a - L2b - L2c - L2d)	\$	\$	
4. Non-Taxable Income (source: )	+\$	+\$	
4a. Non-Tax-Deductible Alimony Paid (Current and/or Past Relationships)	-\$	-\$	
4b. Non-Taxable Alimony Received (Current and/or Past Relationships)	+\$	+\$	
5. Government (Non-Means Tested) Benefits for the Child	+\$	+\$	
6. Net Income (L3 + L4 + L5)	\$	\$	\$
7. Each Parent's Share of Income (L6 Each Parent ÷ L6 Combined)	0.____	0.____	1.00
8. Basic Child Support Amount (from Appendix IX-F Schedules)			\$
9. Number of Overnights with Each Parent			
10. Each Parent's Share of Overnights with the Child (L9 for Parent ÷ L9 Combined)	0.____	0.____	1.00
<b>If PAR time sharing is less than the equivalent of two overnights per week (28%), use Sole Parenting Worksheet.</b>			
11. PAR Shared Parenting Fixed Expenses (L8 x PAR L10 x 0.38 x 2)			+\$
12. Shared Parenting Basic Child Support Amount (L8 + L11)			\$
13. Each Parent's Share of SP Basic Child Support Amount (L7 x L12)	\$	\$	
14. PAR Shared Parenting Variable Expenses (PAR L10 x L8 x 0.37)		-\$	
15. PAR Adjusted SP Basic Child Support Amount (PAR L13 - L11 - L14)		\$	
16. Net Work Related Child Care (from Appendix IX-E Worksheet)			+\$
17. Child's Share of Health Insurance Premium			+\$
18. Unreimbursed Health Care Expenses over \$250 per child per year			+\$
19. Court-Approved Extraordinary Expenses			+\$
20. Total Supplemental Expenses (L16 + L17 + L18 + L19)			\$
21. PAR's Share of Total Supplemental Expenses (PAR L7 x L20)		\$	
22. Government Benefits for the Child Based on Contribution of PAR		\$	
<b>Continued on Page 2</b>			

**Child Support Guidelines - Shared Parenting Worksheet – Page 2**

<i>All amounts must be weekly</i>	PPR	PAR	Combined
23. PAR Net Work-Related Child Care PAID		\$	
24. PAR Health Insurance Premium for the Child PAID		\$	
25. PAR Unreimbursed Health Care Expenses >\$250/child/year) PAID		\$	
26. PAR Court-Approved Extraordinary Expenses PAID		\$	
27. PAR Total Supplemental Expenses PAID (L23 + L24 + L25 + L26)		\$	
28. PAR Net Supplemental Expenses (L21 - L27)		\$	
29. PAR Net Child Support Obligation (L15 + L28)		\$	
<b><i>If there is no adjustment for other dependents, go to line 33.</i></b>			
30. Line 29 PAR CS Obligation WITH Other Dependent Deduction L2d and Child Support Orders for Other Dependents L2c		\$	
31. Line 29 PAR CS Obligation WITHOUT Other Dependent Deduction and Child Support Orders for Other Dependents		\$	
32. Adjusted PAR Child Support Obligation ((L30 + L31) ÷ 2)		\$	
33. Self-Support Reserve Test: (L6 - L29 or L32 for PAR; L6 - L13 for PPR) If L33 for PAR is greater than 150% of the federal poverty guideline for one person (pg) or L33 for the PPR is less than the pg, enter the L29 or L32 amount on the PAR L35. If PAR L33 is less than the pg and PPR's L33 is greater than the pg, go to L34. If L29 or L32 is negative, see App. IX-B for instructions.	\$	\$	
34. Maximum CS Obligation (Obligor Parent's L6 net income - 150% of the poverty guideline for one person). Enter result here and on Line 35.	\$	\$	
35. Child Support Order (negative L29 or L32 denotes PPR Obligation)	\$	\$	
<b><i>If the PAR is the Obligor, Continue on Line 36</i></b>			
36. PPR Household Income Test (L6 PPR net income from all sources + net income of other household members + L35 order). If less than the PPR household income threshold (see App. IX-A, ¶14(c)), the <b>Sole Parenting Worksheet</b> should be used.	\$		
<b>Comments, Rebuttals, and Justification for Deviations</b>			
1. This child support order for this case <input type="checkbox"/> was <input type="checkbox"/> was not based on the child support guidelines award.			
2. If different from the child support guidelines award (Line 35), enter amount ordered:			
3. The child support guidelines were not used, or the guidelines award was adjusted because:			
4. The following extraordinary expenses were added to the basic support obligation on Line 19:			
5. PPR Taxes:	<input type="checkbox"/> App IX-H	<input type="checkbox"/> Circ E	<input type="checkbox"/> Other
PAR Taxes:	<input type="checkbox"/> App IX-H	<input type="checkbox"/> Circ E	<input type="checkbox"/> Other
	# Eligible Dependents:	Marital:	
	# Eligible Dependents:	Marital:	
Prepared By:	Title:	Date:	

## Appendix IX-E

Appendix IX-E amended June 1, 2019 to be effective immediately.

<b>Child Support Guidelines Net Child Care Cost Worksheet</b>	
1. Parent's Adjusted Gross Income (IRS Definition - See Appendix IX-B)	\$
2. Annual work-related child care cost	\$
3. Maximum child care subject to federal tax credit. (Enter the lesser of the annual child care cost in Line 2 or \$3,000 for one child/\$6,000 for two or more children)	\$
4. If the annual child care cost in Line 2 is less than \$3,000 for one child or \$6,000 for two or more children, enter the child care tax credit percentage from Column 2 of the Federal Tax Credit Table here. If the child care costs are greater than these amounts, enter the maximum dollar credit from Column 3 of the Federal Tax Credit Table on Line 5	%            0%
5. Federal Tax Credit (Line 3 x Line 4 or enter the Column 3 maximum dollar tax credit)	\$
6. If parent is a N.J. resident, enter the N.J. State Credit amount calculated from Column 2 of the N.J. State Child Care Tax Credit Table	\$
7. Net annual child care expense (Line 2 - Line 5 - Line 6)	\$
8. Net weekly child care cost (Line 7/52). Enter this amount on the Child Support Guidelines Sole Custody Worksheet, Line 9 or the Shared Custody Worksheet, Line 16	\$

<b>Federal Child Care Tax Credit Table</b>				
Column 1		Column 2		Column 3
Income		Partial Credit Line 3 Amount		Maximum Credit Line 4 Amount:
Parent's Adjusted Gross Income (IRS Definition)		Cost Less than \$3,000/Year (\$58/wk.) for 1 Child OR \$6,000/Year (\$115/wk.) for 2 or More Children		Cost More than \$3,000/Year (\$58/wk.) for 1 Child OR \$6,000/Year (\$115/wk.) for 2 or More Children
Annual	Weekly	Tax Credit Percentage		1 Child CC > \$58/wk.
				2 or more children CC > \$115/wk.
0 - 15,000	0 - 288	35% (.35)		1,050
15,001 - 17,000	289 - 326	34% (.34)		1,020
17,001 - 19,000	327 - 365	33% (.33)		990
19,001 - 21,000	366 - 403	32% (.32)		960
21,001 - 23,000	404 - 442	31% (.31)		930
23,001 - 25,000	443 - 480	30% (.30)		900
25,001 - 27,000	481 - 519	29% (.29)		870
27,001 - 29,000	520 - 557	28% (.28)		840
29,001 - 31,000	558 - 596	27% (.27)		810
31,001 - 33,000	597 - 634	26% (.26)		780
33,001 - 35,000	635 - 673	25% (.25)		750
35,001 - 37,000	674 - 711	24% (.24)		720
37,001 - 39,000	712 - 750	23% (.23)		690
39,001 - 41,000	751 - 788	22% (.22)		660
41,001 - 43,000	789 - 826	21% (.21)		630
43,001 - 45,000	827 - 865	20% (.20)		600
45,001 +	866 +	20% (.20)		600

<b>N.J. State Child Care Tax Credit Table</b>	
<b>Column 1</b>	<b>Column 2</b>
<b>Parent's Adjusted Gross Income</b>	<b>Percentage of Federal Child Care Tax Credit</b>
0 - \$20,000	50% of federal credit (Line 5 X .50)
\$20,001 - \$30,000	40% of federal credit (Line 5 X .40)
\$30,001 - \$40,000	30% of federal credit (Line 5 X .30)
\$40,001 - \$50,000	20% of federal credit (Line 5 X .20)
\$50,001 - \$60,000	10% of federal credit (Line 5 X .10)

## Appendix IX-F

### Schedule of Child Support Awards

Combined Net Weekly Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
0	For combined net incomes that are less than \$180 per week, the court shall establish a child support award based on the obligor's net income and living expenses and the needs of the child. In these circumstances, the support award should be between \$5.00 per week and the support amount at \$180 combined net weekly income as shown on this schedule.					
50						
100						
150						
160						
170						
180	50	59	68	75	83	91
190	53	62	72	80	88	97
200	56	66	76	84	93	102
210	59	69	80	88	98	108
220	62	72	84	93	103	113
230	65	75	88	97	107	119
240	68	78	92	102	112	124
250	71	82	96	106	117	130
260	74	85	100	110	122	135
270	77	88	103	114	127	140
280	80	91	107	119	131	145
290	82	94	111	123	136	151
300	85	97	115	127	140	156
310	88	100	118	131	145	161
320	91	103	122	135	150	166
330	94	106	126	139	154	171
340	96	109	129	143	159	176
350	99	112	133	147	163	181
360	102	114	136	151	167	186
370	104	117	140	155	172	191
380	107	120	143	159	176	196
390	110	123	147	163	181	200
400	112	126	150	167	185	205
410	115	128	154	170	189	210
420	117	131	157	174	193	215
430	120	134	160	178	197	219
440	122	137	164	182	202	224
450	125	139	167	185	206	229



<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
460	127	142	170	189	210	233
470	130	145	174	193	214	238
480	132	147	177	196	218	242
490	135	150	180	200	222	247
500	137	152	183	203	226	251
510	139	155	186	207	230	255
520	142	157	190	210	234	260
530	144	160	193	214	238	264
540	146	162	196	217	242	268
550	149	165	199	221	245	273
560	151	167	202	224	249	277
570	153	170	205	228	253	281
580	155	172	208	231	257	285
590	158	174	211	234	260	289
600	160	177	214	238	264	293
610	162	179	217	241	268	298
620	164	181	220	244	271	302
630	166	184	223	247	275	306
640	168	186	225	250	278	310
650	170	188	228	254	282	314
660	172	191	231	257	285	317
670	174	193	234	260	289	321
680	177	195	237	263	292	325
690	179	197	239	266	296	329
700	181	199	242	269	299	333
710	182	201	245	272	303	337
720	184	204	247	275	306	340
730	186	206	250	278	309	344
740	188	208	253	281	313	348
750	190	210	255	284	316	351
760	192	212	258	287	319	355
770	194	214	261	290	322	358
780	196	216	263	293	325	362
790	198	218	266	295	329	366
800	199	220	268	298	332	369
810	201	222	271	301	335	373
820	203	224	273	304	338	376
830	205	226	276	307	341	379

<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
840	207	228	278	309	344	383
850	208	230	281	312	347	386
860	210	232	283	315	350	389
870	212	234	285	317	353	393
880	213	235	288	320	356	396
890	215	237	290	323	359	399
900	217	239	292	325	362	403
910	218	241	295	328	365	406
920	220	243	297	330	367	409
930	222	244	299	333	370	412
940	223	246	301	335	373	415
950	225	248	304	338	376	418
960	226	250	306	340	379	421
970	228	251	308	343	381	424
980	230	253	310	345	384	427
990	231	255	312	348	387	430
1000	233	257	315	350	389	433
1010	234	258	317	352	392	436
1020	236	260	319	355	395	439
1030	237	261	321	357	397	442
1040	239	263	323	359	400	445
1050	240	265	325	362	402	448
1060	241	266	327	364	405	451
1070	243	268	329	366	408	454
1080	244	269	331	368	410	456
1090	246	271	333	371	412	459
1100	247	273	335	373	415	462
1110	248	274	337	375	417	465
1120	250	276	339	377	420	467
1130	251	277	341	379	422	470
1140	252	279	343	382	425	473
1150	254	280	345	384	427	475
1160	255	282	347	386	429	478
1170	256	283	349	388	432	480
1180	258	284	350	390	434	483
1190	259	286	352	392	436	486
1200	260	287	354	394	439	488
1210	262	289	356	396	441	491

<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
1220	263	290	358	398	443	493
1230	264	291	360	400	445	496
1240	265	293	361	402	447	498
1250	266	294	363	404	450	501
1260	268	296	365	406	452	503
1270	269	297	367	408	454	505
1280	270	298	368	410	456	508
1290	271	300	370	412	458	510
1300	272	301	372	414	460	512
1310	274	302	373	415	462	515
1320	275	303	375	417	464	517
1330	276	305	377	419	467	519
1340	277	306	378	421	469	522
1350	278	307	380	423	471	524
1360	279	308	382	425	473	526
1370	280	310	383	426	475	528
1380	281	311	385	428	477	531
1390	282	312	386	430	479	533
1400	284	313	388	432	481	535
1410	285	315	390	433	482	537
1420	286	316	391	435	484	539
1430	287	317	393	437	486	541
1440	288	318	394	439	488	543
1450	289	319	396	440	490	545
1460	290	320	397	442	492	548
1470	291	322	399	444	494	550
1480	292	323	400	445	496	552
1490	293	324	402	447	497	554
1500	294	325	403	449	499	556
1510	295	326	405	450	501	558
1520	296	327	406	452	503	560
1530	297	328	408	453	505	562
1540	298	329	409	455	506	564
1550	299	330	410	457	508	566
1560	300	331	412	458	510	568
1570	301	333	413	460	512	569
1580	302	334	415	461	513	571
1590	303	335	416	463	515	573

<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
1600	304	336	417	464	517	575
1610	304	337	419	466	518	577
1620	305	338	420	467	520	579
1630	306	339	422	469	522	581
1640	307	340	423	470	523	583
1650	308	341	424	472	525	584
1660	309	342	426	473	527	586
1670	310	343	427	475	528	588
1680	311	344	428	476	530	590
1690	312	345	430	478	532	592
1700	313	346	431	479	533	593
1710	314	347	432	481	535	595
1720	314	348	434	482	536	597
1730	315	349	435	484	538	599
1740	316	350	436	485	540	600
1750	317	351	437	486	541	602
1760	318	352	439	488	543	604
1770	319	353	440	489	544	606
1780	320	354	441	491	546	607
1790	321	355	442	492	547	609
1800	321	356	444	493	549	611
1810	322	356	445	495	550	612
1820	323	357	446	496	552	614
1830	324	358	447	498	553	616
1840	325	359	449	499	555	617
1850	326	360	450	500	556	619
1860	327	361	451	502	558	621
1870	327	362	452	503	559	622
1880	328	363	454	504	561	624
1890	329	364	455	506	562	625
1900	330	365	456	507	564	627
1910	331	366	457	508	565	629
1920	332	367	458	510	567	630
1930	332	367	460	511	568	632
1940	333	368	461	512	569	633
1950	334	369	462	513	571	635
1960	335	370	463	515	572	637
1970	336	371	464	516	574	638

<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
1980	337	372	466	517	575	640
1990	338	373	467	519	577	641
2000	338	374	468	520	578	643
2010	339	375	469	521	579	644
2020	340	376	470	523	581	646
2030	341	376	471	524	582	647
2040	342	377	473	525	584	649
2050	343	378	474	526	585	650
2060	343	379	475	528	586	652
2070	344	380	476	529	588	654
2080	345	381	477	530	589	655
2090	346	382	478	531	591	657
2100	347	383	480	533	592	658
2110	348	384	481	534	593	660
2120	348	384	482	535	595	661
2130	349	385	483	537	596	663
2140	350	386	484	538	598	664
2150	351	387	485	539	599	666
2160	352	388	487	540	600	667
2170	353	389	488	542	602	669
2180	354	390	489	543	603	670
2190	354	391	490	544	604	672
2200	355	391	491	545	606	673
2210	356	392	492	547	607	675
2220	357	393	494	548	609	676
2230	358	394	495	549	610	678
2240	359	395	496	551	611	679
2250	360	396	497	552	613	681
2260	361	397	498	553	614	682
2270	362	398	499	554	616	684
2280	362	399	501	556	617	685
2290	363	400	502	557	618	687
2300	364	400	503	558	620	688
2310	365	401	504	559	621	690
2320	366	402	505	561	623	691
2330	367	403	507	562	624	693
2340	368	404	508	563	625	694
2350	369	405	509	565	627	696

<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
2360	370	406	510	566	628	697
2370	371	407	511	567	630	699
2380	372	408	513	569	631	701
2390	373	409	514	570	632	702
2400	374	410	515	571	634	704
2410	375	411	516	572	635	705
2420	375	412	517	574	637	707
2430	376	413	519	575	638	708
2440	377	414	520	576	640	710
2450	378	414	521	578	641	711
2460	379	415	522	579	642	713
2470	380	416	524	580	644	715
2480	381	417	525	582	645	716
2490	382	418	526	583	647	718
2500	383	419	527	584	648	719
2510	385	420	529	586	650	721
2520	386	421	530	587	651	723
2530	387	422	531	589	653	724
2540	388	423	532	590	654	726
2550	389	424	534	591	656	727
2560	390	425	535	593	657	729
2570	391	426	536	594	659	731
2580	392	427	538	596	660	732
2590	393	428	539	597	662	734
2600	394	430	540	598	663	736
2610	395	431	542	600	665	737
2620	396	432	543	601	666	739
2630	397	433	544	603	668	741
2640	399	434	546	604	669	742
2650	400	435	547	606	671	744
2660	401	436	548	607	673	746
2670	402	437	550	608	674	747
2680	403	438	551	610	676	749
2690	404	439	552	611	677	751
2700	406	440	554	613	679	753
2710	407	441	555	614	681	754
2720	408	443	557	616	682	756
2730	409	444	558	617	684	758

<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
2740	411	445	559	619	685	760
2750	412	446	561	621	687	761
2760	413	447	562	622	689	763
2770	414	448	564	624	691	765
2780	416	450	565	625	692	767
2790	417	451	567	627	694	769
2800	418	452	568	628	696	771
2810	419	453	570	630	697	772
2820	421	454	571	632	699	774
2830	422	456	573	633	701	776
2840	423	457	574	635	703	778
2850	425	458	576	637	704	780
2860	426	459	577	638	706	782
2870	428	461	579	640	708	784
2880	429	462	580	642	710	786
2890	430	463	582	643	712	788
2900	432	464	584	645	713	790
2910	433	466	585	647	715	792
2920	435	467	587	648	717	794
2930	436	468	588	650	719	796
2940	438	470	590	652	721	798
2950	439	471	592	654	723	800
2960	441	472	593	655	725	802
2970	442	474	595	657	727	804
2980	444	475	597	659	728	806
2990	445	477	598	661	730	808
3000	447	478	600	663	732	810
3010	448	479	602	664	734	812
3020	450	481	604	666	736	814
3030	452	482	605	668	738	817
3040	453	484	607	670	740	819
3050	455	485	609	672	742	821
3060	456	487	611	674	744	823
3070	458	488	612	676	747	825
3080	460	490	614	678	749	828
3090	461	491	616	680	751	830
3100	463	493	618	682	753	832
3110	465	494	620	684	755	835

<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
3120	467	496	622	686	757	837
3130	468	497	623	688	759	839
3140	470	499	625	690	762	842
3150	472	501	627	692	764	844
3160	474	502	629	694	766	846
3170	476	504	631	696	768	849
3180	477	505	633	698	770	851
3190	479	507	635	700	773	854
3200	481	509	637	702	775	856
3210	483	510	639	704	777	859
3220	485	512	641	707	780	861
3230	487	514	643	709	782	864
3240	489	516	645	711	784	866
3250	491	517	647	713	787	869
3260	493	519	649	715	789	871
3270	495	521	651	718	792	874
3280	497	523	654	720	794	877
3290	499	524	656	722	796	879
3300	501	526	658	725	799	882
3310	503	528	660	727	801	885
3320	505	530	662	729	804	887
3330	507	532	664	732	807	890
3340	509	534	667	734	809	893
3350	511	536	669	736	812	896
3360	513	537	671	739	814	898
3370	516	539	674	741	817	901
3380	518	541	676	744	820	904
3390	520	543	678	746	822	907
3400	522	545	680	749	825	910
3410	524	547	683	751	828	913
3420	527	549	685	754	830	916
3430	529	551	688	756	833	919
3440	531	553	690	759	836	922
3450	534	555	692	762	839	925
3460	536	557	695	764	842	928
3470	538	560	697	767	844	931
3480	541	562	700	770	847	934
3490	543	564	702	772	850	937



<b>Combined Net Weekly Income</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
3500	546	566	705	775	853	940
3510	548	568	707	778	856	943
3520	551	570	710	780	859	947
3530	553	573	713	783	862	950
3540	556	575	715	786	865	953
3550	558	577	718	789	868	956
3560	561	579	720	792	871	960
3570	563	582	723	795	874	963
3580	566	584	726	797	877	966
3590	569	586	729	800	880	970
3600	571	589	731	803	884	973
<p>For cases in which the combined net income of the parents is more than \$3,600 per week, the child support award at represents the minimum basic support award. The court must add a discretionary amount of child support to the minimum basic award based on the factors specified in <i>N.J.S.A. 2A:34-23</i>. See Appendix IX-A, Extreme Income Situations, for additional information.</p> <p><b><i>DO NOT EXTRAPOLATE THESE SCHEDULES BEYOND \$3,600 COMBINED WEEKLY NET INCOME</i></b></p> <p>(Note: Revised Appendix IX-F adopted July 9, 2013 to be effective September 1, 2013)</p>						

**APPENDIX IX-H**

**COMBINED TAX WITHHOLDING TABLES FOR USE WITH THE SUPPORT GUIDELINES**

Includes Federal, State, Social Security and Medicare Income Tax Withholding Rates and Child Tax Credit

Weekly Payroll Period - Single Persons and Married Living Apart - For Wages Paid on or After January 1, 2021

These Tables should not be used for certain income situations - see notes at end of tables.

2021 Weekly Gross Income		And the number of withholding allowances claimed from IRS form W-4								
At Least	But Less Than	0	1	2	3	4	5	6	7	8
0	100	0	0	0	0	0	0	0	0	0
100	110	9	9	9	8	8	8	8	8	8
110	120	10	10	10	9	9	9	9	9	9
120	130	11	11	11	10	10	10	10	10	10
130	140	12	12	11	11	11	11	10	10	10
140	150	13	13	12	12	12	12	11	11	11
150	160	14	14	13	13	13	12	12	12	12
160	170	15	15	14	14	14	13	13	13	13
170	180	16	15	15	15	15	14	14	14	13
180	190	17	16	16	16	15	15	15	15	14
190	200	18	17	17	17	16	16	16	16	15
200	210	18	18	18	18	17	17	17	16	16
210	220	19	19	19	19	18	18	18	17	17
220	230	20	20	20	19	19	19	19	18	18
230	240	21	21	21	20	20	20	19	19	19
240	250	23	22	22	21	21	21	20	20	20
250	260	24	23	22	22	22	22	21	21	21
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340	350	42	31	31	30	30	30	30	29	29
350	360	44	32	32	31	31	31	30	30	30
360	370	46	33	33	32	32	32	31	31	31
370	380	47	34	33	33	33	33	32	32	32
380	390	49	35	34	34	34	33	33	33	33

390	400	51	36	35	35	35	34	34	34	34
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410	420	55	37	37	37	37	36	36	36	35
420	430	57	38	38	38	37	37	37	37	36
430	440	59	39	39	39	38	38	38	37	37
440	450	61	40	40	40	39	39	39	38	38
450	460	63	41	41	40	40	40	40	39	39
460	470	66	42	42	41	41	41	41	40	40
470	480	68	43	43	42	42	42	41	41	41
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740	750	127	70	69	68	68	68	67	67	67
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760	770	132	72	71	71	70	70	69	69	68
770	780	134	73	73	72	71	71	70	70	69
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790	800	139	76	75	74	73	73	72	72	71
800	810	142	77	76	75	75	74	73	73	72

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820	830	147	82	78	78	77	76	75	75	74
830	840	149	85	80	79	78	77	76	76	75
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860	870	157	93	84	83	81	81	80	79	78
870	880	160	95	85	84	83	82	81	80	80
880	890	162	98	87	85	84	83	82	82	81
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900	910	167	103	89	88	87	86	85	84	83
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980	990	188	123	100	99	98	97	96	94	93
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1100	1110	227	163	117	116	114	113	112	111	110
1110	1120	231	166	118	117	116	115	113	112	111
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1140	1150	242	177	122	121	120	119	118	116	115
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1200	1210	263	198	134	129	128	127	126	125	124
1210	1220	267	202	137	131	130	128	127	126	125
1220	1230	270	206	141	132	131	130	129	127	126

1230	1240	274	209	145	133	132	131	130	129	128
1240	1250	277	213	148	135	134	133	131	130	129
1250	1260	281	216	152	136	135	134	133	132	130
1260	1270	285	220	155	138	136	135	134	133	132
1270	1280	288	224	159	139	138	137	135	134	133
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1290	1300	295	231	166	142	141	139	138	137	136
1300	1310	299	234	170	143	142	141	140	138	137
1310	1320	302	238	173	144	143	142	141	140	139
1320	1330	306	241	177	146	145	144	142	141	140
1330	1340	310	245	180	147	146	145	144	143	141
1340	1350	313	249	184	149	147	146	145	144	143
1350	1360	317	252	187	150	149	148	146	145	144
1360	1370	320	256	191	151	150	149	148	147	146
1370	1380	324	259	195	153	152	150	149	148	147
1380	1390	327	263	198	154	153	152	151	149	148
1390	1400	331	266	202	155	154	153	152	151	150
1400	1410	335	270	205	157	156	155	153	152	151
1410	1420	338	274	209	158	157	156	155	154	152
1420	1430	342	277	213	160	158	157	156	155	154
1430	1440	345	281	216	161	160	159	157	156	155
1440	1450	349	285	222	162	161	160	159	158	157
1450	1460	352	289	225	164	163	161	160	159	158
1460	1470	356	293	231	168	164	163	162	160	159
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1480	1490	363	302	240	178	167	166	164	163	162
1490	1500	367	305	243	182	168	167	166	165	163
1500	1510	371	310	249	188	169	168	167	166	165
1510	1520	374	313	253	192	171	170	168	167	166
1520	1530	378	318	258	198	172	171	170	169	168
1530	1540	382	322	262	202	174	172	171	170	169
1540	1550	385	326	267	208	175	174	173	171	170
1550	1560	389	330	271	212	176	175	174	173	172
1560	1570	393	335	277	219	178	177	175	174	173
1570	1580	396	338	280	222	179	178	177	176	174
1580	1590	400	343	286	229	181	180	178	177	176
1590	1600	404	347	290	232	182	181	180	178	177
1600	1610	407	351	295	239	184	182	181	180	179
1610	1620	411	355	299	243	186	184	183	181	180
1620	1630	415	360	304	249	194	185	184	183	181
1630	1640	418	364	310	256	201	187	186	184	183
1640	1650	422	368	314	259	205	188	187	186	184

1650	1660	426	372	319	266	213	190	188	187	186
1660	1670	429	376	323	270	216	191	190	189	187
1670	1680	433	381	328	276	224	193	191	190	189
1680	1690	437	384	332	280	228	194	193	191	190
1690	1700	440	389	338	286	235	196	194	193	192
1700	1710	444	393	341	290	239	197	196	194	193
1710	1720	448	397	347	297	246	199	197	196	195
1720	1730	451	401	351	300	250	200	199	197	196
1730	1740	455	406	356	307	257	208	200	199	197
1740	1750	459	409	360	310	261	212	202	200	199
1750	1760	462	414	365	317	269	220	203	202	200
1760	1770	466	418	369	321	272	224	205	203	202
1770	1780	470	422	375	327	280	232	206	205	203
1780	1790	473	426	378	331	283	236	207	206	205
1790	1800	477	431	384	337	291	244	209	208	206
1800	1810	481	434	388	341	295	248	210	209	208
1810	1820	484	439	393	348	302	257	212	211	209
1820	1830	488	442	397	351	306	260	215	212	211
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1840	1850	495	451	406	362	317	272	228	215	214
1850	1860	499	455	412	368	324	281	237	216	215
1860	1870	503	459	415	372	328	284	241	218	217
1870	1880	506	464	421	378	336	293	250	219	218
1880	1890	510	468	427	385	343	301	260	221	219
1890	1900	514	472	430	389	347	305	263	222	221
1900	1910	517	477	436	395	354	314	273	232	222
1910	1920	521	481	440	399	358	317	277	236	224
1920	1930	525	485	446	406	366	326	286	247	225
1930	1940	529	489	449	410	370	330	290	250	227
1940	1950	533	493	453	413	374	334	294	254	228
1950	1960	537	497	457	417	378	338	298	258	230
1960	1970	541	501	461	421	381	342	302	262	231
1970	1980	544	505	465	425	385	345	306	266	233
1980	1990	548	509	469	429	389	349	310	270	234
1990	2000	552	512	473	433	393	353	313	274	236
2000	2010	556	516	476	437	397	357	317	277	238
2010	2020	560	520	480	441	401	361	321	281	241
2020	2030	564	524	484	444	405	365	325	285	245
2030	2040	568	528	488	448	408	369	329	289	249
2040	2050	572	532	492	452	412	373	333	293	253
2050	2060	575	536	496	456	416	376	337	297	257
2060	2070	579	539	500	460	420	380	340	301	261

2070	2080	583	543	504	464	424	384	344	304	265
2080	2090	587	547	507	468	428	388	348	308	269
2090	2100	591	551	511	471	432	392	352	312	272
2100	2110	595	555	515	475	436	396	356	316	276
2110	2120	599	559	519	479	439	400	360	320	280
2120	2130	602	563	523	483	443	403	364	324	284
2130	2140	606	567	527	487	447	407	367	328	288
2140	2150	610	570	531	491	451	411	371	332	292
2150	2160	614	574	534	495	455	415	375	335	296
2160	2170	618	578	538	499	459	419	379	339	299
2170	2180	622	582	542	502	463	423	383	343	303
2180	2190	626	586	546	506	466	427	387	347	307
2190	2200	630	590	550	510	470	430	391	351	311
2200	2210	633	594	554	514	474	434	395	355	315
2210	2220	637	597	558	518	478	438	398	359	319
2220	2230	641	601	561	522	482	442	402	362	323
2230	2240	645	605	565	526	486	446	406	366	327
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2250	2260	653	613	573	533	493	454	414	374	334
2260	2270	657	617	577	537	497	458	418	378	338
2270	2280	660	621	581	541	501	461	422	382	342
2280	2290	664	624	585	545	505	465	425	386	346
2290	2300	668	628	589	549	509	469	429	390	350
2300	2310	672	632	592	553	513	473	433	393	354
2310	2320	676	636	596	556	517	477	437	397	357
2320	2330	680	640	600	560	521	481	441	401	361
2330	2340	684	644	604	564	524	485	445	405	365
2340	2350	687	648	608	568	528	488	449	409	369
2350	2360	691	652	612	572	532	492	453	413	373
2360	2370	695	655	616	576	536	496	456	417	377
2370	2380	699	659	619	580	540	500	460	420	381
2380	2390	703	663	623	584	544	504	464	424	385
2390	2400	707	667	627	587	548	508	468	428	388
2400	2410	711	671	631	591	551	512	472	432	392
2410	2420	715	675	635	595	555	516	476	436	396
2420	2430	718	679	639	599	559	519	480	440	400
2430	2440	722	682	643	603	563	523	483	444	404
2440	2450	726	686	647	607	567	527	487	447	408
2450	2460	730	690	650	611	571	531	491	451	412
2460	2470	734	694	654	614	575	535	495	455	415
2470	2480	738	698	658	618	579	539	499	459	419
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2490	2500	745	706	666	626	586	546	507	467	427
2500	2510	749	710	670	630	590	550	510	471	431
2510	2520	753	713	674	634	594	554	514	475	435
2520	2530	757	717	677	638	598	558	518	478	439
2530	2540	761	721	681	642	602	562	522	482	442
2540	2550	765	725	685	645	606	566	526	486	446
2550	2560	769	729	689	649	609	570	530	490	450
2560	2570	773	733	693	653	613	573	534	494	454
2570	2580	776	737	697	657	617	577	538	498	458
2580	2590	780	740	701	661	621	581	541	502	462
2590	2600	784	744	705	665	625	585	545	505	466
2600	2610	788	748	708	669	629	589	549	509	470
2610	2620	792	752	712	672	633	593	553	513	473
2620	2630	796	756	716	676	636	597	557	517	477
2630	2640	800	760	720	680	640	601	561	521	481
2640	2650	803	764	724	684	644	604	565	525	485
2650	2660	807	767	728	688	648	608	568	529	489
2660	2670	811	771	732	692	652	612	572	533	493
2670	2680	815	775	735	696	656	616	576	536	497
2680	2690	819	779	739	699	660	620	580	540	500
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2700	2710	827	787	747	707	667	628	588	548	508
2710	2720	830	791	751	711	671	631	592	552	512
2720	2730	834	795	755	715	675	635	596	556	516
2730	2740	838	798	759	719	679	639	599	560	520
2740	2750	842	802	762	723	683	643	603	563	524
2750	2760	845	806	766	726	686	646	607	567	527
2760	2770	849	809	769	729	689	650	610	570	530
2770	2780	852	812	772	732	693	653	613	573	533
2780	2790	855	815	776	736	696	656	616	577	537
2790	2800	858	819	779	739	699	659	620	580	540
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2820	2830	868	828	789	749	709	669	629	589	550
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2840	2850	875	835	795	755	715	676	636	596	556
2850	2860	878	838	798	758	719	679	639	599	559
2860	2870	881	841	801	762	722	682	642	602	563
2870	2880	884	845	805	765	725	685	646	606	566
2880	2890	888	848	808	768	728	689	649	609	569
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2910	2920	897	858	818	778	738	698	658	619	579
2920	2930	901	861	821	781	741	702	662	622	582
2930	2940	904	864	824	784	745	705	665	625	585
2940	2950	907	867	827	788	748	708	668	628	589
2950	2960	910	870	831	791	751	711	671	632	592
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2980	2990	920	880	840	801	761	721	681	641	602
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3030	3040	936	896	857	817	777	737	697	658	618
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3080	3090	952	913	873	833	793	753	714	674	634
3090	3100	956	916	876	836	797	757	717	677	637
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3130	3140	969	929	889	849	809	770	730	690	650
3140	3150	972	932	892	853	813	773	733	693	654
3150	3160	975	935	896	856	816	776	736	697	657
3160	3170	978	939	899	859	819	779	740	700	660
3170	3180	982	942	902	862	822	783	743	703	663
3180	3190	985	945	905	866	826	786	746	706	666
3190	3200	988	948	909	869	829	789	749	710	670
3200	3210	991	952	912	872	832	792	753	713	673
3210	3220	995	955	915	875	835	796	756	716	676
3220	3230	998	958	918	879	839	799	759	719	679
3230	3240	1001	961	922	882	842	802	762	723	683
3240	3250	1004	965	925	885	845	805	766	726	686
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3260	3270	1011	971	931	891	852	812	772	732	692
3270	3280	1014	974	935	895	855	815	775	736	696
3280	3290	1017	978	938	898	858	818	779	739	699
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3340	3350	1037	997	957	917	878	838	798	758	718
3350	3360	1040	1000	960	921	881	841	801	761	722
3360	3370	1043	1004	964	924	884	844	805	765	725
3370	3380	1047	1007	967	927	887	848	808	768	728
3380	3390	1050	1010	970	930	891	851	811	771	731
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3440	3450	1072	1032	992	952	913	873	833	793	753
3450	3460	1076	1036	996	957	917	877	837	797	757
3460	3470	1080	1040	1000	961	921	881	841	801	762
3470	3480	1084	1044	1004	965	925	885	845	805	766
3480	3490	1088	1048	1008	969	929	889	849	809	770
3490	3500	1092	1052	1012	973	933	893	853	813	774
3500	3510	1096	1056	1017	977	937	897	857	818	778
3510	3520	1100	1060	1021	981	941	901	861	822	782
3520	3530	1104	1064	1025	985	945	905	865	826	786
3530	3540	1108	1068	1029	989	949	909	869	830	790
3540	3550	1112	1073	1033	993	953	913	873	834	794
3550	3560	1116	1077	1037	997	957	917	878	838	798
3560	3570	1120	1081	1041	1001	961	921	882	842	802
3570	3580	1124	1085	1045	1005	965	925	886	846	806
3580	3590	1128	1089	1049	1009	969	929	890	850	810
3590	3600	1133	1093	1053	1013	973	934	894	854	814
3600	3610	1137	1097	1057	1017	977	938	898	858	818
3610	3620	1141	1101	1061	1021	981	942	902	862	822
3620	3630	1145	1105	1065	1025	985	946	906	866	826
3630	3640	1149	1109	1069	1029	989	950	910	870	830
3640	3650	1153	1113	1073	1033	994	954	914	874	834
3650	3660	1157	1117	1077	1037	998	958	918	878	838
3660	3670	1161	1121	1081	1041	1002	962	922	882	842
3670	3680	1165	1125	1085	1045	1006	966	926	886	846
3680	3690	1169	1129	1089	1050	1010	970	930	890	851
3690	3700	1173	1133	1093	1054	1014	974	934	894	855
3700	3710	1177	1137	1097	1058	1018	978	938	898	859
3710	3720	1181	1141	1101	1062	1022	982	942	902	863
3720	3730	1185	1145	1106	1066	1026	986	946	906	867
3730	3740	1189	1149	1110	1070	1030	990	950	911	871
3740	3750	1193	1153	1114	1074	1034	994	954	915	875

3750	3760	1197	1157	1118	1078	1038	998	958	919	879
3760	3770	1201	1162	1122	1082	1042	1002	962	923	883
3770	3780	1205	1166	1126	1086	1046	1006	967	927	887
3780	3790	1209	1170	1130	1090	1050	1010	971	931	891
3790	3800	1213	1174	1134	1094	1054	1014	975	935	895
3800	3810	1217	1178	1138	1098	1058	1018	979	939	899
3810	3820	1222	1182	1142	1102	1062	1023	983	943	903
3820	3830	1226	1186	1146	1106	1066	1027	987	947	907
3830	3840	1230	1190	1150	1110	1070	1031	991	951	911
3840	3850	1234	1194	1154	1114	1074	1035	995	955	915
3850	3860	1238	1199	1160	1121	1082	1044	1005	966	927
3860	3870	1242	1203	1164	1125	1087	1048	1009	970	931
3870	3880	1246	1208	1170	1132	1095	1057	1019	981	943
3880	3890	1250	1213	1176	1139	1103	1066	1029	992	955
3890	3900	1254	1217	1180	1144	1107	1070	1033	996	959
3900	3910	1258	1223	1187	1151	1115	1079	1043	1007	971
3910	3920	1263	1227	1191	1155	1119	1083	1047	1011	975
3920	3930	1267	1232	1197	1162	1127	1092	1057	1022	987
3930	3940	1271	1236	1201	1166	1131	1096	1061	1026	991
3940	3950	1275	1241	1207	1173	1139	1105	1071	1037	1003
3950	3960	1279	1245	1211	1177	1143	1109	1075	1041	1007
3960	3970	1283	1250	1217	1184	1151	1118	1085	1052	1019
3970	3980	1287	1254	1221	1188	1155	1122	1089	1056	1023
3980	3990	1292	1259	1227	1195	1163	1131	1099	1067	1035
3990	4000	1296	1264	1231	1199	1167	1135	1103	1071	1039
4000	4010	1300	1269	1238	1206	1175	1144	1113	1082	1051
4010	4020	1304	1273	1242	1211	1179	1148	1117	1086	1055
4020	4030	1308	1278	1248	1218	1187	1157	1127	1097	1067
4030	4040	1312	1282	1252	1222	1191	1161	1131	1101	1071
4040	4050	1316	1287	1258	1229	1199	1170	1141	1112	1083
4050	4060	1320	1291	1262	1233	1204	1174	1145	1116	1087
4060	4070	1325	1296	1268	1240	1212	1183	1155	1127	1098
4070	4080	1329	1300	1272	1244	1216	1187	1159	1131	1103
4080	4090	1333	1306	1278	1251	1224	1196	1169	1142	1114
4090	4100	1337	1310	1282	1255	1228	1201	1173	1146	1119
4100	4110	1341	1315	1288	1262	1236	1209	1183	1157	1130
4110	4120	1345	1319	1293	1266	1240	1214	1187	1161	1135
4120	4130	1349	1324	1299	1273	1248	1223	1197	1172	1146
4130	4140	1354	1329	1305	1280	1256	1231	1207	1183	1158
4140	4150	1358	1333	1309	1284	1260	1236	1211	1187	1162
4150	4160	1362	1338	1315	1291	1268	1245	1221	1198	1174
4160	4170	1366	1343	1319	1296	1272	1249	1225	1202	1178

4170	4180	1370	1348	1325	1303	1280	1258	1235	1213	1190
4180	4190	1374	1352	1329	1307	1284	1262	1239	1217	1194
4190	4200	1378	1357	1335	1314	1292	1271	1249	1228	1206
4200	4210	1383	1361	1339	1318	1296	1275	1253	1232	1210
4210	4220	1387	1366	1346	1325	1304	1284	1263	1243	1222
4220	4230	1391	1370	1350	1329	1308	1288	1267	1247	1226
4230	4240	1395	1375	1356	1336	1316	1297	1277	1258	1238
4240	4250	1399	1379	1360	1340	1321	1301	1281	1262	1242
4250	4260	1403	1385	1366	1347	1329	1310	1291	1273	1254
4260	4270	1407	1389	1370	1351	1333	1314	1295	1277	1258
4270	4280	1412	1394	1376	1359	1341	1323	1305	1288	1270
4280	4290	1416	1398	1381	1363	1345	1328	1310	1292	1275
4290	4300	1421	1404	1387	1370	1354	1337	1320	1303	1287
4300	4310	1425	1408	1391	1375	1358	1341	1325	1308	1291
4310	4320	1429	1414	1398	1382	1366	1351	1335	1319	1303
4320	4330	1434	1418	1402	1387	1371	1355	1339	1323	1308
4330	4340	1438	1423	1409	1394	1379	1364	1349	1335	1320
4340	4350	1443	1428	1413	1398	1383	1369	1354	1339	1324
4350	4360	1447	1433	1419	1406	1392	1378	1364	1350	1336
4360	4370	1452	1438	1424	1410	1396	1382	1368	1355	1341
4370	4380	1456	1443	1430	1417	1404	1392	1379	1366	1353
4380	4390	1460	1449	1437	1425	1413	1401	1389	1377	1365
4390	4400	1465	1453	1441	1429	1417	1405	1393	1381	1369
4400	4410	1469	1458	1447	1436	1425	1414	1404	1393	1382
4410	4420	1474	1463	1452	1441	1430	1419	1408	1397	1386
4420	4430	1478	1468	1458	1448	1438	1428	1418	1408	1398
4430	4440	1483	1473	1463	1453	1443	1433	1423	1413	1403
4440	4450	1487	1478	1469	1460	1451	1442	1433	1424	1415
4450	4460	1491	1482	1473	1464	1455	1446	1437	1428	1419
4460	4470	1496	1488	1480	1472	1464	1456	1447	1439	1431
4470	4480	1500	1492	1484	1476	1468	1460	1452	1444	1436
4480	4490	1505	1498	1491	1483	1476	1469	1462	1455	1448
4490	4500	1509	1502	1495	1488	1481	1474	1467	1459	1452
4500	4510	1514	1507	1501	1495	1489	1483	1477	1471	1464
4510	4520	1518	1512	1506	1500	1493	1487	1481	1475	1469
4520	4530	1523	1517	1512	1507	1502	1497	1491	1486	1481
4530	4540	1527	1522	1517	1511	1506	1501	1496	1491	1485
4540	4550	1531	1527	1523	1519	1514	1510	1506	1502	1498
4550	4560	1536	1532	1527	1523	1519	1515	1510	1506	1502
4560	4570	1540	1537	1534	1530	1527	1524	1521	1517	1514
4570	4580	1545	1541	1538	1535	1532	1528	1525	1522	1519
4580	4590	1549	1547	1545	1542	1540	1538	1535	1533	1531

4590	4600	1554	1551	1549	1547	1544	1542	1540	1537	1535
4600	4610	1558	1557	1555	1554	1553	1551	1550	1549	1547
4610	4620	1562	1561	1560	1558	1557	1556	1554	1553	1552
4620	4630	1567	1566	1564	1563	1561	1560	1559	1557	1556
4630	4640	1571	1570	1569	1567	1566	1565	1563	1562	1561
4640	4650	1576	1574	1573	1572	1570	1569	1568	1566	1565
4650	4660	1580	1579	1577	1576	1575	1573	1572	1571	1569
4660	4670	1585	1583	1582	1581	1579	1578	1577	1575	1574
4670	4680	1589	1588	1586	1585	1584	1582	1581	1580	1578
4680	4690	1593	1592	1591	1589	1588	1587	1585	1584	1583
4690	4700	1598	1597	1595	1594	1593	1591	1590	1589	1587
4700	4710	1602	1601	1600	1598	1597	1596	1594	1593	1592
4710	4720	1607	1605	1604	1603	1601	1600	1599	1597	1596
4720	4730	1611	1610	1609	1607	1606	1604	1603	1602	1600
4730	4740	1616	1614	1613	1612	1610	1609	1608	1606	1605
4740	4750	1620	1619	1617	1616	1615	1613	1612	1611	1609
4750	4760	1625	1623	1622	1620	1619	1618	1616	1615	1614
4760	4770	1629	1628	1626	1625	1624	1622	1621	1620	1618
4770	4780	1633	1632	1631	1629	1628	1627	1625	1624	1623
4780	4790	1638	1636	1635	1634	1632	1631	1630	1628	1627
4790	4800	1642	1641	1640	1638	1637	1636	1634	1633	1632
4800	4810	1647	1645	1644	1643	1641	1640	1639	1637	1636
4810	4820	1651	1650	1648	1647	1646	1644	1643	1642	1640
4820	4830	1656	1654	1653	1652	1650	1649	1648	1646	1645
4830	4840	1660	1659	1657	1656	1655	1653	1652	1651	1649
4840	4850	1664	1663	1662	1660	1659	1658	1656	1655	1654
4850	4860	1669	1668	1666	1665	1663	1662	1661	1659	1658
4860	4870	1673	1672	1671	1669	1668	1667	1665	1664	1663
4870	4880	1678	1676	1675	1674	1672	1671	1670	1668	1667
4880	4890	1682	1681	1679	1678	1677	1675	1674	1673	1671
4890	4900	1687	1685	1684	1683	1681	1680	1679	1677	1676
4900	4910	1691	1690	1688	1687	1686	1684	1683	1682	1680
4910	4920	1695	1694	1693	1691	1690	1689	1687	1686	1685
4920	4930	1700	1699	1697	1696	1695	1693	1692	1691	1689
4930	4940	1704	1703	1702	1700	1699	1698	1696	1695	1694
4940	4950	1709	1707	1706	1705	1703	1702	1701	1699	1698
4950	4960	1713	1712	1711	1709	1708	1707	1705	1704	1702
4960	4970	1718	1716	1715	1714	1712	1711	1710	1708	1707
4970	4980	1722	1721	1719	1718	1717	1715	1714	1713	1711
4980	4990	1727	1725	1724	1722	1721	1720	1718	1717	1716
4990	5000	1731	1730	1728	1727	1726	1724	1723	1722	1720
5000	5010	1735	1734	1733	1731	1730	1729	1727	1726	1725

5010	5020	1740	1738	1737	1736	1734	1733	1732	1730	1729
5020	5030	1744	1743	1742	1740	1739	1738	1736	1735	1734
5030	5040	1749	1747	1746	1745	1743	1742	1741	1739	1738
5040	5050	1753	1752	1750	1749	1748	1746	1745	1744	1742
5050	5060	1758	1756	1755	1754	1752	1751	1750	1748	1747
5060	5070	1762	1761	1759	1758	1757	1755	1754	1753	1751
5070	5080	1766	1765	1764	1762	1761	1760	1758	1757	1756
5080	5090	1771	1770	1768	1767	1766	1764	1763	1761	1760
5090	5100	1775	1774	1773	1771	1770	1769	1767	1766	1765
5100	5110	1780	1778	1777	1776	1774	1773	1772	1770	1769
5110	5120	1784	1783	1781	1780	1779	1777	1776	1775	1773
5120	5130	1789	1787	1786	1785	1783	1782	1781	1779	1778
5130	5140	1793	1792	1790	1789	1788	1786	1785	1784	1782
5140	5150	1797	1796	1795	1793	1792	1791	1789	1788	1787
5150	5160	1802	1801	1799	1798	1797	1795	1794	1793	1791
5160	5170	1806	1805	1804	1802	1801	1800	1798	1797	1796
5170	5180	1811	1809	1808	1807	1805	1804	1803	1801	1800
5180	5190	1815	1814	1813	1811	1810	1809	1807	1806	1804
5190	5200	1820	1818	1817	1816	1814	1813	1812	1810	1809
5200	5210	1824	1823	1821	1820	1819	1817	1816	1815	1813
5210	5220	1829	1827	1826	1825	1823	1822	1820	1819	1818
5220	5230	1833	1832	1830	1829	1828	1826	1825	1824	1822
5230	5240	1837	1836	1835	1833	1832	1831	1829	1828	1827
5240	5250	1842	1840	1839	1838	1836	1835	1834	1832	1831
5250	5260	1846	1845	1844	1842	1841	1840	1838	1837	1836
5260	5270	1851	1849	1848	1847	1845	1844	1843	1841	1840
5270	5280	1855	1854	1852	1851	1850	1848	1847	1846	1844
5280	5290	1860	1858	1857	1856	1854	1853	1852	1850	1849
5290	5300	1864	1863	1861	1860	1859	1857	1856	1855	1853
5300	5310	1868	1867	1866	1864	1863	1862	1860	1859	1858
5310	5320	1873	1872	1870	1869	1868	1866	1865	1863	1862
5320	5330	1877	1876	1875	1873	1872	1871	1869	1868	1867
5330	5340	1882	1880	1879	1878	1876	1875	1874	1872	1871
5340	5350	1886	1885	1884	1882	1881	1879	1878	1877	1875
5350	5360	1891	1889	1888	1887	1885	1884	1883	1881	1880
5360	5370	1895	1894	1892	1891	1890	1888	1887	1886	1884
5370	5380	1899	1898	1897	1895	1894	1893	1891	1890	1889
5380	5390	1904	1903	1901	1900	1899	1897	1896	1895	1893
5390	5400	1908	1907	1906	1904	1903	1902	1900	1899	1898
5400	5410	1913	1911	1910	1909	1907	1906	1905	1903	1902
5410	5420	1917	1916	1915	1913	1912	1911	1909	1908	1906
5420	5430	1922	1920	1919	1918	1916	1915	1914	1912	1911

5430	5440		1926	1925	1923	1922	1921	1919	1918	1917	1915
5440	5450		1931	1929	1928	1927	1925	1924	1922	1921	1920
5450	5460		1935	1934	1932	1931	1930	1928	1927	1926	1924
5460	5470		1939	1938	1937	1935	1934	1933	1931	1930	1929
5470	5480		1944	1942	1941	1940	1938	1937	1936	1934	1933
5480	5490		1948	1947	1946	1944	1943	1942	1940	1939	1938
5490	5500		1953	1951	1950	1949	1947	1946	1945	1943	1942
5500	5510		1957	1956	1954	1953	1952	1950	1949	1948	1946
5510	5520		1962	1960	1959	1958	1956	1955	1954	1952	1951
5520	5530		1966	1965	1963	1962	1961	1959	1958	1957	1955
5530	5540		1970	1969	1968	1966	1965	1964	1962	1961	1960
5540	5550		1975	1974	1972	1971	1970	1968	1967	1965	1964
5550	5560		1979	1978	1977	1975	1974	1973	1971	1970	1969
5560	5570		1984	1982	1981	1980	1978	1977	1976	1974	1973
5570	5580		1988	1987	1986	1984	1983	1981	1980	1979	1977
5580	5590		1993	1991	1990	1989	1987	1986	1985	1983	1982
5590	5600		1997	1996	1994	1993	1992	1990	1989	1988	1986
5600	5610		2001	2000	1999	1997	1996	1995	1993	1992	1991
5610	5620		2006	2005	2003	2002	2001	1999	1998	1997	1995
5620	5630		2010	2009	2008	2006	2005	2004	2002	2001	2000
5630	5640		2015	2013	2012	2011	2009	2008	2007	2005	2004
5640	5650		2019	2018	2017	2015	2014	2013	2011	2010	2008
5650	5660		2024	2022	2021	2020	2018	2017	2016	2014	2013
5660	5670		2028	2027	2025	2024	2023	2021	2020	2019	2017
5670	5680		2033	2031	2030	2029	2027	2026	2024	2023	2022
5680	5690		2037	2036	2034	2033	2032	2030	2029	2028	2026
5690	5700		2041	2040	2039	2037	2036	2035	2033	2032	2031
5700	5710		2046	2045	2043	2042	2040	2039	2038	2036	2035
5710	5720		2050	2049	2048	2046	2045	2044	2042	2041	2040
5720	5730		2055	2053	2052	2051	2049	2048	2047	2045	2044
5730	5740		2059	2058	2056	2055	2054	2052	2051	2050	2048
5740	5750		2064	2062	2061	2060	2058	2057	2056	2054	2053
5750	5760		2068	2067	2065	2064	2063	2061	2060	2059	2057
5760	5770		2072	2071	2070	2068	2067	2066	2064	2063	2062
5770	5780		2077	2076	2074	2073	2072	2070	2069	2067	2066
5780	5790		2081	2080	2079	2077	2076	2075	2073	2072	2071
5790	5800		2086	2084	2083	2082	2080	2079	2078	2076	2075

## COMMENTS ON THE USE OF THE COMBINED TAX TABLES

### Appendix IX-H

*Limitations of this Table* – This table should not be used if either parent: (1) has income from non-wage income that is not subject to the same taxes as wages (such as alimony or Social Security disability – see Appendix IX-B), (2) claims mandatory retirement contributions, or (3) has a married marital status for tax withholding purposes.

*Withholding Taxes vs. Year-End Tax Obligations* – This table is based on withholding rates and the federal Child Tax Credit. It is meant to provide an estimate of how much after-tax income an individual has available to pay child support at the end of each week. Year-end tax obligations, adjustments, credits, and tax refunds (e.g., earned income credit, filing as head of household, personal deductions for children) are not considered in this table and may result in taxes that differ from the amount withheld by an employer. When applying the Support Guidelines, withholding taxes and/or net income should be adjusted based on year-end tax obligations after reviewing tax returns if such an adjustment would more accurately reflect net income available to either parent in future years.

*Eligible Dependents* – For eligibility regarding the number of dependents qualifying for the federal Child Tax Credit, see Appendix IX-B, Line 2a and IRS Form W-4 2021.

*Self-Employed Persons* – This table gives the withholding tax for employees who are paid wages for their services. It assumes that the employer is paying a portion of the Social Security and Medicare taxes for the employee (7.65%). To estimate the combined tax for self-employed persons earning no more than \$2,746 per week (\$142,800 per year), multiply gross taxable weekly income by 0.0765 and add the result to the table amount. For persons earning above \$2,746 per week, multiply gross taxable weekly income by .0145 (Medicare), add \$170 (Social Security max), and add the sum to the table amount. **IMPORTANT:** Although this formula will provide an estimate of self-employment income taxes, a careful review of the most recent personal and business tax returns will provide a more accurate tax figure for self-employed persons. Also, see IRS Pubs 505 and SE and App. IX-B (Determining Income).

*Non-Taxable Income* – Some forms of income (e.g., Social Security, VA, Worker's Comp) are not subject to state or federal income tax. Such income is added to taxable income after combined withholding taxes are deducted. Do not combine non-taxable income with gross taxable income when using these tables. (See Appendix IX-B – Determining Income).

*Alimony Income* – Alimony ordered after December 31, 2018, received or paid, is neither taxable nor deductible for federal income tax purposes. Alimony ordered prior to January 1, 2019 received may be subject to federal and state income tax, but not Social Security or Medicare tax. If the combined tax tables are used for gross income that includes taxable alimony, deduct the Social Security/Medicare tax for the amount of the alimony (0.0765) from the combined withholding tax.

*Social Security Tax (FICA)* – This table gives the correct amount of combined withholding tax only if wages for income tax and Social Security are the same. The Social Security tax



withholding rate for wage earners is 0.062. The maximum amount of Social Security tax for one year \$8,854/year or \$170/week is averaged into the table for income ranges above \$142,800. Refer to IRS Publications 15 and 15-T for more information. Note that some forms of income are not subject to Social Security and Medicare tax (interest income, rents, dealing in property). These forms of income should be excluded from gross income when estimating a parent's taxes. Also, self-employed persons must pay the full Social Security/Medicare tax on 92.35% of their gross income. (See IRS Form Schedule SE.)

*Medicare Tax* – This table accounts for Medicare tax and "Additional Medicare Tax." The Medicare tax withholding rate for wage earners is 0.0145 for all incomes. In addition to the 1.45% Medicare tax, there is an Additional Medicare Tax of 0.9% applied to wages in excess of \$200,000. The 0.9% Additional Medicare Tax also applies to self-employed persons (there is no employer share of Additional Medicare Tax).

*Federal Income Tax* – This table includes federal income tax withholding rates as published by the IRS (see Publications 15 and 15-T (Circular E) for use in 2021. To determine the amount of federal income tax for incomes greater than those shown in this table, refer to the same IRS Publications.

*New Jersey Income Tax* – This table includes tax withholding rates published by the NJ Division of Taxation (see NJ-WT, effective January 1, 2021). To determine New Jersey withholding tax for incomes greater than those shown in this table, refer to this same NJ-WT publication.

**Note:** Appendix IX-H amended to be effective June 1, 2021.

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## SIGNIFICANT CASES

### *Wunsch-Deffler v. Deffler*, 406 N.J. Super. 505 (Ch. Div. 2009)

When the parties share an equal number of overnights with the child, the following three-step procedure should be used to adjust the paying parent's child support obligation to account for the fact that both parties are responsible for paying the child's 'controlled expenses' during their parenting time: The first step is to multiply the basic child support amount determined in the shared parenting worksheet of the child support guidelines by the payor's income share. Second, this figure should be multiplied by 25 percent, which represents the controlled expenses assumed by the guidelines. Third, the product of this calculation is then subtracted from the paying parent's adjusted basic child support amount, as reflected in the worksheet.

### *Gilligan v. Gilligan*, 428 N.J. Super. 69 (Ch. Div. 2012), disapproved of by *Gormley v. Gormley*, 462 N.J. Super. 433 (2019)

A child support obligor is not relieved of his obligation to pay child support and repay arrears based solely on a determination of disability by the Social Security Administration.

### *Gormley v. Gormley*, 462 N.J. Super. 433 (2019)

Social Security Administration's adjudication of disability constituted a prima facie showing that wife was disabled for the purpose of determining whether to impute income to her.

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## 8. Uniform Interstate Family Support Act (UIFSA)

Enacted on March 5, 1998, UIFSA replaces the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). This uniform act applies to all proceedings to establish, enforce, or modify a support order, including the authority to establish paternity. UIFSA cures jurisdictional conflicts by the creation of long-arm jurisdiction under the following circumstances:

### **2A:4-30.125. Definitions**

Definitions.

As used in this act:

- a. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
- b. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.
- c. "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

- d. “Duty of support” means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
- e. “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and: (1) which has been declared under the law of the United States to be a foreign reciprocating country; (2) which has established a reciprocal arrangement for child support with this State as provided in section 24 of this act; (3) which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this act; or (4) in which the Convention is in force with respect to the United States.
- f. “Foreign support order” means a support order of a foreign tribunal.
- g. “Foreign tribunal” means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.
- h. “Home state” means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a complaint or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.
- i. “Income” includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State.
- j. “Income-withholding order” means an order or other legal process directed to an obligor’s employer, as defined by the “New Jersey Child Support Program Improvement Act,” P.L.1998, c. 1 (C.2A:17-56.7a et al.), to withhold support from the income of the obligor.
- k. “Initiating tribunal” means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.
- l. “Issuing foreign country” means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.
- m. “Issuing state” means the state in which a tribunal issues a support order or a judgment determining parentage of a child.
- n. “Issuing tribunal” means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

- o. “Law” includes decisional and statutory law and rules and regulations having the force of law.
- p. “Obligee” means: (1) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued; (2) a foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support; (3) an individual seeking a judgment determining parentage of the individual’s child; or (4) a person that is a creditor under Article 7 of this act (the Convention).
- q. “Obligor” means an individual, or the estate of a decedent that: (1) owes or is alleged to owe a duty of support; (2) is alleged but has not been adjudicated to be a parent of a child; (3) is liable under a support order; or (4) is a debtor in a proceeding under Article 7 of this act (the Convention).
- r. “Outside this State” means a location in another state or a country other than the United States, whether or not the country is a foreign country.
- s. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- t. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- u. “Register” means to file in a tribunal of this State a support order or judgment determining parentage of a child issued in another state or a foreign country.
- v. “Registering tribunal” means a tribunal in which a support order or judgment determining parentage of a child is registered.
- w. “Responding state” means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.
- x. “Responding tribunal” means the authorized tribunal in a responding state or foreign country.
- y. “Spousal support order” means a support order for a spouse or former spouse of the obligor.
- z. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.
- aa. “State IV-D Agency” means the Department of Human Services.

bb. “Support enforcement agency” means a public official, governmental entity, or private agency authorized to: (1) seek enforcement of support orders or laws relating to the duty of support; (2) seek establishment or modification of child support; (3) request determination of parentage of a child; (4) attempt to locate obligors or their assets; or (5) request determination of the controlling child support order.

cc. “Support order” means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney’s fees, and other relief.

dd. “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.

#### **2A:4-30.126. Tribunal and enforcement agency of State**

State tribunal and support enforcement agency.

- a. The Superior Court, Chancery Division, Family Part is the tribunal of this State.
- b. The Probation Division of the Superior Court and the State IV-D Agency are the support enforcement agencies of this State.

#### **2A:4-30.127. Remedies as cumulative; construction of act**

Remedies cumulative.

- a. Remedies provided by this act are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.
- b. This act does not:
  - (1) provide the exclusive method of establishing or enforcing a support order under the law of this State; or
  - (2) grant a tribunal of this State jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this act.

#### **2A:4-30.128. Application of act to foreign support order, tribunal, or resident; comity; application of Article 7**

Application of act to resident of foreign country and foreign support proceeding.

- a. A tribunal of this State shall apply Articles 1 through 6 of this act and, as applicable, Article 7 of this act, to a support proceeding involving:
- (1) a foreign support order;
  - (2) a foreign tribunal; or
  - (3) an obligee, obligor, or child residing in a foreign country.
- b. A tribunal of this State that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 6 of this act.
- c. Article 7 applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 of this act is inconsistent with Articles 1 through 6 of this act, Article 7 of this act controls.

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## SIGNIFICANT CASES

### ***Youssefi v. Youssefi*, 328 N.J. Super. 12 (App. Div. 2000)**

New Jersey will have continuing jurisdiction even though the former wife moved with the children to Utah and the former husband moved to France. A New Jersey order was the only order setting the former husband's child support obligation.

### ***Sharp v. Sharp*, 336 N.J. Super. 492 (App. Div. 2001)**

The New Jersey courts lacked jurisdiction over the former husband, who resided in California, when his contacts with New Jersey were minimal, and did not cause any effect in New Jersey sufficient to constitute minimum contacts.

### ***Marshak v. Weser*, 390 N.J. Super. 387 (App. Div. 2007)**

The court held that a tribunal of this state cannot modify any aspect of a child support order that may not be modified under the law of the issuing state. In this case, Pennsylvania law did not require the payment of college expenses for a child who reaches the age of 18. Even though the child had moved to New Jersey, New Jersey could not modify the order to require the father to pay for college.

### ***Pek v. Prots*, 409 N.J. Super. 358 (Ch. Div. 2008)**

Pursuant to Uniform Interstate Family Support Act (UIFSA), New Jersey courts retained continuing exclusive jurisdiction to modify a spousal support order that was established in New Jersey pursuant to the parties' judgment of divorce and property settlement agreement (PSA), despite provision in parties' PSA that Ohio should exercise all future jurisdiction over parties' post-judgment matrimonial matters; UIFSA superseded the parties' PSA forum selection clause in relation to spousal support modification, and enforcing the parties' agreement would violate public policy by leaving both ex-wife and ex-husband with no forum in which to seek modification of the spousal support obligation.

## E. CONTRIBUTION TO CHILDREN'S COLLEGE EDUCATION

New Jersey is in the minority of states that grant the judge discretion to require divorced or separated parents to pay for their children's college education. There is no fixed date for emancipation of children. Emancipation may extend beyond a child's 18<sup>th</sup> birthday and beyond graduation from high school. It is a child's reliance on their parents to complete their education or training that extends the period of unemancipation. The public policy and social goal of the family court is to encourage the higher education and ultimate success of children. Divorce or separation of parents should not preclude a child's education or training. If a child has the ability and inclination to seek higher education, the parents are usually required to contribute to the extent they are financially able.

The case of *Newburgh v. Arrigo*, 88 N.J. 529 (1982), has established the following criteria and factors for the court's consideration:

- 1) whether the parent, if still living with the child, would have contributed toward the cost of the requested higher education;
- 2) the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education;
- 3) the amount of the contribution sought by the child for the cost of higher education;
- 4) the ability of the parent to pay that cost;
- 5) the relationship of the requested contribution to the kind of school or course of study sought by the child;
- 6) the financial resources of both parents;
- 7) the commitment to and aptitude of the child for the requested education;
- 8) the financial resources of the child, including assets owned individually or held in custodianship or trust;
- 9) the ability of the child to earn income during the school year or on vacation;
- 10) the availability of financial aid in the form of college grants and loans;
- 11) the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance; and
- 12) the relationship of the education requested to any prior training and to the overall long-range goals of the child.

The court will only entertain an application for college contribution when the issue is ripe for adjudication. However, the parties are free to negotiate the college issue even before the children approach college age. In those instances, it is better practice to use a general clause in the property

settlement agreement that acknowledges the party's obligation to contribute but sets the actual dollar amount or percentage only when the costs are known and the parties' incomes are known. If the agreement is silent and the case law changes, the future obligation may no longer exist.

The amount of contribution and the selection of colleges are often contested. The courts will frequently weigh the child's academic ability against the selection of schools and the associated cost. Most judges will impose a requirement on the child to obtain all available loans, scholarships, grants, and aid. In some cases where there is insufficient income of the parents or the child is average or below average academically, the contribution will be limited to a county college rate. Similarly, the courts may limit the parent's contribution to the rates charged by New Jersey state universities, sometimes referred to as the 'Rutger's rate.' Consistent with the criteria in *Newburgh v. Arrigo*, the selection of schools must be discussed, in advance, with the parent being asked to contribute.

College contribution may have an impact upon the level of child support being paid. First, the child support guidelines do not apply to college-aged students. As a result, child support is usually renegotiated when a child attends college. The child support guidelines must first be applied to children under the age of 18. After that is computed, the parents' incomes are analyzed to determine their ability to contribute to college. Of course, if a child remains in the custodial parent's home while attending college the need for child support continuing at pre-college levels remains almost the same. Conversely, if a child lives outside the home of the custodial parent, the child support previously paid should be adjusted to reflect the reduced cost to the custodial parent. Factors to consider include the time spent at school and time spent at the custodial parent's home on weekends, holidays and summer vacation. Appendix IX-A to the child support guidelines provides:

18. College or Other Post-Secondary Education Expenses. These child support guidelines are intended to apply to children who are less than 18 years of age or more than 18 years of age but still attending high school or a similar secondary education institution. For the reasons set forth below, the Appendix IX-F support schedules shall not be used to determine parental contributions for college or other post-secondary education (hereafter college) expenses nor the amount of support for a child attending college. The child support guidelines may be applied in the court's discretion to support for students over 18 years of age who commute to college.

Duplicate Expenditures. Many costs associated with college attendance (e.g., room, board, transportation) are included in the Appendix IX-F child support guidelines awards. Thus, a parent who is ordered to pay a guidelines-based child support award and part of the child's college expenses is forced to make duplicate expenditures for the child (i.e., the PAR would be paying a share of the cost of food for the child to primary household as well as a share of the



cost of a meal plan or food allowance while the child is attending college). As a result, the level of total spending on the child would exceed that of intact families in a similar economic situation and the PAR's share of the total spending on the child would increase beyond his or her income share. Requiring duplicate expenditures for a child is inconsistent with spending patterns of intact families and the economic theory of the child's support guidelines.

In 2009, the United States Department of Education adopted new regulations for the implementation of Family Educational Rights and Privacy Act (FERPA) restrictions. To the benefit of *Newburgh* litigants, education institutions may disclose information without a student's consent "to parents of a dependent student as defined in section 152 of the Internal Revenue Code of 1954." 34 C.F.R. §99.31(a)(8). For institutions within the reach of a subpoena power (or in cases where the parties have sufficient resources to conduct discovery outside of New Jersey), the school can make the same disclosures "to comply with a judicial order or lawfully issues subpoena." 34 C.F.R. §99.31(a)(9).

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## SIGNIFICANT CASES

### ***Moss v. Nedas*, 289 N.J. Super. 352 (Ch. Div. 1996)**

Denied the custodial parent's request to compel the non-custodial parent to contribute to their child's college where there had been no prior discussion concerning the selection of schools and associated costs.

### ***Gac v. Gac*, 186 N.J. 535 (2006)**

A non-custodial parent who was not consulted with regard to child's continued education, has no relationship with the child because the child terminated the relationship, and was not asked to contribute to college until after she completed her education, had no obligation to contribute to college loans.

### ***Van Brunt v. Van Brunt*, 419 N.J. Super. 327, (Ch. Div. 2010)**

A student and a custodial parent have an obligation to provide the non-custodial parent with ongoing proof of the student's enrollment, course credits and grades as a condition for receipt of ongoing child support and college contribution.

## F. ALIMONY

### 1. Establishment of Alimony

New Jersey permits four types of alimony: open duration alimony, limited duration alimony, rehabilitative alimony, or reimbursement alimony, or a combination thereof.

#### **2A:34-23. Orders as to alimony or maintenance of parties and care, custody, education, and maintenance of children**

Pending any matrimonial action or action for dissolution of a civil union brought in this State or elsewhere, or after judgment of divorce or dissolution or maintenance, whether obtained in this State or elsewhere, the court may make such order as to the alimony or maintenance of the parties, and also as to the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just, and require reasonable security for the due observance of such orders, including, but not limited to, the creation of trusts or other security devices, to assure payment of reasonably foreseeable medical and educational expenses. Upon neglect or refusal to give such reasonable security, as shall be required, or upon default in complying with any such order, the court may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just; or the performance of the said orders may be enforced by other ways according to the practice of the court. Orders so made may be revised and altered by the court from time to time as circumstances may require.

The court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just. In considering an application, the court shall review the financial capacity of each party to conduct the litigation and the criteria for award of counsel fees that are then pertinent as set forth by court rule. Whenever any other application is made to a court which includes an application for pendente lite or final award of counsel fees, the court shall determine the appropriate award for counsel fees, if any, at the same time that a decision is rendered on the other issue then before the court and shall consider the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party. The court may not order a retainer or counsel fee of a party convicted of an attempt or conspiracy to murder the other party to be paid by the party who was the intended victim of the attempt or conspiracy.

a. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the court in those cases not governed by court rule shall consider, but not be limited to, the following factors:

- (1) Needs of the child;
- (2) Standard of living and economic circumstances of each parent;
- (3) All sources of income and assets of each parent;
- (4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment;
- (5) Need and capacity of the child for education, including higher education;
- (6) Age and health of the child and each parent;
- (7) Income, assets and earning ability of the child;
- (8) Responsibility of the parents for the court-ordered support of others;
- (9) Reasonable debts and liabilities of each child and parent; and
- (10) Any other factors the court may deem relevant.

The obligation to pay support for a child who has not been emancipated by the court shall not terminate solely on the basis of the child's age if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on a parent. The obligation to pay support for that child shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent. However, in assessing the financial obligation of the parent, the court shall consider, in addition to the factors enumerated in this section, the child's eligibility for public benefits and services for people with disabilities and may make such orders, including an order involving the creation of a trust, as are necessary to promote the well-being of the child.

As used in this section "severe mental or physical incapacity" shall not include a child's abuse of, or addiction to, alcohol or controlled substances.

b. In all actions brought for divorce, dissolution of a civil union, divorce from bed and board, legal separation from a partner in a civil union couple or nullity the court may award one or more of the following types of alimony: open durational alimony; rehabilitative alimony; limited duration alimony or reimbursement alimony to either party. In so doing the court shall consider, but not be limited to, the following factors:

- (1) The actual need and ability of the parties to pay;
- (2) The duration of the marriage or civil union;

- (3) The age, physical and emotional health of the parties;
- (4) The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;
- (5) The earning capacities, educational levels, vocational skills, and employability of the parties;
- (6) The length of absence from the job market of the party seeking maintenance;
- (7) The parental responsibilities for the children;
- (8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;
- (9) The history of the financial or non-financial contributions to the marriage or civil union by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;
- (10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;
- (11) The income available to either party through investment of any assets held by that party;
- (12) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;
- (13) The nature, amount, and length of pendente lite support paid, if any; and
- (14) Any other factors which the court may deem relevant.

In each case where the court is asked to make an award of alimony, the court shall consider and assess evidence with respect to all relevant statutory factors. If the court determines that certain factors are more or less relevant than others, the court shall make specific written findings of fact and conclusions of law on the reasons why the court reached that conclusion. No factor shall be elevated in importance over any other factor unless the court finds otherwise, in which case the court shall make specific written findings of fact and conclusions of law in that regard.

When a share of a retirement benefit is treated as an asset for purposes of equitable distribution, the court shall not consider income generated thereafter by that share for purposes of determining alimony.

c. In any case in which there is a request for an award of alimony, the court shall consider and make specific findings on the evidence about all of the statutory factors set forth in subsection b. of this section.

For any marriage or civil union less than 20 years in duration, the total duration of alimony shall not, except in exceptional circumstances, exceed the length of the marriage or civil union. Determination of the length and amount of alimony shall be made by the court pursuant to consideration of all of the statutory factors set forth in subsection b. of this section. In addition to those factors, the court shall also consider the practical impact of the parties' need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage or civil union, to which both parties are entitled, with neither party having a greater entitlement thereto.

Exceptional circumstances which may require an adjustment to the duration of alimony include:

- (1) The ages of the parties at the time of the marriage or civil union and at the time of the alimony award;
- (2) The degree and duration of the dependency of one party on the other party during the marriage or civil union;
- (3) Whether a spouse or partner has a chronic illness or unusual health circumstance;
- (4) Whether a spouse or partner has given up a career or a career opportunity or otherwise supported the career of the other spouse or partner;
- (5) Whether a spouse or partner has received a disproportionate share of equitable distribution;
- (6) The impact of the marriage or civil union on either party's ability to become self-supporting, including but not limited to either party's responsibility as primary caretaker of a child;
- (7) Tax considerations of either party;
- (8) Any other factors or circumstances that the court deems equitable, relevant and material.

An award of alimony for a limited duration may be modified based either upon changed circumstances, or upon the nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of such an award, but shall not modify the length of the term except in unusual circumstances.

In determining the length of the term, the court shall consider the length of time it would reasonably take for the recipient to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.

d. Rehabilitative alimony shall be awarded based upon a plan in which the payee shows the scope of rehabilitation, the steps to be taken, and the time frame, including a period of employment during which rehabilitation will occur. An award of rehabilitative alimony may be modified based either upon changed circumstances, or upon the nonoccurrence of circumstances that the court found would occur at the time of the rehabilitative award.

This section is not intended to preclude a court from modifying alimony awards based upon the law.

e. Reimbursement alimony may be awarded under circumstances in which one party supported the other through an advanced education, anticipating participation in the fruits of the earning capacity generated by that education. An award of reimbursement alimony shall not be modified for any reason.

f. Except as provided in subsection i., nothing in this section shall be construed to limit the court's authority to award open durational alimony, limited duration alimony, rehabilitative alimony or reimbursement alimony, separately or in any combination, as warranted by the circumstances of the parties and the nature of the case.

g. In all actions for divorce or dissolution other than those where judgment is granted solely on the ground of separation the court may consider also the proofs made in establishing such ground in determining an amount of alimony or maintenance that is fit, reasonable and just. In all actions for divorce, dissolution of civil union, divorce from bed and board, or legal separation from a partner in a civil union couple where judgment is granted on the ground of institutionalization for mental illness the court may consider the possible burden upon the taxpayers of the State as well as the ability of the party to pay in determining an amount of maintenance to be awarded.

h. Except as provided in this subsection, in all actions where a judgment of divorce, dissolution of civil union, divorce from bed and board or legal separation from a partner in a civil union couple is entered the court may make such award or awards to the parties, in addition to alimony and maintenance, to effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage or civil union. However, all such property, real, personal or otherwise, legally or beneficially acquired during the marriage or civil union by either party by way of gift, devise, or intestate succession shall not be subject to equitable distribution, except that interspousal gifts or gifts between partners in a civil union couple shall be subject to equitable distribution. The court may not make an award concerning the equitable distribution of property on behalf of a party convicted of an attempt or conspiracy to murder the other party.

i. No person convicted of Murder, N.J.S.2C:11-3; Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2; Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a substantially similar offense under the laws of another jurisdiction, may receive alimony if: (1) the crime results in death or serious bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a family member of a divorcing party; and (2) the crime was committed after the marriage or civil union. A person convicted of an attempt or conspiracy to commit murder may not receive alimony from the person who was the intended victim of the attempt or conspiracy. Nothing in this subsection shall be construed to limit the authority of the court to deny alimony for other bad acts.

As used in this subsection:

“Family member” means a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage or civil union, or adoption.

j. Alimony may be modified or terminated upon the prospective or actual retirement of the obligor.

(1) There shall be a rebuttable presumption that alimony shall terminate upon the obligor spouse or partner attaining full retirement age, except that any arrearages that have accrued prior to the termination date shall not be vacated or annulled. The court may set a different alimony termination date for good cause shown based on specific written findings of fact and conclusions of law.

The rebuttable presumption may be overcome if, upon consideration of the following factors and for good cause shown, the court determines that alimony should continue:

- (a) The ages of the parties at the time of the application for retirement;
- (b) The ages of the parties at the time of the marriage or civil union and their ages at the time of entry of the alimony award;
- (c) The degree and duration of the economic dependency of the recipient upon the payor during the marriage or civil union;
- (d) Whether the recipient has foregone or relinquished or otherwise sacrificed claims, rights or property in exchange for a more substantial or longer alimony award;
- (e) The duration or amount of alimony already paid;
- (f) The health of the parties at the time of the retirement application;
- (g) Assets of the parties at the time of the retirement application;
- (h) Whether the recipient has reached full retirement age as defined in this section;

- (i) Sources of income, both earned and unearned, of the parties;
- (j) The ability of the recipient to have saved adequately for retirement; and
- (k) Any other factors that the court may deem relevant.

If the court determines, for good cause shown based on specific written findings of fact and conclusions of law, that the presumption has been overcome, then the court shall apply the alimony factors as set forth in subsection b. of this section to the parties' current circumstances in order to determine whether modification or termination of alimony is appropriate. If the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective.

(2) Where the obligor seeks to retire prior to attaining the full retirement age as defined in this section, the obligor shall have the burden of demonstrating by a preponderance of the evidence that the prospective or actual retirement is reasonable and made in good faith. Both the obligor's application to the court for modification or termination of alimony and the obligee's response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification.

In order to determine whether the obligor has met the burden of demonstrating that the obligor's prospective or actual retirement is reasonable and made in good faith, the court shall consider the following factors:

- (a) The age and health of the parties at the time of the application;
- (b) The obligor's field of employment and the generally accepted age of retirement for those in that field;
- (c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;
- (d) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;
- (e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;
- (f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;
- (g) The obligee's level of financial independence and the financial impact of the obligor's retirement upon the obligee; and



(h) Any other relevant factors affecting the obligor's decision to retire and the parties' respective financial positions.

If the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective.

(3) When a retirement application is filed in cases in which there is an existing final alimony order or enforceable written agreement established prior to the effective date of this act, the obligor's reaching full retirement age as defined in this section shall be deemed a good faith retirement age. Upon application by the obligor to modify or terminate alimony, both the obligor's application to the court for modification or termination of alimony and the obligee's response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. In making its determination, the court shall consider the ability of the obligee to have saved adequately for retirement as well as the following factors in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate:

- (a) The age and health of the parties at the time of the application;
- (b) The obligor's field of employment and the generally accepted age of retirement for those in that field;
- (c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;
- (d) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;
- (e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;
- (f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;
- (g) The obligee's level of financial independence and the financial impact of the obligor's retirement upon the obligee; and
- (h) Any other relevant factors affecting the parties' respective financial positions.

(4) The assets distributed between the parties at the time of the entry of a final order of divorce or dissolution of a civil union shall not be considered by the court for purposes of determining the obligor's ability to pay alimony following retirement.

k. When a non-self-employed party seeks modification of alimony, the court shall consider the following factors:

- (1) The reasons for any loss of income;
- (2) Under circumstances where there has been a loss of employment, the obligor's documented efforts to obtain replacement employment or to pursue an alternative occupation;
- (3) Under circumstances where there has been a loss of employment, whether the obligor is making a good faith effort to find remunerative employment at any level and in any field;
- (4) The income of the obligee; the obligee's circumstances; and the obligee's reasonable efforts to obtain employment in view of those circumstances and existing opportunities;
- (5) The impact of the parties' health on their ability to obtain employment;
- (6) Any severance compensation or award made in connection with any loss of employment;
- (7) Any changes in the respective financial circumstances of the parties that have occurred since the date of the order from which modification is sought;
- (8) The reasons for any change in either party's financial circumstances since the date of the order from which modification is sought, including, but not limited to, assessment of the extent to which either party's financial circumstances at the time of the application are attributable to enhanced earnings or financial benefits received from any source since the date of the order;
- (9) Whether a temporary remedy should be fashioned to provide adjustment of the support award from which modification is sought, and the terms of any such adjustment, pending continuing employment investigations by the unemployed spouse or partner; and
- (10) Any other factor the court deems relevant to fairly and equitably decide the application.

Under circumstances where the changed circumstances arise from the loss of employment, the length of time a party has been involuntarily unemployed or has had an involuntary reduction in income shall not be the only factor considered by the court when an application is filed by a non-self-employed party to reduce alimony because of involuntary loss of employment. The court shall determine the application based upon all of the enumerated factors, however, no application shall be filed until a party has been unemployed, or has not been able to return to or attain employment at prior income levels, or both, for a period of 90 days. The court shall have discretion to make any relief granted retroactive to the date of the loss of employment or reduction of income.

l. When a self-employed party seeks modification of alimony because of an involuntary reduction in income since the date of the order from which modification is sought, then that party's application for relief must include an analysis that sets forth the economic and non-economic benefits the party receives from the business, and which compares these economic and non-economic benefits to those that were in existence at the time of the entry of the order.

m. When assessing a temporary remedy, the court may temporarily suspend support, or reduce support on terms; direct that support be paid in some amount from assets pending further proceedings; direct a periodic review; or enter any other order the court finds appropriate to assure fairness and equity to both parties.

n. Alimony may be suspended or terminated if the payee cohabits with another person. Cohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household.

When assessing whether cohabitation is occurring, the court shall consider the following:

- (1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
- (2) Sharing or joint responsibility for living expenses;
- (3) Recognition of the relationship in the couple's social and family circle;
- (4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
- (5) Sharing household chores;
- (6) Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S.25:1-5; and
- (7) All other relevant evidence.

In evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also consider the length of the relationship. A court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis.

As used in this section:

"Full retirement age" shall mean the age at which a person is eligible to receive full retirement for full retirement benefits under section 216 of the federal Social Security Act (42 U.S.C. s.416).

## 2. Termination of Alimony

Open duration and limited duration alimony terminate upon the remarriage of the dependent spouse, and in some cases upon cohabitation. Rehabilitative alimony does not automatically terminate upon the remarriage or cohabitation of the dependent spouse. N.J.S.A. 2A:34-25 provides as follows:

### **2A:34-25. Remarriage of former spouse or partner; termination of alimony; exceptions**

If after the judgment of divorce or dissolution a former spouse shall remarry or a former partner shall enter into a new civil union, permanent and limited duration alimony shall terminate as of the date of remarriage or new civil union except that any arrearages that have accrued prior to the date of remarriage or new civil union shall not be vacated or annulled. A former spouse or former partner in a civil union couple who remarries or enters into a new civil union shall promptly so inform the spouse or partner paying permanent or limited duration alimony as well as the collecting agency, if any. The court may order such alimony recipient who fails to comply with the notification provision of this act to pay any reasonable attorney fees and court costs incurred by the recipient's former spouse or partner as a result of such non-compliance.

The remarriage or establishment of a new civil union of a former spouse or partner receiving rehabilitative or reimbursement alimony shall not be cause for termination of such alimony by the court unless the court finds that the circumstances upon which the award was based have not occurred or unless the payer spouse or partner demonstrates an agreement or good cause to the contrary.

Alimony shall terminate upon the death of the payer spouse or partner, except that any arrearages that have accrued prior to the date of the payer spouse's or partner's death shall not be vacated or annulled.

Nothing in this act shall be construed to prohibit a court from ordering either spouse or partner to maintain life insurance for the protection of the former spouse, partner, or the children of the marriage or civil union in the event of the payer spouse's or partner's death.

## 3. Cohabitation

The issue of whether cohabitation terminates or significantly modifies an award of permanent alimony has received much attention. The alimony statute, which became effective on Sept. 10, 2014, provides the court with more guidance in determining the termination or suspension of

alimony based upon cohabitation than previously existed. The court is now permitted to suspend or terminate alimony based upon cohabitation. Cohabitation is defined as a mutually supportive intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage. The statute provides that cohabitation does not have to mean the maintenance of a single common household. The statute directs the court to consider the following:

- (1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
- (2) Sharing or joint responsibility for living expenses;
- (3) Recognition of the relationship in the couple's social and family circle;
- (4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
- (5) Sharing household chores;
- (6) Whether the recipient of alimony has an enforceable promise of support from another person within the meaning of subsection h. of R.S.25:1-5; and
- (7) All other relevant evidence.

In evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also consider the length of the relationship. A court may not find an absence of cohabitation solely on the grounds that the couple does not live together on a full-time basis.

#### **4. Retirement**

The alimony statute which became effective on September 10, 2014 provides additional guidance on how a payor's retirement impacts an alimony obligation. The statute now provides a rebuttable presumption that alimony terminates upon the payor spouse attaining full retirement age. The statute also now allows a payor spouse to make an application to terminate alimony in anticipation of retirement. If a payor spouse has not reached full retirement age, he may still make an application but has the burden of demonstrating by a preponderance of the evidence that the prospective or actual retirement is reasonable and made in good faith. The statute sets forth the factors the Court must consider:

- (a) The age and health of the parties at the time of the application;
- (b) The obligor's field of employment and the generally accepted age of retirement for those in that field;
- (c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;

- (d) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;
- (e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;
- (f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;
- (g) The obligee's level of financial independence and the financial impact of the obligor's retirement upon the obligee; and
- (h) Any other relevant factors affecting the obligor's decision to retire and the parties' respective financial positions.

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## SIGNIFICANT CASES

***Gayet v. Gayet*, 92 N.J. 149 (1983); superseded by statute as stated in *Mills v. Mills* 447 N.J. Super. 78 (Ch. Div. 2016)**

Cohabitation by divorced spouse constitutes changed circumstances justifying a discovery and a hearing but the test for modification of alimony remains whether the relationship reduced the financial dependence of the former spouse.

***Dilger v. Dilger*, 242 N.J. Super. 380 (Ch. Div. 1990)**

In assessing whether early retirement constitutes a change in circumstances warranting modification of alimony, the court must consider whether the retirement was in good faith and in light of all the surrounding circumstances whether it was reasonable. Relevant factors are the age and health of the party, motives in retiring, timing of the retirement, ability to pay maintenance even after retirement, and ability of other spouse to provide for him or herself. Also significant are reasonable expectations of parties at the time of the agreement, evidence bearing on whether the supporting spouse was planning retirement at a particular age, and the opportunity given to dependent spouse to prepare to live on the reduced support.

***Deegan v. Deegan*, 254 N.J. Super. 350 (App. Div. 1992); superseded by statute as set forth in *Landers v. Landers* 444 N.J. Super. 315 (App. Div. 2016)**

Even in a case in which the retiring spouse has been shown to have acted in good faith and has advanced entirely rational reasons for his or her actions, the trial judge will be required to decide one pivotal issue: whether the advantage to the retiring spouse substantially outweighs the disadvantage to the payee spouse. Only if that answer is affirmative, should the retirement be viewed as a legitimate change in circumstances warranting modification of a pre-existing support obligation.

***Silvan v. Silvan*, 267 N.J. Super. 578 (App. Div. 1993)**

Good faith retirement at age 65 may be “changed circumstances” entitling retiring former spouse to hearing on whether alimony obligations should be modified. The court should consider a variety of factors including: age gap between parties; whether at time of initial alimony award any intention was given by parties to possibility of future retirement; whether particular retirement was mandatory; whether particular retirement occurred earlier than might have been anticipated at time alimony was awarded; impact of retirement upon respective financial positions of parties; and whether decision to retire was reasonable under all circumstances or motivated primarily by desire to reduce alimony.

***Cerminara v. Cerminara*, 286 N.J. Super. 448 (App. Div. 1996)**

Assets and income from assets equitably distributed may be applied to satisfy an alimony obligation.

***Heinl v. Heinl*, 287 N.J. Super. 337 (App. Div. 1996)**

The court must consider rehabilitative alimony before awarding permanent alimony.

***Ozolins v. Ozolins*, 308 N.J. Super. 243 (App. Div. 1998)**

There is a rebuttable presumption of changed circumstances arising upon *prima facie* showing of cohabitation. The burden of proof shifts to the dependent

***Konzelman v. Konzelman*, 158 N.J. 185 (1999)**

A dependent spouse’s cohabitation may cause a change of circumstances for modifying alimony, if coupled with economic consequences. The reduction in alimony should be granted in proportion to the contribution of the co-habitor to the dependent spouse’s needs. The economic benefit inuring to either co-habitor must be sufficiently material to justify relief.

***Miller v. Miller*, 160 N.J. 408 (1999)**

Non-income-producing assets will have an impact on imputed income in recognition of growth of the asset when determining support.

***Rose v. Csapo*, 359 N.J. Super. 53 (Ch. Div. 2002)**

In the *pendente lite* spousal support setting, a supporting spouse should not be placed in the untenable position of being required to finance the dependent spouse’s new relationship, and a finding of cohabitation is a determination that the parties have such an intertwined relationship that support of the dependent spouse inevitably constitutes support of the paramour.

***Weishaus v. Weishaus*, 360 N.J. Super. 281 (App. Div. 2003), cert. granted, 177 N.J. 495 (2003), aff’d in part, rev’d in part, 180 N.J. 131 (2003)**

Contributions made by husband’s mother, as well as funds generated by liquidation and leveraging marital assets, will establish marital lifestyle, even if the lifestyle is greater than the parties’ incomes.

***Weishaus v. Weishaus*, 180 N.J. 131 (2004)**

The obligations and benefits of alimony are governed on an ongoing basis, and the court may monitor and revise alimony as circumstances require.

***Mani v. Mani*, 183 N.J. 70 (2005)**

Except in cases of “egregious fault” or in cases where marital fault negatively impacts the economic status of the parties, marital fault should not be considered in the award of alimony.

***Steneken v. Steneken*, 183 N.J. 290 (2005)**

Alimony should be based on actual income, not “normalized income” used for business evaluation.

***Overbay v. Overbay*, 376 N.J. Super. 99 (App. Div. 2005)**

Because no two cases are exactly alike, neither bright line tests nor hard and fast rules should be imposed when imputing a reasonable rate of return on investments any more than when determining an appropriate award of alimony. In this case, the court overturned an imputation of income to an ex-wife in the amount of \$80,000 per year by attributing a 7.4 percent rate of return to her inherited assets.

***Bursztyn v. Bursztyn*, 379 N.J. Super. 385 (App. Div. 2005)**

The court has discretion to compel the parties to file a joint income tax return or to award credit for refusal to file joint return.

***Palmieri v. Palmieri*, 388 N.J. Super. 562 (App. Div. 2006)**

A mere romantic relationship between a dependent spouse and another individual does not justify termination of alimony and language purporting to terminate alimony upon the dependent spouse’s “residing with an unrelated person,” regardless of the financial arrangements may, therefore, be unenforceable.

***Gonzalez-Posse v. Ricciardulli*, 410 N.J. Super. 340 (App. Div. 2009)**

An award of alimony for a limited duration may be modified based either upon changed circumstances or upon the nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of such an award, but shall not modify the length of the term, except in unusual circumstances.

***Reese v. Weis*, 430 N.J. Super. 552 (App. Div. 2013)**

The Appellate Division terminated alimony when the recipient had entered into a new relationship and the standard of living was greater than that during the marriage.

***Spangenberg v. Kolakowski*, 442 N.J. Super. 529 (App. Div. 2015)**

Prior agreement or final orders filed before the adoption of the statutory amendments to the alimony statute relating to cohabitation are not affected by the amendments.



***Landers v. Landers*, 444 N.J. Super. 315 (App. Div. 2016)**

The rebuttable statutory presumption that alimony terminated when an obligor attained full retirement age did not apply where ex-husband's retirement application was filed in a case in which there was an existing alimony order in place prior to the amendment to the statute.

***S.W. v. G.M.*, 462 N.J. Super. 522, 228 A.3d 226 (App. Div. 2020)**

A finding of marital lifestyle for purposes of determining alimony must be made by explaining the characteristics of the lifestyle and quantifying it.

***Amzler v. Amzler*, 463 N.J. Super. 187, 230 A.3d 987 (App. Div. 2020)**

Provision of alimony statute governing modification or termination of alimony orders upon obligor's prospective or actual retirement, when the alimony order was established prior to effective date of statutory amendments, controlled, and thus trial court was required to consider wife's ability to have saved adequately for retirement.

***Temple v. Temple*, No. A-0293-20, 2021 WL 2471016 (N.J. Super. Ct. App. Div. June 17, 2021)**

To establish prima facie case of cohabitation, statute does not require a movant seeking to terminate alimony based upon cohabitation to provide evidence on all six factors set forth in statute's codification of meaning of cohabitation.

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### **3. Palimony**

Under New Jersey law, couples that have cohabitated together, but were never married, are not entitled to either alimony or equitable distribution. New Jersey has not recognized common law marriage since 1939. A claim for palimony is, therefore, the only remedy available to a party that was never married but is seeking support from an ex-cohabitant. A party may make a claim for palimony only if the promise to provide support or other consideration, either during the course of the relationship or after its termination, is made in writing and is made with the independent advice of counsel for both parties. The requirement that the promise be in writing was made part of N.J.S.A. 25:1-5 in Jan. 2010.

**25:1-5. Promises or agreements not binding unless in writing**

No action shall be brought upon any of the following agreements or promises, unless the agreement or promise, upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorized:

a. (Deleted by amendment, P.L.1995, c.360.)

b. (Deleted by amendment, P.L.1995, c.360.)

- c. An agreement made upon consideration of marriage entered into prior to the effective date [Nov. 3, 1988] of the “Uniform Premarital Agreement Act,” N.J.S.37:2-31 et seq.;
- d. (Deleted by amendment, P.L.1995, c.360.)
- e. (Deleted by amendment, P.L.1995, c.360.)
- f. A contract, promise, undertaking or commitment to loan money or to grant, extend or renew credit, in an amount greater than \$100,000, not primarily for personal, family or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For the purposes of this subsection, a contract, promise, undertaking or commitment to loan money shall include agreements to lease personal property if the lease is primarily a method of financing the obtaining of the property;
- g. An agreement by a creditor to forbear from exercising remedies pursuant to a contract, promise, undertaking or commitment which is subject to the provisions of subsection f. of this section; or
- h. A promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination. For the purposes of this subsection, no such written promise is binding unless it was made with the independent advice of counsel for both parties.

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## SIGNIFICANT CASES

### ***Crowe v. DeGioia*, 90 N.J. 126 (1982)**

Court held that under the circumstances, unmarried cohabitant was entitled to preliminary injunctive relief.

### ***Rolle v. Rolle*, 219 N.J. Super. 528 (Ch. Div. 1987)**

Separate property acquired during cohabitation is not subject to equitable distribution, even where cohabitation is followed by marriage.

### ***In re Estate of Roccamonte*, 346 N.J. Super. 107 (App. Div. 2001); *aff'd as modified*, 174 N.J. 381 (2001)**

Contractually based right to palimony can survive the death of the promisor.

### ***Levine v. Konvitz, et al.*, 383 N.J. Super. 1 (App. Div. 2006), *abrogated by Devaney v. L'Esperance*, 195 N.J. 247 (2008)**

*Prima facie* case for palimony requires: 1) cohabitation, 2) marriage-type relationship, 3) promise of support for life, and 4) valid consideration. [This case applies to complaints prior to enactment of N.J.S.A. 25:1-5.]

***Devaney v. L'Esperance*, 195 N.J. 247 (2008)**

Cohabitation is not an indispensable element of palimony, but rather one element the court should consider when determining whether a marital-type relationship existed between the parties. [This case applies to palimony complaints prior to enactment of N.J.S.A. 25:1-5.]

***Botis v. Estate of Kudrick*, 421 N.J. Super. 107 (App. Div. 2011)**

The amendment to the statute of frauds to include palimony agreements does not apply retroactively where an agreement was enforceable when the complaint was filed.

***Cavalli v. Arena*, 425 N.J. Super. 595 (Ch. Div. 2012)**

A palimony claim filed after the amendment to the statute of frauds was barred.

***Joiner v. Orman*, FD-07-001086-13**

On Sept. 30, 2013, in an unreported case, the Essex County Superior Court granted declaratory judgment applying the “doctrine of partial performance,” and ruled that the plaintiff’s palimony case could go forward contrary to statute of frauds legislation. The ruling held that the doctrine of partial performance was a recognized exception to the statute of frauds.

***Maeker v. Ross*, 219 N.J. 565 (2014)**

Amendment to the statute of frauds to prohibit oral palimony agreement does not apply retroactively to oral palimony agreements that predate the amendment.

***C.N. v. S.R.*, 463 N.J. Super. 213, 230 A.3d 1003 (Ch. Div. 2020)**

Section of Statute of Frauds imposing writing requirement to promises by party to non-marital personal relationship to provide support or other consideration for the other party does not bar the equitable remedy of partition of real property in the absence of a writing among unmarried, cohabitating intimates engaged in a joint venture.

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## **G. EQUITABLE DISTRIBUTION**

Marital property is divided in New Jersey by what is known as equitable distribution. Equity is a term for fairness, and the court can make any fair allocation and distribution. N.J.S.A. 2A:34-23.1.

### **2A:34-23.1. Equitable distribution criteria**

In making an equitable distribution of property, the court shall consider, but not be limited to, the following factors:

- a. The duration of the marriage or civil union;

- b. The age and physical and emotional health of the parties;
- c. The income or property brought to the marriage or civil union;
- d. The standard of living established during the marriage or civil union;
- e. Any written agreement made by the parties before or during the marriage or civil union concerning an arrangement of property distribution;
- f. The economic circumstances of each party at the time the division of property becomes effective;
- g. The income and earning capacity of each party, including education background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage or civil union;
- h. The contribution by each party to the education, training or earning power of the other;
- i. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, or the property acquired during the civil union as well as the contribution of a party as a homemaker;
- j. The tax consequences of the proposed distribution to each party;
- k. The present value of the property;
- l. The need of a parent who has physical custody of a child to own or occupy the marital residence or residence shared by the partners in a civil union couple and to use or own the household effects;
- m. The debts and liabilities of the parties;
- n. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse, partner in a civil union couple or children;
- o. The extent to which a party deferred achieving their career goals; and
- p. Any other factors which the court may deem relevant.

In every case, except cases where the court does not make an award concerning the equitable distribution of property pursuant to subsection h. of N.J.S.2A:34-23, the court shall make specific findings of fact on the evidence relevant to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, including specifically, but not limited to, the factors set forth in this section.

It shall be a rebuttable presumption that each party made a substantial financial or nonfinancial contribution to the acquisition of income and property while the party was married.

What is included for equitable distribution, how much is it worth, and how is it distributed are the three questions that must be answered. To understand what is included in the ‘marital estate’ for purposes of equitable distribution, one must first conceptualize a pool of assets that consists of everything and anything of value or future value. Initially, property, jewelry, businesses, artwork and retirement benefits are included. It usually makes no difference whether the property is held by the husband, wife, jointly or in the name or names of third persons.

There are three exclusions from equitable distribution. The first is an asset that is premarital or can be traced to a premarital contribution. There is a developing classification of property acquired by one party prior to marriage that is drawn into the marital estate and is includible in equitable distribution if the asset was purchased in contemplation of marriage. The cases have included obvious assets, such as a marital home purchased in one name immediately prior to marriage, but the cases have not included property such as an engagement ring. The second exclusion is inheritances received by one party during the marriage. The third is gifts from third persons.

## **1. Valuation of Property**

The date of the filing of the complaint for divorce historically has been the date assets are valued for purposes of equitable distribution. If the asset increases or decreases in value due to fluctuating market conditions, as in the real estate and stock markets, the gain or loss is realized by both parties at the time of the actual distribution or sale of the asset. However, when an asset has increased in value due to the sole efforts and industry of one party, the gain usually will be awarded to the person responsible for the increase in value. Losses are similarly treated. Recent case law has created several exceptions to the general rule depending upon whether an asset was premarital, active or passive, and whether a non-owner spouse contributed to the increase in value during the marriage. See *Scavone v. Scavone*, 230 N.J. Super. 482 (Ch. Div. 1988).

## **2. Distribution of the Marital Home**

A pervasive principle of equitable distribution is to liquidate and distribute all assets at the time of the entry of the final judgment of divorce. This theory likens divorce to partnership dissolutions where the partners receive their distributive share of partnership assets upon termination. Obviously, if there are offsetting assets that the non-custodial parent can receive, it is desirable for the custodial parent to remain in the marital home, thus avoiding the need to move the children from what usually has been a somewhat stable and nurturing environment. When there are insufficient assets to offset the non-custodial parent’s interest in the marital home, the court generally takes the view that the marital home must be sold at a time when it is least detrimental to the best interests of the children. The judge will weigh the needs of the non-custodial parent to receive his or her equitable share in the marital home against the needs of the children to maintain a stable environment.

If, for example, the divorcing couple have children ages three and five, the court generally will order the immediate sale of the marital residence because children of those ages are extremely

resilient to change and usually do not have strong attachments to neighborhoods, schools and neighborhood activities. Children who are in high school create more of a need to permit the custodial parent to remain in the marital home until completion of the high school program, including extra-curricular and athletic programs attendant to high school. Children in the middle category pose the most difficult situation. If those children were ages eight and 11, for example, the family court judge would then look for the closest possible date to sell the former marital residence while attempting to preserve some stability. Often children of those ages change schools from either an elementary to middle school or middle school to a high school. Those change dates are ideal for the sale of the former marital residence because the children will be experiencing new friends, new schools, and new teachers.

### **3. Valuation of Assets**

One may boast at cocktail parties that his or her business is worth millions and one may inflate assets and deflate debts on mortgage applications, but in divorce court the name of the game is valuation by expert opinion. By agreement of the parties, value can be stipulated, but more often an expert is required. Real estate is inexpensive to value, and a certified real estate appraiser is preferred. However, most realtors will provide comparable sales analysis at little or no cost with the promise of a future listing.

Pensions, annuities, 401K plans, Keoughs, IRAs, and any form of deferred compensation plan is subject to equitable distribution. Only that portion of the asset accruing during the marriage through the date of the complaint for divorce is included in equitable distribution. However, cost-of-living increments and appreciation earned on that portion accruing during the marriage but distributed in the future is part of equitable distribution.

The value of 401K plans, Keough plans and assets such as IRAs are easily determined by simply obtaining account balances. The valuation of a pension or annuity is more difficult. Actuaries or pension evaluators routinely provide the present dollar value of pensions. To understand the value is more challenging. A pension is usually the right to receive monthly payments at a given retirement age until death. Often, there are additional survivor benefits that continue until the death of the spouse. Conceptually, the value of that pension (or the portion of the pension accruing during the marriage) is the amount of money it would take to purchase a single-premium annuity through a life insurance company that would yield the same benefit. Another way to value the pension is to compute the monthly payments from retirement to the date of death, determined by published mortality tables, and discount that sum back to the present value using an interest rate discount factor.

The value, once determined, must again be factored by the anticipated tax consequences of distribution. If the retirement benefit was funded by pre-tax dollars it will be taxed upon distribution. If funded with after-tax dollars, it will not. There are plans that are a combination of pre-tax and after-tax contributions.

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## SIGNIFICANT CASES

***Rodgers v. Reid Oldsmobile*, 58 N.J. Super. 375 (App. Div. 1960)**

Owner of personal property, at least where of a common class or in general daily use, may be permitted in the discretion of the court, to testify as to its value.

***Painter v. Painter*, 65 N.J. 196 (1974)**

Period of acquisition for the equitable distribution of marital property shall terminate the day the complaint for divorce is filed. [This case is superseded by statute as provided in *Landwehr v. Landwehr*, 111 N.J. 491 (1998).]

***Rothman v. Rothman*, 65 N.J. 219 (1974)**

Assets are not automatically divided on a 50/50 basis. The court must follow a three-step analysis in determining equitable distribution: 1) what assets are subject to equitable distribution; 2) the values of the assets; 3) what percentage of each asset should each party receive.

***Chalmers v. Chalmers*, 65 N.J. 186 (1974)**

Fault plays no role in the determination of equitable distribution, except in cases of extreme levels of criminal or financial fault.

***Smith v. Smith*, 72 N.J. 350 (1977)**

If parties have a separation agreement and have separated, period of acquisition for equitable distribution of marital property will be the date of the separation agreement.

***Grayer v. Grayer*, 147 N.J. Super. 513 (App. Div. 1977)**

Appreciation in value from the date of marriage to the date of complaint of the law firm that husband owned prior to the marriage was subject to equitable distribution.

***Weiss v. Weiss*, 226 N.J. Super. 281 (App. Div. 1988)**

Wife was entitled to share in the enhancement value of a premarital business because her efforts at home allowed husband to work more at the business and because she worked part time at the business as well.

***Landwehr v. Landwehr*, 111 N.J. 491 (1988)**

Portion of personal injury award intended to compensate for lost earnings and medical expenses is subject to equitable distribution; however, portion of award allocated for pain and suffering is not.

***DeVane v. DeVane*, 260 N.J. Super. 501 (Ch. Div. 1992)**

Lottery winnings are property subject to equitable distribution.

***Sculler v. Sculler*, 348 N.J. Super. 374 (Ch. Div. 2001)**

Proof that an asset is immune from equitable distribution raises a rebuttable presumption that any subsequent value increase will also be immune, and the burden shifts to the non-owner spouse to rebut the presumption.

***Brown v. Brown*, 348 N.J. Super. 466 (App. Div. 2002)**

Donative intent to gift to one party even though titled in both must be shown to overcome the presumptive joint gift if titled in both names. See also *Pascarella v. Pascarella*, 165 N.J. Super. 558 (1979); *Dotsko V. Dotsko*, 244 N.J. Super. 668 (1990); and *Wadlow v. Wadlow*, 200 N.J. Super. 372 (1985).

***Bursztyn v. Bursztyn*, 379 N.J. Super. 385 (App. Div. 2005)**

The court has the discretion to order parties to file joint tax returns or to award monetary credit for refusal to file jointly.

***Robertson v. Robertson*, 381 N.J. Super. 199 (App. Div. 2005)**

Stock options husband received from new employer three days before a complaint for divorce was filed were not subject to equitable distribution where options were granted after husband moved from marital home, were offered as an inducement to commence employment rather than as recognition for past performance, vested over a four-year period, and were designed to insure husband's continued employment with new employer.

***In re Hill*, 342 B.R. 183 (Bankr. D.N.J. 2006)**

Debtor's transfer of her interest in certain marital assets as part of divorce settlement was done with the intent to keep assets from a judgment creditor and the transfer may be avoided by the trustee, who is entitled to recover the value of the property transferred pursuant to 11 U.S.C. 550 (a)(1).

***Clark v. Pomponio*, 397 N.J. Super. 630 (App. Div. 2008), certif. denied, 195 N.J. 420 (2008)**

Bankruptcy proceeding temporarily put a stop to any divorce proceeding. The court could not proceed with the default judgment or equitable distribution.

***Houseman v. Dare*, 405 N.J. Super. 538 (App. Div. 2009)**

Alleged oral agreement between parties regarding ownership of dog was subject to specific performance upon a showing that such remedy was appropriate.

***Kay v. Kay*, 200 N.J. 551 (2010)**

Equity demanded that deceased husband's estate be allowed to intervene and continue divorce proceedings to adjudicate equitable distribution of marital estate and to resolve claim raised by husband prior to death that wife had diverted marital assets.



## 4. Qualified Domestic Relations Order (QDRO)

The Divorce Reform Act of 1988 created a mechanism by which non-participating spouses, through a court order, can become participants in the pension plan or deferred compensation plan of their spouses. The qualified domestic relations order (QDRO) is an order from the family court directing the pension plan administrator to segregate that amount or percentage of pension a spouse either settles on or is awarded by way of equitable distribution. The spouse then has a vested pension right along with the rights of distribution or withdrawal, similar to those of the employed spouse. The net result is that the non-employed spouse will receive a negotiated or court-ordered amount of pension benefits and will be taxed on the amount received. QDROs are utilized when a spouse desires the security of a pension or when there are insufficient assets for a buy-out of the pension value at the time of divorce.

When negotiating the QDRO or offset of the value of a pension for other post-employment benefits, such as survivor benefits, care should be taken to understand the plan and its provisions. When the survivor benefit or joint annuitant benefit terminates upon the death of the employed spouse, it is wise to secure that negotiated provision with life insurance to the non-employed spouse.

Because of the requirement to protect personal identifiers, the QDRO is submitted to the court for signature without the inclusion of a Social Security number or other personal identifier. After the court approves the QDRO, the filed QDRO is sent to the plan administrator, along with a separate sheet that contains the personal identifiers for the administrator's internal use. Thus, the Social Security number is not made a public record. See QDRO and separate addendum letter to the plan administrator.

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### SIGNIFICANT CASES

#### ***Risoldi v. Risoldi*, 320 N.J. Super. 524 (App. Div. 1984)**

A QDRO is defined as any judgment, decree or order that is made pursuant to a state's domestic relations law and has an alternate payee, which includes any spouse, former spouse, child or other dependent of the plan participant, and relates to the provision of child support, alimony or marital property rights to the alternate payee. 29 V.S.C.A. § 1056(d)(3)(B)(i) and (ii). To qualify as a QDRO, the order must create or recognize the existence of an alternate payee's right to receive all or a part of the benefits payable with respect to a particular participant in a plan. 29 U.S.C.A. § 1056(d)(3)(B)(i)(I). A QDRO must contain, among other things, the amount or percentage of benefits to be paid by the plan to the alternate payee or the manner in which this will be determined. 29 U.S.C.A. § 1056(d)(3)(C).

***Moore v. Moore*, 114 N.J. 147 (1989), superseded by statute as stated in *Berg v. Christie*, 436 N.J. Super. 220 (App. Div. 2014)**

To determine post-retirement cost of living increases subject to equitable distribution, the court must apply the coverture fraction. The numerator of this fraction is the total period of time the employee spouse participated in the plan during the marriage. The denominator is the total period of time the employee spouse participated in the plan. The fraction is then applied to post-retirement cost of living increases to determine the percentage of those increases attributable to the employee spouse's participation in the pension.

***Claffey v. Claffey*, 360 N.J. Super. 240 (App. Div. 2003)**

- 1) The court is within its discretion to order the pensioned husband to provide life insurance as security when the pension had no survivor benefit and wife's interest would be extinguished upon husband's death.
- 2) The three methods of distributing defined benefit pensions are present value offset, deferred distribution, and partial deferred distribution.
- 3) The court cannot assign a present value to a pension at the time of divorce and then defer distribution of that value until the pension is received.

***Larrison v. Larrison*, 392 N.J. Super. 1 (App. Div. 2007)**

When equitable distribution of defendant's disability pension is sought, a reviewing court must determine which portion of a pension represents a retirement component in which plaintiff would be able to share and which portion represents compensation for defendant's personal disability and personal economic loss.

***Kennedy v. Plan Adm'r for DuPont Sav. and Inv. Plan*, 129 S. Ct. 865 (2009)**

Although savings and investment plan (SIP) participant's former spouse had signed federal common-law waiver as part of divorce decree, plan administrator had duty, pursuant to Employee Retirement Income Security Act's (ERISA's) plan documents rule, to follow participant's conflicting beneficiary designation, which continued to list ex-spouse at time of participant's death; waiver was not qualified domestic relations order (QDRO), and ex-spouse had not disclaimed her interest in SIP benefits using plan's specified method.

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NEW JERSEY ATTORNEY ID#01201976  
 MARK GRUBER, ESQ.  
 GRUBER, COLABELLA, LIUZZA & THOMPSON  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500  
 Attorneys for Defendant

**FILED**

**AUG 12 2019**

**Ralph E. Amirata, J.S.C.**

	:	
	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION, FAMILY PART
Plaintiff,	:	MORRIS COUNTY
	:	DOCKET NO.: FM-14-
vs.	:	
	:	QUALIFIED DOMESTIC RELATIONS
	:	ORDER FOR
	:	MONEY PURCHASE
Defendant	:	PENSION PLAN AND
	:	SAVINGS
	:	PLAN

WHEREAS, a Dual Judgment of Divorce terminating the marriage of the above named parties was entered on February 8, 2018 by the Honorable James M. DeMarzo J.S.C., which Judgment approved and incorporated a Marital Settlement Agreement that was duly executed by the Plaintiff, (f/k/a \_\_\_\_\_), and by the Defendant, \_\_\_\_\_; and

WHEREAS, the Dual Judgment of Divorce and Marital Settlement Agreement require the entry of a Qualified Domestic Relations Order by this Court providing for the division and distribution of the marital portion of the benefits accrued with respect to the Defendant under the retirement plans identified in Paragraph (2) hereof, and referred to in this Order as "the Plans" in accordance with the provisions of Section 206(d) of the Employee Retirement Income Security Act (ERISA), as amended by the Retirement Equity Act of 1984, and Section 414(p) the internal Revenue Code; and

WHEREAS, Plaintiff, \_\_\_\_\_ (f/k/a \_\_\_\_\_), is a "Participant," as that term is defined in 29 U.S.C. 1002(7), with respect to each of the Plans; and

WHEREAS, the Defendant, \_\_\_\_\_, is an "Alternate Payee," as that term is defined in 26 U.S.C. 414(p)(8) and 29 U.S.C. 1056(d)(3)(K), with respect to each of the Plans; and

WHEREAS, it is the intention of the parties to divide the benefits referred to above by creating separate interests therein for the Plaintiff and the Defendant.

NOW THEREFORE, upon the request of counsel,

THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Authority For Order. This Order is entered pursuant to the authority granted in the domestic relations law of the State of New Jersey N.J.S.A. 2A:34-1 et seq.

2. identification of Plan.

(a) This Order relates and applies to:

(1) The Money Purchase Pension Plan, hereinafter referred to in this Order as the "Pension Plan"; and

(2) The Savings Plan, hereinafter referred to in this Order as the "401(k) Plan".

(b) The Plan Administrator for the Pension Plan and the 401(k) Plan is Savings and Pension Plan Administrative Committee.

(c) Any changes in Plan Administrator, the sponsor of the Pension Plan or the 401(k) Plan or the name of the Pension Plan or 401(k) Plan shall not affect the Alternate Payee's rights granted under this Order.

(d) This Order shall refer to the Pension Plan and the 401(k) Plan each as a "Plan" and collectively as the "Plans".

3. Identification of Participant. The following information is hereby established and reported with respect to the Participant:

Name:

Address:

Birth date and social security number are provided on the attached Addendum.

The Participant shall have the duty to notify the Plan Administrator in writing of any change in her mailing address subsequent to the entry of this Order.

4. Identification of Alternate Payee. The following information is hereby established and reported with respect to the Alternate Payee:

Name:

Address:

Birth date and social security number are provided on the attached Addendum.

The Alternate Payee shall have the duty to notify the Plan Administrator in writing of any change in his mailing address subsequent to the entry of this Order.

5. Notice by Alternate Payee. The Alternate Payee shall provide written requests for payment, consents to payment or receipts of payment as the Plan Administrator may require.

6. Function to Which Order Relates. This Order relates to the division of marital property that was acquired, accumulated or accrued by the parties during the period of their marriage; to wit, the benefits of the Participant under each of the Plans.

7. Right of Alternate Payee to Receive Benefits. The right of the Alternate Payee to receive a portion of the Participant's benefits under each of the Plans is hereby created and recognized.

8. Relationship of Alternate Payee to Participant. The Alternate Payee is a former spouse of the Participant. The parties were married on July 27, 2008. A Complaint for Divorce was filed on June 28, 2016.

9. Intention of Order. This Order is intended to be a Qualified Domestic Relations Order (as that term is defined in 26 U.S.C. 414(p) and 29 U.S.C. 1056(d)) utilizing the separate interest approach in dividing benefits and benefit rights between the parties. This Order is not intended to require, and shall not be construed to require, either of the Plans to:

- (a) provide any type or form of benefit, or any option, not otherwise provided under the terms of the Plans;
- (b) provide any increased benefits to the Alternate Payee which are not otherwise available under the Plans; or
- (c) pay any benefits to the Alternate Payee which are required to be paid to another alternate payee under another order that was previously determined to be a Qualified Domestic Relations Order.

10. Amount or Percentage of Alternate Payee's Benefits. The total amount of the Alternate Payee's benefit awarded under this Order as the Alternate Payee's sole and separate property shall consist of the following

(a) Pension Plan - The Alternate Payee is to be paid an amount equal to 22.65% of the Participant's vested accrued benefit under the Pension Plan (to include all accounts and/or subaccounts established on behalf of the Participant, should there be any) as of June 26, 2016. Any amounts contributed to the Participant's account after June 26, 2016 which are attributable to periods prior to such date (i.e. the contribution made with respect to the Pension Plan for 2016) shall be included in the calculation of the Alternate Payee's awarded amount. Accordingly, if necessary, the Plan shall prorate the 2016 annual contribution by multiplying the contribution amount by 179/366 and then by 22.65%.

The amount to be paid to the Alternate Payee's pursuant to this Subparagraph (a) shall be adjusted for earnings or losses, dividends and interest from June 26, 2016 through the date of segregation, determined in accordance with the applicable terms of

the Pension Plan at the time segregation is to be made. The amount awarded to the Alternate Payee pursuant to this Subparagraph (a) shall be segregated on a pro rata basis against each fund and/or class of contributions then held within the Participant's account or accounts under the Pension Plan; and

(b) 401(k) Plan - The Alternate Payee is to be paid \$14,113 from the Participant's accrued benefit under the 401(k) Plan as of the date a separate account is established for the Alternate Payee. The amount awarded to the Alternate Payee pursuant to this Subparagraph (b) shall be segregated on a pro rata basis against each fund and/or class of contributions then held within the Participant's account or accounts under the 401(k) Plan

11. Segregation of Alternate Payee's Accounts. As soon as reasonably practicable, following a determination by the Plan Administrator that this Order constitutes a QDRO with respect to the Plan, the designated amount shall be segregated into a separate account within the applicable Plan for the benefit of the Alternate Payee. Earnings and losses attributable to the Alternate Payee's separate account shall be allocated to such account as provided for by the applicable Plan. If so instructed by the Alternate Payee, the Plan Administrator for the applicable Plan shall transfer the funds directly to an I.R.A. or other qualified plan designated in writing by the Alternate Payee, subject to the terms and conditions of the applicable Plan.

12. Payment of Alternate Payee's Accounts. If either Plan is so instructed by the Alternate Payee, payment of the Alternate Payee's funds shall be made to the Alternate Payee, in any form available under the applicable Plan, including a lump sum distribution, as soon as administratively feasible following a determination by the applicable Plan Administrator that this Order constitutes a Qualified Domestic Relations Order and receipt of the appropriate Plan distribution form, subject to the terms and conditions of the applicable Plan. Payment may be made to the Alternate Payee regardless of whether the Participant's account under the applicable Plan is then distributable.

13. Death of Participant. Should the Participant die prior to the establishment of separate account(s) in the name of the Alternate Payee under both or either of the Plans, the Alternate Payee shall be treated as the surviving spouse of the Participant with respect to any death benefits or account balances that may be payable under the applicable Plan(s) to the extent of the full amount of the benefits provided for under Paragraph 10 of this Order. Should the Participant die after the establishment of separate account(s) for the Alternate Payee under both or either of the Plans, the Participant's death shall have no effect on the Alternate Payee's right to the benefits under the applicable Plan(s) provided in this Order.

14. Death of Alternate Payee. In the event of the death of the Alternate Payee, all rights, title and interest of the Alternate Payee to the Alternate Payee's awarded amount in Paragraph 10 of this Order shall be paid to the Alternate Payee's designated beneficiary under each Plan, or if there is no designated beneficiary to his Estate, according to the terms of each of the Plans.

15. Participant's Interest. The percentage or amount of benefits not awarded to the Alternate Payee under Paragraph 10 of this Order shall belong to the Participant and are subject to the Participant's disposition pursuant to the provisions of the respective Plans.

16. **Tax Provision.** The Alternate Payee, as a former spouse of the Participant, shall be responsible for the payment of all taxes incurred by reason of any benefits paid to the Alternate Payee under this Order.

17. **Determination of Qualified Status.** A copy of this Order shall be delivered to the Plan Administrator for each of the Plans, who is required by Federal law to (1) promptly notify the Participant and the Alternate Payee of its receipt, (2) determine, within a reasonable time, the qualified status of this Order, (3) promptly notify the parties of that determination, and (4) carry out the provisions of this Order if it is determined to be qualified.

18. **Constructive Receipt.** Neither the Participant nor the Alternate Payee shall accept any benefits from either of the Plans which are the property of the other. In the event that the Plan Trustee of either Plan inadvertently pays to the Participant any benefits that are assigned to the Alternate Payee pursuant to the terms of the Order, the Participant shall immediately reimburse the appropriate Plan to the extent that Participant has received such benefit payments, and shall forthwith pay such amounts so received directly to the appropriate Plan within ten (10) days of receipt. In the event that the Plan Trustee for either of the Plans inadvertently pays to the Alternate Payee any benefits that are not assigned to the Alternate Payee pursuant to the terms of the Order, the Alternate Payee shall immediately reimburse the appropriate Plan to the extent that Alternate Payee has received such benefit payments, and shall forthwith pay such amounts so received directly to the appropriate Plan within ten (10) days of receipt.

19. **Maintaining Qualified Status.** It is the intention of the Court and the parties that this Order continue to qualify as a Qualified Domestic Relations Order under 26 U.S.C. 414(p) and 29 U.S.C. 1056(d) and any Regulations that have been or may be issued thereunder. If changes are subsequently made in any statute or regulation affecting the qualified status of this Order, this Order may be modified upon the request of any party so as to maintain its qualified status.

20. **Effect of Plan Termination.** In the event either of the Plans is terminated for any reason prior to the distribution of all benefits provided in this Order for the Alternate Payee, the Alternate Payee shall be entitled to the benefits provided in this Order in accordance with the termination provisions of the appropriate Plan that pertain to beneficiaries.

21. **Continued Jurisdiction.** The Court shall retain jurisdiction with respect to this Order to the extent required to retain the qualified status of the Order and to interpret and carry out the provisions of the Order.

22. **Conflicting Terms.** In the case of conflict between the terms of the QDRO and the terms of either of the Plans, the terms of the appropriate Plan shall prevail.

23. **Cooperation Clause.** Each party shall, upon receiving a request, perform any act reasonably necessary to carry into effect the terms of this Order.

24. Plan Administrator Modifications. In the event the Plan Administrator for either of the Plan does not approve of this Order, then the Participant and Alternate Payee shall cooperate to devise a form that is acceptable to the Plan Administrator for the appropriate Plan. Should any portion of this Order be rendered invalid, illegal, unconstitutional, or otherwise incapable of enforcement, or should any of the procedural matters herein ordered need to be adjusted to accomplish the objectives of this Order, the Court reserves jurisdiction to make such adjustments in this Order as will effect the intent of the parties as manifested herein.

25. Service of Order. A copy of this Order shall be served upon all interested parties within seven (7) days of receipt by counsel for Defendant.

IT IS SO ORDERED on this £2<sup>4th</sup> day of Aug<sup>X</sup> **JCT**, 20 12

[Signature]  
[Signature]  
 p J.S.C.  
 Ralph E. Amirata, J.S.C.

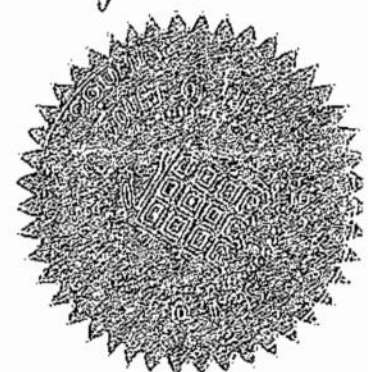
We hereby consent to the form and entry of the above Order.

\_\_\_\_\_, *Pro se*

Sworn and subscribed to before me this 30<sup>th</sup>  
 day of July, 2019

HEREBY CERTIFY THE  
 FOREGOING TO BE A TRUE COPY  
 THERESA MAHONEY, ACTING DEPUTY CLERK  
 VICINAGE 1b - MORRIS/SUSSEX

BY: [Signature] [Signature]  
 Jf. drA Mahoney  
 Asofthis 1<sup>st</sup> day of August 2019



\_\_\_\_\_, Defendant

Sworn and subscribed to before me this 5<sup>th</sup>  
 day of August, 2019

[Signature]  
 Mark Grdtied, Esq.  
 Attorney for Defendant



## ADDENDUM TO QUALIFIED DOMESTIC RELATIONS ORDER

### For Submission to Plan Administrator ONLY

Due to the **Federal Privacy Act** and New Jersey's Court Rule N.J.S.A. 1:38-7, New Jersey state courts prohibit the inclusion of personal data in public records to prevent identity theft. Therefore, please forward the following information sheet to the Plan Administrator when you submit the court certified copy of the Qualified Domestic Relations Order. **Do NOT file the Addendum with the court when you file the Qualified Domestic Relations Order.**

Participant information		Alternate Payee Information	
Name:		Name:	
Address:		Address:	
SSN:    -    -		SSN:    -    -	
Date of Birth:		Date of Birth:	
Participant Attorney's Information		Alternate Payee Attorney's Information	
Name:		Name:	Mark Gruber, Esq. Gruber, Colabella, Liuzza, Thompson & Hiben
Address:		Address:	41 Lakeside Boulevard Hopatcong, NJ 07843
Phone Number:		Phone Number:	973-398-7500
Plan Sponsor Information			
Plan/Account Number:			
Plan Name:		Money Purchase Pension Plan	

## H. USE OF EXPERTS IN DIVORCE CASES

Many cases require, and the Court Rules permit, qualified experts to render opinions addressing any relevant issue in a divorce action. Experts are routinely engaged and render opinions on custody, visitation, employability, disability, valuation of real estate, business interests, retirement benefits, pensions, etc. The parties are free to engage their own expert or to retain a jointly appointed expert. The court has the inherent authority to appoint experts when the court concludes the disposition of an issue will be assisted by expert opinion. R. 5:3-3 (Appointment of Experts). Pursuant to R. 5:3-3, the court also may order who is to pay for the expert's fees and can establish the scope of the expert's assignment. If an expert is appointed by the court, neither party shall be bound by the report of the expert. The expert may conduct an investigation independently to obtain information reasonable and necessary to complete his or her report from any source and may contact directly any party from whom information is sought.

N.J.S.A. 2A:34-23 permits the court to direct one party to pay the retainer on behalf of the other party for expert or legal services when the financial circumstances require. N.J.S.A. 2A:34-23, in part, states:

**2A:34-23. Permanent or rehabilitative alimony, maintenance and child support; security; failure to obey order; sequestration of property; receiver; modification of orders; retainer and counsel fees; factors in determination of amount of payments; equitable distribution of property**

...

The court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just. In considering an application, the court shall review the financial capacity of each party to conduct the litigation and the criteria for award of counsel fees that are then pertinent as set forth by court rule. Whenever any other application is made to a court which includes an application for pendente lite or final award of counsel fees, the court shall determine the appropriate award for counsel fees, if any, at the same time that a decision is rendered on the other issue then before the court and shall consider the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party.

As in all civil litigation, experts' reports and opinions are discoverable. Discovery may be made through interrogatories and/or deposition. R. 4:10-2 provides:

### **4:10-2. Scope of Discovery; Treating Physician**

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

**(a) In General.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; nor is it ground for objection that the examining party has knowledge of the matters as to which discovery is sought.

**(b) Insurance Agreements.** A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

**(c) Trial Preparation; Materials.** Subject to the provisions of R. 4: 10-2(d), a party may obtain discovery of documents, electronically stored information, and tangible things otherwise discoverable under R. 4:10-2(a) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of R. 4:23-1(c) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

**(d) Trial Preparation; Experts.** Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of R. 4:10-2(a) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) A party may through interrogatories require any other party to disclose the names and addresses of each person whom the other party expects to call at trial as an expert witness, including a treating physician who is expected to testify and, whether or not expected to testify, of an expert who has conducted an examination pursuant to R. 4:19 or to whom a party making a claim for personal injury has voluntarily submitted for examination without court order. The interrogatories may also require, as provided by R. 4:17-4(a), the furnishing of a copy of that person's report. Discovery of communications between an attorney and any expert retained or specially employed by that attorney is limited to facts and data considered by the expert in rendering the report. Except as otherwise expressly provided by R. 4:17-4(e), all other communications between counsel and the expert constituting the collaborative process in preparation of the report, including all preliminary or draft reports produced during this process, shall be deemed trial preparation materials discoverable only as provided in paragraph (c) of this rule.

(2) Unless the court otherwise orders, an expert whose report is required to be furnished pursuant to subparagraph (1) may be deposed as to the opinion stated therein at a time and place as provided by R. 4:14-7(b)(2). Unless otherwise ordered by the court, the party taking the deposition shall pay the expert or treating physician a reasonable fee for the appearance, to be determined by the court if the parties and the expert or treating physician cannot agree on the amount therefor. The fee for the witness's preparation for the deposition shall, however, be paid by the proponent of the witness, unless otherwise ordered by the court.

(3) A party may discover facts known or opinions held by an expert (other than an expert who has conducted an examination pursuant to R. 4:19) who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impractical for the party seeking discovery to obtain facts or opinions on the same subject by other means.

If the court permits such discovery, it shall require the payment of the expert's fee provided for by R. 4:10-2(d)(2), and unless manifest injustice would result, the payment by the party seeking discovery to the other party of a fair portion of the fees and expenses which had been reasonably incurred by the party retaining the expert in obtaining facts and opinions from that expert.

(4) A party shall not seek a voluntary interview with another party's treating physician unless that party has authorized the physician, in the form set forth in Appendix XII-C, to disclose protected medical information.

**(e) Claims of Privilege or Protection of Trial Preparation Materials.**

(1) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(2) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable efforts to retrieve it. The producing party must preserve the information until the claim is resolved.

**(f) Electronic Information.**

(1) Metadata in Electronic Documents. A party may request metadata in electronic documents. When parties request metadata in discovery, they should consult and seek agreement regarding the scope of the request and the format of electronic documents to be produced. Absent an agreement between the parties, on a motion to compel discovery or for a protective order, the party from whom discovery is sought shall demonstrate that the request presents undue burden or costs.

Judges should consider the limitations of R. 4:10-2(g) when reviewing such motions.

(2) Claims that Electronically Stored Information is not Reasonably Accessible. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery or for a protective order, the party from whom discovery is sought shall demonstrate that the information is not reasonably accessible because of undue burden or cost.

If that showing is made, the court nevertheless may order discovery from such sources if the requesting party establishes good cause, considering the limitations of R. 4:10-2(g). The court may specify conditions for the discovery.

**(g) Limitation on Frequency of Discovery.** The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited

by the court if it determines that: (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (3) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act pursuant to a motion or on its own initiative after reasonable notice to the parties.

When an interrogatory requires a copy of the report of an expert witness, the answering party shall annex a copy of the entire report, or a complete summary of any oral report. R. 4:17-4(e) provides:

(e) Expert's or Treating Physician's Names and Reports. If an interrogatory requires a copy of the report of an expert witness or treating or examining physician as set forth in R. 4:10-2(d)(1), the answering party shall annex to the interrogatory an exact copy of the entire report or reports rendered by the expert or physician. The report shall contain a complete statement of that persons opinions and the basis therefor; the facts and data considered in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and whether compensation has been or is to be paid for the report and testimony and, if so, the terms of the compensation. If the answer to an interrogatory requesting the name and report of the party's expert or treating physician indicates that the same will be supplied thereafter, the propounder may, on notice, move for an order of the court fixing a day certain for the furnishing of that information by the answering party. Such order may further provide that an expert or treating physician whose name or report is not so furnished shall not be permitted to testify at trial. Except as herein provided, the communications between counsel and expert deemed trial preparation materials pursuant to R. 4:10-2(d)(1) may not be inquired into.

The following Rules of Evidence apply to expert opinions:

### **Rule 702. Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, or training, or education may testify thereto in the form of an opinion or otherwise.

**Rule 703. Bases of Opinion Testimony by Experts**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

**Rule 704. Opinion on Ultimate Issue**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

**Rule 705. Disclosure of Facts or Data Underlying Expert Opinion; Hypotheses Not Necessary**

The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may, in any event, be required to disclose the underlying facts or data on cross-examination. Questions calling for the opinion of an expert witness need not be hypothetical in form unless [the judge in his discretion so requires] in the judge's discretion it is so required.

## **I. PHYSICIANS, PSYCHOLOGIST, AND MARRIAGE COUNSELOR PRIVILEGE**

Psychologists and marriage counselors now have statutory requirements to withhold communications deemed privileged.

**2A:84A-22.1. Definitions; patient-physician privilege**

As used in this act, (a) "patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of his physical or mental condition, consults a physician, or submits to an examination by a physician; (b) "physician" means a person authorized or reasonably believed by the patient to be authorized, to practice medicine in the State or jurisdiction in which the consultation or examination takes place; (c) "holder of the privilege" means the patient while alive and not under the guardianship or the guardian of the person of an incompetent patient, or the personal representative of a deceased patient; (d) "confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

### **2A:84A-22.2. Patient and physician privilege**

Except as otherwise provided in this act, a person, whether or not a party, has a privilege in a civil action or in a prosecution for a crime or violation of the disorderly persons law or for an act of juvenile delinquency to refuse to disclose, and to prevent a witness from disclosing, a communication, if he claims the privilege and the judge finds that (a) the communication was a confidential communication between patient and physician, and (b) the patient or the physician reasonably believed the communication to be necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor, and (c) the witness (i) is the holder of the privilege or (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or his agent or servant and (d) the claimant is the holder of the privilege or a person authorized to claim the privilege for him.

### **2A:84A-22.3. Mental incompetence; validity of will; nonprivileged communication**

There is no privilege under this act as to any relevant communication between the patient and his physician (a) upon an issue of the patient's condition in an action to commit him or otherwise place him under the control of another or others because of alleged incapacity, or in an action in which the patient seeks to establish his competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor, or (b) upon an issue as to the validity of a document as a will of the patient, or (c) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

### **2A:84A-22.4. Contract of patient; condition of patient is element of claim; nonprivileged communications**

There is no privilege under this act in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party or under which the patient is or was insured.

### **2A:84A-22.5. Information reported to public official; nonprivileged communications**

There is no privilege under this act as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.



#### **45:14B-28. Confidential relations and communications**

The confidential relations and communications between and among a licensed practicing psychologist and individuals, couples, families or groups in the course of the practice of psychology are placed on the same basis as those provided between attorney and client, and nothing in this act shall be construed to require any such privileged communications to be disclosed by any such person.

There is no privilege under this section for any communication: (a) upon an issue of the client's condition in an action to commit the client or otherwise place the client under the control of another or others because of alleged incapacity, or in an action in which the client seeks to establish his competence or in an action to recover damages on account of conduct of the client which constitutes a crime; or (b) upon an issue as to the validity of a document as a will of the client; or (c) upon an issue between parties claiming by testate or intestate succession from a deceased client.

#### **45:148-29. Disposition of fees, fines, penalties and other moneys**

All fees, fines, penalties and other moneys derived from the operation of this act shall be paid to the board and by it remitted to the State Treasurer.

#### **45:148-36. Disclosure authorization; contents**

A valid authorization for the purpose of this act shall:

- a. Be in writing;
- b. Specify the nature of the information to be disclosed, the person authorized to disclose the information, to whom the information may be disclosed, the specific purposes for which the information may be used, both at the time of disclosure and at any time in the future;
- c. Specify that the patient is aware of the statutory privilege accorded by section 28 of P.L.1966, c. 282 (C. 45:148-28) to confidential communications between a patient and a licensed psychologist;
- d. State that the consent is subject to revocation at any time;
- e. Be signed by the patient or the person authorizing the disclosure. If the patient is adjudicated incompetent or is deceased, the authorization shall be signed by the patient's legally authorized representative. When the patient is more than 14 years of age but has not yet reached the age of majority, the authorization shall be signed by the patient and by the patient's parent or legal guardian. When the patient is less than 14 years of age, the authorization shall be signed only by the patient's parent or legal guardian; and
- f. Contain the date upon which the authorization was signed.

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## SIGNIFICANT CASES

### *D. v. D.*, 108 N.J. Super. 149 (Ch. Div. 1969)

Doctor-patient privilege may be pierced in child custody case, but not if the wife's mental and physical condition can be obtained by other means, such as court-ordered evaluation.

### *Wichansky v. Wichansky*, 126 N.J. Super. 156 (Ch. Div. 1973)

A marriage counselor cannot be subpoenaed to testify about conversations taking place during the course of marriage counseling.

### *Kinsella v. Kinsella*, 150 N.J. 276 (1997)

The psychologist patient privilege serves two purposes: 1) protects revelation of patients innermost thoughts, which were not meant to be disclosed and 2) fosters open and productive relationship between doctor and patient.

### *Runyon v. Smith*, 322 N.J. Super. 236 (App. Div. 1999)

Before piercing the psychologist patient privilege, the following showing must be made: 1) a legitimate need for the evidence exists; (2) evidence must be relevant and material to the issue; (3) no other less intrusive means of obtaining the evidence must exist.

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## J. ATTORNEYS' FEES

Attorneys' fees are allowable at all stages of divorce litigation. N.J.S.A. 2A:34-23 permits the court to order a retainer for legal services when the respective financial circumstances make the award reasonable and just. The court is bound to review the financial capacity of each party to conduct the litigation.

*Pendente lite* or final awards of counsel fees may likewise be ordered by the court. N.J.S.A. 2A:34-23 requires that the award of counsel fees be made at the time of decisions and requires that the court consider the factors set forth in the Court Rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party. The Court Rule provides:

### **4:42-9. Attorney's fees**

(a) Actions in Which Fee Is Allowable. No fee for legal services shall be allowed in the taxed costs or otherwise, except

(1) In a family action, a fee allowance both *pendente lite* and on final determination may be made pursuant to R. 5:3-5(c).

...

(8) In all cases where attorney's fees are permitted by statute.

(b) Affidavit of Service. Except in tax and mortgage foreclosure actions, all applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated by RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought. If the court is requested to consider the rendition of paraprofessional services in making a fee allowance, the affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorneys' services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client. For purposes of this rule, "paraprofessional services" shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks which are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform.

(c) Statement of Fees Received. All applications for the allowance of fees shall state how much had been paid to the attorney (including, in a matrimonial action, the amount, if any, received by the attorney from *pendente lite* allowances) and what provision, if any, has been made for the payment of fees to the attorney in the future.

(d) Prohibiting Separate Orders for Allowances of Fees. An allowance of fees made on the determination of a matter shall be included in the judgment or order stating the determination.

Family court judges routinely cite the cases of *Williams v. Williams*, 59 N.J. 229 (1971), and *Darmanin v. Darmanin*, 224 N.J. Super. 427 (App. Div. 1988), which were superseded by N.J.S.A. 2A:34-23. See also *Kelly v. Kelly*, 262 N.J. Super. 303 (Ch. Div. 1992).

An affidavit or certification of services is required in all requests for *pendente lite* and final awards of counsel fees. The Court Rule is very specific and requires a recitation of all factors pertinent to the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements.

N.J.S.A. 2A:34-23a mandates an award of counsel fees to a party required to enforce or collect child support unless the court finds default justified.

### **2A:34-23a. Payment of counsel fees incurred in collection of child support**

If a party in any action to enforce and collect child support ordered by a court pursuant to the provisions of N.J.S. 2A:34-23 has incurred counsel fees, the court shall require the defaulting party to pay those counsel fees unless the court finds that the default was substantially justified or that other circumstances make an award of counsel fees unjust. The court shall determine the appropriate award for counsel fees and shall consider the financial circumstances of the parties and whether each acted in good faith.

Except where no fee is to be charged, every agreement for legal services to be rendered in a civil family action shall be in writing signed by the attorney and the client, and an executed copy of the agreement shall be delivered to the client. The agreement shall have annexed thereto the Statement of Client Rights and Responsibilities in Civil Family Actions in the form appearing in Appendix XVIII of these rules and shall include the following:

- (1) a description of legal services anticipated to be rendered;
- (2) a description of the legal services not encompassed by the agreement, such as real estate transactions, municipal court appearances, tort claims, appeals, and domestic violence proceedings;
- (3) the method by which the fee will be computed;
- (4) the amount of the initial retainer and how it will be applied;
- (5) when bills are to be rendered, which shall be no less frequently than once every ninety days, provided that services have been rendered during that period; when payment is to be made; whether interest is to be charged, provided, however, that the running of interest shall not commence prior to thirty days following the rendering of the bill; and whether and in what manner the initial retainer is required to be replenished;
- (6) the name of the attorney having primary responsibility for the client's representation and that attorney's hourly rate; the hourly rates of all other attorneys who may provide legal services; whether rate increases are agreed to, and, if so, the frequency and notice thereof required to be given to the client;
- (7) a statement of the expenses and disbursements for which the client is responsible and how they will be billed;
- (8) the effect of counsel fees awarded on application to the court pursuant to paragraph (c) of this rule;
- (9) the right of the attorney to withdraw from the representation, pursuant to paragraph (e) of this rule, if the client does not comply with the agreement; and
- (10) the availability of Complementary Dispute Resolution (CDR) programs including but not limited to mediation and arbitration.

During the period of the representation, an attorney shall not take or hold a security interest, mortgage, or other lien on the client's property interests to assure payment of the fee. This Rule shall not, however, prohibit an attorney from taking a security interest in the property of a former client after the conclusion of the matter for which the attorney was retained, provided the requirements of R.P.C. 1.8(a) shall have been satisfied. Nor shall the retainer agreement include a provision for a non-refundable retainer. Contingent fees pursuant to R. 1:21-7 shall only be permitted as to claims based on the tortious conduct of another, and if compensation is contingent, in whole or in part, there shall be a separate contingent fee arrangement complying with R. 1:21-7. No services rendered in connection with the contingent fee representation shall be billed under the retainer agreement required by paragraph (a) of this rule, nor shall any such services be eligible for an award of fees pursuant to paragraph (c) of this rule.

Subject to the provisions of R. 4:42-9(b), (c), and (d), the court in its discretion may make an allowance, both pendente lite and on final determination, to be paid by any party to the action, including, if deemed to be just, any party successful in the action, on any claim for divorce, dissolution of civil union, termination of domestic partnership, nullity, support, alimony, custody, parenting time, equitable distribution, separate maintenance, enforcement of agreements between spouses, domestic partners, or civil union partners and claims relating to family type matters. All applications or motions seeking an award of attorney fees shall include an affidavit of services at the time of initial filing, as required by paragraph (d) of this rule. A pendente lite allowance may include a fee based on an evaluation of prospective services likely to be performed and the respective financial circumstances of the parties. The court may also, on good cause shown, direct the parties to sell, mortgage, or otherwise encumber or pledge assets to the extent the court deems necessary to permit both parties to fund the litigation. In determining the amount of the fee award, the court should consider, in addition to the information required to be submitted pursuant to R. 4:42-9, the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

All applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated in RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the

services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought. If the court is requested to consider paraprofessional services in making a fee allowance, the affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorneys' services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client. For purposes of this rule, "paraprofessional services" shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks that are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform.

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

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

(3) Upon the filing of a motion or cross-motion to be relieved as counsel, the court, absent good cause, shall sever all other relief sought by the motion or cross-motion from the motion to be relieved as counsel. The court shall first decide the motion to be

### **RPC 1.5. Fees**

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and

(2) the client is notified of the fee division; and

(3) the client consents to the participation of all the lawyers involved; and

(4) the total fee is reasonable.

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## SIGNIFICANT CASES

***Prensky v. Clair Greiter, LLP***, U.S. Dist. Ct. (Wolfson, U.S.D.J. 2010) (unpublished decision)

A debtor's obligation to pay counsel fees directly to ex-wife's attorney is a non-dischargeable divorce-related debt. The law firm has standing to contest the dischargeability of the indebtedness and the debt is non-dischargeable pursuant to §532(a)(15) of the Bankruptcy Code.

***Ippolito v. Ippolito***, 465 N.J. Super. 428, 243 A.3d 963 (App. Div. 2020)

Even if judge's decision in matrimonial action was in former husband's favor for purposes of former husband's attorney's entitlement to attorney's lien against an escrow account holding net proceeds of a sale of marital property, former wife and former spouse's children had a higher priority to the escrow account, where former wife and the children were victims of former husband's bad conduct, and former husband failed to voluntarily pay child support despite his significant earning capacity.

***Bisbing v. Bisbing***, 468 N.J. Super. 112, 255 A.3d 1240 (App. Div. 2021)

Award of counsel fees against ex-spouse who had unsuccessfully sought permission to relocate with the couple's children outside of the state would be nondischargeable in any bankruptcy case subsequently filed by that spouse, as being in nature of "domestic support obligation"; award was entered in litigation that involved the other ex-spouse's attempts to preserve his ability to visit with his daughters, and trial court expressly found that, but for the expenses resulting from the first spouse's attempt to relocate, the funds in the matter could otherwise have been used for the children's support.

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distinctions:

- Certified by the N.J. Supreme Court as a Matrimonial Law Attorney
- Fellow and past president of the American Academy of Matrimonial Attorneys - 1988 to present
- NJ Chapter Delegate to the National Board of Governors of the American Academy of Matrimonial Attorneys - March 2019 to present
- Divorce Arbitrator and Mediator
- Former Master, Worrall F. Mountain American Inn of Court
- Institute of Continuing Legal Education Lecturer: Domestic Violence, Domestic Torts, Family Law Skills and Methods Instructor
- Author, The Basic Guide to New Jersey Divorce with Forms and Court Rules
- Trustee, Jersey Battered Women's Service – 1983 to 1985
- Trustee, Sussex County Bar Association – 1992 to 1995
- Chair, Family Law Committee of Sussex County Bar Association – 1998 to 2018
- Host of cable television show Law Talk – 1985 to 2013
- WOR-TV Panelist, Domestic Violence
- Recipient of the ICLE Alfred C. Clapp Award - Legal Educator of the Year

- d) The amount of fees involved and the results obtained make this fee application reasonable.
- e) The amount of time involved in the anticipated results also justify the fee requested.
- f) The Retainer Agreement between this firm and my client is attached as **Exhibit B**.
- g) No portion of any fee allowance claimed for attorney services duplicate any Paraprofessional or Legal Assistant services rendered to the client.
- h) The provisions for payment of future fees are as contained in the Retainer Agreement.

3. In accordance with R.5:3-5(c), the following factors apply:

a) **The Financial Circumstances of the Parties.**

Plaintiff has no assets and is on disability living with her parents. Defendant's circumstances are unknown.

b) **The Ability of the Parties to Pay Their Own Fees or to Contribute to the Fees of the Other Party.**

Plaintiff has no ability to pay her own fees.

c) **The Reasonableness and Good Faith of the Positions Advanced by the Parties.**

Defendant's position is bad faith by seeking alimony. See Certification.

d) **The Extent of the Fees Incurred by Both Parties.**

Unknown

e) **Any Fees Previously Awarded.**

Not applicable.

f) **The Amount of Fees Previously Paid to Counsel by Each Party.**

Not applicable.

g) **The Results Obtained.**

To be determined.

h) **The Degree to Which Fees Were Incurred to Enforce Existing Orders or to Compel Discovery.**

All Plaintiff's fees were incurred to enforce the default.

i) **Any Other Factors Bearing on the Fairness of an Award.**

See Certification of Plaintiff.

*I certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**  
Attorneys for Plaintiff

**Dated:** March 17, 2022

By: \_\_\_\_\_  
**Mark Gruber, Esq.**

Needy v. Deadbeat  
Docket No. FM-16-  
Time & Expenses  
Gruber, Colabella, Liuzza, Thompson & Hiben

<u>Date</u>	<u>Explanation</u>		<u>Hourly Rate</u>	<u>Time</u>	<u>Total</u>
3/14/2022	Conference with client; preparation of cross-motion, certification, letter brief	M. Gruber	\$ 450.00	1.80	\$ 810.00
3/15/2022	Review correspondence	M. Gruber	\$ 450.00	0.20	\$ 90.00
3/16/2022	Review and revise cross-motion and preparation of certification of services	M. Gruber	\$ 450.00	0.80	\$ 360.00
3/16/2022	Phone call to court re: confirmation of motion hearing; phone call to judge's chambers	Legal Asst	\$ 100.00	0.20	\$ 20.00
3/17/2022	Phone call to judge's chambers, Family Division and defendant re: consent to adjourn	Legal Asst	\$ 100.00	0.20	\$ 20.00
				<b>3.20</b>	<b>\$ 1,300.00</b>
 <b><u>Anticipated Charges</u></b>					
	Review reply certification	M. Gruber	\$ 450.00	1.00	\$ 450.00
	Preparation and appearance at oral argument	M. Gruber	\$ 450.00	3.00	\$ 1,350.00
				<b>4.00</b>	<b>\$ 1,800.00</b>
					<b>Filing Fee \$ 50.00</b>
					<b>Costs: copy, fax &amp; postage \$52.00</b>
					<b>TOTAL \$ 3,202.00</b>

## **K. DOMESTIC PARTNERSHIPS—SAME-SEX RELATIONSHIPS**

On Jan. 12, 2004, the state of New Jersey passed the Domestic Partnership Act and recognized that same-sex partners have mutually supportive relationships similar to marriage and should be recognized and granted certain rights and benefits. The act provides for protection against various forms of discrimination against domestic partners, visitation and decision-making rights in a healthcare setting, certain tax-related benefits and, in some cases, health and pension benefits that are provided in the same manner as for spouses. Effective upon the enactment and implementation of the Civil Union Statute, N.J.S.A. 37:1-28, *et seq.*, on Feb. 19, 2007, the Domestic Partnership Act only applies to same-sex partners over the age of 62. However existing registrants are grandfathered. See N.J.S.A. 26:8A-4.1 (reprinted below).

### **1. Requirements of Domestic Partnerships N.J.S.A. 26:8A-4**

Domestic partners are defined as persons of the same sex or two persons not of the same sex who are each 62 years of age or older and meet the following requirements:

- a. Both persons have a common residence and are, otherwise, jointly responsible for each other's common welfare;
- b. Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership;
- c. Neither person is in a marriage recognized by New Jersey law or a member of another domestic partnership;
- d. Neither person is related to the other by blood or affinity up to and including the fourth degree of consanguinity;
- e. Both persons have chosen to share each other's lives in a committed relationship of mutual caring;
- f. Both persons are at least 18 years of age;
- g. Both persons file jointly an affidavit of domestic partnership; and
- h. Neither person has been a partner in a domestic partnership that was terminated less than 180 days prior to the filing of the current affidavit of domestic partnership, except in the case of death.

#### **26:8A-4.1. Limitation on domestic partnerships on or after February 19, 2007; effect of law establishing civil unions**

On or after the effective date of this act, no domestic partnerships shall be registered under P.L.2003, c. 246 (C.26:8A-1 et al.), except that two persons who are each 62 years of age or older may establish a domestic partnership pursuant to the provisions of P.L.2003, c.246 (C.26:8A-1 et al.). This act shall not alter the

rights and responsibilities of domestic partnerships existing before the effective date of this act, except that eligible domestic partners shall be given notice and opportunity to enter into a civil union pursuant to the provisions of this act. Entry into a civil union, when joined by both parties to an existing domestic partnership, shall operate to terminate the domestic partnership.

## **2. Obligations of Domestic Partnerships N.J.S.A. 26:8A-6**

Obligations of domestic partners are defined by the act as requiring the partners to be jointly responsible to provide for each other's basic living expenses, if the other party is unable to provide for himself (or herself). Basic living expenses include the cost of basic food, shelter, and any other cost, including, but not limited to the cost of healthcare, if some or all of the cost is paid as a benefit because a person is another person's domestic partner.

## **3. What is Not Covered by the Domestic Partnership N.J.S.A. 26:8A-6**

- a) Upon termination of a domestic partnership, neither partner will be responsible for the debts of the other;
- b) Domestic partners are not responsible for the debts of the other partner contracted before the establishment of the domestic partnership or contracted by the other partner in his or her own name during the domestic partnership. The partner who contracts for the debt in his or her own name shall be liable to be sued separately in his or her own name, and any property belonging to that partner shall be liable to satisfy that debt in the same manner as if the partner had not entered into a domestic partnership; and
- c) A court cannot effect an equitable distribution of property, either real or personal, which has been legally and beneficially required by both domestic partners or either domestic partner during the domestic partnership.

## **4. Termination of Domestic Partnerships N.J.S.A. 26:8A-10**

The Superior Court, Family Part, has jurisdiction to terminate domestic partnerships similar to dissolution of marriage. The following are grounds to terminate a domestic partnership:

- a. Voluntarily sexual intercourse with another;
- b. Willful and continued desertion for a period of 12 or more consecutive months;
- c. Extreme cruelty, which is defined as including any physical or mental cruelty that endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant;

- d. Separation for a period of 18 months or more;
- e. Voluntary induced addiction or habituation to any narcotic drug;
- f. Institutionalization for mental illness for a period of 24 or more consecutive months;
- g. Imprisonment for 18 or more consecutive months; and

Regarding two persons who are each 62 years of age or older and not of the same sex who have formed a domestic partnership, the partnership shall be deemed terminated if the two persons enter into a marriage with each other that is recognized by New Jersey law.

The Domestic Partnership Act does not grant the court the right to award support, equitable distribution, and the other rights and obligations of marriage. It is, therefore, recommended that when representing domestic partners, the practitioner consider drafting cohabitation agreements, which contain provisions outlining the partners' rights and responsibilities in all aspects of their relationships.

## **5. Other Relevant Sections of the Domestic Partnership Act**

### **N.J.S.A. 26:8A-2. Legislative findings; declarations**

The Legislature finds and declares that:

- a) There are a significant number of individuals in this State who choose to live together in important personal, emotional and economic committed relationships with another individual;
- b) These familial relationships, which are known as domestic partnerships, assist the State by their establishment of a private network of support for the financial, physical and emotional health of their participants;
- c) Because of the material and other support that these familial relationships provide to their participants, the Legislature believes that these mutually supportive relationships should be formally recognized by statute, and that certain rights and benefits should be made available to individuals participating in them, including: statutory protection against various forms of discrimination against domestic partners; certain visitation and decision-making rights in a health care setting; and certain tax-related benefits; and, in some cases, health and pension benefits that are provided in the same manner as for spouses;
- d) All persons in domestic partnerships should be entitled to certain rights and benefits that are accorded to married couples under the laws of New Jersey, including: statutory protection through the "Law Against Discrimination," P.L.1945, c. 169 (C.10:5-1 *et seq.*) against various forms of

discrimination based on domestic partnership status, such as employment, housing and credit discrimination; visitation rights for a hospitalized domestic partner and the right to make medical or legal decisions for an incapacitated partner; and an additional exemption from the personal income tax and the transfer inheritance tax on the same basis as a spouse. The need for all persons who are in domestic partnerships, regardless of their sex, to have access to these rights and benefits is paramount in view of their essential relationship to any reasonable conception of basic human dignity and autonomy, and the extent to which they will play an integral role in enabling these persons to enjoy their familial relationships as domestic partners and to cope with adversity when a medical emergency arises that affects a domestic partnership, as was painfully but graphically illustrated on a large scale in the aftermath of the tragic events that befell the people of our State and region on September 11, 2001;

e) The Legislature, however, discerns a clear and rational basis for making certain health and pension benefits available to dependent domestic partners only in the case of domestic partnerships in which both persons are of the same sex and are therefore unable to enter into a marriage with each other that is recognized by New Jersey law, unlike persons of the opposite sex who are in a domestic partnership but have the right to enter into a marriage that is recognized by State law and thereby have access to these health and pension benefits; and

f) Therefore, it is the public policy of this State to hereby establish and define the rights and responsibilities of domestic partners.

### **N.J.S.A. 26:8A-3. Definitions**

As used in sections 1 through 9 of P.L.2003, c. 246 (C.26:8A-1 through 26:8A-9) and in R.S.26:8-1 *et seq.*:

a) “Affidavit of Domestic Partnership” means an affidavit that sets forth each party’s name and age, the parties’ common mailing address, and a statement that, at the time the affidavit is signed, both parties meet the requirements of this act for entering into a domestic partnership and wish to enter into a domestic partnership with each other.

b) “Basic Living Expenses” means the cost of basic food and shelter, and any other cost, including, but not limited to, the cost of health care, if some or all of the cost is paid as a benefit because a person is another person’s domestic partner.

c) “Certificate of Domestic Partnership” means a certificate that includes: the full names of the domestic partners, a statement that the two individuals are members of a registered domestic partnership recognized by the State of New Jersey, the date that the domestic partnership was entered into, and



a statement that the partners are entitled to all the rights, privileges and responsibilities accorded to domestic partners under the law. The certificate shall bear the seal of the State of New Jersey.

d) “Commissioner” means the Commissioner of Health and Senior Services.

e) “Domestic Partner” or “Partner” means a person who is in a relationship that satisfies the definition of a domestic partnership as set forth in this act.

f) “Have A Common Residence” means that two persons share the same place to live in this State, or share the same place to live in another jurisdiction when at least one of the persons is a member of a State-administered retirement system, regardless of whether or not: the legal right to possess the place is in both of their names; one or both persons have additional places to live; or one person temporarily leaves the shared place of residence to reside elsewhere, on either a short-term or long-term basis, for reasons that include, but are not limited to, medical care, incarceration, education, a sabbatical or employment, but intends to return to the shared place of residence.

g) “Jointly Responsible” means that each domestic partner agrees to provide for the other partner’s basic living expenses if the other partner is unable to provide for himself.

h) “Notice of Rights and Obligations of Domestic Partners” means a form that advises domestic partners, or persons seeking to become domestic partners, of the procedural requirements for establishing, maintaining, and terminating a domestic partnership, and includes information about the rights and responsibilities of the partners.

#### **26:8A-4. Establishment of domestic partnership; requirements; affidavit**

a) Two persons who desire to become domestic partners and meet the requirements of subsection b. of this section may execute and file an Affidavit of Domestic Partnership with the local registrar upon payment of a fee, in an amount to be determined by the commissioner, which shall be deposited in the General Fund. Each person shall receive a copy of the affidavit marked “filed.”

b) A domestic partnership shall be established when all of the following requirements are met:

1. Both persons have a common residence and are otherwise jointly responsible for each other’s common welfare as evidenced by joint financial arrangements or joint ownership of real or personal property, which shall be demonstrated by at least one of the following:

i. A joint deed, mortgage agreement or lease;

ii. A joint bank account;

- iii. Designation of one of the persons as a primary beneficiary in the other person's will;
  - iv. Designation of one of the persons as a primary beneficiary in the other person's life insurance policy or retirement plan; or
  - v. Joint ownership of a motor vehicle.
2. Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership;
  3. Neither person is in a marriage recognized by New Jersey law or a member of another domestic partnership;
  4. Neither person is related to the other by blood or affinity up to and including the fourth degree of consanguinity;
  5. Both persons are of the same sex and therefore unable to enter into a marriage with each other that is recognized by New Jersey law, except that two persons who are each 62 years of age or older and not of the same sex may establish a domestic partnership if they meet the requirements set forth in this section;
  6. Both persons have chosen to share each other's lives in a committed relationship of mutual caring;
  7. Both persons are at least 18 years of age;
  8. Both persons file jointly an Affidavit of Domestic Partnership; and
  9. Neither person has been a partner in a domestic partnership that was terminated less than 180 days prior to the filing of the current Affidavit of Domestic Partnership, except that this prohibition shall not apply if one of the partners died; and, in all cases in which a person registered a prior domestic partnership, the domestic partnership shall have been terminated in accordance with the provisions of section 10 of P.L.2003, c. 246 (C.26:8A-10).
- c) A person who executes an Affidavit of Domestic Partnership in violation of the provisions of subsection b. of this section shall be liable to a civil penalty in an amount not to exceed \$1,000. The penalty shall be sued for and collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 *et seq.*).

**N.J.S.A. 26:8A-5. Termination of domestic partnership; notification of termination requirements**

- a) A former domestic partner who has given a copy of the Certificate of Domestic Partnership to any third party to qualify for any benefit or right and whose receipt of that benefit or enjoyment of that right has not otherwise terminated, shall, upon termination of the domestic partnership, give or send to the third party, at the last known address of the third party, written notification that the domestic partnership has been terminated. A third party

that suffers a loss as a result of failure by a domestic partner to provide this notice shall be entitled to seek recovery from the partner who was obligated to send the notice for any actual loss resulting thereby.

b) Failure to provide notice to a third party, as required pursuant to this section, shall not delay or prevent the termination of the domestic partnership.

### **N.J.S.A. 268:A-6. Obligations of domestic partners**

a) The obligations that two people have to each other as a result of creating a domestic partnership shall be limited to the provisions of this act, and those provisions shall not diminish any right granted under any other provision of law.

b) Upon the termination of a domestic partnership, the domestic partners, from that time forward, shall incur none of the obligations to each other as domestic partners that are created by this or any other act.

c) A domestic partnership, civil union or reciprocal beneficiary relationship entered into outside of this State, which is valid under the laws of the jurisdiction under which the partnership was created, shall be valid in this State.

d) Any health care or social services provider, employer, operator of a place of public accommodation, property owner or administrator, or other individual or entity may treat a person as a member of a domestic partnership, notwithstanding the absence of an Affidavit of Domestic Partnership filed pursuant to this act.

e) Domestic partners may modify the rights and obligations to each other that are granted by this act in any valid contract between themselves, except for the requirements for a domestic partnership as set forth in section 4 of P.L.2003, c. 246 (C.6:8A-4).

f) Two adults who have not filed an Affidavit of Domestic Partnership shall be treated as domestic partners in an emergency medical situation for the purposes of allowing one adult to accompany the other adult who is ill or injured while the latter is being transported to a hospital, or to visit the other adult who is a hospital patient, on the same basis as a member of the latter's immediate family, if both persons, or one of the persons in the event that the other person is legally or medically incapacitated, advise the emergency care provider that the two persons have met the other requirements for establishing a domestic partnership as set forth in section 4 of P.L.2003, c. 246 (C.26:8A-4); however, the provisions of this section shall not be construed to permit the two adults to be treated as domestic partners for any other purpose as provided in P.L.2003, c. 246 (C.26:8A-1 et al.) prior to their having filed an Affidavit of Domestic Partnership.

g) A domestic partner shall not be liable for the debts of the other partner contracted before establishment of the domestic partnership, or contracted by the other partner in his own name during the domestic partnership. The

partner who contracts for the debt in his own name shall be liable to be sued separately in his own name, and any property belonging to that partner shall be liable to satisfy that debt in the same manner as if the partner had not entered into a domestic partnership.

**N.J.S.A. 26:8A-10. Jurisdiction of superior court over proceedings to terminate domestic partnerships**

a) (1) The Superior Court shall have jurisdiction over all proceedings relating to the termination of a domestic partnership established pursuant to section 4 of P.L.2003, c. 246 (C.26:8A-4), including the division and distribution of jointly held property. The fees for filing an action or proceeding for the termination of a domestic partnership shall be the same as those for filing an action or proceeding for divorce pursuant to N.J.S. 22A:2-12.

(2) The termination of a domestic partnership may be adjudged for the following causes:

- i. Voluntary sexual intercourse between a person who is in a domestic partnership and an individual other than the person's domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3);
- ii. Willful and continued desertion for a period of 12 or more consecutive months, which may be established by satisfactory proof that the parties have ceased to cohabit as domestic partners;
- iii. Extreme cruelty, which is defined as including any physical or mental cruelty that endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; except that no complaint for termination shall be filed until after three months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;
- iv. Separation, provided that the domestic partners have lived separate and apart in different habitations for a period of at least 18 or more consecutive months and there is no reasonable prospect of reconciliation; and provided further that, after the 18-month period, there shall be a presumption that there is no reasonable prospect of reconciliation;
- v. Voluntarily induced addiction or habituation to any narcotic drug, as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 226 (C. 24:21-2) or the "Comprehensive Drug Reform Act of 1987," N.J.S. 2C:35-1 et al., or habitual drunkenness for a period of 12 or more consecutive months subsequent to establishment of the domestic partnership and next preceding the filing of the complaint;
- vi. Institutionalization for mental illness for a period of 24 or more consecutive months subsequent to establishment of the domestic partnership and next preceding the filing of the complaint; or

vii. Imprisonment of the defendant for 18 or more consecutive months after establishment of the domestic partnership, provided that where the action is not commenced until after the defendant's release, the parties have not resumed cohabitation following the imprisonment.

(3) In all such proceedings, the court shall in no event be required to effect an equitable distribution of property, either real or personal, which was legally and beneficially acquired by both domestic partners or either domestic partner during the domestic partnership.

(4) The court shall notify the State registrar of the termination of a domestic partnership pursuant to this subsection.

b) In the case of two persons who are each 62 years of age or older and not of the same sex and have established a domestic partnership pursuant to section 4 of P.L.2003, c. 246 (C.26: 8A-4), the domestic partnership shall be deemed terminated if the two persons enter into a marriage with each other that is recognized by New Jersey law.

c) The State registrar shall revise the records of domestic partnership provided for in section 9 of P.L.2003, c. 246 (C.26: 8A-9) to reflect the termination of a domestic partnership pursuant to this section.

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## SIGNIFICANT CASES

***Lewis v. Harris*, 378 N.J. Super. 168 (App. Div. 2005), judgment affirmed as modified by *Lewis v. Harris*, 188 N.J. 415 (2006)**

The New Jersey Constitution does not compel the state to allow same-sex couples to marry, especially in light of the Domestic Partnership Act. The prevailing societal view is that marriage is a union between a man and a woman. When that view changes, it is for the Legislature to amend the marriage laws. The Court went on to state that under the equal protection guarantee of the New Jersey Constitution, committed same-sex couples must be afforded on equal terms the same rights and benefits enjoyed by married opposite sex couples.

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A complaint to terminate a domestic partnership follows.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

EDWARD SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
<i>Plaintiff,</i>	:	MORRIS COUNTY
	:	
vs.	:	DOCKET NO. FM-14-
	:	
	:	<u>CIVIL ACTION</u>
CARL JONES,	:	
	:	
<i>Defendant.</i>	:	COMPLAINT FOR TERMINATION
	:	OF DOMESTIC PARTNERSHIP

The Plaintiff, Edward Smith, residing at 2 Smith Street, Morristown, Morris County, New Jersey 07960, by way of Complaint against the above-named Defendant, says:

**FIRST COUNT**

1. Plaintiff lawfully registered as a Domestic Partner of Defendant, Carl Jones, on July 12, 2004, at the Morristown Municipal Building, Morristown, Morris County, New Jersey 07960.
2. Plaintiff was a bona fide resident of the State of New Jersey when the within cause of action for termination of the Domestic Partnership arose and has ever since and for more than one year next proceeding the commencement of this action, continued to be such a bona fide resident of the State of New Jersey residing at the above-stated address.
3. At the time that the within cause of action for dissolution of the domestic partnership arose, the parties resided at 2 Smith Street, Morristown, Morris County, New Jersey 07960. Venue is properly situated in Morris County.
4. The Defendant currently resides at 8 Tremont Avenue, Morristown, Morris County, New Jersey 07960.

5. The parties separated in July 12, 2005 and ever since which time, and for more than eighteen (18) consecutive months, said parties have lived separate and apart in different habitations. There is no prospect of reconciliation.
6. There have been no previous proceedings between the Plaintiff and the Defendant respecting the domestic partnership or its dissolution in any Court.

WHEREFORE, the Plaintiff demands Judgment:

- A. Dissolving the domestic partnership between the parties pursuant to N.J.S.A. 26:8A-10.
- B. For such further relief as the court may deem equitable and just.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorney for Plaintiff**

Dated:

BY: \_\_\_\_\_  
Mark Gruber, Esq.

**CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

I hereby certify that to the best of my information, knowledge and belief that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, that no other action or arbitration proceeding is contemplated, and I am not aware of any other person who should be joined in this matter.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorney for Plaintiff**

Dated:

BY: \_\_\_\_\_  
Mark Gruber, Esq.

**TRIAL COUNSEL DESIGNATION PURSUANT TO R. 4:5-1(c)**

Mark Gruber, Esq. is hereby designated trial counsel in this matter.



**CERTIFICATION PURSUANT TO R. 5:4-2(h)**  
**BY ATTORNEY AND CLIENT**

I, Mark Gruber, Esq. being of full age, hereby certifies as follows:

1. I am the attorney for the Plaintiff in the above-captioned matter.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have provided my client with a copy of the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”
4. I have discussed with my client the Complementary Dispute Resolution (“CDR”) Alternatives to Litigation contained in that document

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorney for Plaintiff**

Dated:

\_\_\_\_\_  
Mark Gruber, Esq.

I, Edward Smith, of full age, hereby certify as follows:

1. I am the Defendant in the above-captioned matter and am represented in this divorce matter by Mark Gruber, Esq.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have read the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”
4. I, thus, have been informed as to the availability of Complementary Divorce—Dispute Resolution Alternatives to Conventional Litigation.

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated:

\_\_\_\_\_  
Edward Smith

**CERTIFICATION OF VERIFICATION AND NON-COLLUSION**  
**PURSUANT TO R. 5:4-2(c)**

I, Edward Smith, being of full age, hereby certify:

I am the Plaintiff in the foregoing Complaint. The allegations in the Complaint are true to the best of my knowledge, information and belief, and the said Complaint is made in truth and good faith and without collusion for the causes set forth therein. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

\_\_\_\_\_  
Edward Smith

**CERTIFICATION OF INSURANCE COVERAGE**  
**PURSUANT TO R.5:4-2(f)**

I, Edward Smith, of full age, hereby certify as follows:

1. I am the Plaintiff in the foregoing Complaint. To the best of my knowledge and belief, the insurance coverage with this Certification represents all insurance coverage of myself and the Defendant in this matter.
2. To the best of my knowledge and belief, none of the insurance coverage listed within this Certification was canceled or modified within the ninety days preceding the date of this Certification.

**LIFE INSURANCE**

Name of Company:

Address:

Policy Number:

Beneficiary:

Face Amount:

Name of Insured:

Policy Owner:

Policy Term (if applicable):

**HEALTH INSURANCE**

Name of Company:

Address:

Name of Insured:

I.D. Number:

Group Number:

Coverage Type:

Single \_\_\_ Child \_\_\_ Family \_\_\_ Optical \_\_\_ Hospital \_\_\_ Major Medical \_\_\_

Dental \_\_\_ Drug \_\_\_ Diagnostic \_\_\_

Check if made available through employment \_\_\_ or personally obtained \_\_\_.

### **AUTOMOBILE INSURANCE**

Name of Company:

Address:

Policy Number:

Policy Expiration Date:

Year, Make & Model of Vehicle:

Coverage Limits:

Lawsuit Threshold Yes \_\_\_ No \_\_\_; Umbrella Coverage Yes \_\_\_ No \_\_\_

Driver(s) of Vehicle:

Lienholder/Lessor (If applicable):

Address of Lienholder/Lessor:

Use of Vehicle: Personal \_\_\_ Business \_\_\_

### **HOMEOWNER'S INSURANCE**

Name of Company:

Address:

Policy Number:

Policy Expiration Date:

Address of Covered Residence:

Coverage Limits:

Umbrella Coverage: Yes \_\_\_ No \_\_\_; mbrella Coverage: \$

Mortgage (If applicable):

Address of Mortgagee:

Rider(s) to Policy: Jewelry \_\_\_ Furs \_\_\_ Artwork \_\_\_ Other \_\_\_

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated:

\_\_\_\_\_

Edward Smith

## L. CIVIL UNIONS

In a landmark case entitled *Lewis v. Harris*, the New Jersey Supreme Court held that committed same-sex couples must be afforded the same rights and benefits enjoyed by married opposite-sex couples, and directed the Legislature to amend and enact marriage statutes affording same-sex couples the same rights and benefits enjoyed by married opposite-sex couples. The Court further held that same-sex marriage is not a fundamental right entitled to protection under the liberty guarantee of the New Jersey Constitution. The New Jersey Supreme Court did hold that under the equal protection guarantee of the New Jersey Constitution, committed same-sex couples must be afforded, on equal terms, the same rights and benefits enjoyed by married opposite-sex couples. *Lewis v. Harris*, 188 N.J. 415 (2006). Accordingly, the Legislature enacted a civil union statute, N.J.S.A. 37:1-28, *et seq.*, which was held unconstitutional by *Garden State Equality v. Dow*, 215 N.J. 314 (2013), which provided that, because the Civil Union Act offers same-sex couples civil unions, but not the option of marriage, and federal agencies provided federal benefits only to married same-sex couples, same-sex couples in New Jersey are deprived of the full rights and benefits the New Jersey Constitution guarantees in the equal protection clause.

### **37:1-28. Findings, declarations concerning civil unions**

The Legislature finds and declares that:

- a. Same-sex couples in New Jersey live together in committed relationships without the benefits and rights afforded to heterosexual couples who choose to marry;
- b. Promoting such stable and durable relationships as well as eliminating obstacles and hardships these couples may face is necessary and proper and reaffirms this State's obligation to insure equality for all the citizens of New Jersey;
- c. New Jersey was one of the first states to adopt comprehensive legislation prohibiting discrimination based on affectional or sexual orientation and one of the first states to formally recognize domestic partnerships by enacting the "Domestic Partnership Act," P.L.2003, c.246 (C.26:8A-1 *et al.*) on January 12, 2004 thereby guaranteeing in law certain rights and benefits to those individuals who enter into domestic partnerships;
- d. Those rights and benefits afforded to same-sex couples under the "Domestic Partnership Act" should be expanded by the legal recognition of civil unions between same-sex couples in order to provide these couples with all the rights and benefits that married heterosexual couples enjoy;
- e. It is the intent of the Legislature to comply with the constitutional mandate set forth by the New Jersey Supreme Court in the recent landmark decision of *Lewis v. Harris*, 188 N.J. 415 (October 25, 2006) wherein the Court held that the equal protection guarantee of Article I, paragraph 1 of the State Constitution was violated by denying rights and benefits to committed same-sex couples which were statutorily given to their heterosexual counterparts.

The Court stated that the “State can fulfill that constitutional requirement in one of two ways. It can either amend the marriage statutes to include same-sex couples or enact a parallel statutory structure by another name, in which same-sex couples would not only enjoy the rights and benefits, but also bear the burdens and obligations of civil marriage.” *Id.* at 463.

f. The Legislature has chosen to establish civil unions by amending the current marriage statute to include same-sex couples. In doing so, the Legislature is continuing its longstanding history of insuring equality under the laws for all New Jersey citizens by providing same-sex couples with the same rights and benefits as heterosexual couples who choose to marry.

### **37:1-29. Definitions relative to civil unions**

As used in this act:

“Civil union couple” means two persons who have established a civil union pursuant to this act.

“Civil union license or civil union certificate” means a document that certifies that the persons named on the license or certificate have established a civil union in this State in compliance with this act.

“Civil union” means the legally recognized union of two eligible individuals of the same sex established pursuant to this act. Parties to a civil union shall receive the same benefits and protections and be subject to the same responsibilities as spouses in a marriage.

“Commissioner” means the Commissioner of Health and Senior Services.

“One partner in a civil union couple” means a person who has established a civil union pursuant to the provisions of this act.

### **37:1-30. Requirements to establish a civil union**

For two persons to establish a civil union in this State, it shall be necessary that they satisfy all of the following criteria:

- a. Not be a party to another civil union, domestic partnership or marriage in this State;
- b. Be of the same sex; and
- c. Be at least 18 years of age, except as provided in section 10 of this act.

### **37:1-31. Legal benefits, protections, responsibilities of civil union couples equal to those of married couples**

a. Civil union couples shall have all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage.

- b. The dissolution of civil unions shall follow the same procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of marriage.
- c. The laws of domestic relations, including annulment, premarital agreements, separation, divorce, child custody and support, property division and maintenance, and post-relationship spousal support, shall apply to civil union couples.
- d. Civil union couples may modify the terms, conditions or effects of their civil union in the same manner and to the same extent as married persons who execute an antenuptial agreement or other agreement recognized and enforceable under the law, setting forth particular understandings with respect to their union.
- e. The rights of civil union couples with respect to a child of whom either becomes the parent during the term of the civil union, shall be the same as those of a married couple with respect to a child of whom either spouse or partner in a civil union couple becomes the parent during the marriage.
- f. All contracts made between persons in contemplation of a civil union shall remain in full force after such civil union takes place.
- g. A copy of the record of the civil union received from the local or State registrar shall be presumptive evidence of the civil union in all courts.

**37:1-32. Legal benefits, protections, responsibilities of spouses which apply in like manner to civil union couples; list not exclusive**

The following list of legal benefits, protections and responsibilities of spouses shall apply in like manner to civil union couples, but shall not be construed to be an exclusive list of such benefits, protections and responsibilities:

- a. laws relating to title, tenure, descent and distribution, intestate succession, survivorship, or other incidents of the acquisition, ownership or transfer, inter vivos or at death, of real or personal property, including but not limited to eligibility to hold real and personal property as tenants by the entirety;
- b. causes of action related to or dependent upon spousal status, including an action for wrongful death, emotional distress, loss of consortium, or other torts or actions under contracts reciting, related to, or dependent upon spousal status;
- c. probate law and procedure, including nonprobate transfer;
- d. adoption law and procedures;
- e. laws relating to insurance, health and pension benefits;
- f. domestic violence protections pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et al.) and domestic violence programs;

- g. prohibitions against discrimination based upon marital status;
- h. victim's compensation benefits, including but not limited to compensation to spouse, children and relatives of homicide victims;
- i. workers' compensation benefits pursuant to chapter 15 of Title 34 of the Revised Statutes, including but not limited to survivors' benefits and payment of back wages;
- j. laws relating to emergency and nonemergency medical care and treatment, hospital visitation and notification, and any rights guaranteed to a hospital patient pursuant to P.L.1989, c.170 (C.26:2H-12.7 et seq.) or a nursing home resident pursuant to P.L.1976, c.120 (C.30:13-1 et seq.);
- k. advance directives for health care and designation as a health care representative pursuant to P.L.1991, c.201 (C.26:2H-53 et al.);
- l. family leave benefits pursuant to P.L.1989, c.261 (C.34:11B-1 et seq.);
- m. public assistance benefits under State law, including, but not limited to: Work First New Jersey benefits pursuant to P.L.1997, c.38 (C.44:10-55 et seq.); medical assistance pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.); Supplemental Security Income pursuant to P.L.1973, c.256 (C.44:7-85 et seq.); pharmaceutical assistance pursuant to P.L.1975, c.194 (C.30:4D-20 et seq.) and P.L.2001, c.96 (C.30:4D-43 et seq.); hearing aid assistance pursuant to P.L.1987, c.298 (C.30:4D-36 et seq.); and utility benefits pursuant to P.L.1979, c.197 (C.48:2-29.15 et seq.) and P.L.1981, c.210 (C.48:2-29.30 et al.);
- n. laws relating to taxes imposed by the State or a municipality including but not limited to homestead rebate tax allowances, tax deductions based on marital status or exemptions from realty transfer tax based on marital status;
- o. laws relating to immunity from compelled testimony and the marital communication privilege;
- p. the home ownership rights of a surviving spouse;
- q. the right of a spouse to a surname change without petitioning the court;
- r. laws relating to the making of, revoking and objecting to anatomical gifts pursuant to P.L.1969, c.161 (C.26:6-57 et seq.);
- s. State pay for military service;
- t. application for absentee ballots;
- u. legal requirements for assignment of wages; and
- v. laws related to tuition assistance for higher education for surviving spouses or children.

**37:1-33. References to marital or spousal relationships to include civil unions**

Whenever in any law, rule, regulation, judicial or administrative proceeding or otherwise, reference is made to “marriage,” “husband,” “wife,” “spouse,” “family,” “immediate family,” “dependent,” “next of kin,” “widow,” “widower,” “widowed” or another word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union pursuant to the provisions of this act.

**37:1-34. Validity of civil unions entered into in foreign jurisdictions**

A civil union relationship entered into outside of this State, which is valid under the laws of the jurisdiction under which the civil union relationship was created, shall be valid in this State.

**37:1-35. Rules and regulations; guidance on replying to form questions**

The Commissioner of Health and Senior Services in consultation with the Director of the Administrative Office of the Courts, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to effectuate the purposes of this act.

These rules and regulations shall address the issue of how partners in a civil union couple may legally answer questions on forms, governmental and private, concerning their status as partners in a civil union couple.

**37:1-36. New Jersey Civil Union Review Commission, establishment; membership; duties; reports; expiration**

a. There is hereby established the New Jersey Civil Union Review Commission commencing on the effective date of P.L.2006, c.103 (C.37:1-28 et al.).

b. The commission shall be composed of 13 members to be appointed as follows: the Attorney General or his designee, the Commissioner of the Department of Banking and Insurance or his designee, the Commissioner of Health and Senior Services or his designee, the Commissioner of Human Services or his designee, the Commissioner of the Department of Children and Families or his designee, the Director of the Division of Civil Rights in the Department of Law and Public Safety or his designee, one public member appointed by the President of the Senate, one public member appointed by the Speaker of the General Assembly, and five public members appointed by the Governor, with the advice and consent of the Senate, no more than three who shall be of the same political party.

c. It shall be the duty of the commission to study all aspects of P.L.2006, c.103 (C.37:1-28 et al.) which authorizes civil unions including, but not limited to:



- (1) evaluate the implementation, operation and effectiveness of the act;
- (2) collect information about the act's effectiveness from members of the public, State agencies and private and public sector businesses and organizations;
- (3) determine whether additional protections are needed;
- (4) collect information about the recognition and treatment of civil unions by other states and jurisdictions including the procedures for dissolution;
- (5) evaluate the effect on same-sex couples, their children and other family members of being provided civil unions rather than marriage;
- (6) evaluate the financial impact on the State of New Jersey of same-sex couples being provided civil unions rather than marriage; and
- (7) review the "Domestic Partnership Act," P.L.2003, c.246 (C.26:8A-1 et al.) and make recommendations whether this act should be repealed.

d. The commission shall organize as soon as possible after the appointment of its members. The commission shall be established for a term of three years and the members shall be appointed for the full term of three years. Vacancies in the membership of the commission shall be filled in the same manner as the original appointment. The commission members shall choose a Chair from among its members.

e. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to the commission for its purposes.

f. The commission is entitled to the assistance and service of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ stenographic and clerical assistance and to incur traveling or other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

g. The commission shall report semi-annually its findings and recommendations to the Legislature and the Governor.

h. The commission shall expire three years from the date of its initial organizational meeting and upon submission of its final report.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

_____	:	SUPERIOR COURT OF NEW JERSEY
EDWARD SMITH,	:	CHANCERY DIVISION: FAMILY PART
	:	MORRIS COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-14-
vs.	:	
	:	<u>CIVIL ACTION</u>
CARL JONES,	:	
	:	
<i>Defendant.</i>	:	COMPLAINT FOR DISSOLUTION OF CIVIL UNION
_____	:	

The Plaintiff, Edward Smith, residing at 2 Smith Street, Morristown, Morris County, New Jersey 07960, by way of Complaint against the above-named Defendant, says:

**FIRST COUNT**

1. Plaintiff was lawfully joined in a civil union with Defendant, Carl Jones, on March 1, 2007, at the Morris County Court House, Morris County, New Jersey 07960.
2. Plaintiff was a bona fide resident of the State of New Jersey when the within cause of action for dissolution of the civil union arose and has ever since and for more than one year next proceeding the commencement of this action, continued to be such a bona fide resident of the State of New Jersey residing at the above-stated address.
3. At the time that the within cause of action for dissolution of the civil union arose, the parties resided at 2 Smith Street, Morristown, Morris County, New Jersey 07960. Venue is properly situated in Morris County.
4. The Defendant currently resides at 8 Tremont Avenue, Morristown, Morris County, New Jersey 07960.
5. The Defendant has perpetrated acts of extreme mental cruelty against the Plaintiff, which in the past and present both endangered her health and made it improper and unreasonable

for the Plaintiff to cohabit with the Defendant under the same roof. All of said acts, which are stated below, occurred more than three months prior to the filing of this suit and any acts, which are included below, which occurred thereafter are merely to demonstrate the continued nature and character of the Defendant's acts:

- (a) Throughout the course of the civil union, the Defendant insisted on going out with his friends each weekend, leaving the Plaintiff home alone.
  - (b) Throughout the course of the civil union, the Defendant has verbally abused the Plaintiff, calling him vulgar names.
  - (c) Throughout the course of the civil union, the Defendant refused to go out with or plan activity with Plaintiff.
  - (d) The Defendant refused to spend time with the Plaintiff and his family on the holidays.
6. During the course of the civil union the parties' acquired property, which is subject to equitable distribution.
7. There have been no previous proceedings between the Plaintiff and the Defendant respecting the civil union or its dissolution in any Court.

WHEREFORE, the Plaintiff demands Judgment:

- 1. Dissolving the civil union between the parties pursuant to N.J.S.A. 2A:34-2.1.
- 2. Awarding the Plaintiff alimony pursuant to N.J.S.A. 2A:34-23.
- 3. Equitably distributing all property, both real and personal acquired during the civil union, pursuant to N.J.S.A. 2:34-23.1.
- 4. Compelling the Defendant to pay Plaintiff for the reasonable counsel fees and costs associated with the within action;

For such further relief as the Court may deem equitable and just.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorney for Plaintiff**

Dated:

BY: \_\_\_\_\_  
Mark Gruber, Esq.

## **CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

I hereby certify that to the best of my information, knowledge and belief that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, that no other action or arbitration proceeding is contemplated, and I am not aware of any other person who should be joined in this matter.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorney for Plaintiff

Dated:

BY: \_\_\_\_\_  
Mark Gruber, Esq.

## **TRIAL COUNSEL DESIGNATION PURSUANT TO R. 4:5-1(c)**

Mark Gruber, Esq. is hereby designated trial counsel in this matter.

## **CERTIFICATION PURSUANT TO R. 5:4-2(h)** **BY ATTORNEY AND CLIENT**

I, Mark Gruber, Esq. being of full age, hereby certifies as follows:

1. I am the attorney for the Plaintiff in the above-captioned matter.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have provided my client with a copy of the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”
4. I have discussed with my client the Complementary Dispute Resolution (“CDR”) Alternatives to Litigation contained in that document.

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorney for Plaintiff

Dated:

BY: \_\_\_\_\_  
Mark Gruber, Esq.

I, Edward Smith, of full age, hereby certify as follows:

1. I am the Defendant in the above-captioned matter and am represented in this divorce matter by Mark Gruber, Esq.

I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

I have read the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”

I, thus, have been informed as to the availability of Complementary Divorce—Dispute Resolution Alternatives to Conventional Litigation.

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated:

\_\_\_\_\_  
Edward Smith

**CERTIFICATION OF VERIFICATION AND NON-COLLUSION**  
**PURSUANT TO R. 5:4-2(c)**

I, Edward Smith, being of full age, hereby certify:

I am the Plaintiff in the foregoing Complaint. The allegations in the Complaint are true to the best of my knowledge, information and belief, and the said Complaint is made in truth and good faith and without collusion for the causes set forth therein. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

\_\_\_\_\_  
Edward Smith

**CERTIFICATION OF INSURANCE COVERAGE**  
**PURSUANT TO R.5:4-2(f)**

I, Edward Smith, of full age, hereby certify as follows:

1. I am the Plaintiff in the foregoing Complaint. To the best of my knowledge and belief, the insurance coverage with this Certification represents all insurance coverage of myself and the Defendant in this matter.
2. To the best of my knowledge and belief, none of the insurance coverage listed within this Certification was canceled or modified within the ninety days preceding the date of this Certification.

**LIFE INSURANCE**

Name of Company:

Address:

Policy Number:

Beneficiary:

Face Amount:

Name of Insured:

Policy Owner:

Policy Term (if applicable):

**HEALTH INSURANCE**

Name of Company:

Address:

Name of Insured:

I.D. Number:

Group Number:

Coverage Type:

Single \_\_\_ Child \_\_\_ Family \_\_\_ Optical \_\_\_ Hospital \_\_\_ Major Medical \_\_\_  
Dental \_\_\_ Drug \_\_\_ Diagnostic \_\_\_

Check if made available through employment \_\_\_ or personally obtained \_\_\_ .

**AUTOMOBILE INSURANCE**

Name of Company:

Address:

Policy Number:

Policy Expiration Date:

Year, Make & Model of Vehicle:

Coverage Limits:

Lawsuit Threshold Yes \_\_\_ No \_\_\_; Umbrella Coverage Yes \_\_\_ No \_\_\_

Driver(s) of Vehicle:

Lienholder/Lessor (If applicable):  
Address of Lienholder/Lessor:  
Use of Vehicle: Personal \_\_\_ Business \_\_\_

**HOMEOWNER'S INSURANCE**

Name of Company:  
Address:  
Policy Number:  
Policy Expiration Date:  
Address of Covered Residence:  
Coverage Limits:  
Umbrella Coverage: Yes \_\_\_ No \_\_\_; Umbrella Coverage: \$  
Mortgage (If applicable):  
Address of Mortgagee:  
Rider(s) to Policy: Jewelry \_\_\_ Furs \_\_\_ Artwork \_\_\_ Other \_\_\_

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated:

\_\_\_\_\_  
Edward Smith

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

EDWARD SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
<i>Plaintiff,</i>	:	MORRIS COUNTY
	:	
vs.	:	DOCKET NO. FM-14-
	:	
CARL JONES,	:	<u>CIVIL ACTION</u>
	:	
<i>Defendant.</i>	:	JUDGMENT OF DISSOLUTION OF CIVIL UNION
	:	WITH MARITAL SETTLEMENT AGREEMENT
	:	ATTACHED
	:	
	:	

THIS MATTER coming on to be heard on January 2, 2019 in the presence of Mark Gruber, Esq. of the law office of Gruber, Colabella, Liuzza, Thompson & Hiben, Attorneys for the Plaintiff, Edward Smith, and Carl Jones, the Defendant Pro Se, having defaulted; and the Court having read and considered the Complaint for Divorce filed September 1, 2018; and it appearing that Plaintiff and Defendant were joined in a civil union on March 1, 2007 in Morris County, New Jersey; and the Plaintiff having pleaded and proved a cause of action for Dissolution of Civil Union under the statute in such case made and provided; and the Plaintiff having been a bona fide resident of the State of New Jersey for more than one year next preceding the commencement of this action and jurisdiction having been acquired over the Defendant pursuant to the Rules governing the Courts;

THEREUPON, IT IS on this 2<sup>nd</sup> day of January 2019, by the Superior Court of New Jersey, Chancery Division, ORDERED AND ADJUDGED; and the said Court by virtue of the power and authority of this Court and of the acts of the legislature in such case made and provided does hereby ORDER AND ADJUDGE that the said Plaintiff, Edward Smith, and the said Defendant Carl Jones, be dissolved of the civil union for the cause stated in the Complaint, and the said parties and each of them be freed and discharged from the obligations thereof; and it is



FURTHER ORDERED that, the Marital Settlement Agreement fully executed on January 2, 2012 and annexed hereto as “P-1” is hereby made a part of this Judgment of Dissolution of Civil Union and shall not merge with, but shall survive this Judgment of Dissolution of Civil Union, and the parties are hereby directed to comply with the terms of said Agreement. The Court has not taken testimony as to the merits of the Agreement, but finds that it was entered into freely and voluntarily by the parties.

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Honorable Frank J. DeAngelis, J.S.C

## M. SAME-SEX MARRIAGE IN NEW JERSEY

In the case of the *United States v. Windsor*, the United States Supreme Court held that pertinent provisions of the definition of marriage as found in the Defense of Marriage Act (DOMA) were unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment. *U.S. v. Windsor*, 133 S. Ct. 2675 (2013). The Court's rejection of the definition of marriage in DOMA had a wide range of implications under federal law. With the ruling, married same-sex couples were to be treated the same as traditional couples. This also meant that married same-sex couples would have the same rights as traditional married couples in such areas as income tax, estate tax, health privacy and other federally regulated areas, including immigration.

In the prior case of *Lewis v. Harris*, 188 N.J. 415 (2006), the Court held that, in order to comply with the equal protection guarantee of the New Jersey Constitution, the state must provide to same-sex couples, on equal terms, the full rights and benefits enjoyed by heterosexual couples. The Legislature then enacted the civil union legislation to comply with the ruling in *Lewis v. Harris*. The civil union statute, N.J.S.A. 37:1-28 *et seq.*, conveyed state benefits upon same-sex couples, but fell short in granting them the full status of marriage, which would otherwise entitle them to federal benefits.

On June 26, 2015, in a landmark decision, a split Supreme Court (5/4) declared same-sex marriage legal in all 50 states. In *Obergefell, et al. v. Hodges, Director at Department of Health*, 576 U.S. 135 S. Ct. 2584 (2015), the Supreme Court determined that the due process and the equal protection clause of the 14<sup>th</sup> Amendment requires a state to license a marriage between two people of the same sex and to recognize as a marriage a union between two people of the same sex when their union was lawfully licensed and performed out of state. Justice Anthony Kennedy, writing for the majority, stated: "The limitation of marriage to opposite sex couples may long have seemed natural and just, but its inconsistency with the current meaning of the fundamental right to marry is now manifest. In closing, Justice Kennedy wrote for the Court:

"No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for dignity in the eyes of the law. The Constitution grants them that right."

## **N. PREMARITAL AGREEMENTS**

### **1. The Uniform Premarital Agreement Act**

Effective Nov. 5, 1988, New Jersey passed the Uniform Premarital Agreement Act. The statutes are reprinted below. The statute was amended on June 27, 2013.

#### **37:2-31. Short title**

This article shall be known and may be cited as the “Uniform Premarital and Pre-Civil Union

#### **37:2-32. Definitions, as used in this article:**

- a. “Premarital or pre-civil union agreement” means an agreement between prospective spouses or partners in a civil union couple made in contemplation of marriage or a civil union and to be effective upon marriage or upon the parties establishing a civil union;
- b. “Property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings;
- c. Deleted by Amendment, (P.L. 2013, c. 72)

#### **37:2-33. Formalities; consideration**

A premarital or pre-civil union agreement shall be in writing, with a statement of assets annexed thereto, signed by both parties, and it is enforceable without consideration.

#### **37:2-34. Contents of premarital or pre-civil union agreement**

Parties to a premarital or pre-civil union agreement may contract with respect to:

- a. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
- b. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
- c. The disposition of property upon separation, marital dissolution, dissolution of a civil union, death, or the occurrence or nonoccurrence of any other event;
- d. The modification or elimination of spousal or one partner in a civil union couple support;
- e. The making of a will, trust, or other arrangement to carry out the provisions of the agreement;

- f. The ownership rights in and disposition of the death benefit from a life insurance policy;
- g. The choice of law governing the construction of the agreement; and
- h. Any other matter, including their personal rights and obligations, not in violation of public policy.

**37:2-35. Premarital or pre-civil union agreement not to adversely affect right of child support**

A premarital or pre-civil union agreement shall not adversely affect the right of a child to support.

**37:2-36. When premarital or pre-civil union agreement becomes effective**

A premarital or pre-civil union agreement becomes effective upon marriage of the parties or upon the parties establishing a civil union.

**37:2-37. Amendment or revocation of premarital or pre-civil union agreement**

After marriage of the parties or the parties establishing a civil union, a premarital or pre-civil union agreement may be amended or revoked only by a written agreement signed by the parties, and the amended agreement or revocation is enforceable without consideration.

**37:2-38. Enforcement of premarital or pre-civil union agreement; generally**

The burden of proof to set aside a premarital or pre-civil union agreement shall be upon the party alleging the agreement to be unenforceable. A premarital or pre-civil union agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

- a. The party executed the agreement involuntarily; or
- b. (Deleted by Amendment, P.L. 2013, c. 72)
- c. The agreement was unconscionable when it was executed because that party before the execution of the agreement:
  - (1) Was not provided full and fair disclosure of the earnings, property and financial obligations of the other party;
  - (2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided;
  - (3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or

(4) Did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

d. The issue of unconscionability of a premarital or pre-civil union agreement shall be determined by the court as a matter of law. An agreement shall not be deemed unconscionable unless the circumstances set out in subsection C of this section are applicable.

**37:2-39. Enforcement of premarital or pre-civil union agreement; marriage or civil union determined void**

If a marriage or civil union is determined to be void, an agreement that would otherwise have been a premarital or pre-civil union agreement is enforceable only to the extent necessary to avoid an inequitable result.

**37:2-40. Construction of article**

a. This article shall be construed to effectuate its general purpose to make uniform the law with respect to the subject of the article among states enacting the “Uniform Premarital Agreement Act.”

b. This article shall be construed to apply to pre-civil union agreements executed on and after the effective date of P.L.2006, c.103 (C.37:1-28 et al.).

**37:2-41. Application of article**

This article shall apply to premarital agreements executed on and after its effective date.

This article as amended by P.L.2006, c.103 (C.37:1-28 et al.) shall apply to pre-civil union agreements executed on and after the effective date of P.L.2006, c.103 (C.37:1-28 et al.).

On June 27, 2013, New Jersey’s Premarital Agreement Statute was revised. N.J.S.A. 37:2-32 and N.J.S.A. 37:2-38. The old statute put the burden of proving, by clear and convincing evidence, that there existed some inherent unfairness in the negotiation, execution, or enforcement of the agreement on the party seeking to set aside the agreement. The primary thrust of the prior statute focused on the unconscionability at the time enforcement was sought. The revisions made the determination of unconscionability based upon circumstances that existed at the

time the agreement was signed, not when it was enforced. The court's discretion in determining unconscionability is limited to the grounds set forth in the statute, such as full disclosure, independent counsel, waiver in writing, etc.

The new standard applies only to prenuptial agreements executed after June 27, 2013. Thus, the old statute applies to agreements executed prior to June 27, 2013. This does not prevent couples from voluntarily revising their agreements and entering into marital agreements applying the new standard in the event enforcement is sought. This, of course, leads to questions as to whether the mid-marriage agreement is "inherently coercive." See *Pacelli v. Pacelli*, 319 N.J. Super. 195 (App. Div. 1999).

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## SIGNIFICANT CASES

***Rogers v. Gordon*, 404 N.J. Super. 213 (App. Div. 2009)**

Unconscionability of prenuptial agreement was properly determined at time of enforcement thereof, rather than at time of execution thereof.

***Steele v. Steele*, 467 N.J. Super. 414, 439–40 (App. Div. 2021), cert. denied, No. 085893, 2021 WL 4262215 (N.J. Sept. 16, 2021)**

Unlike premarital agreements or property settlement agreements, the Court will not approach the question of whether a mid-marriage agreement is enforceable with a predisposition in favor of its enforceability, given the "inherently coercive" nature of mid-marriage agreements.

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# JURISDICTION AND VENUE

## A. JURISDICTION

### 1. In General.

When either party is a *bona fide* resident of the state of New Jersey, the superior court has jurisdiction of all cases of divorce, bed and board divorce, and nullity. The superior court also has jurisdiction in actions for alimony and maintenance whenever the defendant is subject to personal jurisdiction of the court, is a resident of the state, or has tangible or intangible real or personal property within the jurisdiction of the court (*in rem jurisdiction*). Jurisdiction is conferred by N.J.S.A. 2A:34-8, which provides:

#### **2A:34-8. Jurisdiction stated**

The Superior Court shall have jurisdiction of all causes of divorce, dissolution of a civil union, bed and board divorce, legal separation from a partner in a civil union couple or nullity when either party is a bona fide resident of this State. The Superior Court shall have jurisdiction of an action for alimony and maintenance when the defendant is subject to the personal jurisdiction of the court, is a resident of this State, or has tangible or intangible real or personal property within the jurisdiction of the court. The Superior Court may afford incidental relief as in other cases of an equitable nature and by rule of court may determine the venue of matrimonial and civil union actions.

R. 5:1-1 confers jurisdiction to the New Jersey Superior Court, Family Part, for all civil actions in which the principle claim is unique to and arises out of a family or family-type relationship.

#### **R. 5:1-1. Scope and Applicability of Rules**

The rules in Part V shall govern family actions. All family actions shall also be governed by the rules in Part I insofar as applicable. Civil family actions shall also be governed by the rules in Part IV insofar as applicable and except as otherwise provided by the rules in Part V. Criminal and quasi-criminal family

actions shall also be governed by the rules in Part III insofar as applicable except as otherwise provided by the rules in Part V. Juvenile delinquency actions shall be governed by the rules in Part III insofar as applicable and except as otherwise provided by the rules in Part V.

## 2. How Acquired.

- a. **Nullity.** If either party is a *bona fide* resident at the time of the commencement of the action for nullity, the New Jersey courts have jurisdiction.

### **2A:34-9. Jurisdiction in nullity proceedings or dissolution proceedings; residence requirements; service of process**

Jurisdiction in actions for nullity of marriage or dissolution of a civil union may be acquired when:

- a. Either party is a *bona fide* resident of this State at the time of the commencement of the action; and
- b. Process is served upon the defendant as prescribed by the rules of the Supreme Court.

- b. **Divorce Proceedings.** One-year residency requirement. When process is served upon a defendant in accordance with the rules of the court, jurisdiction is conferred for purposes of divorce when the following requirements are met:

- (1) Either party was a *bona fide* resident of New Jersey when the cause of action arose; and
- (2) One party has continued to be a resident up to the time of the commencement of the action; and
- (3) One of the parties has been a resident for one year next preceding the commencement of the action (except if adultery is alleged); or
- (4) After the cause of action arises, either party becomes and remains resident for one year next preceding the commencement of the action.

### **2A:34-10. Jurisdiction in divorce proceedings, dissolution of a civil union, legal separation from a partner in a civil union couple; service of process; residence requirements**

Jurisdiction in actions for divorce, either absolute or from bed and board, and in actions for dissolution of a civil union or legal separation from a partner in a civil union couple may be acquired when process is served upon the defendant as prescribed by the rules of the Supreme Court, and

1. When, at the time the cause of action arose, either party was a *bona fide* resident of this State, and has continued so to be down to the time of the



commencement of the action; except that no action for absolute divorce or dissolution of a civil union shall be commenced for any cause other than adultery or extreme cruelty involving an act of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) or under the provisions of a substantially similar statute under the laws of another state or the United States, unless one of the parties has been for the 1 year next preceding the commencement of the action a bona fide resident of this State; or

2. When, since the cause of action arose, either party has become, and for at least 1 year next preceding the commencement of the action has continued to be, a bona fide resident of this State; or

3. When, since the cause of action arose, either party has alleged grounds of extreme cruelty involving an act of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) or under the provisions of a substantially similar statute under the laws of another state or the United States.

“*Bona fide* resident” has been defined as the domiciliary. *Raybin v. Raybin*, 179 N.J. Super. 121 (App. Div. 1981). “Matrimonial domicile” exists when marriage partners have the present intention to establish *bona fide* habitation for an unlimited and indefinite period, permanent, rather than temporary. *Zieper v. Zieper*, 14 N.J. 551 (1954).

**c. Support Orders Where No Jurisdiction Over Absent Spouse.** There is a special statute, which permits support orders to be entered even in the absence of jurisdiction over one spouse. The statute permits court orders to be entered touching the suitable support and maintenance to be paid and provided by the spouse or to be made out of the spouse’s property for the other spouse and their children as the nature of the case and circumstances render suitable and proper.

### **2A:34-24.1. Court-ordered support, maintenance**

When a spouse or partner in a civil union couple has secured a judgment or decree of divorce, whether absolute or from bed and board, dissolution of a civil union, legal separation from a partner in a civil union couple, or of nullity or annulment of marriage or civil union, in an action whether brought in this State or elsewhere, wherein jurisdiction over the person of the other spouse or the other partner in a civil union couple was not obtained, the court may make the same orders and judgments touching the suitable support and maintenance to be paid and provided by the spouse or partner in a civil union couple, or to be made out of the spouse’s or partner’s property, for the other spouse or partner and their children, or any of them, by their marriage or civil union and for such time, as the nature of the case and circumstances of the parties render suitable and proper, pursuant to the provisions of chapter 34 of Title 2A of the New Jersey Statutes notwithstanding the securing of such judgment or decree.

d. **Jurisdiction by Acknowledgement of Service.** Jurisdiction may be established by the filing of an acknowledgement of service of process, appearance, or an answer of the defendant *pro se*, or by an attorney on his or her behalf.

**2A:34-11. Jurisdiction by acknowledgment of service of process, appearance, etc.**

In divorce, dissolution and nullity actions, the jurisdiction of the court over the defendant's person for all purposes of the action shall be fully established by the filing of an acknowledgment of service of process, or of an appearance, or of an answer by the defendant *pro se*, or on his behalf by a duly authorized attorney, in such manner as may be prescribed by rules of the Supreme Court. L. 1951 (1st SS), c. 344; amended 2006, c. 103, § 71, eff. Feb 19, 2007.

e. **Jurisdiction of Counterclaim.** Jurisdiction is conferred upon the defendant for any cause of action for a counterclaim once the court has acquired jurisdiction of the complaint.

**2A:34-12. Counterclaims**

Whenever the court shall have acquired jurisdiction of any action under the provisions of this chapter or P.L.2004, c. 103 (C.37:1-28 et al.), the defendant therein may, by counterclaim, state any cause of action under this chapter or P.L.2006, c.103 (C.37:1-28 et al.) which exists at the time of the service of the counterclaim.

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## SIGNIFICANT CASES

***Pek v. Prots*, 409 N.J. Super. 358 (Ch. Div. 2008)**

Under the Uniform Interstate Family Support Act (UIFSA), New Jersey retains continuing exclusive jurisdiction to modify a spousal support order that was established in New Jersey pursuant to the parties' judgment of divorce and property settlement agreement, despite provision in the parties' agreement that provided that Ohio should exercise all future jurisdiction.

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## **B. VENUE**

Generally, venue is established in the county where the plaintiff's cause of action arose. If the plaintiff was not a domicile of the state of New Jersey, then it will be established in the county where the defendant was domiciled when the cause of action arose. If neither party was domiciled in New Jersey when the cause of action arose, then it will be established in the county in which the plaintiff was domiciled when the action is commenced, or in the county where the defendant is domiciled when service of process is made. (See R. 5:7-1)

### **5:7-1. Venue**

Except as otherwise provided by law, venue in actions for divorce, dissolution of civil union or termination of domestic partnership, nullity and separate maintenance shall be laid in the county in which plaintiff was domiciled when the cause of action arose, or if plaintiff was not then domiciled in this State, then in the county in which defendant was domiciled when the cause of action arose; or if neither party was domiciled in this State when the cause of action arose, then in the county in which the plaintiff is domiciled when the action is commenced, or if plaintiff is not domiciled in this State, then in the county where defendant is domiciled when service of process is made. For purposes of this rule, in actions brought under N.J.S.A. 2A:34-2(c), the cause of action shall be deemed to have arisen three months after the last act of cruelty complained of in the Complaint. For purposes of this rule, in actions brought under N.J.S.A. 26:8A-10 for termination of a domestic partnership in which both parties are non-residents and without a forum available to dissolve the domestic partnership, venue shall be laid in the county in which the Certificate of Domestic Partnership is filed. For purposes of this rule, for the dissolution of a civil union created in New Jersey in which both parties are now non-residents and without a forum available to dissolve the civil union, venue shall be laid in the county in which the civil union was solemnized.

### **5:2-1. Venue, Where Laid**

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

(a)(1) In actions primarily involving the support or parentage of a child (except actions in which the issue of support of a child is joined with claims for divorce, dissolution of civil union, termination of domestic partnership, or nullity) venue shall be laid, pursuant to the Uniform Interstate Family Support Act (UIFSA), in the county of New Jersey in which the child is domiciled, if New Jersey is determined to be the child's home state, as defined under N.J.S.A. 2A:4-30.125.

(2) In a proceeding to establish or enforce a support order or to determine parentage, personal jurisdiction over nonresident individuals shall be governed by N.J.S.A. 2A:4-30.129.

- (3) The jurisdictional basis for the establishment of a support order shall be governed by N.J.S.A. 2A:4-30.132.
- (4) The continuing exclusive jurisdiction of New Jersey or another issuing state, exceptions thereto and modification of a support order issued by a court of this or another state, shall be governed by N.J.S.A. 2A:4-30.133.
- (5) Recognition of an order entered by this State, or by a tribunal of another state, and the method to determine which order is controlling, when multiple orders exist, including responses to multiple registrations or petitions for enforcement, shall be governed by N.J.S.A. 2A:4-30.134 and 2A:4-30.135.
- (b)(1)** In actions involving the welfare, custody, protection and status of a child (except actions in which the issues of welfare, custody, protection and status of a child are joined with claims for divorce, dissolution of civil union, termination of domestic partnership, or nullity), venue shall be laid, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), in the county of New Jersey in which the child was last domiciled if New Jersey is determined to be the child's home state, as defined under N.J.S.A. 2A:34-54, and pursuant to N.J.S.A. 2A:34-65.
- (2) Pursuant to N.J.S.A. 2A:34-68, New Jersey may exercise temporary emergency jurisdiction under the Rule.
- (c)** In divorce, dissolution of civil union, termination of domestic partnership, and nullity actions, venue shall be laid in accordance with R. 5:7-1.
- (d)** In actions for adoption, venue shall be laid in accordance with R. 5:10-1.
- (e)** In actions for termination of parental rights, venue shall be laid in accordance with R. 5:9-1.
- (f)** In juvenile delinquency actions, venue shall be laid in accordance with R. 5:19-1.
- (g)** In kinship legal guardianship actions, venue shall be laid in accordance with R. 5:9A-3.

### **3:14-1. Venue**

An offense shall be prosecuted in the county in which it was committed, except that

- (a) If it is uncertain in which one of 2 or more counties the offense has been committed or if an offense is committed in several counties prosecution may be had in any of such counties.
- (b) If a person dies in one county as a result of an offense committed in any other county or counties, the prosecution may be had in any of such counties.
- (c) Whenever the body of any person who died as a result of an offense is found in any county, prosecution may be had in such county, regardless of where the offense was committed.

- (d) Whenever a person dies within the jurisdiction of this State as a result of an offense committed outside the jurisdiction of this State, or dies outside the jurisdiction of this State as a result of an offense committed within the jurisdiction of this State, the prosecution shall be had in the county in which the death occurred or the offense was committed.
- (e) An accessory may be prosecuted as such either in the county in which the offense to which he or she is an accessory is triable or the county in which he or she became such accessory.
- (f) Any person charged with receiving stolen property, may be prosecuted in any county in which the stolen property is possessed.
- (g) Prosecutions for acts of forgery, fraud, theft by deception, or theft by unlawful disposition may be had either in the county in which such offense was committed or in the county in which the offender last resided.
- (h) Prosecutions for nonsupport may be had either in the county in which the spouse, statutory partner or any child resided at the time of the nonsupport or in the county in which the spouse or statutory partner resides when the prosecution is begun.
- (i) The county of venue for purposes of trial of indictments returned by a State Grand Jury shall be designated by the Assignment Judge appointed to impanel and supervise the State Grand Jury or Grand Juries pursuant to R. 3:6-11(b).

#### **4:3-2. Venue in the Superior Court**

- (a) Where Laid. Venue shall be laid by the plaintiff in Superior Court actions as follows:
  - (1) actions affecting title to real property or a possessory or other interest therein, or for damages thereto, or appeals from assessments for improvements, in the county in which any affected property is situate;
  - (2) actions not affecting real property which are brought by or against municipal corporations, counties, public agencies or officials, in the county in which the cause of action arose;
  - (3) except as otherwise provided by R. 4:44A-1 (structured settlements), R. 4:53-2 (receivership actions), R. 4:60-2 (attachments), R. 5:2-1 (family actions), R. 4:83-4 (probate actions), and R. 6:1-3 (Special Civil Part actions), the venue in all other actions in the Superior Court shall be laid in the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement, or in which the summons was served on a nonresident defendant; and
  - (4) actions on and objections to certificates of debt for motor vehicle surcharges that have been docketed as judgments by the Superior Court Clerk pursuant to N.J.S.A. 17:29A-35 shall be brought in the county of residence of the judgment debtor.

- (b) Business Entity. For purposes of this rule, a business entity shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business.
- (c) Exceptions in Multicounty Vicinages. With the approval of the Chief Justice, the assignment judge of any multicounty vicinage may order that in lieu of laying venue in the county of the vicinage as provided by these rules, venue in any designated category of cases shall be laid in any single county within the vicinage.

# PLEADINGS AND FORMS

## A. CAPTION REQUIREMENTS

R. 1:4-1 requires at the top of the first page a three-inch blank space (approximately) above the caption for use for notations by the filing clerk. The first sheet of every paper filed shall include the attorney's name, address (**no P.O. box**), telephone number, and the New Jersey attorney identification number of the attorney filing the paper. The *pro se* litigant shall include their name, residence address and telephone number. The attorney or *pro se* party shall advise the court and all other parties of a change of address or telephone number during the pendency of the action.

### **Rule 1:4-1. Caption: Name and Addresses of Party and Attorney; Format**

(a) Caption. Every paper to be filed shall contain a caption setting forth the name, division and part thereof, if any, of the court, the county in which the venue in a Superior Court action is laid, the title of the action, the docket number except in the case of a complaint, the designation "Civil Action" or "Criminal Action," as appropriate, and a designation such as "complaint," "order," or the like. In a complaint in a civil action, the title of the action shall include the names of all the parties, but in other papers it need state only the name of the first party on each side with an appropriate indication that there are other parties. Except as otherwise provided by R. 5:4-2(a), the first pleading of any party shall state the party's residence address, or, if not a natural person, the address of its principal place of business.

(b) Format; Addresses. At the top of the first page of each paper filed, a blank space of approximately 3 inches shall be reserved for notations of receipt and filing by the clerk. Above the caption at the left-hand margin of the first sheet of every paper to be filed there shall be printed or typed the name and the New Jersey attorney identification number of the attorney filing the paper, office address and telephone number or, if a party is appearing *pro se*, the name of such party, residence address and telephone number. No paper shall bear an attorney's post office box number in lieu of a street address. An

attorney or pro se party shall advise the court and all other parties of a change of address or telephone number if such occurs during the pendency of an action.

The following directive of the Court, dated Oct. 17, 2013, pertains to the attorney of record and the filing attorney's name requirements.



**ATTORNEY ID NUMBER REQUIRED ON ALL DOCUMENTS**  
**SUBMITTED FOR FILING**

**REMINDER OF NOVEMBER 1, 2013, effective date**

As a follow-up to the August 14, 2013 notice to the bar, this is a reminder that the Supreme Court, as part of the July 9, 2013 Omnibus Rule Amendment Order, amended Rule 1:4-1(b) so as to add the New Jersey **attorney identification number** to the information required to be shown on the first page of each document filed. As set forth in that earlier notice, the addition of the attorney ID number will be required as of November 1, 2013.

Therefore, effective November 1, 2013, the following information shall be included “above the caption at the left-hand margin of the first sheet of every paper to be filed” (R. 1:4-1(b)):

Filing Attorney’s Name – NJ Attorney ID Number  
Firm or Office Street Address  
Firm or Office Phone Number  
Attorney for \_\_\_\_\_

The “filing attorney” is the attorney who signs the paper.

Attorneys who do not know or are unsure of their New Jersey attorney identification number may ascertain that number by accessing the Attorney Index on the Judiciary’s website at [www.njcourts.com](http://www.njcourts.com) (which is linked from the website’s front page under Public Access Resources).

For those situations in which the attorney of record is different from the attorney signing and filing the paper, and the law firm or office would prefer to have both attorneys’ names reflected in the court’s record, both attorneys’ names and identification numbers should be included in the caption, as shown in the sample below:

Attorney of Record’s Name – NJ Attorney ID Number  
Filing Attorney’s Name – NJ Attorney ID Number  
Firm or Office Street Address  
Firm or Office Phone Number  
Attorney for \_\_\_\_\_

Questions regarding this notice may be directed to the Superior Court Clerk’s Office at 609-421-6100 or by email to [SCCO.Mailbox@judiciary.state.nj.us](mailto:SCCO.Mailbox@judiciary.state.nj.us) (please include “Attorney ID” in the email subject line).

Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Dated: October 17, 2013

## B. SUMMONS

The form of summons in divorce cases is prepared by the attorney for the plaintiff and must be served within 10 days after the filing of the complaint, or the complaint may be dismissed (R. 4:4-1 Summons).

The form of the summons is prescribed by R. 4:4-2 and must advise the defendant about the Lawyer Referral Service and the Legal Services Office.

### **4:4-2. Summons: Form**

Except as otherwise provided by R. 5:4-1(b) (summary proceedings in family actions), the face of the summons shall be in the form prescribed by Appendix XII-A to these Rules. It shall be in the name of the State, signed in the name of the Superior Court Clerk and directed to the defendant. It shall contain the name of the court and the plaintiff and the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to serve an answer upon the plaintiff or plaintiff's attorney, and shall notify the defendant that if he or she fails to answer, judgment by default may be rendered for the relief demanded in the complaint. It shall also inform the defendant of the necessity to file an answer and proof of service thereof with the deputy clerk of the Superior Court in the county of venue, except in mortgage and tax foreclosure actions an answer shall be filed with the Clerk of the Superior Court in Trenton unless and until the action is deemed contested and the papers have been sent by the Clerk to the county of venue in which event an answer shall be filed with the deputy clerk of the Superior Court in the county of venue. If the defendant is an individual resident in this state, the summons shall advise that if he or she is unable to obtain an attorney, he or she may communicate with the Lawyer Referral Service of the county of his or her residence, or the county in which the action is pending, or, if there is none in either county, the Lawyer Referral Service of an adjacent county. The summons shall also advise defendant that if he or she cannot afford an attorney, he or she may communicate with the Legal Services Office of the county of his or her residence or the county in which the action is pending or the Legal Services of New Jersey statewide toll free hotline at 1-888-LSNJ-LAW (1-888-576-5529). If the defendant is an individual not resident in this State, the summons shall similarly advise him or her, directing the defendant, however, to the appropriate agency in the county in which the action is pending. The reverse side or second page of the summons shall contain a current listing, by county, of telephone numbers of the Legal Services Office and the Lawyer Referral Office serving each county and the Legal Services of New Jersey statewide toll free hotline at 1-888-LSNJ-LAW (1-888-576-5529), which list shall be updated regularly

by the Administrative Office of the Courts and made available to legal forms publishers and to any person requesting such list.

The summons should also state that the defendant has 35 days in which to answer the complaint. A party served with a pleading stating a counterclaim or cross-claim against that party must serve an answer within 35 days.

#### **4:6-1. When Presented**

(a) Time; Presentation. Except as otherwise provided by R. 4:7-5(c) (crossclaims), 4:8-1(b) (third-party joinder), 4:9-1 (answer to amended complaint), and 4:64-1(g) (governmental answer in foreclosure actions), the defendant shall serve an answer, including therein any counterclaim, within 35 days after service of the summons and complaint on that defendant. If service is made as provided by court order, pursuant to R. 4:44(b)(3), the time for service of the answer may be specified therein. Service of the answer shall be complete as provided by R. 1:5-4. A party served with a pleading stating a counterclaim or crossclaim against that party shall serve an answer thereto within 35 days after the service upon that party. A reply to an answer, where permitted, shall be served within 20 days after service of the answer.

(b) Time; Effect of Certain Motions. Unless the court fixes a different time period, the time periods prescribed in paragraph (a) of this rule are altered by the filing and service of a motion under R. 4:6 or for summary judgment under R. 4:46 or R. 4:69-2 as follows: (1) if the motion is denied in whole or part or its disposition postponed until trial, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if a motion for a more definite statement is granted, the responsive pleadings shall be served within 10 days after the service of such statement. If notice is given a nonresident party demanding security for costs and the nonresident gives notice of the filing of the bond or the making of the deposit, the party making the demand shall then have the same time to plead as may have remained at the time of the service of the notice demanding the security.

(c) Time; Extension by Consent. The time for service of a responsive pleading may be enlarged for a period not exceeding 60 days by the written consent of the parties, which shall be filed with the responsive pleading within said 60-day period. Further enlargements shall be allowed only on notice by court order, on good cause shown therefor.

(d) Certificate of Service. The party filing the responsive pleading or the party's attorney shall certify thereon, or in an acknowledgment proof or certificate of service, that the pleading was served within the time period allowed by R. 4:6 or other rule specified in the certificate.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	SUMMONS
<i>Defendant.</i>	:	
	:	

STATE OF NEW JERSEY  
 TO THE DEFENDANT(S) NAMED ABOVE: MARY SMITH

The Plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint, attached to this Summons, states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written Answer or a general Appearance in accordance with R.5:4-3(a) with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you receive this Summons and Complaint, not counting the date you receive it. (The addresses of the deputy clerks of the Superior Court for each county are provided on the back of this Summons.)

A \$175.00 filing fee payable to the Clerk of the Superior Court must accompany your Answer or Appearance when it is filed. You must also send a copy of your Answer or Appearance to Plaintiff's attorney whose name and address appear above, or to Plaintiff, if no attorney is named above. A telephone call will not project your rights; you must file and serve a written Answer or Appearance (with fee) if you want the court to hear your defense.

If you do not file and serve a written Answer or Appearance within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices' telephone numbers is also provided on the back of this Summons. If you do not have an attorney and are eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided on the back of this Summons.

DATED:

Michelle M. Smith /s/

Acting Superior Court Clerk

Name of Defendant to be served:

**MARY SMITH**

Address of the Defendant to be

**c/o LARRY LAWYER, ESQ.**

Served:

**Law Offices of Lawyer, LLC**

**PO Box 1000**

**50 Jefferson Street**

**Morristown, NJ 07963**

## Directory of Superior Court Deputy Clerk's Offices County Lawyer Referral and Legal Services Offices

### **ATLANTIC COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division, Direct Filing  
1201 Bacharach Blvd., First Fl.  
Atlantic City, NJ 08401

LAWYER REFERRAL  
(609) 345-3444  
LEGAL SERVICES  
(609) 348-4200

### **BERGEN COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division, Room 115  
Justice Center, 10 Main St.  
Hackensack, NJ 07601

LAWYER REFERRAL  
(201) 488-0044  
LEGAL SERVICES  
(201) 487-2166

### **BURLINGTON COUNTY:**

Deputy Clerk of the Superior Court  
Central Processing Office  
Attn: Judicial Intake  
First Fl., Courts Facility  
49 Rancocas Rd.  
Mt. Holly, NJ 08060

LAWYER REFERRAL  
(609) 261-4862  
LEGAL SERVICES  
(609) 261-1088

### **CAMDEN COUNTY:**

Deputy Clerk of the Superior Court  
Civil Processing Office  
Hall of Justice  
1st Fl., Suite 150  
101 South 5<sup>th</sup> Street  
Camden, NJ 08103

LAWYER REFERRAL  
(856) 482-0618  
LEGAL SERVICES  
(856) 964-2010

### **CAPE MAY COUNTY:**

Deputy Clerk of the Superior Court  
9 N. Main Street  
Cape May Court House, NJ 08210

LAWYER REFERRAL  
(609) 463-0313  
LEGAL SERVICES  
(609) 465-3001

### **CUMBERLAND COUNTY:**

Deputy Clerk of the Superior Court  
Civil Case Management Office  
60 West Broad Street  
P.O. Box 10  
Bridgeton, NJ 08302

LAWYER REFERRAL  
(856) 696-5550  
LEGAL SERVICES  
(856) 691-0494

### **ESSEX COUNTY:**

Deputy Clerk of the Superior Court  
Civil Customer Service  
Hall of Records, Room 201  
465 Dr. Martin Luther King Jr. Blvd.  
Newark, NJ 07102

LAWYER REFERRAL  
(973) 622-6204  
LEGAL SERVICES  
(973) 624-4500

**GLOUCESTER COUNTY:**

Deputy Clerk of the Superior Court  
Civil Case Management Office  
Attn: Intake  
First Fl., Court House  
1 North Broad Street  
Woodbury, NJ 08096

LAWYER REFERRAL  
(856) 848-4589  
LEGAL SERVICES  
(856) 848-5360

**HUDSON COUNTY:**

Deputy Clerk of the Superior Court  
Superior Court, Civil Records Dept.  
Brennan Court House--1st Floor  
583 Newark Ave.  
Jersey City, NJ 07306

LAWYER REFERRAL  
(201) 798-2727  
LEGAL SERVICES  
(201) 792-6363

**HUNTERDON COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
65 Park Avenue  
Flemington, NJ 08822

LAWYER REFERRAL  
(908) 236-6109  
LEGAL SERVICES  
(908) 782-7979

**MERCER COUNTY:**

Deputy Clerk of the Superior Court  
Local Filing Office, Courthouse  
175 S. Broad Street, P.O. Box 8068  
Trenton, NJ 08650

LAWYER REFERRAL  
(609) 585-6200  
LEGAL SERVICES  
(609) 695-6249

**MIDDLESEX COUNTY:**

Deputy Clerk of the Superior Court,  
Middlesex Vicinage  
2nd Floor - Tower  
56 Paterson Street, P.O. Box 2633  
New Brunswick, NJ 08903-2633

LAWYER REFERRAL  
(732) 828-0053  
LEGAL SERVICES  
(732) 249-7600

**MONMOUTH COUNTY:**

Deputy Clerk of the Superior Court  
Court House  
P.O. Box 1269  
Freehold, NJ 07728-1269

LAWYER REFERRAL  
(732) 431-5544  
LEGAL SERVICES  
(732) 866-0020

**MORRIS COUNTY:**

Morris County Courthouse  
Civil Division  
Washington and Court Streets  
P. O. Box 910  
Morristown, NJ 07963-0910

LAWYER REFERRAL  
(973) 267-5882  
LEGAL SERVICES  
(973) 285-6911

**OCEAN COUNTY:**

Deputy Clerk of the Superior Court  
118 Washington Street, Room 121  
P.O. Box 2191  
Toms River, NJ 08754-2191

LAWYER REFERRAL  
(732) 240-3666  
LEGAL SERVICES  
(732) 341-2727

**PASSAIC COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
Court House  
77 Hamilton Street  
Paterson, NJ 07505

LAWYER REFERRAL  
(973) 278-9223  
LEGAL SERVICES  
(973) 523-2900

**SALEM COUNTY:**

Deputy Clerk of the Superior Court  
Attn: Civil Case Management Office  
92 Market Street  
Salem, NJ 08079

LAWYER REFERRAL  
(856) 935-5629  
LEGAL SERVICES  
(856) 691-0494

**SOMERSET COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
P.O. Box 3000  
40 North Bridge Street  
Somerville, N.J. 08876

LAWYER REFERRAL  
(908) 685-2323  
LEGAL SERVICES  
(908) 231-0840

**SUSSEX COUNTY:**

Deputy Clerk of the Superior Court  
Sussex County Judicial Center  
43-47 High Street  
Newton, NJ 07860

LAWYER REFERRAL  
(973) 267-5882  
LEGAL SERVICES  
(973) 383-7400

**UNION COUNTY:**

Deputy Clerk of the Superior Court  
1st Fl., Court House  
2 Broad Street  
Elizabeth, NJ 07207-6073

LAWYER REFERRAL  
(908) 353-4715  
LEGAL SERVICES  
(908) 354-4340

**WARREN COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division Office  
Court House  
413 Second Street  
Belvidere, NJ 07823-1500

LAWYER REFERRAL  
(908) 859-4300  
LEGAL SERVICES  
(908) 475-2010



## **C. COMPLAINT, INSURANCE CERTIFICATION AND CERTIFICATION OF CDR ALTERNATIVES**

### **1. Generally**

R. 5:4-2(a) requires all family actions to be captioned in the Chancery Division, Family Part. Each complaint must include a statement of the essential facts constituting the basis of the relief sought, the statute or statutes relied upon for the relief, the addresses of the parties, a statement of previous family actions between the parties and facts upon which venue is based.

#### **Rule 5:4-2. Complaint**

##### (a) Complaint Generally.

(1) Caption. All family actions shall be captioned in the Chancery Division--Family Part.

(2) Contents. Every complaint in a family part action, in addition to the special requirements prescribed by these rules for specific family actions shall also include a statement of the essential facts constituting the basis of the relief sought, the statute or statutes, if any, relied on by the plaintiff, the street address or, if none, the post office address of each party, or a statement that such address is not known; a statement of any previous family actions between the parties; and, if not otherwise stated, the facts upon which venue is based. If a civil union or domestic partnership exists between the parties, it shall be stated in the complaint. When dissolution or termination of that relationship is sought, the complaint shall contain a separate cause of action seeking such relief.

In any action involving the welfare or status of a child, the complaint shall include the child's name, address, the date of birth, and a statement of where and with whom the child resides.

##### (b) Corespondent.

(1) Identification of Corespondent. In family actions in which adultery or deviant sexual conduct is charged, the pleading so charging shall state the name of the person with whom such conduct was committed, if known, and if not known, shall state any available information tending to describe the said person, and shall also state such designation of the time, place and circumstances under which the act or series of acts were committed as will enable the party charged therewith and the court to distinguish the particular offense or offenses intended to be charged. If it is stated that the name is unknown, it must be shown at the hearing that it was not known at the time of the filing of the pleading containing the charge.

(2) Notice to Corespondent. A person named as a corespondent in any pleading seeking or resisting relief on the ground of adultery or deviant sexual

conduct shall, within 30 days after filing of such a pleading, be served by the party making the charge, either personally or by registered or certified mail to the corespondent's last-known address, return receipt requested, or, if the corespondent refuses to claim or to accept delivery, by ordinary mail, with a copy of such pleading and a written notice of the pendency of the action, of the charge, and of the right to intervene in accordance with R. 4:33. If the name and address of the corespondent are discovered thereafter and before the trial, the party making the charge shall give such notice forthwith. If the name and address of the corespondent appear at the trial, and such notice has not been given, an adjournment may be ordered and such notice given. An affidavit of compliance with the requirements of this rule shall be filed.

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

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

(e) Amended or Supplemental Complaint or Counterclaim in 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.

(f) Affidavit or Certification of Insurance Coverage. The first pleading of each party shall have annexed thereto an affidavit listing all known insurance coverage of the parties and their minor children, including but not limited to life, health, automobile, homeowner's and renter's insurance and any umbrella policy related thereto, long-term care, and disability insurance. The affidavit shall specify the name of the insurance company, the policy number, the named insured and, if applicable, other persons covered by the policy;

a description of the coverage including the policy term, if applicable; and in the case of life insurance, an identification of the named beneficiaries. The affidavit shall also specify whether any insurance coverage was canceled or modified within the ninety days preceding its date and, if so, a description of the canceled insurance coverage. Insurance coverage identified in the affidavit shall be maintained pending further order of the court. If, however, the only relief sought is dissolution of the marriage or civil union, or a termination of a domestic partnership, or if a settlement agreement addressing insurance coverage has already been reached, the parties shall annex to their pleadings, in lieu of the required insurance affidavit, an affidavit so stating. Nevertheless, if a responding party seeks financial relief, the responding party shall annex an insurance-coverage affidavit to the responsive pleading and the adverse party shall serve and file an insurance-coverage affidavit within 20 days after service of the responsive pleading. A certification in lieu of affidavit may be filed.

(g) Confidential Litigant Information Sheet. All pleadings of each party to any proceeding involving alimony, maintenance, child support, custody, parenting time, visitation or paternity shall be accompanied by a completed Confidential Litigant Information Sheet in the form prescribed by the Administrative Director of the Courts. The form shall be provided at the time of the filing of any pleading but shall not be affixed to the pleadings. The information contained in the Confidential Litigant Information Sheet shall be maintained as confidential and shall be used for the sole purposes of establishing, modifying, and enforcing orders. The Administrative Office of the Courts shall develop and implement procedures to maintain the Confidential Litigant Information Sheet as a confidential document rather than a public record. The Confidential Litigant Information Sheet shall contain a certification consistent with R. 1:4-4(b). No copy thereof shall be served on any opposing party.

(h) 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, 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.

(i) Complaint in Non-Dissolution Matters. Non-dissolution actions shall commence with the filing of a verified complaint/counterclaim form promulgated by the Administrative Director of the Courts, except that attorneys may file a non-conforming complaint, which must have appended to it a completed supplement promulgated by the Administrative Director of the Courts.

In any action involving the welfare or status of a child, the complaint shall include the child's name, address, the date of birth, and a statement of where and with whom the child resides.

In any non-dissolution action involving the support of a child in which paternity was previously acknowledged by the parents, a copy of the Certificate of Parentage or other written acknowledgment of paternity shall be filed with the complaint for support.

(j) Designation of Complex Non-Dissolution Matters. In any non-dissolution action, any party or attorney seeking to designate a case as complex may submit that request in a verified complaint/counterclaim form promulgated by the Administrative Director of the Courts or in writing to the court prior to the first hearing. The procedure for the assignment of non-dissolution matters to the complex track is set forth in R. 5:5-7(c).

The certifications, which must be signed by the attorney and client pursuant to R. 5:4-2(h) and attached to the Complaint for Divorce, along with the CDR material the court requires each litigant to be provided with, follow.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
<i>Plaintiff,</i>	:	SUSSEX COUNTY
	:	
vs.	:	DOCKET NO. FM-19-
	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	CERTIFICATION PURSUANT TO R. 5:4-2(h)
<i>Defendant.</i>	:	BY ATTORNEY
	:	
	:	

I, Mark Gruber, Esq., being of full age, hereby certifies as follows:

1. I am the attorney for the Plaintiff in the above-captioned matter.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have provided my client with a copy of the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”
4. I have discussed with my client the Complementary Dispute Resolution (“CDR”) Alternatives to Litigation contained in that document.

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorneys for Plaintiff**

Dated: \_\_\_\_\_  
Mark Gruber, Esq.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

_____	:	SUPERIOR COURT OF NEW JERSEY
JOHN SMITH,	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	CERTIFICATION PURSUANT TO R. 5:4-2(h)
<i>Defendant.</i>	:	BY CLIENT
_____	:	

I, **John Smith**, of full age, hereby certify as follows:

1. I am the Plaintiff in the above-captioned matter and am represented in this divorce matter by Mark Gruber, Esq.

I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

I have read the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”

I, thus, have been informed as to the availability of Complementary Divorce—Dispute Resolution Alternatives to Conventional Litigation.

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated: \_\_\_\_\_  
 John Smith



## New Jersey Judiciary Descriptive Material (R. 5:4-2(h)) Divorce or Dissolution - Dispute Resolution Alternatives to Conventional Litigation

Resolving issues concerning your divorce or dissolution matter can be expensive and difficult. You are receiving this document because you are a party to a divorce or dissolution matter (FM docket). Cases filed in the FM docket include: divorce from marriage, dissolving a civil union, terminating a domestic partnership and annulment. Only a judge can grant a divorce or dissolution of a relationship. You also may need to address the following issues: division of your property and your debts, alimony, child support, custody and parenting time. A judge can decide all of your issues at trial. However, there are other methods to resolve these matters. These methods may also be more efficient, less expensive, offer privacy, and may reduce the level of conflict between you and the other party during your court case. You are encouraged to discuss alternate resolutions with your lawyer.

What follows are short descriptions of the other methods you may use to help you resolve your case.

### **Mediation<sup>1</sup>**

Mediation is a way of resolving differences with the help of a trained, independent third party. The parties, with or without lawyers, are brought together by the mediator in a neutral setting. A mediator does not represent either side and does not offer legal advice. Parties are encouraged to hire a lawyer to advise them of their rights during the mediation process. The mediator helps the parties identify the issues, gather the information they need to make informed decisions, and communicate so that they can find a solution agreeable to both. Mediation is designed to assist with settling court cases in an informal, cooperative manner. The court maintains a roster of approved mediators or private non-roster mediation services also are available. The judge will make the final determination as to whether to grant the divorce or dissolution.

### **Arbitration**

If arbitration is selected, the parties will waive their right to having the court decide the issues that will be resolved in arbitration. In this process, an independent third party decides issues in a case. The parties select and hire the arbitrator and agree on which issues the arbitrator will decide. The arbitrator's decision is binding and final. While an arbitrator may decide some issues, the judge will make the final decision to grant the divorce or dissolution.

### **Collaborative Law Process**

The collaborative law process allows parties represented by lawyers to work together to resolve disputes without court involvement. The parties and their lawyers meet and, as needed, consult with experts who are not lawyers but are professionals in their fields. These experts may include certified financial planners, certified public accountants, licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists, and psychiatrists. All participants understand and agree that this process is intended to replace traditional divorce or dissolution proceedings. The parties further understand the collaborative law process will end if either party files a divorce or dissolution complaint. Upon termination of the collaborative law process, the parties are not permitted to hire any lawyers or law firms that represented them in that process for purposes of the divorce or dissolution.

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<sup>1</sup> The Court's policy against the mediation of matters in which a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act remains in effect.

**Use of Professionals**

As part of or in addition to the methods described above, parties in a divorce or dissolution matter may seek the assistance of skilled professionals to help resolve issues. These professionals may help the parties resolve all or some of the issues in the case. While this approach may resolve some issues, the judge will make the final decision to grant the divorce or dissolution.

**Combinations of Alternatives**

Depending on your circumstances, it may be helpful for you to use a combination of mediation, arbitration, collaborative law and/or skilled professionals to resolve issues in your divorce or dissolution matter.

**Conclusion**

Just as every relationship is unique, every divorce or dissolution is unique. The specific circumstances of your case determine what methods are best suited to resolve your issues. You are encouraged to ask your lawyer about whether mediation, arbitration, collaborative law or the use of professionals may assist you in resolving issues in your divorce or dissolution.



The insurance certification requirement is provided for in N.J.S.A. 2A:34-23d, as follows:

**2A:34-23d. Maintenance of certain insurance coverage in action for divorce**

- a. Upon filing of a complaint for an action for divorce, nullity or separate maintenance, where the custody, visitation or support of a minor child is an issue, the party who has maintained all existing insurance coverage or coverage traditionally maintained during the marriage, including but not limited to, all health, disability, home or life insurance, shall continue to maintain or continue to share in the cost of maintaining the coverage.
- b. If a party who has maintained the existing insurance coverage or has shared in the cost of maintaining the coverage has had a voluntary or involuntary change in employment status, which may cause the existing insurance coverage to terminate, then that party shall notify the other party that it may be necessary to reallocate the financial responsibilities of maintaining the coverage.
- c. Upon receipt of this notice, the party may petition the court to reallocate financial responsibilities.
- d. The court may take any action it deems appropriate to reallocate financial responsibilities including but not limited to ordering a party to obtain comparable coverage or releasing a party from the obligation or any other order.

## **2. Right to Trial**

A pleading should include a request for a jury if there is a right to a jury. Dissolution cases in New Jersey do not permit juries to determine dissolution, equitable distribution, support and the other forms of relief generally associated with divorce actions. However, for personal injury, domestic torts, and other causes of action that must be brought with the divorce action or waived, a jury may be sought and it must be pleaded. R. 4:35-1 requires that the jury request be served upon the other party no later than 10 days after the service of the last pleading. The jury demand is more commonly appended to the party's pleading as provided by the rule.

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### **SIGNIFICANT CASES**

***Tweedley v. Tweedley*, 277 N.J. Super. 246 (Ch. Div. 1994)**

Establishes constitutional right to jury trial in matrimonial tort actions.

***Brennan v. Orban*, 145 N.J. 282 (1996)**

To resolve question of whether claimants are entitled to try their tort claims before a jury, family part must determine if the tort claims are ancillary and incidental to the underlying divorce action. Legal issues are ancillary if they are germane to or grow out of the subject matter of the equitable distribution.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	COMPLAINT FOR DIVORCE
	:	

The Plaintiff, John Smith, residing at 100 Main Street, Newton, Sussex County, New Jersey 07860, by way of Complaint against the above-named Defendant says:

**FIRST COUNT**

1. Plaintiff was lawfully married to the Defendant, Mary Smith, on August 26, 2009, in a religious ceremony at Saint Christopher’s Church, Stillwater, New Jersey.
2. The Plaintiff was a bona fide resident of the State of New Jersey when this cause of action arose and has ever since and for more than one year next preceding the commencement of this action continued to be such a bona fide resident. Said cause of action arose while Plaintiff resided in Newton, Sussex County, New Jersey.
3. At the time that the within cause of action for divorce arose, Plaintiff resided at 100 Main Street, Newton, Sussex County, New Jersey 07860. Venue is properly situated in Sussex County.
4. The Defendant, Mary Smith, currently resides at 11 Willow Street, Sussex, Sussex County, New Jersey 07461.
5. The Defendant has perpetrated acts of extreme mental cruelty against the Plaintiff, which in the past and present both endanger his health and make it improper and unreasonable

for the Plaintiff to cohabit with the Defendant under the same roof. All of said acts, which are stated below, occurred more than three months prior to the filing of this suit and any acts, which are included below which occurred thereafter, are merely to demonstrate the continued nature and character of the Defendant's acts:

- (a) Commencing after the birth of the parties' son, Jeff, in 2011, the Defendant developed an uncontrollable anger toward the Plaintiff. Despite the fact that the Plaintiff cleaned the house and cooked most of the meals, the Defendant became angered and told the Plaintiff that he did not do enough.
  - (b) Throughout the course of the marriage, the Defendant has been habitually drunk. At a Christmas party in 2012, while at a friend's home, the Defendant became intoxicated, went into another room, and fell asleep at approximately 10:00 p.m. At another party on or about October 8, 2014, at another friend's house, the Defendant became intoxicated, sick, and the parties were compelled to leave the party early — much to the Plaintiff's embarrassment.
  - (c) Within the past two (2) years, the Defendant has degraded the Plaintiff in front of other people and the children.
  - (d) Throughout the course of the marriage, the Defendant has constantly failed to show affection toward the Plaintiff and is very rarely intimate with him.
  - (e) Throughout the course of the marriage, the Defendant constantly argued with the Plaintiff and would never admit that she is wrong or that she is ever at fault.
6. There are two children born of the marriage, to wit: Jeff Smith, d.o.b. August 15, 2011, age 8; and Megan Smith, d.o.b. April 18, 2015, age 4. All unemancipated children are in the custody and control of the Plaintiff.
7. There have been previous proceedings between the parties respecting the marriage or its dissolution or respecting the maintenance of either party as follows: Domestic Violence Complaint and Final Restraining Order entitled *Mary Smith v. John Smith*, Docket No. FV-19-000-14, in the Superior Court of New Jersey, Chancery Division, Family Part, Sussex County.

**WHEREFORE**, Plaintiff demands judgment:

- A. Dissolving the marriage between the parties pursuant to N.J.S.A. 2A: 34-2(c);
- B. Granting Plaintiff joint legal custody and shared physical custody of the minor children born of the marriage, namely: Jeff Smith, d.o.b. August 15, 2011, age 8, and Megan Smith, d.o.b. April 18, 2015, age 4, pursuant to N.J.S.A. 9:2-4;
- C. Equitable distribution of all property, both real and personal, which was legally and beneficially acquired during the marriage pursuant to N.J.S.A. 2A:34-23.1;

- D. Directing the Defendant to pay Plaintiff's counsel fees pursuant to N.J.S.A. 2A:34-23; and
- E. For such further relief as the Court may deem equitable and just.

### **SECOND COUNT**

1. Plaintiff, **John Smith**, repeats each and every allegation contained in the First Count of the Complaint as if set forth at length herein.
2. The Defendant committed adultery with Richard Jones at the Short Hills Hilton, Short Hills, New Jersey, on December 4, 2014, and at numerous other times and places presently unknown to the Plaintiff.

**WHEREFORE**, Plaintiff demands judgment:

- A. Dissolving the marriage between the parties pursuant to N.J.S.A. 2A: 34-2(a);
- B. Granting Plaintiff joint legal custody and shared physical custody of the minor children born of the marriage, namely: Jeff Smith, d.o.b. August 15, 2011, age 8, and Megan Smith, d.o.b. April 18, 2015, age 4, pursuant to N.J.S.A. 9:2-4;
- C. Equitable distribution of all property, both real and personal, which was legally and beneficially acquired during the marriage pursuant to N.J.S.A. 2A:34-23.1;
- D. Directing the Defendant to pay Plaintiff's counsel fees pursuant to N.J.S.A. 2A:34-23; and
- E. For such further relief as the Court may deem equitable and just.

### **THIRD COUNT**

1. Plaintiff, John Smith, repeats each and every allegation contained in the First and Second Counts of the Complaint as if set forth at length herein.
2. The Defendant has constructively deserted the Plaintiff by willfully refusing to engage in sexual relations with the Plaintiff commencing December 24, 2016, and continuing to the present time.

**WHEREFORE**, Plaintiff demands judgment:

- A. Dissolving the marriage between the parties pursuant to N.J.S.A. 2A: 34-2(b);
- B. Granting Plaintiff joint legal custody and shared physical custody of the minor children born of the marriage, namely: Jeff Smith, d.o.b. August 15, 2011, age 8, and Megan Smith, d.o.b. April 18, 2015, age 4, pursuant to N.J.S.A. 9:2-4;

- C. Equitable distribution of all property, both real and personal, which was legally and beneficially acquired during the marriage pursuant to N.J.S.A. 2A:34-23.1;
- D. Directing the Defendant to pay Plaintiff's counsel fees pursuant to N.J.S.A. 2A:34-23; and
- E. For such further relief as the Court may deem equitable and just.

#### **FOURTH COUNT**

1. Plaintiff, John Smith, repeats each and every allegation contained in the First, Second and Third Counts of the Complaint as if set forth at length herein.
2. For the past twelve continuous months, the Defendant has been habitually drunk.

**WHEREFORE**, Plaintiff demands judgment:

- A. Dissolving the marriage between the parties pursuant to N.J.S.A. 2A: 34-2(e);
- B. Granting Plaintiff joint legal custody and shared physical custody of the minor children born of the marriage, namely: Jeff Smith, d.o.b. August 15, 2003, age 6, and Megan Smith, d.o.b. April 18, 2005, age 5, pursuant to N.J.S.A. 9:2-4;
- C. Equitable distribution of all property, both real and personal, which was legally and beneficially acquired during the marriage pursuant to N.J.S.A. 2A:34-23.1;
- D. Directing the Defendant to pay Plaintiff's counsel fees pursuant to N.J.S.A. 2A:34-23; and
- E. For such further relief as the Court may deem equitable and just.

#### **FIFTH COUNT**

1. Plaintiff, John Smith, repeats each and every allegation contained in the First, Second, Third and Fourth Counts of the Complaint as if set forth at length herein.
2. Irreconcilable differences have arisen, which have caused the breakdown of marriage for a period of six (6) months, which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation.

**WHEREFORE**, Plaintiff demands judgment:

- A. Dissolving the marriage between the parties pursuant to N.J.S.A. 2A: 34-2(i);

- B. Granting Plaintiff joint legal custody and shared physical custody of the minor children born of the marriage, namely: Jeff Smith, d.o.b. August 15, 2011, age 8, and Megan Smith, d.o.b. April 18, 2015, age 4, pursuant to N.J.S.A. 9:2-4;
- C. Equitable distribution of all property, both real and personal, which was legally and beneficially acquired during the marriage pursuant to N.J.S.A. 2A:34-23.1;
- D. Directing the Defendant to pay Plaintiff's counsel fees pursuant to N.J.S.A. 2A:34-23; and
- E. For such further relief as the Court may deem equitable and just.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**

Dated:

BY: \_\_\_\_\_

Mark Gruber, Esq.  
Attorney for Plaintiff

**CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

I hereby certify that to the best of my information, knowledge and belief that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, that no other action or arbitration proceeding is contemplated, and I am not aware of any other person who should be joined in this matter.

GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN

Dated:

BY: \_\_\_\_\_

Mark Gruber, Esq.  
Attorney for Plaintiff

**TRIAL COUNSEL DESIGNATION PURSUANT TO R. 4:5-1(C)**

Mark Gruber, Esq. is hereby designated trial counsel in this matter.

**CERTIFICATION PURSUANT TO R. 5:4-2(h)**  
**BY ATTORNEY AND CLIENT**

I, Mark Gruber, Esq., being of full age, hereby certifies as follows:

1. I am the attorney for the Plaintiff in the above-captioned matter.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have provided my client with a copy of the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”
4. I have discussed with my client the Complementary Dispute Resolution (“CDR”) Alternatives to Litigation contained in that document.

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorneys for Plaintiff**

Dated: \_\_\_\_\_

Mark Gruber, Esq.

I, John Smith, of full age, hereby certify as follows:

1. I am the Plaintiff in the above-captioned matter and am represented in this divorce matter by Mark Gruber, Esq.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have read the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”
4. I, thus, have been informed as to the availability of Complementary Divorce—Dispute Resolution Alternatives to Conventional Litigation.

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated: \_\_\_\_\_

John Smith



**CERTIFICATION OF VERIFICATION AND NON-COLLUSION  
PURSUANT TO R. 5:4-2(C)**

I, **John Smith**, being of full age, hereby certify:

I am the Plaintiff in the foregoing Complaint. The allegations in the Complaint are true to the best of my knowledge, information and belief, and the said Complaint is made in truth and good faith and without collusion for the causes set forth therein. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

\_\_\_\_\_  
John Smith

**INSURANCE CERTIFICATION IN LIEU OF AFFIDAVIT  
PURSUANT TO R. 5:4-2(f)**

1. I am the Plaintiff in the foregoing Complaint for Divorce. To the best of my knowledge and belief, the insurance coverage with this Certification represents all insurance coverage of myself and the Defendant in this matter.
2. To the best of my knowledge and belief, none of the insurance coverage listed within this Certification was canceled or modified within the ninety days preceding the date of this Certification.

**LIFE INSURANCE**

Name of Company:

Address:

Policy Number:

Beneficiary:

Face Amount:

Name of Insured:

Policy Owner:

Policy Term (if applicable):

**HEALTH INSURANCE**

Name of Company:

Address:

Name of Insured:

I.D. Number:

Group Number:

Coverage Type:

Single \_\_\_ Child \_\_\_ Family \_\_\_ Optical \_\_\_ Hospital \_\_\_ Major Medical \_\_\_  
Dental \_\_\_ Drug \_\_\_ Diagnostic \_\_\_

Check if made available through employment \_\_\_ or personally obtained \_\_\_.

### **AUTOMOBILE INSURANCE**

Name of Company:

Address:

Policy Number:

Policy Expiration Date:

Year, Make & Model of Vehicle:

Coverage Limits:

Lawsuit Threshold Yes \_\_\_ No \_\_\_; Umbrella Coverage Yes \_\_\_ No \_\_\_

Driver(s) of Vehicle:

Lienholder/Lessor (If applicable):

Address of Lienholder/Lessor:

Use of Vehicle: Personal \_\_\_ Business \_\_\_

### **HOMEOWNER'S INSURANCE**

Name of Company:

Address:

Policy Number:

Policy Expiration Date:

Address of Covered Residence:

Coverage Limits:

Umbrella Coverage: Yes \_\_\_ No \_\_\_; Umbrella Coverage: \$

Mortgage (If applicable):

Address of Mortgagee:

Rider(s) to Policy: Jewelry \_\_\_ Furs \_\_\_ Artwork \_\_\_ Other \_\_\_

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated: \_\_\_\_\_

John Smith

R. 4:5-1 requires a certification that the matter is not the subject of any other action or arbitration and that none is contemplated. Further, no other person is known to be joined in the case.

#### **4:5-1. General Requirements for Pleadings**

(a) Pleadings Allowed. There shall be a complaint and an answer; an answer to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint pursuant to R. 4:8; a third-party answer, if a third-party complaint is served; and a reply, if an affirmative defense is set forth in an answer and the pleader wishes to allege any matter constituting an avoidance of the defense. No other pleading is allowed.

(b) Requirements for First Pleadings.

(1) Case Information Statement. A Case Information Statement in the form prescribed by Appendix Xll-8(1) (Civil Actions General) or Appendix Xll-8(2) (Foreclosure Actions) shall be annexed as a cover sheet to each party's first pleading in all civil actions except civil commitment actions brought pursuant to Rule 4:74-7, probate actions, and all non-foreclosure general equity actions.

(2) Notice of Other Actions and Potentially Liable Persons. Each party shall include with the first pleading a certification as to whether the matter in controversy is the subject of any other action pending in any court or of a pending arbitration proceeding, or whether any other action or arbitration proceeding is contemplated; and, if so, the certification shall identify such actions and all parties thereto. Further, each party shall disclose in the certification the names of any non-party who should be joined in the action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. Each party shall have a continuing obligation during the course of the litigation to file and serve on all other parties and with the court an amended certification if there is a change in the facts stated in the original certification. The court may require notice of the action to be given to any non-party whose name is disclosed in accordance with this rule or may compel joinder pursuant to R. 4:29-1(b). If a party fails to comply with its obligations under this rule, the court may impose an appropriate sanction including dismissal of a successive action against a party whose existence was not disclosed or the imposition on the noncomplying party of litigation expenses that could have been avoided by compliance with this rule. A successive action shall not, however, be dismissed for failure of compliance with this rule unless the failure of compliance was inexcusable and the right of the undisclosed party to defend the successive action has been substantially prejudiced by not having been identified in the prior action.

(3) Certification of Compliance with Rule 1:38-7(c). The first filed pleading of any party in an action in the Chancery Division, General Equity Part, the Chancery Division, Probate Part, or in the Law Division, Special Civil Part shall include a certification of compliance as required in R. 1:38-7(c) that states, “I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).”

(c) Designation of Trial Counsel. Designation of trial counsel may be made in the party’s first pleading. If trial counsel is not designated in the pleading, designation shall be made as required in R. 4:25-4.

Trial counsel designation is permitted by R. 4:5-1(c). Certification of verification and non-collusion is required by R. 5:4-2(c). This provision deviates from the general practice where an attorney can sign pleadings.

The attorney for any party (or the court on its own initiative) must request the clerk of any venue to transfer all previous family action files to the present court.

#### **5:5-8. Previous File or Record**

(a) Previous Action Within State. In every family action where it appears by a pleading that there has been a previous family action in this State between the parties, any party or the court shall request the clerk of the court in which it was instituted to send to the clerk of the county in which the pending action is to be tried the complete file in the previous action or a certified copy thereof. At the conclusion of the action such file shall be returned.

(b) Previous Action Outside State. If it appears that the previous action was in a foreign jurisdiction, the party whose pleading refers thereto, or the moving party if the action is uncontested, shall produce at trial so much of the record in said action as is necessary to enable the court to determine the effect, if any, of the previous action upon the issue before it.

## D. CONFIDENTIAL LITIGANT INFORMATION SHEET

A confidential litigant information sheet is required to be filed with all pleadings of each party pursuant to R. 5:4-2(g). The form is filed separately and not attached to the pleading. The form is not served on the adversary because it is to remain confidential pursuant to N.J.S.A. 2A:17-56.60. Most clerks will reject the pleading if the form is not filed simultaneously with the pleading.

### **2A:17-56.60. Access to, use of social security numbers**

a. Subject to safeguards on privacy and information security provided for in this section:

- (1) The Social Security number of an applicant for any professional or occupational license, recreational or sporting license, driver's license, or marriage license shall be recorded on the application;
- (2) The Social Security number shall be placed in the record relating to: a divorce decree; support order in a divorce decree; support order and paternity determination or acknowledgment; and on a death certificate; and
- (3) The Social Security number shall be made available to the department through electronic means when feasible.

b. The use or disclosure of information concerning applicants or recipients of support enforcement services is limited to purposes directly connected with:

- (1) the administration of the State plan or program approved under part A, B, D, E, or F of Title IV or under Title I, X, XIV, XVI, XIX or XX of the federal Social Security Act (42 U.S.C. § 301 et seq.) or the supplemental security income program established under Title XVI of the federal Social Security Act (42 U.S.C. §301et seq.);
- (2) any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program;
- (3) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; and
- (4) reporting to an appropriate agency or official, information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement activity under circumstances which indicate that the child's health or welfare is threatened thereby.

The department is prohibited from disclosing to any committee or federal, State or local legislative body any information that identifies by name or address any such applicant or recipient.

## **E. CONFIDENTIALITY OF COURT RECORDS/PERSONAL IDENTIFIERS**

Court records and administrative records as defined by R. 1:38 are within the custody and control of the Judiciary and are open for public inspection and copying, except as provided for by the rules. See R. 1:38-1, R. 1:38-2, R. 1:38-3, and R. 1:38-4 below.

With regard to personal identifiers, see R. 1:38-5, which defines a personal identifier as a Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, or active credit card numbers. An active financial account may be identified by the last four digits. R. 1:38-7 requires the parties to certify that all confidential personal identifiers have been redacted.

R. 1:38-8 permits a party or interested person to request that the court remove from its file any improperly submitted document upon application to the court and notice to all parties.

R. 1:38-7(g) allows for the replacement of submitted documents for failure to redact confidential personal identifiers. If the court determines that the personal identifiers should not be in the document, it may order the clerk to replace the original un-redacted document with a redacted document for filing. The party or attorney representing the party that submitted the documents is responsible for preparing the redacted version.

### **Rule 1:38-1. Policy**

Court records and administrative records as defined by R. 1:38-2 and R. 1:38-4 respectively and within the custody and control of the judiciary are open for public inspection and copying except as otherwise provided in this rule. Exceptions enumerated in this rule shall be narrowly construed in order to implement the policy of open access to records of the judiciary.

### **1:38-2. Definition of Court Records**

(a) "Court record" includes:

- (1) any information maintained by a court in any form in connection with a case or judicial proceeding, including but not limited to pleadings, motions, briefs and their respective attachments, evidentiary exhibits, indices, calendars, dockets, and aggregate data maintained or created by the judiciary for the purpose of statistics;
- (2) any order, judgment, opinion, or decree related to a judicial proceeding;
- (3) any official transcript or recording of a public judicial proceeding, in any form;
- (4) any information in a computerized case management system created or prepared by the court in connection with a case or judicial proceeding;
- (5) any record made or maintained by a Surrogate as a judicial officer.

(b) “Court record” does not include:

(1) information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined by this rule;

(2) unfiled discovery materials in any action.

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

The following court records are excluded from public access:

(a) General. Records required to be kept confidential by statute, rule, or prior case law consistent with this rule, unless otherwise ordered by a court upon a finding of good cause. These records remain confidential even when attached to a non-confidential document.

(b) Internal Records.

(1) Notes, memoranda, draft opinions, or other working papers maintained in any form by or for the use of a justice, judge, or judiciary staff member in the course of performing official duties, except those notes, not otherwise excluded from public access under this rule, that are required by rule or law, e.g., R. 7:2-1 (e), to be taken as part of the record of the proceeding;

(2) Records of consultative, advisory, or deliberative discussions pertaining to the rendering of decisions or the management of cases; and support data maintained or created by the judiciary for use in reporting aggregate data for the purpose of statistics.

(c) Records of Criminal and Municipal Court Proceedings.

(1) Discovery materials provided to the Criminal Division Manager’s office by the prosecutor pursuant to R. 3:9-1 and R. 3:13-3, except for parties and their counsel of record;

(2) Writs to produce prisoners pending execution of the writ;

(3) Indictments sealed pursuant to R. 3:6-8(a);

(4) Records relating to grand jury proceedings pursuant to R. 3:6-7 except as provided by R. 3:6-6(c) and R. 3:6-9(d);

(5) Records relating to participants in drug court programs and programs approved for operation under R. 3:28 (Pre-trial Intervention), and reports made for a court or prosecuting attorney pertaining to persons enrolled in or applications for enrollment in such programs, but not the fact of enrollment and the enrollment conditions imposed by the court;

(6) Victim statements unless placed on the record at a public proceeding;

(7) Expunged records pursuant to N.J.S.A. 2C:52-15;

(8) Reports of the Diagnostic Center to the extent provided under R. 3:21-3;

(9) Records relating to child victims of sexual assault or abuse pursuant to N.J.S.A. 2A:82-46;

- (10) Search warrants pursuant to Rule 3:5-4 and the affidavit or testimony upon which a warrant is based, except as provided in Rules 3:5-6(c) and 3:13-3;
  - (11) Documents, records and transcripts related to proceedings and hearings required by the Supreme Court pursuant to *Doe v. Poritz*, 142 N.J. 1, 39 (1995), or subsequent orders of the Court;
  - (12) Names and addresses of victims or alleged victims of domestic violence or sexual offenses;
  - (13) Complaint-Warrants sealed pursuant to R. 1:38-11(e);
  - (14) Records created or maintained by the Pretrial Services Program;
  - (15) Records of convictions for offenses involving marijuana or hashish sealed pursuant to N.J.S.A. 2C:52-5.2.
- (d) Records of Family Part Proceedings.
- (1) Family Case Information Statements required by R. 5:5-2, notices required by R. 5:5-10 including requisite financial, custody and parenting plans, Financial Statements in Summary Support Actions required by R. 5:5-3 including all attachments, and settlement agreements incorporated into judgments or orders in dissolution and nondissolution actions, except for parties and their counsel of record;
  - (2) Confidential Litigant Information Sheets pursuant to R. 5:4-2(g) and Affidavits or Certifications of Insurance Coverage pursuant to R. 5:4-2(f), except for the filing party and his or her counsel of record;
  - (3) Medical, psychiatric, psychological, and alcohol and drug dependency records, reports, and evaluations in matters related to child support, child custody, or parenting time determinations;
  - (4) Documents, records and transcripts related to proceedings and hearings required by the Supreme Court pursuant to *Doe v. Poritz*, 142 N.J. 1, 39 (1995), or subsequent orders of the Court;
  - (5) Juvenile delinquency records and reports pursuant to R. 5:19-2 and N.J.S.A. 2A:4A-60, except for parties and their counsel of record;
  - (6) Records of Juvenile Conference Committees to the extent provided under R. 5:25-1(e), except for parties and their counsel of record;
  - (7) Expunged juvenile records pursuant to N.J.S.A. 2A:4A-62f and 2C:52-15;
  - (8) Sealed juvenile records pursuant to N.J.S.A. 2A:4A-62;
  - (9) Domestic violence records and reports pursuant to N.J.S.A. 2C:25-33, except for parties and their counsel of record in the underlying domestic violence matter;
  - (10) Names and addresses of victims or alleged victims of domestic violence or sexual offenses;
  - (11) Records relating to child victims of sexual assault or abuse pursuant to N.J.S.A. 2A:82-46;



- (12) Records relating to Division of Child Protection and Permanency proceedings held pursuant to R. 5:12;
  - (13) Child custody evaluations, parenting time and visitation plans, reports, and records pursuant to R. 5:8-4, R. 5:8-5, R. 5:8B, N.J.S.A. 9:2-1, or N.J.S.A. 9:2-3;
  - (14) Paternity records and reports, except for the final judgments or birth certificates pursuant to N.J.S.A. 9:17-42;
  - (15) Records and reports relating to child placement matters pursuant to R. 5:13-8(a);
  - (16) Adoption records and reports pursuant to N.J.S.A. 9:3-52;
  - (17) Records of hearings on the welfare or status of a child, to the extent provided under R. 5:3-2;
  - (18) Records related to applications for Special Immigrant Juvenile Status (SIJS) predicate orders;
  - (19) Records of adjudications of delinquency for offenses involving marijuana or hashish sealed pursuant to N.J.S.A. 2C:52-5.2;
  - (20) Records relating to actions to change the name of a minor.
- (e) Records of Guardianship Proceedings.

Guardianship records and reports maintained by the Surrogate and by the Chancery Division, Probate Part, except the guardianship index, of which only the following information shall be available to an attorney-at-law of this state or to a title examiner seeking access to such records in connection with transactions affecting property of the ward: (1) minor's or incapacitated person's name, (2) name of the municipality where the minor or incapacitated person resided when the guardianship was created, (3) name of the guardian, (4) docket number, (5) date of the judgment appointing the guardian, and (6) date of the guardian's qualification.

Further, an attorney-at-law or a title examiner requiring access to the guardianship index in connection with a transaction affecting the property of the ward may inspect and copy the following guardianship file documents: the guardianship judgment, the Letters of Guardianship, and any subsequent order dealing with the powers or limitations of the guardian, provided any financial information contained in these documents, including information on the amount of the bond, is redacted prior to the documents being made available for review or copying.

All guardianship records and reports, however, are available to the incapacitated person and the minor upon reaching majority; the incapacitated person's spouse, civil union partner, or domestic partner; the minor's or incapacitated person's parents and siblings; any adult children of the incapacitated person; the guardian appointed in the action; and any attorneys appearing in the guardianship action on behalf of these persons. Appointed New Jersey Judiciary Guardianship Monitoring Program volunteers shall have access to guardianship records and reports in those guardianship matters to which they are assigned. Any other individual or entity

seeking records must make a showing of a special interest in the matter to the Assignment Judge or the Assignment Judge's designee.

(f) Records of Other Proceedings.

- (1) Records pertaining to mediation sessions and complementary dispute resolution proceedings pursuant to R. 1:40-4(d) and R. 7:8-1, but not the fact that mediation has occurred;
- (2) Records and transcripts of civil commitment proceedings, civil commitment expungement petitions and proceedings, and expunged civil commitment records, pursuant to N.J.S.A. 30:4-24.3, N.J.S.A. 30:4-27.27(c), N.J.S.A. 30:4-80.8-80.11, N.J.S.A. 30:4-82.4 h., R. 4:74-7, and R. 4:74-7A;
- (3) Police investigative reports, unless admitted into evidence or submitted to the court in support of a motion, brief, or other pleading;
- (4) Records that are impounded, sealed pursuant to R. 1:38-11, or subject to a protective order pursuant to R. 4:10-3;
- (5) Criminal, Family, Municipal and Probation Division records pertaining to any investigations and reports made by court staff or pursuant to court order for a court or pertaining to persons on probation, on pretrial release, or subject to pretrial detention;
- (6) Family, Finance and Probation Division records containing information pertaining to persons receiving or ordered to pay child support, including the child(ren); custodial parents; non-custodial parents; legal guardians; putative fathers; family members and any other individuals for whom information may be collected and retained by the court in connection with child support cases subject to Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq. and applicable state and federal statutes, but not the complaint or orders in such cases, except for parties and their counsel of record;
- (7) Records maintained by the Judiciary that contain identifying information about a person who has or is suspected of having AIDS or HIV infection, pursuant to N.J.S.A. 26:5C-7, except as provided in N.J.S.A. 26:5C-8 and -9;
- (8) Records of appeals from the Division of Developmental Disabilities in accordance with N.J.S.A. 30:4-24.3;
- (9) Written requests by a crime victim, or if such a person is deceased or incapacitated, a member of that person's immediate family, for a record to which the victim is entitled pursuant to N.J.S.A. 47:1A-5(b)(2);
- (10) All records in actions for change of name pursuant to N.J.S.A. 2A:52-1 and R. 4:72-1 et seq.

### **1:38-4. Definition of Administrative Records**

An “administrative record” is any information maintained in any form by the judiciary that is not associated with any particular case or judicial proceeding.

### **1:38-5. Administrative Records Excluded from Public Access**

The following administrative records are excluded from public access:

- (a) Records required to be kept confidential by statute, rule, or prior case law consistent with this rule, unless otherwise ordered by a court;
- (b) Notes, memoranda, or other working papers maintained in any form by or for the use of a justice, judge or judiciary staff member in the course of his or her official duties, including administrative duties; and support data maintained or created by the Judiciary for use in reporting aggregate data for the purpose of statistics;
- (c) Minutes, reports, memoranda, notes, and correspondence in any form pertaining to the development and implementation of judiciary rules and policies, including draft versions of rules, policies and procedures, self-critical analysis reports, and peer review reports;
- (d) Reports, memoranda, and other records pertaining to policies and procedures for court security and data security;
- (e) Personnel records, except for an employee’s name, title, position, salary, compensation, dates of service, and date and type of separation;
- (f) Records concerning volunteers, except for a volunteer’s name, title, if any, program to which assigned, and dates of service;
- (g) Juror source lists prepared pursuant to N.J.S.A. 2B:20-2, jury questionnaires completed pursuant to N.J.S.A. 2B:20-3, and preliminary lists prepared pursuant to N.J.S.A. 2B:20-4 of persons to be summoned for possible as grand or petit jurors, which shall remain confidential, except as provided in Rule 1:8-5, unless otherwise ordered by the Assignment Judge;
- (h) Reports required to be prepared by trial court judges on a weekly, monthly, or other basis and submitted to the Administrative Director of the Courts pursuant to R. 1:32-1 and/or R. 1:38-11;
- (i) Records and information obtained and maintained by the Judicial Performance Committee pursuant to R. 1:35A, except as otherwise provided in that rule;
- (j) Records of the Ethics Telephone Research Service to the extent provided under R. 1:19-9;
- (k) Records of proceedings concerning advisory opinions of the Committee on Attorney Advertising to the extent provided under R. 1:19A-5;

- (l) Records relating to attorney discipline to the extent provided under R. 1:20-9;
- (m) Records of District Fee Arbitration Committees to the extent provided under R. 1:20A-5;
- (n) Records of the Attorney Disciplinary Oversight Committee to the extent provided under R. 1:20B-4;
- (o) Records of the Lawyers' Fund for Client Protection to the extent provided under R. 1:28-9;
- (p) Records of the Advisory Committee on Judicial Conduct to the extent provided under R. 2:15-20;
- (q) Records of the Office of the Ombudsman, except for court user satisfaction survey reports, statewide daily contact reports, and information related to community outreach events.
- (r) Records relating to Special Civil Part Officers to the extent provided under Administrative Directive;
- (s) Any original or copy of an oath, oath of allegiance, or oath of office of a judge, judicial official, or Judiciary personnel, except that the full name, title, and oath date of that person shall not be excluded from public access (see N.J.S.A. 47:1A-1.1).

### **1:38-6. Intergovernmental Exchanges**

The Administrative Director of the Courts may authorize the exchange of information, otherwise excluded from public access, with other branches of state government, with other state governments, and with the federal government when the public benefit of such disclosure outweighs the need for confidentiality. Child support information may be exchanged only to the extent allowed by federal law and regulations.

### **1:38-7. Confidential Personal Identifiers**

- (a) Definition of Confidential Personal Identifiers. A confidential personal identifier is a Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, active credit card number, or information as to an individual's military status.
- (b) Prohibition on Submission of Confidential Personal Identifiers to the Court. A party shall not set forth confidential personal identifiers as defined in R. 1:38-7(a) in any document or pleading submitted to the court unless otherwise required by statute, rule, administrative directive, or court order; provided, however, that an active financial account number may be identified by the last four digits when the financial account is the subject of the litigation and cannot otherwise be identified.

(c) Compliance.

(1) In every trial Division of the Superior Court where a Case Information Statement is required, parties shall certify in the Case Information Statement that all confidential personal identifiers have been redacted and that subsequent papers submitted to the court will not contain confidential personal identifiers in accordance with the provisions of this rule.

(2) In General Equity Part, Probate Part, and Special Civil Part matters, where no Case Information Statement is required, parties shall include the following language in the first filed pleading as provided in R. 4:5-1(b)(3), "I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b)."

(3) In all criminal matters, the judge shall inform both parties at the time of the defendant's arraignment status conference that confidential personal identifiers must be redacted from any documents submitted to the court as provided in R. 1:38-7(b) and R. 3:9-1(b).

(d) Judgment Debtors. Any writ, order, or judgment issued by the court involving a judgment debtor or any application therefor may include the judgment debtor's name(s), address, date of birth, the last four digits of active financial account numbers, and the last three digits of the individual's Social Security number. No other personal identifiers shall be included.

(e) Redaction of Required Personal Identifiers. When confidential personal identifiers as defined in R. 1:38-7(a) are required by statute, rule, or court order to be included in documents or pleadings, such identifiers shall be redacted before public inspection is permitted. This redaction requirement, however, does not apply to driver's license numbers that the New Jersey Motor Vehicle Commission requires in documents pertaining to the suspension and reinstatement of licenses.

(f) Redaction of Social Security Numbers from Records in Bulk. Any request for the mass release, in bulk, of records, no matter how maintained or stored, containing Social Security numbers must be submitted to the Administrative Director of the Courts. A bulk release request is a request for the release of a substantial number of records that would involve an extraordinary expenditure of time and effort to accommodate, resulting in a disruption of court operations. A fee may be charged for the cost of redacting Social Security numbers from such records.

(g) Requesting Replacement of Submitted Documents for Failure to Redact Confidential Personal Identifiers.

(1) A party or other interested person may request that the court replace a document that contains confidential personal identifiers contrary to R. 1:38-7(b) with a redacted version on application to the court and notice to all

parties. Such application should be made in the trial courts by order to show cause or motion and in the Appellate Division or Supreme Court either by motion or by emergent request for temporary relief, and may include a request for immediate temporary removal pending the return date.

(2) If the court thereafter determines that the confidential personal identifiers should not be in the document, it may by order direct the clerk to replace the original unredacted document with a redacted document for filing, with the redacted document to be submitted to the clerk by the party or attorney representing the party that submitted the document containing the confidential personal identifiers.

(3) The court shall not order the clerk to alter or undertake redaction of the document as that obligation rests with the party or the attorney for the party that submitted the document containing the confidential personal identifiers.

### **1:38-8. Removing from the Court File Documents Improperly Submitted to Court**

(a) A party or other interested person may request that the court remove from its file an improperly submitted document upon application to the court and notice to all parties. A document is deemed improperly submitted to the court if the person who submitted the document had no legitimate basis in rule or law for doing so and if the document is not an evidentiary exhibit or part of a motion, brief, or other pleading. The party or interested person seeking to have a document removed from a court file bears the burden of proving by a preponderance of the evidence that it was improperly submitted.

(b) If the court thereafter determines that a document was improperly submitted, it may by order direct the clerk to destroy the document, to return it to the party that submitted it, or to remove the document from the file and retain it in a manner specified by the court pending further direction.

### **1:38-9. Fees**

The Supreme Court shall establish a schedule of fees for copies of records.

### **Rule 1:38-10. Determinations; Appeal Process**

(a) Requests for court records or administrative records to be inspected or copied under this rule shall be directed to the following officers or their designees:

(1) Supreme Court records (including committees and offices reporting to the Supreme Court): Clerk of the Supreme Court

(2) Superior Court records, Clerk's office, including Foreclosure Unit: Clerk of the Superior Court

(3) Superior Court records, Appellate Division: Clerk of the Appellate Division

- (4) Superior Court records, Law and Chancery Divisions (other than Clerk's office and Probate Part): Trial Court Administrator of appropriate vicinage
  - (5) Superior Court records, Chancery Division, Probate Part, and Surrogate's Court records: Surrogate of appropriate county
  - (6) Tax Court records: Clerk of the Tax Court
  - (7) Municipal Court records: Municipal Court Director or Administrator of appropriate municipal court
  - (8) Administrative Office of the Courts records and all other judiciary records: Deputy Administrative Director of the Courts
- (b) Any person denied access to a court record or administrative record by one of the above officers or their designees may seek review by the Administrative Director of the Courts under procedures established by the Supreme Court, except that an appeal regarding a municipal court record shall first be filed with the Trial Court Administrator of the appropriate vicinage. An appeal from the decision of the Administrative Director shall be filed in the Appellate Division in accordance with R. 2:2-3(a)(2).

### **1:38-11. Sealing of Court Records**

- (a) Information in a court record may be sealed by court order for good cause as defined in paragraph (b) or subparagraph (e)(2) for the temporary sealing of a Complaint-Warrant (CDR-2). The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.
- (b) Good cause to seal a record except as provided in subparagraph (e)(2) shall exist when:
- (1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and
  - (2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.
- (c) Exceptions. The provisions of this rule do not apply to:
- (1) Actions required to be sealed pursuant to the New Jersey False Claims Act (N.J.S.A. 2A:32C-5(c) and 2A:32C-5(f)); or
  - (2) Records for convictions or adjudications of delinquency for offenses involving marijuana or hashish required to be sealed pursuant to N.J.S.A. 2C:52-5.2.
- (d) Documents or other materials not exempt from public access under Rule 1:38 may not be filed under seal absent a prior court order mandating the sealing of such documents, and should not be submitted to the court with the motion, which may be filed on short notice, requesting an order to seal.

(e) Temporary Seal of Complaint-Warrant (CDR-2).

(1) Application for Temporary Seal of Complaint-Warrant (CDR-2) by Prosecutor. Upon submission of a Complaint-Warrant (CDR-2) on an initial charge in the Judiciary's computerized system used to generate complaints, a prosecutor may request a Superior Court judge to temporarily seal the Complaint-Warrant. For purposes of paragraph (e), the Complaint-Warrant (CDR-2) includes information contained within and attached to the Complaint-Warrant (CDR-2).

(2) Good Cause for a Temporary Seal of Complaint-Warrant (CDR-2). The application requesting a temporary seal of the Complaint-Warrant (CDR-2) shall contain the facts and circumstances that are alleged to establish good cause for the temporary seal. In determining whether good cause exists to temporarily seal the Complaint-Warrant (CDR-2), among the factors a Superior Court judge should consider are:

(A) the risk of physical harm to any person(s);

(B) the risk of harm to any law enforcement investigation, including, but not limited to destruction of evidence or witness tampering;

(C) the risk of defendant's flight; and

(D) when sealing would be required by any other law, including, but not limited to the New Jersey Wiretapping and Electronic Surveillance Control Act. N.J.S.A. 2A:156A-1 to -37. The availability of reasonable alternative means to address the concerns in the above factors should be considered in determining whether to seal the Complaint-Warrant (CDR-2).

(3) Period of Temporary Seal; Extension. Upon a finding of good cause, a Superior Court judge shall grant a request for the temporary sealing of the Complaint-Warrant (CDR-2) for a period of no more than ten calendar days following issuance of the warrant or until the warrant has been executed, whichever occurs first. Any order for a temporary seal of a Complaint-Warrant (CDR-2) shall certify that for good cause shown the Complaint-Warrant (CDR-2) is sealed and state the date that the sealing shall expire. If the defendant has not yet been arrested, the prosecutor may apply to the court to extend the temporary seal for additional periods of time no greater than ten days each.

(4) Confidentiality. The Complaint-Warrant (CDR-2) and the sealing order shall be kept confidential pursuant to R. 1:38-3(c)(13) until the expiration of the sealing period or the execution of the Complaint-Warrant, except that it shall not be kept confidential from law enforcement as needed to perform their official duties.



**1:38-12. Unsealing of Court Records**

A record that has been sealed by order of the court may be unsealed upon motion by any person or entity. The proponent for continued sealing shall bear the burden of proving by a preponderance of the evidence that good cause continues to exist for sealing the record.

**1:38-13. Records Available Only in the Form Maintained by the Judiciary**

Court records and administrative records are available only in the form in which they are maintained or indexed by the Judiciary. Requests by private individuals or entities for programming, searching, or compilation of records in a form other than as used for the Judiciary's purposes will not be granted.



**New Jersey Judiciary**  
**Confidential Litigant Information Sheet (R. 5:4-2(g))**

To assure accuracy of court records - To be filled out by Plaintiff, or Defendant, or Attorney  
 Collection of the following information is pursuant to N.J.S.A. 2A:17-56.50 and R. 5:7-4.

**Confidentiality of this information must be maintained**

Please complete the entire form, leaving no blank spaces. If something does not apply to you, enter "N/A". This form is confidential and will not be shared with the other party.

Docket Number:	CS Number:	Do you have an active Domestic Violence Order with the other party in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No
----------------	------------	--

Plaintiff				Defendant							
Name (last, first, middle Initial)				Name (last, first, middle initial)							
Social Security Number		Date of Birth		Social Security Number		Date of Birth					
Address: Street				Address: Street							
City		State	Zip	City		State	Zip				
Plaintiff Telephone Number		Employer Telephone Number		Defendant Telephone Number		Employer Telephone Number					
Plaintiff Email Address				Defendant Email Address							
Employer Name (or other income source)				Employer Name (or other income source)							
Employer Address: Street				Employer Address: Street							
City		State	Zip	City		State	Zip				
Professional, Occupational, Recreational Licenses (include types and license numbers)				Professional Occupational, Recreational Licenses (include types and license numbers)							
Driver's License Number		State of Issuance		Driver's License Number		State of Issuance					
Sex	Race/Ethnicity	Height	Weight	Eyes	Hair	Sex	Race/Ethnicity	Height	Weight	Eyes	Hair
Auto: License Plate	State	Make	Model	Year	Auto: License Plate	State	Make	Model	Year		
Attorney Name				Attorney Name							
Attorney Address: Street				Attorney Address: Street							
City		State	Zip	City		State	Zip				

**Children Information**

Name (fast, first, middle initial)	Date of Birth	Race	Sex	Social Security Number
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____

Health Coverage for Children - available through parent filling out this form (  Plaintiff /  Defendant )

Health Care Provider: _____	Policy Number: _____	Group Number: _____
Health Care Provider: _____	Policy Number: _____	Group Number: _____
Health Care Provider: _____	Policy Number: _____	Group Number: _____

I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Date \_\_\_\_\_ Signature \_\_\_\_\_

## **F. APPEARANCE**

A defendant may appear by serving and filing an answer, counterclaim or appearance. An appearance by the defendant is governed by R. 5:4-3(a).

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Defendant

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	<b>APPEARANCE</b>
	:	

Defendant, **Mary Smith**, residing at 11 Willow Street, Sussex, Sussex County, New Jersey 07461, hereby enters an Appearance in the above-entitled action, in order to be heard on the issues indicated below:

- |  |  |
|--|--|
| <input type="checkbox"/> Custody of Children | <input checked="" type="checkbox"/> Equitable Distribution         |
| <input type="checkbox"/> Visitation          | <input type="checkbox"/> Counsel Fees                              |
| <input type="checkbox"/> Alimony             | <input type="checkbox"/> Other Issues Incidental to the Proceeding |
| <input type="checkbox"/> Child Support       |  |

I hereby certify that a copy of the within Appearance was served within the time prescribed by Rule 4:6.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
 Attorneys for Defendant

Dated: \_\_\_\_\_  
Mark Gruber, Esq.

## **G. ANSWER**

A defendant may file an answer alone. More often in divorce actions an answer is filed along with a counterclaim. R. 4:5-3 requires the pleader to admit or deny each allegation of the complaint. A pleader may also state that the answerer is without knowledge or information sufficient to form a belief as to the truth of the allegation.

### **4:5-3. Answer; defenses; form of denials**

An answer shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the allegations upon which the adversary relies. A physician defending against a malpractice claim who admits to treating the plaintiff must include in his or her answer the field of medicine in which he or she specialized at that time, if any, and whether his or her treatment of the plaintiff involved that specialty. A pleader who is without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state and, except as otherwise provided by R. 4:64-1(c) (foreclosure actions), this shall have the effect of a denial. Denials shall fairly meet the substance of the allegations denied. A pleader who intends in good faith to deny only a part or a qualification of an allegation shall specify so much of it as is true and material and deny only the remainder. The pleader may not generally deny all the allegations but shall make the denials as specific denials of designated allegations or paragraphs.

### **4:5-4. Affirmative defenses; misdesignation of defense and counterclaim**

A responsive pleading shall set forth specifically and separately a statement of facts constituting an avoidance or affirmative defense such as accord and satisfaction, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver. If a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms if the interest of justice requires, shall treat the pleading as if there had been a proper designation.

### **4:5-5. Effect of failure to deny**

Allegations in a pleading which sets forth a claim for relief, other than those as to the amount of damages, are admitted if not denied in the answer thereto. In every action brought upon a negotiable instrument, the authenticity of any signature or endorsement thereon shall be taken to be admitted unless the same is put in issue by the pleadings. Allegations in any answer setting forth

an affirmative defense shall be taken as denied if not avoided in a reply; issue shall be deemed to have been joined upon allegations in an answer setting forth other matters. Allegations in a reply shall be taken as denied or avoided, and any defense thereto in law or fact may be asserted at trial.

#### **4:5-6. Consistency**

A party may set forth 2 or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. As many separate claims or defenses as the party has may be stated regardless of their consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in R. 1:4-8.

#### **4:5-7. Pleadings to be concise and direct; construction**

Each allegation of a pleading shall be simple, concise and direct, and no technical forms of pleading are required. All pleadings shall be liberally construed in the interest of justice.

R. 4:6-1 requires an answer or counterclaim to be filed within 35 days after service.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Defendant

_____	:	SUPERIOR COURT OF NEW JERSEY
JOHN SMITH,	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	ANSWER & COUNTERCLAIM
_____	:	

Defendant, **Mary Smith**, residing at 11 Willow Street, Sussex, Sussex County, New Jersey 07461, by way of Answer to the Complaint, says:

**ANSWER**

**FIRST COUNT**

1. Defendant admits the allegations of paragraphs 1, 2, 3, 5 and 6.
2. Defendant denies the allegations of paragraphs 4(a), 4(b), 4(d), and 4(e).
3. Defendant has insufficient knowledge as to the truth or falsity of the allegations contained in paragraph 4(c).

**WHEREFORE**, Defendant demands judgment dismissing the Complaint for failure to state a cause of action upon which relief can be granted, counsel fees and costs.

**SECOND COUNT**

Defendant, **Mary Smith**, repeats each and every answer to the allegations of the First Count of the Complaint as if set forth at length herein.

1. Defendant denies the allegations contained in paragraph 2.

**WHEREFORE**, Defendant demands judgment dismissing the Complaint for failure to state a cause of action upon which relief can be granted, counsel fees and costs.

### **THIRD COUNT**

Defendant, **Mary Smith**, repeats each and every answer to the allegations of the First and Second Counts of the Complaint as if set forth at length herein.

1. Defendant denies the allegations contained in paragraph 2.

**WHEREFORE**, Defendant demands judgment dismissing the Complaint for failure to state a cause of action upon which relief can be granted, counsel fees and costs.

### **FOURTH COUNT**

Defendant, **Mary Smith**, repeats each and every answer to the allegations of the First, Second and Third Counts of the Complaint as if set forth at length herein.

1. Defendant denies the allegations contained in paragraph 2.

**WHEREFORE**, Defendant demands judgment dismissing the Complaint for failure to state a cause of action upon which relief can be granted, counsel fees and costs.

### **COUNTERCLAIM**

Defendant, **Mary Smith**, residing at 11 Willow Street, Sussex, Sussex County, New Jersey 07461, by way of Counterclaim against the Plaintiff, says:

#### **FIRST COUNT**

1. Defendant was lawfully married to Plaintiff, John Smith, on August 26, 2009, in a religious ceremony at St. Christopher's Church, Parsippany, New Jersey.
2. Defendant was a bona fide resident of the County of Sussex, State of New Jersey when this cause of action arose and has ever since and for more than one year next preceding the commencement of this action continued to be such a bona fide resident.



3. At the time cause of action arose, Defendant resided at 100 Main Street, Newton, Sussex County, New Jersey 07860.
4. The Plaintiff, John Smith, currently resides at 100 Main Street, Newton, Sussex County, New Jersey 07860.
5. The Plaintiff has perpetrated acts of extreme mental cruelty against the Defendant, which in the past and present both endanger her health and make it improper and unreasonable for the Defendant to cohabit with the Plaintiff under the same roof. All of said acts, which are stated below, occurred more than three months prior to the filing of this suit and any acts, which are included below and which occurred thereafter, are merely to demonstrate the continuing nature and character of the Plaintiff's acts:
  - (a) The Plaintiff has not given the Defendant any companionship and does not socialize with Defendant. Plaintiff has not been supportive of the Defendant and tells the Defendant that he cannot be bothered with the Defendant.
  - (b) The Plaintiff shows the Defendant absolutely no affection at all. He has been treating the Defendant as hired help and caretaker. Plaintiff has not shared emotions or affections with Defendant or offered Defendant any endearments or show of affection. Plaintiff does not even let the Defendant know his work schedule.
  - (c) At Christmas, the Plaintiff will not purchase gifts for defendant. Plaintiff has Defendant order what she wants out of a catalog and then he will pay for it. Plaintiff will not make any attempt to shop for Defendant and buy her something special. Plaintiff's treatment of Defendant makes her feel alone and left out.
  - (d) The Plaintiff and Defendant always had a nice sexual relationship; however, Plaintiff has not had sex with Defendant since December 2016. Plaintiff has never told Defendant why their sex life stopped abruptly.
  - (e) The Plaintiff was named as a co-respondent in another matrimonial action and when Defendant questioned him after receiving the mail, Plaintiff never denied it. Plaintiff just said the other party was jealous.
  - (f) When the Defendant and the children visit her family in Oregon, the Plaintiff stays home. The Plaintiff does not like Defendant's family and has said that they are boring.
6. There are two children born of the marriage, to wit: Jeff Smith, d.o.b. August 15, 2011, age 8; and Megan Smith, d.o.b. April 18, 2015, age 4. All unemancipated children are in the custody and control of the Plaintiff.
7. There have been previous proceedings between the parties respecting the marriage or its dissolution or respecting the maintenance of either party as follows: Domestic Violence

Complaint and Final Restraining Order entitled *Mary Smith v. John Smith*, Docket Number FV-19-000-15, in the Superior Court of New Jersey, Chancery Division, Family Part, Sussex County.

**WHEREFORE**, Plaintiff demands judgment:

- A. Dissolving the marriage between the parties pursuant to N.J.S.A. 2A: 34-2(c);
- B. Granting Defendant joint legal custody of the minor children born of the marriage with physical custody of the children with the Defendant pursuant to N.J.S.A. 9:2-4;
- C. For rehabilitative and permanent alimony pursuant to N.J.S.A. 2A:34-23;
- D. For child support for the unemancipated children born of the marriage pursuant to N.J.S.A. 2A:34-23(a) and R. 5:6A;
- E. Equitable distribution of all property, both real and personal, which was legally and beneficially acquired during the marriage pursuant to N.J.S.A. 2A:34-23.1;
- F. Permitting the Defendant to resume her maiden name of Mary Thomas. Her date of birth is April 13, 1979, and her Social Security number is XXX-XX-0003.
- G. Directing the Defendant to pay Plaintiff's counsel fees pursuant to N.J.S.A. 2A:34-23; and
- H. For such further relief as the Court may deem equitable and just.

## **SECOND COUNT**

Defendant, **Mary Smith**, repeats each and every allegation contained in the First Count of the Counterclaim as if set forth at length herein.

1. On or about December 4, 2015, the Plaintiff physically assaulted the Defendant by striking her with a closed fist about the head and face.
2. As a result of the actions of the Plaintiff, the Defendant has incurred permanent injuries and pain and suffering, which in the past and present have resulted in a loss of future employment.

**WHEREFORE**, Defendant demands judgment for damages, punitive damages, consequential damages, attorneys' fees and costs of suit.

### **THIRD COUNT**

Defendant, Mary Smith, repeats each and every allegation contained in the First and Second Counts of the Counterclaim as if set forth at length herein.

1. On or about December 4, 2015, and at other times presently unknown to the Defendant, the Plaintiff did unlawfully intercept communications between the Defendant and others in violation of the New Jersey wiretap statute, N.J.S.A. 2A:156A-3.
2. As a result, the Defendant has suffered damages, emotional distress, and consequential damages.

**WHEREFORE**, Defendant demands judgment for damages, punitive damages, and consequential damages, pursuant to N.J.S.A. 2A:156A-24.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorneys for Defendant

Dated:

BY: \_\_\_\_\_  
Mark Gruber, Esq.

### **NOTICE PURSUANT TO N.J.S.A. 2A:17-56.8**

In accordance with N.J.S.A. 2A:17-56.8 you are notified that child support provisions of an order shall, and the medical support provisions may, as appropriate, be enforced by an income withholding upon the current or future income due from the obligor's employer or successor's employers and upon the unemployment compensation benefits due the obligor and against debts, income, trust funds, profits or income from any other source due the obligor except as provided in N.J.S.A. 2A:17-56.9. The obligor's driver's license and professional or occupational licenses held or applied for by the obligor may be denied, suspended or revoked if: a child support arrearage is equal to or exceeds the amount of child support payable for six months; the obligor fails to provide health insurance for the children as ordered by the Court for six months; or a warrant for the obligor's arrest has been issued by the Court due to 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 hearing to enforce a child support order and said warrant remains outstanding. The amount of IV-D child support and the provisions for medical support coverage shall be reviewed and updated as necessary, at least every three years.

## **CERTIFICATION PURSUANT TO R. 4:5-1**

I hereby certify that to the best of my information, knowledge and belief that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, that no other action or arbitration proceeding is contemplated, and I am not aware of any other person who should be joined in this matter.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorneys for Defendant

Dated:

BY: \_\_\_\_\_

Mark Gruber, Esq.  
Attorney for Plaintiff

## **TRIAL COUNSEL DESIGNATION PURSUANT TO R. 4:5-1(c)**

Mark Gruber, Esq. is hereby designated trial counsel in this matter.

### **JURY DEMAND**

Defendant demands a jury of six (6) persons as to all issues.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorneys for Defendant

Dated:

BY: \_\_\_\_\_

Mark Gruber, Esq.

## **CERTIFICATION PURSUANT TO R. 5:4-2(h)** **BY ATTORNEY AND CLIENT**

I, Mark Gruber, Esq., being of full age, hereby certifies as follows:

1. I am the attorney for the Defendant in the above-captioned matter.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

3. I have provided my client with a copy of the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”
4. I have discussed with my client the Complementary Dispute Resolution (“CDR”) Alternatives to Litigation contained in that document.

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
Attorneys for Defendant**

Dated:

BY: \_\_\_\_\_  
Mark Gruber, Esq.

I, **Mary Smith**, of full age, hereby certify as follows:

1. I am the Defendant in the above-captioned matter and am represented in this divorce matter by Mark Gruber, Esq.
2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).
3. I have read the document entitled “Divorce—Dispute Resolution Alternatives to Conventional Litigation.”
4. I, thus, have been informed as to the availability of Complementary Divorce—Dispute Resolution Alternatives to Conventional Litigation.

I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

\_\_\_\_\_  
Mary Smith

**CERTIFICATION OF VERIFICATION AND NON-COLLUSION**  
**PURSUANT TO R. 5:4-2(C)**

I, **Mary Smith**, being of full age, hereby certify:

I am the Defendant in the foregoing Counterclaim. The allegations in the Counterclaim are true to the best of my knowledge, information and belief, and the said Counterclaim is made in truth and good faith and without collusion for the causes set forth therein. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

\_\_\_\_\_  
Mary Smith

**CERTIFICATION OF INSURANCE COVERAGE**  
**PURSUANT TO R. 5:4-2(f)**

1. I am the Defendant in the foregoing Counterclaim. To the best of my knowledge and belief, the insurance coverage with this Certification represents all insurance coverage of myself and the Plaintiff in this matter.
2. To the best of my knowledge and belief, none of the insurance coverage listed within this Certification was canceled or modified within the ninety days preceding the date of this Certification.

**LIFE INSURANCE**

Name of Company:

Address:

Policy Number:

Beneficiary:

Face Amount:

Name of Insured:

Policy Owner:

Policy Term (if applicable):

**HEALTH INSURANCE**

Name of Company:

Address:

Name of Insured:

I.D. Number:

Group Number:

Coverage Type:

Single \_\_\_ Child \_\_\_ Family \_\_\_ Optical \_\_\_ Hospital \_\_\_ Major Medical \_\_\_  
Dental \_\_\_ Drug \_\_\_ Diagnostic \_\_\_

Check if made available through employment \_\_\_ or personally obtained \_\_\_.

### **AUTOMOBILE INSURANCE**

Name of Company:

Address:

Policy Number:

Policy Expiration Date:

Year, Make & Model of Vehicle:

Coverage Limits:

Lawsuit Threshold Yes \_\_\_ No \_\_\_; Umbrella Coverage Yes \_\_\_ No \_\_\_

Driver(s) of Vehicle:

Lienholder/Lessor (If applicable):

Address of Lienholder/Lessor:

Use of Vehicle: Personal \_\_\_ Business \_\_\_

### **HOMEOWNER'S INSURANCE**

Name of Company:

Address:

Policy Number:

Policy Expiration Date:

Address of Covered Residence:

Coverage Limits:

Umbrella Coverage: Yes \_\_\_ No \_\_\_; Umbrella Coverage: \$

Mortgage (If applicable):

Address of Mortgagee:

Rider(s) to Policy: Jewelry \_\_\_ Furs \_\_\_ Artwork \_\_\_ Other \_\_\_

*I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated:

\_\_\_\_\_  
Mary Smith

## **H. COUNTERCLAIM**

A counterclaim may state any family cause of action and any other causes of action that exist at the time of service of the counterclaim.

## **I. ANSWER TO COUNTERCLAIM**

R. 4:6-1 requires an answer to a counterclaim to be filed 20 days after service of the counterclaim.



Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

_____	:	SUPERIOR COURT OF NEW JERSEY
JOHN SMITH,	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	ANSWER TO COUNTERCLAIM
_____	:	

The Plaintiff, **John Smith**, residing at 100 Main Street, Newton, Sussex County, New Jersey, by way of Answer to the Counterclaim, says:

**FIRST COUNT**

1. Plaintiff admits the allegations of paragraphs 1, 2, 3, 5, and 6
2. Plaintiff denies the allegations of paragraphs 4A-4F.

**WHEREFORE**, Plaintiff demands judgment dismissing the First Count of the Counterclaim for failure to state a cause of action upon which relief can be granted, counsel fees and costs.

**SECOND COUNT**

1. Plaintiff denies the allegations of paragraphs 1, 2 and 3.

**WHEREFORE**, Plaintiff demands judgment dismissing the Second Count of the Counterclaim for failure to state a cause of action upon which relief can be granted, counsel fees and costs.

### **THIRD COUNT**

1. Plaintiff denies the allegations of paragraphs 1, 2 and 3.

**WHEREFORE**, Plaintiff demands judgment dismissing the Third Count of the Counterclaim for failure to state a cause of action upon which relief can be granted, counsel fees and costs.

### **SEPARATE DEFENSES**

#### **FIRST SEPARATE DEFENSE**

The Counterclaim fails to state a claim upon which relief can be granted.

#### **SECOND SEPARATE DEFENSE**

Negligence, if any, on the part of the Plaintiff was not the proximate cause of any injuries, which may have been sustained by the Defendant.

#### **THIRD SEPARATE DEFENSE**

Damages, if any, were the result of the sole negligence of the Defendant.

#### **FOURTH SEPARATE DEFENSE**

The Defendant was contributorily negligent and, therefore, any recovery to which she would otherwise be entitled as against this Defendant must be reduced by the application of the standard of comparative negligence mandated by N.J.S.A. 59:9-4.

#### **FIFTH SEPARATE DEFENSE**

The alleged tortuous activity in the Third Count of the Counterclaim is barred by the Statute of Limitations.

### **DEMAND FOR DAMAGES**

Plaintiff demands damages as to Counts Two & Three of the Counterclaim.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorneys for Plaintiff

Dated:

By: \_\_\_\_\_

Mark Gruber, Esq.

## **J. DIFFERENTIATED CASE MANAGEMENT**

Cases are separated into four categories for purposes of case management: priority, complex, expedited, or standard. The Family Part presiding judge must assign each case a designation after case information statements are filed or after the case management conference. The parties can agree on a designation.

**N.J.S.A. 5:1-4 Repealed**

## **K. CASE MANAGEMENT CONFERENCE**

Within 30 days of the last pleading, the court will schedule case management conferences that may be conducted over the telephone. The responsible attorney must participate. Joinder of additional parties and discovery issues are scheduled.

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

(a) Priority and Complex Actions. In civil family actions assigned to the priority or complex track, an initial case management conference, which may be by telephone, shall be held within 30 days after the expiration of the time for the last permissible responsive pleading or as soon thereafter as is practicable considering, among other factors, the number of parties, if any, added or impleaded. Following the conference, the court shall enter an initial case management order fixing a schedule for initial discovery; requiring other parties to be joined, if necessary; narrowing the issues in dispute, if possible; and scheduling a second case management conference to be held after the close of the initial discovery period. The second case management order shall, among its other determinations, fix a firm trial date.

(b) Standard and Expedited Cases. In civil family actions assigned to the standard or expedited track, a case management conference, which may be by telephone, shall be held within 30 days after the expiration of the time for the last permissible responsive pleading. The attorneys actually responsible for the prosecution and defense of the case shall participate in the case management conference and the parties shall be available in person or by telephone. Following the conference, the court shall enter a case management order fixing a discovery schedule and a firm trial date. Additional case management conferences may be held in the court's discretion and for good cause shown on its motion or a party's request.

(c) Non-Dissolution Actions. While non-dissolution actions are presumed to be summary and non-complex, at the first hearing following the filing of a non-dissolution application, the court, on oral application by a party or an attorney for a party, shall determine whether the case should be placed on a complex track. The court, in its discretion, also may make such a determination without an application from the parties. The complex track shall be reserved for only exceptional cases that cannot be heard in a summary matter. The court may assign the case to the complex track based only on a specific finding that discovery, expert evaluations, extended trial time or another material complexity requires such an assignment. Applications for a complex track assignment made after the initial hearing may be considered upon presentation of exceptional circumstances. If the court deems a non-dissolution case to be appropriate for the complex track

at the first hearing, an initial case management conference shall be held at that time, and a case management order shall be issued detailing the reasons that the case is deemed complex. The court shall enter an order fixing a schedule for discovery, narrowing the issues in dispute, appointing experts, ordering necessary reports from probation or third parties, scheduling mediation (where appropriate), fixing a trial date, scheduling a second case management conference to fix a trial date, or addressing any other relief the court may deem appropriate. At the first case management conference, the court shall address any pendente lite relief requested, identify and schedule any anticipated applications and/or schedule another hearing to address any requested relief. At the second case management conference, the court shall fix a trial date, address any stipulations between the parties, address anticipated applications, address the completion of discovery or expert or third party reports, narrow the issues, schedule mediation and fix the time for the filing of briefs and pre-marked documents.

## **L. PREVIOUS FILE ON RECORD**

R. 5:5-8 requires the parties to obtain and file the records from any other action previously filed between the parties, including out-of-state filings.

### **5:5-8. Previous File or Record**

(a) Previous Action Within State. In every family action where it appears by a pleading that there has been a previous family action in this State between the parties, any party or the court shall request the clerk of the court in which it was instituted to send to the clerk of the county in which the pending action is to be tried the complete file in the previous action or a certified copy thereof. At the conclusion of the action such file shall be returned.

(b) Previous Action Outside State. If it appears that the previous action was in a foreign jurisdiction, the party whose pleading refers thereto, or the moving party if the action is uncontested, shall produce at trial so much of the record in said action as is necessary to enable the court to determine the effect, if any, of the previous action upon the issue before it.

## **M. SERVICE OF PLEADINGS**

### **1. Filing and Payment of Fees**

Actions for dissolution of marriage are commenced by filing a complaint in the Chancery Division, Family Part, with the court clerk of the county of venue. In all other family actions, the complaint is filed with the Family Division manager in the county of venue. R. 1:5-6(b)(4). The complaint is usually transmitted with an extra copy and return envelope so the court can affix a docket number and return a filed complaint with the docket number to the attorney for service upon the other party. The payment of a filing fee is required unless waived pursuant to R. 1:13-2, when a person is represented by a legal aid society, a Legal Services project, a public defender, or counsel assigned in accordance with the Court Rules.

### **2. Summons**

Matrimonial summons should issue within 15 days of filing of the complaint, and is issued by the plaintiff's attorney pursuant to R. 4:4-1. Failure to issue the summons within 15 days may lead to a dismissal in accordance with R. 4:37-2(a).

Each responsive pleading must contain a certification that the service of the pleading was served within the time periods permitted by the rule. R. 4:6-1(d).

### **3. Service of Summons and Complaint**

Service of process in all matrimonial actions is made in accordance with the applicable provisions of R. 4:4-4. The primary method of obtaining *in personam* jurisdiction is by personally serving the summons and complaint by the sheriff of the county where the defendant resides, or by a person specially appointed by the court for that purpose. The attorney should send a check to the sheriff's department for the appropriate fee (check the *New Jersey Lawyer's Diary*) and provide the sheriff with an original and two copies of the summons and complaint with a self-addressed stamped envelope. If the sheriff is unable to serve the summons, the summons and complaint may then be served personally by the plaintiff's attorney or agent, or any other competent adult not having a direct interest in the litigation.

#### **4:4-3. By Whom Served; Copies**

(a) Summons and Complaint. Summonses shall be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation. If personal service cannot be effected after a reasonable and good faith attempt, which shall be described with specificity in the proof of service required by R. 4:4-7, service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of

abode of the defendant or a person authorized by rule of law to accept service for the defendant or, with postal instructions to deliver to addressee only, to defendant's place of business or employment. If the addressee refuses to claim or accept delivery of registered or certified mail, service may be made by ordinary mail addressed to the defendant's usual place of abode. The party making service may, at the party's option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim or accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2. Return of service shall be made as provided by R. 4:4-7.

(b) Writs. Unless the court otherwise orders, all writs and process to enforce a judgment or order shall be served by the sheriff.

(c) Private Service; Costs. When service of process pursuant to this rule has been made by any person other than the sheriff, the allowance of taxed costs pursuant to R. 4:42-8 shall include a cost of service not exceeding the fee and mileage expenses allowable by law to the sheriff for that service.

#### **4:4-4. Summons; Personal Service; In Personam Jurisdiction**

Service of summons, writs and complaints shall be made as follows:

(a) Primary Method of Obtaining In Personam Jurisdiction. The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State pursuant to R. 4:4-3, as follows:

(1) Upon a competent individual of the age of 14 or over, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member of the household of the age of 14 or over then residing therein, or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual's behalf;

(2) Upon a minor under the age of 14, by delivering a copy of the summons and complaint personally to a parent or the guardian of the minor's person or to a competent adult member of the household with whom the minor resides;

(3) Upon a mentally incapacitated person, by delivering a copy of the summons and complaint personally to the guardian of the person of the mentally incapacitated individual or to a competent adult member of the household with whom the mentally incapacitated person resides, or if the mentally incapacitated person resides in an institution, to the director or chief executive officer thereof;

(4) Upon individual proprietors and real property owners, provided the action arises out of a business in which the individual is engaged within this State

or out of any real property or interest in real property in this State owned by the individual, by delivering a copy of the summons and complaint to the individual if competent, or, whether or not the individual proprietor or property owner is competent, to a managing or general agent employed by the individual in such business or for the management of such real property, or if service cannot be made in that manner, then by delivering a copy of the summons and complaint to any employee or agent of the individual within this State acting in the discharge of his or her duties in connection with the business or the management of the real property;

(5) Upon partnerships and unincorporated associations subject to suit under a recognized name, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on an officer or managing agent or, in the case of a partnership, a general partner;

(6) Upon a corporation, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on any officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof, or, if service cannot be made on any of those persons, then on a person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then on any employee of the corporation within this State acting in the discharge of his or her duties, provided, however, that a foreign corporation may be served only as herein prescribed subject to due process of law;

(7) Upon the State of New Jersey, by registered, certified or ordinary mail of a copy of the summons and complaint or by personal delivery of a copy of the summons and complaint to the Attorney General or to the Attorney General's designee named in a writing filed with the Clerk of the Superior Court. No default shall be entered for failure to appear unless personal service has been made under this paragraph. In an action under N.J.S.A. 2A:45-1 et seq. (lien or encumbrance held by the State), the notice in lieu of summons shall be in the form, manner and substance prescribed by N.J.S.A. 2A:45-2, and shall be served, together with a copy of the complaint, on the Attorney General or designee as herein provided, but if the lien or encumbrance arises by reason of a recognizance entered into in connection with any proceeding in the Superior Court or any criminal judgment rendered in such court, the notice, together with a copy of the complaint, shall be served on the county prosecutor or the prosecutor's designee named in a writing filed with the Clerk of the Superior Court;

(8) On other public bodies, by serving a copy of the summons and complaint in the manner prescribed by subparagraph (a)(1) of this rule on the presiding officer or on the clerk or secretary thereof;



(9) Upon a junior judgment creditor defendant in a foreclosure action, by delivering a copy of the summons and complaint via mail to the last known address or by publication when the last known address cannot be ascertained after diligent inquiry.

The foregoing subparagraphs (a)(2) through (a)(9) notwithstanding, in personam jurisdiction may be obtained by mail under the circumstances and in the manner provided by R. 4:4-3.

(b) Obtaining In Personam Jurisdiction by Substituted or Constructive Service.

(1) By Mail or Personal Service Outside the State. If it appears by affidavit satisfying the requirements of R. 4:4-5(b) that despite diligent effort and inquiry personal service cannot be made in accordance with paragraph (a) of this rule, then, consistent with due process of law, in personam jurisdiction may be obtained over any defendant as follows:

(A) personal service in a state of the United States or the District of Columbia, in the same manner as if service were made within this State or by a public official having authority to serve civil process in the jurisdiction in which the service is made or by a person qualified to practice law in this State or in the jurisdiction in which service is made; or

(B) personal service outside the territorial jurisdiction of the United States, in accordance with any governing international treaty or convention to the extent required thereby, and if none, in the same manner as if service were made within the United States, except that service shall be made by a person specially appointed by the court for that purpose; or

(C) mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, and, simultaneously, by ordinary mail to: (1) a competent individual of the age of 14 or over, addressed to the individual's dwelling house or usual place of abode; (2) a minor under the age of 14 or a mentally incapacitated person, addressed to the person or persons on whom service is authorized by paragraphs (a)(2) and (a)(3) of this rule; (3) a corporation, partnership or unincorporated association that is subject to suit under a recognized name, addressed to a registered agent for service, or to its principal place of business, or to its registered office. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2.

(2) As Provided by Law. Any defendant may be served as provided by law.

(3) By Court Order. If service can be made by any of the modes provided by this rule, no court order shall be necessary. If service cannot be made by any of the modes provided by this rule, any defendant may be served as provided by court order, consistent with due process of law.

(c) Optional Mailed Service. Where personal service is required to be made pursuant to paragraph (a) of this rule, service, in lieu of personal service,

may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto, and provided further that default shall not be entered against a defendant who fails to answer or appear in response thereto. This prohibition against entry of default shall not apply to mailed service authorized by any other provisions of this rule. If defendant does not answer or appear within 60 days following mailed service, service shall be made as is otherwise prescribed by this rule, and the time prescribed by R. 4:4-1 for issuance of the summons shall then begin to run anew.

Service may be made by mail in lieu of personal service by registered, certified and ordinary mail. However, mail service is only effective if the defendant answers the complaint or otherwise appears in response. R. 4:4-4(c).

If a defendant is incompetent, the summons and complaint should be served upon the guardian of the person or a competent adult member of the family with whom the incompetent resides, or if living in an institution, then also upon the director or chief executive office of the institution, or if service cannot be made on any of them, as provided in a court order. R. 4:4-4(a)(3).

#### **4. Service Via the Hague Convention**

Signatories to the Hague Convention have procedures for service of judicial and extrajudicial documents in civil and commercial matters. For service abroad or in a foreign country that adopted the Hague Convention, see the Request for Service Abroad form that follows.

#### **5. Service of Summons and Complaint Upon Absent Defendant**

In matrimonial actions over which the court has jurisdiction, service may be made upon a defendant who cannot be located in this state by personal service outside the state pursuant to R. 4:4-4(b)(J)(A) and (B), service by mail as prescribed by R. 4:4-4(b)(l)(C), by publication or as provided by court order.

Service by publication is provided in R. 4:4-5. The practice for publication is for the attorney to make a motion to the court and attach an affidavit or certification of diligent inquiry that the defendant's whereabouts could not be determined. Freedom of information letters and motor vehicle and registration searches are suggested. Many judges require an affidavit from an investigator or service similar to those employed to find missing heirs. R. 4:4-5(c)(2) sets forth the requirement for the inquiry. The publication is in the newspaper in the county where venue is laid, or if there is none, in a newspaper published in the state that circulates in the county.

#### **4:4-5. Summons; Service on Absent Defendants; In Rem or Quasi In Rem Jurisdiction**

(a) Methods of Obtaining In Rem Jurisdiction. Whenever, in actions affecting specific property, or any interest therein, or any res within the jurisdiction of the court, or in matrimonial actions over which the court has jurisdiction, wherein it shall appear by affidavit of the plaintiff's attorney or other person having knowledge of the facts, that a defendant cannot, after diligent inquiry as required by this rule, be served within the State, service may, consistent with due process of law, be made by any of the following four methods:

(1) personal service outside this State as prescribed by R. 4:4-4(b)(1)(A) and (B); or

(2) service by mail as prescribed by R. 4:4-4(b)(1)(C); or

(3) by publication of a notice to absent defendants once in a newspaper published or of general circulation in the county in which the venue is laid; and also by mailing, within 7 days after publication, a copy of the notice as herein provided and the complaint to the defendant, prepaid, to the defendant's residence or the place where the defendant usually receives mail, unless it shall appear by affidavit that such residence or place is unknown, and cannot be ascertained after inquiry as herein provided or unless the defendants are proceeded against as unknown owners or claimants pursuant to R. 4:26-5(c). If defendants are proceeded against pursuant to R. 4:26-5(c), a copy of the notice shall be posted upon the lands affected by the action within 7 days after publication. The notice of publication to absent defendants required by this rule shall be in the form of a summons, without a caption. The top of the notice shall include the docket number of the action, the court, and county of venue. The notice shall state briefly:

(A) the object of the action, the name of the plaintiff and defendant followed by et al., if there are additional parties, the name of the person or persons to whom the notice is addressed, and the basis for joining such person as a defendant; and

(B) if the action concerns real estate, the municipality in which the property is located, its street address, if improved, or the street on which it is located, if unimproved, and its tax map lot and block numbers; and

(C) if the action is to foreclose a mortgage, tax sale certificate, or lien of a condominium or homeowners association, the parties to the instrument and the date thereof, and the recording date and book and page of a recorded instrument; and

(D) the information required by R. 4:4-2 regarding the availability of Legal Services and Lawyer Referral Services together with telephone numbers of the pertinent offices in the vicinage in which the action is pending or the property is located; or

(4) as may be provided by court order.

(b) Contents of Affidavit of Inquiry. The inquiry required by this rule shall be made by the plaintiff, plaintiff's attorney actually entrusted with the conduct of the action, or by the agent of the attorney; it shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the defendant's residence or address or the matter inquired of; the inquiry shall be undertaken in person or by letter enclosing sufficient postage for the return of an answer; and the inquirer shall state that an action has been or is about to be commenced against the person inquired for, and that the object of the inquiry is to give notice of the action in order that the person may appear and defend it. The affidavit of inquiry shall be made by the inquirer fully specifying the inquiry made, of what persons and in what manner, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

## **6. Proof of Service**

The person serving the process must file a proof of service with the court prior to the time during which the person served must respond thereto. The proof must state the name of the person served, the place, mode and date of service and a copy must be provided to the plaintiff's attorney. When personal service is made by someone other than a sheriff, the proof must be made by affidavit. When service is made by mail, an affidavit of service must be filed with the court.

If the defendant enters an answer or appearance, there is no need to file proof of service. Proof of service may also be accomplished by the signing and submission of an acknowledgment of service. The acknowledgment of service may be signed by the defendant's attorney or by the defendant if the defendant's signature is acknowledged properly.



# REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

DEMANDE  
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION À L'ETRANGER  
D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.  
Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

**Identity and address of the applicant**  
*Identité et adresse du requérant*

**Address of receiving authority**  
*Adresse de l'autorité destinataire*

The undersigned applicant has the honour to transmit -- in duplicate-- the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

*Le requérant soussignée a l'honneur de faire parvenir--en double exemplaire--à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir:*  
*(identité et adresse)*

\_\_\_\_\_

- (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.\*  
*a) selon les formes légales (article 5 alinéa premier, lettre a).*
- (b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)\*:  
*b) selon la forme particulière suivante (article 5, alinéa premier, lettre b) :*

\_\_\_\_\_

- (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)\*:  
*c) le cas échéant, par remise simple (article 5, alinéa 2).*

The authority is requested to return or to have returned to the applicant a copy of the documents and of the annexes with a certificate as provided on the reverse side.

*Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte - et de ses annexes - avec l'attestation figurant au verso.*

List of documents  
*Énumération des pièces*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Done at \_\_\_\_\_, the \_\_\_\_\_  
*Fait à \_\_\_\_\_, le \_\_\_\_\_*

Signature and/or stamp  
*Signature et/ou cachet*

\_\_\_\_\_

\*Delete if inappropriate  
*Rayer les mentions inutiles.*

**CERTIFICATE  
ATTESTATION**

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,  
*L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,*

1) that the document has been served \*

1) *que la demande a été exécutée*

-- the (date) -- *le (date)*

-- at (place, street, number) - à *(localité, rue, numéro)*

-- in one of the following methods authorized by article 5:

-- *dans une des formes suivantes prévues à l'article 5:*

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*.  
*a) selon les formes légales (article 5. alinéa premier, lettre a)*

(b) in accordance with the following particular method:  
*b) selon la forme particulière suivante:*

(c) by delivery to the addressee, who accepted it voluntarily.\*  
*c) par remise simple.*

The documents referred to in the request have been delivered to:

*Les documents mentionnés dans la demande ont été remis à:*

- *(identity and description of person)*

- *(Identité et qualité de la personne)*

- relationship to the addressee family, business or other

- *liens de parenté de subordination ou autres avec le destinataire de l'acte:*

2) that the document has not been served, by reason of the following facts\*:

2) *que la demande n'a pas été exécutée, en raison des faits suivants:*

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*

*Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.*

**ANNEXES**

*Annexes*

Documents returned:

*Pièces renvoyées*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

In appropriate cases, documents establishing the service:

*Le cas échéant, les documents justificatifs de l'exécution:*

\_\_\_\_\_

\_\_\_\_\_

Done at \_\_\_\_\_, the \_\_\_\_\_  
*Fait à \_\_\_\_\_, le \_\_\_\_\_*

Signature and/or stamp  
*Signature et/ou cachet*

\_\_\_\_\_

**SUMMARY OF THE DOCUMENT TO BE SERVED**  
*ÉLÉMENTS ESSENTIELS DE L'ACTE*

**Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.**

*Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.*

**(article 5, fourth paragraph)**  
*(article 5, alinéa quatre)*

**Name and address of the requesting authority:**  
*Nom et adresse de l'autorité requérante:*

**Particulars of the parties:**  
*Identité des parties:*

**JUDICIAL DOCUMENT**  
*ACTE JUDICIAIRE*

**Nature and purpose of the document:**  
*Nature et objet de l'acte:*

**Nature and purpose of the proceedings and, where appropriate, the amount in dispute:**  
*Nature et objet de l'instance, le cas échéant, le montant du litige:*

**Date and place for entering appearance:**  
*Date et lieu de la comparution:*

**Court which has given judgment\*\*:**  
*Jurisdiction qui a rendu la décision:*

**Date of judgment\*\*:**  
*Date de la décision:*

**Time limits stated in the document\*\*:**  
*Indication des délais figurant dans l'acte:*

**EXTRAJUDICIAL DOCUMENT**  
*ACTE EXTRAJUDICIAIRE*

**Nature and purpose of the document:**  
*Nature et objet de l'acte:*

**Time limits stated in the document\*\*:**  
*Indication des délais figurant dans l'acte:*

## **7. Electronic Filing**

With the advent of COVID-19, in April 2020, the courts established the Judiciary Electronic Document Submission System (JEDS) for the electronic filing of documents. By Order of the Supreme Court dated May 5, 2020, JEDS became an approved filing system in which all documents submitted through JEDS are filed upon receipt and deemed electronically signed. Information and instructions for registration and filing can be found at the Judiciary website at <https://www.njcourts.gov/selfhelp/jeds.html#home>.



Mark Gruber, Esq./ID#021201976  
Filing Attorney, Esq./ID# \_\_\_\_\_  
GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
41 Lakeside Boulevard  
Hopatcong, NJ 07843  
973-398-7500/fax 973-398-5579  
Attorneys for Plaintiff

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JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	ACKNOWLEDGEMENT OF SERVICE

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TO: LARRY LAWYER, Esq.  
LAW OFFICES OF LAWYER, LLC  
PO Box 1000  
50 Jefferson Street  
Morristown, NJ 07963

Service of the within Summons & Complaint are hereby acknowledged on \_\_\_\_\_, 2019.

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Larry Lawyer, Esq.

## **N. CASE INFORMATION STATEMENT**

R. 5:5-2 requires a case information statement to be filed in all contested family actions in which there is an issue as to custody, support, alimony or equitable distribution within 20 days after the filing of the answer of appearance or any other time designated by the court. Failure to comply may lead to a dismissal of the pleading. The parties also have a continuing duty to amend the case information statement, which must be filed with the court no later than 20 days before the final hearing. It is interesting to note that income tax returns must be attached with the case information statement, but the tax returns shall be returned to the parties at the conclusion of the case.

### **5:5-2. Family Case Information Statement**

(a) **Applicability.** The case information statement required by this rule shall be filed and served in all contested family actions, except summary actions, in which there is any issue as to custody, support, alimony or equitable distribution. With respect to summary actions, R. 5:5-3 shall apply. In all other family actions, a case information statement may be required by order on motion of the court or a party.

(b) **Time and Filing.** Except as otherwise provided in R. 5:7-2, an initial case information statement or certification that no such statement is required under subparagraph (a) shall be filed by each party with the clerk in the county of venue within 20 days after the filing of an Answer or Appearance or at any other time designated by the court. The Family Case Information Statement shall be filed in the form set forth in Appendix V of these rules. The court on either its own or a party's motion may, on notice to all parties, dismiss a party's pleadings for failure to have filed a case information statement. If dismissed, said pleadings shall be subject to reinstatement upon such conditions as the court may deem just.

(c) **Amendments.** Parties are under a continuing duty in all cases to inform the court of any material changes in the information supplied on the case information statement. All amendments to the statement shall be filed with the court no later than 20 days before the final hearing. The court may prohibit a party from introducing into evidence any information not disclosed or it may enter such other order as it deems appropriate.

(d) **Income Tax Returns.** Following the entry of a final judgment, the court shall order the return to the parties of any income tax returns filed with a case information statement under this rule.

(e) **Marital, Civil Union or Domestic Partnership Standard of Living Declaration.** In any matter in which an agreement or settlement contains an award of alimony, (1) the parties shall include a declaration that the marital,

civil union or domestic partnership standard of living is satisfied by the agreement or settlement; or (2) the parties shall by stipulation define the marital, civil union or domestic partnership standard of living; or (3) the parties shall preserve copies of their respective filed Family Case Information Statements until such time as alimony is terminated; or (4) any party who has not filed a Family Case Information Statement shall prepare Part D (“Monthly Expenses”) of the Family Case Information Statement form serving a copy thereof on the other party and preserving that completed Part D until such time as alimony is terminated.

(f) Confidentiality. The Family Case Information Statement and all attachments thereto shall be confidential and unavailable for public inspection, pursuant to R. 1:38-3(d)(1).

The case information statement must be filed with the clerk and served upon the adversary. Although a case information statement may be filed with the court, an additional case information statement must be filed with any *pendente lite* applications.

## FAMILY PART CASE INFORMATION STATEMENT

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

Attorney(s): Mark Gruber, Esq. - 021201976  
Office Address: 41 Lakeside Boulevard, Hopatcong, NJ 07843  
Tel. No./Fax No: (973) 398-7500 / (973) 398-2592  
Attorney(s) for Plaintiff

John Smith	
	<b>Plaintiff</b>
	vs.
Mary Smith	
	<b>Defendant</b>

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, FAMILY PART  
COUNTY SUSSEX

DOCKET NO. FM-19-

**CASE INFORMATION STATEMENT**  
OF John Smith

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

### INSTRUCTIONS:

The Case Information Statement is a document which is filed with the Court setting forth the financial details of your case. The required information includes your income, your spouse's/partner's income, a budget of your joint life style expenses, a budget of your current life style expenses including the expenses of your children, if applicable, an itemization of the amounts which you may be paying in support for your spouse/partner or children if you are contributing to their support, a summary of the value of all assets referenced on page 8 –**It is extremely important that the Case Information Statement be as accurate as possible because you are required to certify that the contents of the form are true.** It helps establish your lifestyle which is an important component of alimony/spousal support and child support.

The monthly expenses must be reviewed and should be based on actual expenditures such as those shown from checkbook registers, bank statements or credit card statements from the past 24 months. The asset values should be taken, if possible, from actual appraisals or account statements. If the values are estimates, it should be clearly noted that they are estimates.

According to the Court Rules, you **must** update the Case Information Statement as your circumstances change. For example, if you move out of your residence and acquire your own apartment, you should file an Amended Case Information Statement showing your new rental and other living expenses.

It is also very important that you **attach** copies of relevant documents as required by the Case Information Statement, including your most recent **tax returns with W-2 forms, 1099s and your three (3) most recent paystubs.**

If a request has been made for college or post-secondary school contribution, you must also attach all relevant information pertaining to that request, including but not limited to documentation of all costs and reimbursements or assistance for which contribution is sought, such as invoices or receipts for tuition, board and books; proof of enrollment; and proof of all financial aid, scholarships, grants and student loans obtained.

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**PART A – CASE INFORMATION:**

Date of Statement  
Date of Divorce, Dissolution of Civil Union  
or Termination of Domestic Partnership  
(post-Judgment matters)  
Date(s) of Prior Statement(s)  
Your Birthdate  
Birthdate of Other Party  
Date of Marriage, or entry into Civil Union  
or Domestic Partnership  
Date of Separation

Date of Complaint

Does an agreement exist between parties relative to any issue?  Yes  No.

**ISSUES IN DISPUTE:**

Cause of Action   
Custody   
  
Parenting Time   
Alimony   
Child Support   
Equitable Distribution   
  
Counsel Fees   
Anticipated College/Post-Secondary Education  
Expenses   
Other issues [be specific]

If yes, **ATTACH** a copy (if written) or a summary (if oral).

**1. Name and Address of Parties:**

Your Name John Smith

Street Address

City

State/Zip

Other Party's Name Mary Smith

Street Address

City

State/Zip

**2. Name, Address, Birthdate and Person with whom children reside:****a. Child(ren) From This Relationship**

Child's Full Name	Address	Birthdate	Person's Name
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**b. Child(ren) From Other Relationships**

Child's Full Name	Address	Birthdate	Person's Name
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**PART B – MISCELLANEOUS INFORMATION:****1. Information about Employment (Provide Name & Address of Business, if Self-employed)**

Name of Employer/Business

Address

Name of Employer/Business

Address

**2. Do you have Insurance obtained through Employment/Business?  Yes  No. Type of Insurance:**

Medical  Yes  No; Dental  Yes  No; Prescription Drug  Yes  No; Life  Yes  No; Disability  Yes  No

Other (explain)

Is Insurance available through Employment/Business?  Yes  No Explain:

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

Confidential Litigant Information Sheet: Filed  Yes  No

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

**PART C – INCOME INFORMATION:**

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

**1. LAST YEAR'S INCOME**

	Yours	Joint	Other Party
1. Gross earned income last calendar (year) (2018)			
2. Unearned income (same year)			
3. Total Income Taxes paid on income (Fed., State, F.I.C.A. and S.U.I.). If Joint Return, use middle column.			
4. Net Income (1 + 2 – 3)			

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

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

Check if attached: Federal Tax Return  State Tax Return  W-2  Other

**2. PRESENT EARNED INCOME AND EXPENSES**

	Yours	Other Party (if known)
1. Average Gross weekly Income (based on last 3 pay periods - <u>ATTACH</u> pay stubs)		
Commissions and bonuses, etc., are: <input checked="" type="checkbox"/> included <input type="checkbox"/> not included* <input type="checkbox"/> not paid to you		
* <b><u>ATTACH</u></b> details of basis thereof, including, but not limited to, percentage overrides, timing of payments, etc.		
<b><u>ATTACH</u></b> copies of last three statements of such bonuses, commissions, etc.		
2. Deductions per week: (check all types of withholdings) <input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> F.I.C.A. <input type="checkbox"/> S.U.I. <input type="checkbox"/> Other		
3. Net Average weekly Income (1 - 2)		

**3. YOUR CURRENT YEAR-TO-DATE EARNED INCOME**

Provide Dates: From: \_\_\_\_\_  
 Number of Weeks 0.00

To: \_\_\_\_\_

**1. GROSS EARNED INCOME:**

**2. TAX DEDUCTIONS:** (Number of dependents: 0)

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

**TOTAL** \$0

**3. GROSS INCOME NET OF TAXES:**

\$0

**4. OTHER DEDUCTIONS:**

If mandatory, check box

a. Hospitalization/Medical Insurance	a.	<input type="checkbox"/>
b. Life Insurance	b.	<input type="checkbox"/>
c. Union Dues	c.	<input type="checkbox"/>
d. 401(k) Plans	d.	<input type="checkbox"/>
e. Pension/Retirement Plans	e.	<input type="checkbox"/>
f. Other Plans – specify	f.	<input type="checkbox"/>
g. Charity	g.	<input type="checkbox"/>
h. Wage Execution	h.	<input type="checkbox"/>
i. Medical Reimbursement (flex fund)	i.	<input type="checkbox"/>
j. Other:	j.	<input type="checkbox"/>

**TOTAL** \$0

**5. NET YEAR-TO-DATE EARNED INCOME**

\$0

**NET AVERAGE EARNED INCOME PER MONTH**

\$0

**NET AVERAGE EARNED INCOME PER WEEK**

\$0

**4. YOUR YEAR-TO-DATE GROSS UNEARNED INCOME FROM ALL SOURCES**

(including, but not limited to, income from unemployment, disability and/or social security payments, interest, dividends, rental income and any other miscellaneous unearned income)

<u>Source</u>	<u>How often paid</u>	<u>Year to date amount</u>
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TOTAL GROSS UNEARNED INCOME YEAR TO DATE

\$0

**5. ADDITIONAL INFORMATION:**

1. How often are you paid?
2. What is your annual salary?
3. Have you received any raises in the current year? If yes, provide the date and the gross/net amount.  Yes  No
4. Do you receive bonuses, commissions, or other compensation, including distributions, taxable or non-taxable, in addition to your regular salary? If yes, explain.  Yes  No
5. Does your employer pay for or provide you with an automobile (lease or purchase), automobile expenses, gas, repairs, lodging and other. If yes, explain.  Yes  No
6. Did you receive bonuses, commissions, or other compensation, including distributions, taxable or non-taxable, in addition to your regular salary during the current or immediate past 2 calendar years? If yes, explain and state the date(s) of receipt and set forth the gross and net amounts received:  Yes  No
7. Do you receive cash or distributions not otherwise listed? If yes, explain.  Yes  No
8. Have you received income from overtime work during either the current or immediate past calendar year? If yes, explain.  Yes  No
9. Have you been awarded or granted stock options, restricted stock or any other non-cash compensation or entitlement during the current or immediate past calendar year? If yes, explain.  Yes  No
10. Have you received any other supplemental compensation during either the current or immediate past calendar year?  
If yes, state the date(s) of receipt and set forth the gross and net amounts received. Also describe the nature of any supplemental compensation received.  Yes  No
11. Have you received income from unemployment, disability and/or social security during either the current or immediate past calendar year? If yes, state the date(s) of receipt and set forth the gross and net amounts received.  Yes  No
12. List the names of the dependents you claim:
13. Are you paying or receiving any alimony? If yes, how much and from or to whom?  Yes  No
14. Are you paying or receiving any child support? If yes, list names of the children, the amount paid or received for each child and to whom paid or from whom received.  Yes  No
15. Is there a wage execution in connection with support? If yes, explain.  Yes  No
16. Does a Safe Deposit Box exist and if so, at which bank?  Yes  No
17. Has a dependent child of yours received income from social security, SSI or other government program during either the current or immediate past calendar year? If yes, explain the basis and state the date(s) of receipt and set forth the gross and net amounts received.  Yes  No
18. Explanation of Income or Other Information:



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

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

**SCHEDULE A: SHELTER**

Joint Life Style  
Family, including  
(0) children

Current Life Style  
Yours and  
(0) children

**If Tenant:**

Rent			
Heat (if not furnished)			
Electric & Gas (if not furnished)			
Renter's Insurance			
Parking (at Apartment)			
Other Charges (Itemize):			

**If Homeowner:**

Mortgage			
Real Estate Taxes (if not included w/mortgage payment)			
Homeowners Ins. (if not included w/mortgage payment)			
Other Mortgages or Home Equity Loans (Specify)			
Heat (unless Electric or Gas)			
Electric & Gas			
Water and Sewer			
Garbage Removal			
Snow Removal			
Lawn Care			
Maintenance/Repairs			
Condo, Co-op or Association Fees			
Other Charges (Itemize)			

**Tenant or Homeowner:**

Telephone			
Mobile/Cellular Telephone			
Service Contracts on Equipment			
Cable TV			
Plumber/Electrician			
Equipment and Furnishings			
Internet Charges			
Home Security System			
Other Charges (Itemize)			

TOTAL \$0 \$0

**SCHEDULE B: TRANSPORTATION**

Auto Payment			
Auto Insurance (number of vehicles: 0)			
Registration, License			
Maintenance			
Fuel and Oil			
Commuting Expenses			
Other Charges (Itemize)			

TOTAL \$0 \$0





**STATEMENT OF LIABILITIES**

Description	Name of Responsible Party (P, D, J)	If you contend liability should not be shared, state reason	Monthly Payment	Total Owed	Date
<b>1. Real Estate Mortgages</b>					
<b>2. Other Long Term Debts</b>					
<b>3. Revolving Charges</b>					
<b>4. Other Short Term Debts</b>					
<b>5. Contingent Liabilities</b>					

*Items marked with \* are either marked as exempt or marked as not to be included in monthly expenses (budget) Section.*

**TOTAL GROSS LIABILITIES:** \$0  
(excluding contingent liabilities)

**NET WORTH:** \$0  
(subject to equitable distribution)

**TOTAL SUBJECT TO EQUITABLE DISTRIBUTION:** \$0  
**TOTAL NOT SUBJECT TO EQUITABLE DISTRIBUTION:** \$0

**PART F - STATEMENT OF SPECIAL PROBLEMS**

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

**PART G – REQUIRED ATTACHMENTS**

CHECK IF YOU HAVE ATTACHED THE FOLLOWING REQUIRED DOCUMENTS

- |     |  |    |
|-----|--|----|
| 1.  | A full and complete copy of your last federal and state income tax returns with all schedules and attachments. (Part C-1)  | No |
| 2.  | Your last calendar year's W-2 statements, 1099's, K-1 statements.  | No |
| 3.  | Your three most recent pay stubs.  | No |
| 4.  | Bonus information including, but not limited to, percentage overrides, timing of payments, etc.; the last three statements of such bonuses, commissions, etc. (Part C)   | No |
| 5.  | Your most recent corporate benefit statement or a summary thereof showing the nature, amount and status of retirement plans, savings plans, income deferral plans, insurance benefits, etc. (Part C)   | No |
| 6.  | Affidavit of Insurance Coverage as required by Court Rule 5:4-2(f) (Part B-3)  | No |
| 7.  | List of all prior/pending family actions involving support, custody or Domestic Violence, with the Docket Number, County, State and the disposition reached. Attach copies of all existing Orders in effect. (Part B-5)  | No |
| 8.  | Attach details of each wage execution (Part C-5)   | No |
| 9.  | Schedule of payments made for a spouse or civil union partner and/or children not reflected in Part D.   | No |
| 10. | Any agreements between the parties.  | No |
| 11. | An Appendix IX Child Support Guideline Worksheet, as applicable, based upon available information.   | No |
| 12. | If a request has been made for college or post-secondary school contribution, you must also attach all relevant information pertaining to that request, including but not limited to documentation of all costs and reimbursements or assistance for which contribution is sought, such as invoices or receipts for tuition, board and books; proof of enrollment; and proof of all financial aid, scholarships, grants and student loans obtained. A list of the information as promulgated by the Administrative Director of the Courts can be found on the Judiciary website. | No |

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

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

DATED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

## O. REQUEST TO ENTER DEFAULT

If the defendant does not serve an appearance or answer, or if the answer has been stricken, upon request, the clerk shall enter default on the docket. The request to enter default and certification is made pursuant to R. 4:43-1, and must be made within six months of actual default or thereafter upon motion to the court.

### **4:43-1. Entry of Default**

If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or court order, or if the answer has been stricken with prejudice, the clerk shall enter a default on the docket as to such party. Except where the default is entered on special order of the court, the moving party shall make a formal written request of the clerk for the entry of the default, supported by the attorney's affidavit. The affidavit shall recite the service of the process and copy of complaint on the defendant or defendants (if more than one, naming them), the date of service as appears from the return of the process, and that the time within which the defendant or defendants may answer or otherwise move as to the complaint, counterclaim, cross-claim, or third-party complaint has expired and has not been extended. The request and affidavit for entry of default shall be filed together within 6 months of the actual default, and the default shall not be entered thereafter except on notice of motion filed and served in accordance with R. 1:6 on the party in default. If defendant was originally served with process either personally or by certified or ordinary mail, the attorney obtaining the entry of the default shall send a copy thereof to the defaulting defendant by ordinary mail addressed to the same address at which defendant was served with process.

Mark Gruber, Esq./ID#021201976  
Filing Attorney, Esq./ID# \_\_\_\_\_  
GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
41 Lakeside Boulevard  
Hopatcong, NJ 07843  
973-398-7500/fax 973-398-5579  
Attorneys for Plaintiff

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MARY SAINT,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
DAN DEADBEAT,	:	
	:	REQUEST TO ENTER DEFAULT
<i>Defendant.</i>	:	AND CERTIFICATION
	:	

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TO THE CLERK OF THE ABOVE NAMED COURT:

Please enter upon the docket the default of the Defendant, in the above-entitled action, for failure to plead or otherwise defend as provided by the rules of civil practice or by an order of this Court, or because the answer of Defendant has been stricken.

GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
Attorneys for Plaintiff

Dated: BY: \_\_\_\_\_  
Mark Gruber, Esq.

## CERTIFICATION

1. I, Mark Gruber, am the attorney for Plaintiff in the above-entitled action.
2. The Summons and a copy of the Complaint in this action were served upon the Defendant, Dan Deadbeat, pursuant to the attached Acknowledgment of Service dated March 17, 2019.
3. The Defendant has waived the statutory period of time in which he has to answer or otherwise move as to the said Complaint and has consented to the entry of default. The Waiver of Statutory Period and Consent to Enter Default is attached hereto.
3. The time within which Defendant had to answer or otherwise move as to the Complaint has expired, is less than six months from today, and no Defendant named herein has answered or otherwise moved.
4. Defendant is not an active member of the military, as is indicated by the Affidavit of Non-Military Service and Department of Defense Manpower Data Center Military Status Report, which is attached hereto.

*I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorneys for Plaintiff

Dated:

BY: \_\_\_\_\_  
Mark Gruber, Esq.



## **P. AFFIDAVIT OF NON-MILITARY SERVICE**

Where a defendant has failed to plead or otherwise defend, the plaintiff must submit an affidavit that the defendant is not in the military service before entry of final judgment. R. 1:5-7.

### **1:5-7. Non-Military Affidavit**

Before entry of judgment by default, an affidavit, which may be filed as part of the affidavit of proof, shall be filed as required by law setting forth facts showing that the defendant is not in military service. Unless based on facts admissible in evidence, the affidavit shall have attached to it a statement from the Department of Defense or from each branch of the armed forces that the defendant is not in the military service. If the plaintiff is unable to determine whether the defendant is in military service, the affidavit shall so state, and the court, before entering judgment, may require the plaintiff to post a bond in an amount approved by the court to indemnify the defendant, if later found to have been in military service, against any loss or damage resulting from the judgment should it be set aside. The bond shall remain in effect until expiration of the time for appeal and setting aside of the judgment.

### **AFFIDAVIT OF NON-MILITARY SERVICE SOURCES**

Whenever an affidavit of non-military service is required, certificates in accordance with Section 601 of the (Soldiers and Sailors) Civil Relief Act may be obtained from the U.S. Military Database website at <https://scra.dmdc.osd.mil/scra/#/home>.

Certificates may also be obtained by contacting the associated service directly at the following:

Army: Army Human Resource Service Center  
1-888-ARMYHRC (1-888-276-9472)  
Email: [askhrc.army@us.army.mil](mailto:askhrc.army@us.army.mil)

Navy: Navy World Wide Locator, Navy Personnel Command, PERS 1, 5720 Integrity Drive, Millington, TN 38055  
1-866-U-ASK-NPC (1-866-827-5672)

Marine Corps: Headquarters U S Marine Corps, Personnel Management Support Branch (MMSB-17), 2008 Elliot Road, Quantico, VA 22134-5030  
Phone number: 703-784-3941 / 3942 / 3943

Air Force: HQ AFPC/DS1W, 550 C St West Suite 50, Randolph AFB, TX 78150-4752  
Total Force Service Center (800-525-0102)

Coast Guard: Commander, CG Personnel Service Center PSC, ATTN: PSC-BOPS-C-MR, US Coast Guard Stop 7200, 2703 Martin Luther King Jr Ave SE, Washington, D.C. 20593-7200

Requests for such certificates should contain the defendants' full name, service number, rank or grade, Social Security number, date and place of birth, last known address, former organizations to which assigned, or other information to properly identify the individual in question. The reason for requiring such as certificate must be stated.

In the event the defendant is in the military service, the court must appoint an attorney for the defendant. The attorney's task is to contact the defendant and ask if the defendant requests representation.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

MAY SAINT,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
DAN DEADBEAT,	:	
	:	
<i>Defendant.</i>	:	AFFIDAVIT OF NON-MILITARY SERVICE
	:	

STATE OF NEW JERSEY, COUNTY OF SUSSEX } SS:

I, Mary Saint, of full age, being duly sworn according to law, upon my oath deposes and says:

I know that the Defendant named herein is not in the military service of the United States. The source of my knowledge is personal. The Military Status Report from the Department of Defense Manpower Data Center website is attached hereto.

*I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

Dated: \_\_\_\_\_  
 Mary Saint

## **Q. OTHER CONSIDERATIONS REGARDING MILITARY SERVICE**

New Jersey has attempted to take every measure possible to ensure protection of members of the military during their time of service. Given today's political landscape, this is an issue that each practitioner must be aware of. New Jersey has enacted the Soldiers and Sailors Civil Relief Act at N.J.S.A 38:23C-1. The act provides that it is the public policy of the state of New Jersey to maintain, secure and protect the civil and property rights of persons in the military service.

### **38:23C-1. Policy**

It is hereby declared to be the public policy of the State to maintain, secure and protect the civil and property rights of persons in the military service, as hereinafter defined, and of employees who are members of the organized militia or members of a reserve component of the Armed Forces of the United States. All the provisions of this act shall be liberally construed for the accomplishment of this purpose. This act shall be deemed an exercise of the police power of the State, for the protection of the public welfare, prosperity, health and peace of the people of the State.

As set forth in the statute, the court may appoint an attorney for a party in the military, who is not represented by counsel, in order to protect that party's rights.

The most important consideration when representing the non-service member is ensuring proper service on the service member. Service can be effectuated by using methods prescribed by R. 4:4-4, if the location of the service member is known. However, in the event that the location of the service member is not known, service becomes more difficult. This burden can be reduced if the service member's Social Security number is known, which is likely if the parties were married and have filed tax returns together. Attempts at locating the service member can first be made by contacting the local Armed Forces recruiter or the base locator at the last installation at which the service member was stationed (this number is available through the installation's information operator). The military legal assistance's attorney also may be of assistance in locating a service member. Legal assistance attorneys are authorized to assist service member spouses, legitimate children, and adjudicated illegitimate children. Assistance includes providing addresses for legitimate legal purposes, such as civil legal process. Additionally, each branch of the military will assist in locating individuals on active duty. The addresses for each branch can be found above.

If it appears that a party to an action pending on the trial calendar in any court is in the military service, and if the court believes the service member's ability to prosecute the action or conduct a defense is materially affected by reason of the military service, the court can choose to place the matter on the inactive list for a period of six months. This is provided for in New Jersey Rule of Court 1:13-6.

### **1:13-6. Military Lists**

If it appears by affidavit or other competent proof that a party to an action pending on the trial calendar in any court is in the military service of the United States, and if in the opinion of the court the party's ability to prosecute the action or conduct a defense is materially affected by reason of the military service and the party's attendance may not be secured within a reasonable time without undue inconvenience, the action shall be placed on the Military List. The affidavit or other proof shall show the place where the party is stationed and, upon information and belief, the duration of that assignment and shall establish that the party cannot be available for the trial of the action within a reasonable time and without undue inconvenience. Such actions shall be automatically returned to the active trial calendar by the court at the end of 6 months unless it is made to appear by further affidavit or other competent proof that the ability of the party to prosecute the action or to conduct the defense continues to be materially affected by reason of the party's military service. A similar procedure shall be followed at the expiration of every 6 month period until the action is restored to the active trial calendar.

An attorney representing the non-service member can object to delaying the litigation and may be successful if he or she is able to document that there would be no undue hardship to the military service member if the matter is carried to conclusion during the service member's time of service. The burden is on the service member to prove that he or she is actually unable to litigate the matter at hand due to military service. If unsuccessful, the service member is expected to participate in the litigation through his or her attorney or through some other form of technology. In cases such as support actions, matters can easily be brought to a swift conclusion while a service member is still on active duty. Information regarding the service member's income is readily available. A service member is not allowed to use his or her active status in order to avoid litigation that can be brought to a conclusion.

There are many other provisions of the New Jersey Soldiers and Sailors Civil Relief Act, as well as federal statute and regulations that an attorney should be familiar with when dealing with a defendant on military service. The statutes and regulations are too voluminous to cite here; however, *The Military Divorce Handbook*, which is published by the American Bar Association and written by Mark E. Sullivan, is an excellent source of information.

## **R. NOTICE TO CO-RESPONDENT**

When adultery or deviant sexual conduct is charged, the pleadings must state the name of the person, if known, and if not known, any available information tending to describe the person. The pleadings should also contain any available information as to the date, time, place and circumstances under which the acts were committed. Within 30 days of the filing of the pleading, the co-respondent, if known, must be served with a notice to co-respondent. The notice must be sent by regular and certified mail, return receipt requested. The co-respondent must be served with a copy of the pleading, which must notify the co-respondent of the right to intervene in accordance with R. 4:33.

### **5:4-2. Complaint**

...

#### **(b) Corespondent**

(1) Identification of Corespondent. In family actions in which adultery or deviant sexual conduct is charged, the pleading so charging shall state the name of the person with whom such conduct was committed, if known, and if not known, shall state any available information tending to describe the said person, and shall also state such designation of the time, place and circumstances under which the act or series of acts were committed as will enable the party charged therewith and the court to distinguish the particular offense or offenses intended to be charged. If it is stated that the name is unknown, it must be shown at the hearing that it was not known at the time of the filing of the pleading containing the charge.

(2) Notice to Corespondent. A person named as a corespondent in any pleading seeking or resisting relief on the ground of adultery or deviant sexual conduct shall, within 30 days after filing of such a pleading, be served by the party making the charge, either personally or by registered or certified mail to the corespondent's last-known address, return receipt requested, or, if the corespondent refuses to claim or to accept delivery, by ordinary mail, with a copy of such pleading and a written notice of the pendency of the action, of the charge, and of the right to intervene in accordance with R. 4:33. If the name and address of the corespondent are discovered thereafter and before the trial, the party making the charge shall give such notice forthwith. If the name and address of the corespondent appear at the trial, and such notice has not been given, an adjournment may be ordered and such notice given. An affidavit of compliance with the requirements of this rule shall be filed.

Mark Gruber, Esq./ID#021201976  
Filing Attorney, Esq./ID# \_\_\_\_\_  
GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
41 Lakeside Boulevard  
Hopatcong, NJ 07843  
973-398-7500/fax 973-398-5579  
Attorneys for Plaintiff

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ROBERT CHEATEDON,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	WARREN COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-21-
vs.	:	
	:	<u>CIVIL ACTION</u>
ANNA ADULTEROUS,	:	
	:	NOTICE TO CORESPONDENT
<i>Defendant.</i>	:	

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TO: PATRICK PARAMOUR  
88 Lovers Lane  
Blairstown, NJ 07825  
Via Certified Mail RRR & First Class Mail

**TAKE NOTICE** that you have been charged with having committed adultery with Anna Adulterous, the Defendant herein, at the Outer Banks, North Carolina, between December 13, 2015, through December 17, 2015, and at 88 Lovers Lane, Blairstown, Warren County, New Jersey, commencing October 28, 2015, and continuing on to the present time.

**TAKE FURTHER NOTICE** that, the above action is a suit for divorce wherein the Defendant is charged with having committed adultery with you at said times and places.

**TAKE FURTHER NOTICE** that, the above action is pending in the Superior Court of New Jersey, Chancery Division, Warren County.

**TAKE FURTHER NOTICE** that, you may intervene in this action pursuant to R. 4:33.

GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
Attorney for Plaintiff

Dated: BY: \_\_\_\_\_  
Mark Gruber, Esq.

## **S. NOTICE OF PROPOSED FINAL JUDGMENT**

When default has been entered against a defendant and equitable distribution, alimony, child support and any other relief is sought, the plaintiff must file and serve on the defaulting party and with the court a notice of proposed final judgment, pursuant to R. 5:5-10. The notice must be filed 20 days prior to the hearing date and must include notice of the trial date, a statement as to the value of each asset and amount of debt to be distributed, a proposal for distribution and statement whether the plaintiff is seeking alimony and/or child support and if so in what amount, and a statement as to all other relief sought, including a proposed parenting time schedule where applicable. The plaintiff shall annex to the notice the filed case information statement.

### **5:5-10. Default; Notice for Final Judgment**

In those cases where equitable distribution, alimony, child support and other relief are sought and a default has been entered, the plaintiff shall file and serve on the defaulting party, in accordance with R. 1:5-2, a Notice of Proposed Final Judgment (“Notice”), not less than 20 days prior to the hearing date. The Notice shall include the proposed trial date, a statement of the value of each asset and the amount of each debt sought to be distributed and a proposal for distribution, a statement as to whether plaintiff is seeking alimony and/or child support and, if so, in what amount, and a statement as to all other relief sought, including a proposed parenting time schedule where applicable. Plaintiff shall annex to the Notice a completed and filed Case Information Statement in the form set forth in Appendix V of these Rules. When a written property settlement agreement has been executed, plaintiff shall not be obligated to file such a Notice. When the summons and complaint have been served on the defendant by substituted service pursuant to R. 4:4-4, a copy of the Notice shall be filed and served on the defendant in the same manner as the summons and complaint or in any other manner permitted by the court, at least twenty (20) days prior to the date set for hearing. The Notice shall state that such Notice can be examined by the defendant during normal business hours at the Family Division Manager’s office in the county in which the Notice was filed. The notice shall provide the address of the county courthouse where the Notice has been filed. Defaults shall be entered in accordance with R. 4:43-1, except that a default judgment in a Family Part matter may be entered without separate notice of motion as set forth in R. 4:43-2.



Mark Gruber, Esq./ID#021201976  
Filing Attorney, Esq./ID# \_\_\_\_\_  
GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
41 Lakeside Boulevard  
Hopatcong, NJ 07843  
973-398-7500/fax 973-398-5579  
Attorneys for Plaintiff

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MARY SAINT,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
DAN DEADBEAT,	:	
	:	NOTICE OF PROPOSED FINAL JUDGMENT
<i>Defendant.</i>	:	

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TO: Mr. Dan Deadbeat  
3 Lookout Way  
Missing Point, New Jersey 00008  
Via First Class Mail & Certified Mail RRR

Superior Court of New Jersey  
Sussex County Judicial Center  
43-47 High Street  
Newton, New Jersey 07860

**PLEASE TAKE NOTICE** that, Plaintiff, **Mary Saint**, will seek final judgment of issues contained in this notice.

**Hearing Date:**

**Case Information Statement: Attached**

1. **Custody.** The parties shall have joint legal custody of the unemancipated children. The Plaintiff shall be designated as the Parent of Primary Residence and the Defendant the Parent of Alternate Residence. The Defendant shall have parenting time each Wednesday night from 5:00 p.m. to 7:30 p.m. and alternate weekends from 5:00 p.m. on Friday to 6:00 p.m. on Sunday. The Holidays will be as follows:

- (b) The Defendant shall have each Christmas Eve until 9:00 p.m.
  - (c) The Plaintiff shall have Christmas Eve 9:00 p.m. through Christmas Day 1:00 p.m.
  - (d) The Defendant shall have 1:00 p.m. Christmas Day through 9:00 p.m. December 26.
  - (e) Christmas Break through the day school begins after New Year's Day - Plaintiff in odd years; Defendant event years.
  - (f) Spring Break - Plaintiff odd years; Defendant even years.
  - (g) Easter - The parent having that weekend shall have Easter, except if it is the Plaintiff's weekend, the Defendant will have the children Easter Sunday 1:00 p.m. to 7:00 p.m.
  - (h) Summer - each parent to have two non-consecutive weeks.
  - (i) Official Holidays - Whichever weekend falls on a holiday weekend shall have that weekend extended through Monday evening 7:30 p.m.
  - (j) Thanksgiving - Plaintiff even years; Defendant odd years (except on Plaintiff's year, the Defendant will have Thanksgiving from 2:00 p.m. to 9:00 p.m.)
  - (k) Plaintiff shall have Mother's Day and Defendant shall have Father's Day.
  - (l) Children's Birthdays - Each party will have two hours with the children.
  - (m) The parties shall notify the other party thirty (30) days prior to any vacation and shall provide the address and phone contact information. Further, the parent will ensure that the children phone the other parent at least every day.
2. **Alimony.** The Defendant shall pay to the Plaintiff limited duration alimony in the amount of \$300.00 per week for a period of five (5) years, payable through the probation department as a wage execution. Alimony will terminated upon the death of the Plaintiff, death of the Defendant, or five (5) years from the date of the Judgment of Divorce, whichever shall first occur.
3. **Child Support & Daycare.** The Defendant shall pay child support to the Plaintiff in the amount of \$280.00 per week, payable through the probation department as a wage execution. Child Support Guidelines are attached. The Defendant will contribute fifty-seven percent (57%) of all unrelated daycare not contained in the child support.
4. **Medical Insurance.** Each party shall provide their own medical insurance. The Defendant shall provide medical insurance for the children similar to the medical insurance presently in place. The Plaintiff shall pay the first \$250.00 per year per child unreimbursed medical expenses and, thereafter, the parties will allocate the unreimbursed medical expenses 43% Plaintiff and 57% Defendant. This allocation is subject to change when alimony and/or

child support, and/or the parties' incomes change. The parties will discuss the appropriate medical insurance for the children, if the Plaintiff obtains employment with benefits.

5. **Extraordinary Extracurricular Activities.** The Defendant will share equally in the cost of extracurricular activities not contained in the Child Support Guidelines and events, which may include, but not necessarily be limited to summer camps, class trips, extracurricular or religious activity trips, graduation expenses, proms, dances, school photos.
6. **Life Insurance.** The Defendant shall obtain \$500,000 life insurance on his life designating the Plaintiff as beneficiary of \$150,000 for so long as the Defendant has an alimony obligation, and further designating the balance in equal shares to the children as beneficiaries during their unemancipation. The Defendant shall designate the Plaintiff as trustee for children's portion. The Defendant shall provide an authorization permitting the Plaintiff to verify the insurance coverage and beneficiary designation.
7. **College.** The parties shall contribute to the cost of college in accordance with their ability to do so at the time the children enter college. The children will be required to apply for all applicable loans, grants and scholarships. The Defendant shall transfer all of the children's college accounts into Plaintiff's name as custodian, which accounts shall be utilized for the children's college education prior to contribution from the parties.
8. **Equitable Distribution.**
  - (a) **Marital Home.** The marital home at 11 Main Street, Newton, New Jersey, shall be listed for sale. Upon the sale and after the payment of customary commissions and closing costs, the net proceeds shall first be applied to the Plaintiff's parents' equity loans, which were taken out to provide the parties' funds for their living expenses. Thereafter, the Plaintiff's credit card balances will be paid off. If there is any deficiency, the Defendant shall be responsible for the balance of the Plaintiff's credit cards and/or Plaintiff's parents' equity loans.
  - (b) **Dan's Quick Stop.** Defendant will retain all ownership of Dan's Quick Stop and will be responsible for all liabilities, including, but not limited to federal and state taxes, employer related taxes, and all other obligations. The Defendant shall indemnify and save the Plaintiff harmless with regard to all liabilities of Dan's Quick Stop.
  - (c) **Bank Accounts.** Each party will retain their own bank accounts and other accounts not listed herein.
  - (d) **IRAs.** Each party will retain their own IRAs.
  - (e) **401(k).** The Plaintiff will retain her 401(k).

(f) **Automobiles.** Plaintiff will retain her 2006 Nissan Maxima and will be responsible for the loan of approximately \$12,000. The Defendant will retain his 2008 Nissan Murano and will be responsible for the loan thereon.

9. **Liabilities.**

(a) **Federal and State Income Taxes.** Each party will be responsible for filing and payment of their own federal and state income taxes.

(b) **Short-Term Debts for Defendant.** The Defendant shall be responsible for the following: Defendant's car loan, A's Tree Trimming Tree bill (\$600.00), Atlantic Ambulance bill (\$2,000), Plaintiff's credit card balances minus \$1,650 personal expenses set forth below, and all other debts incurred by defendant.

\$3,600.00	Citi
\$8,600.00	Discover
\$6,500.35	American Express

(c) **Short-Term Debts for Plaintiff.** The Plaintiff shall be responsible for the following: all personal debts incurred by Plaintiff in the amount of \$1,650 (on credit cards) - balances to be paid by Defendant. Plaintiff's car loan.

10. **Counsel Fees.** Defendant shall pay 100% of the Plaintiff's counsel fees, payable within thirty (30) days.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorney for Plaintiff**

Dated:

\_\_\_\_\_  
Mark Gruber, Esq.

This notice has been filed with the Clerk of Superior Court, Chancery Division, and can be examined by the Defendant at the Sussex County Superior Court's office during normal business hours located at 43-47 High Street, Newton, New Jersey.

# ***PENDENTE LITE*** **APPLICATIONS** **WITH FORMS**

## **A. NOTICE OF MOTION**

During the pendency of litigated family actions, there are numerous problems that arise regarding all aspects of the case. A litigant may make an application to the court to seek interim relief for issues of custody, support, property-related issues, fees, and discovery. Motion practice consumes a great deal of a divorce attorney's time, and is an instrumental and crucial aspect of the practice of family law. R. 5:7-2(a) permits an application for *pendente lite* relief and requires that it be accompanied by a completed case information statement. Any amendments to the case information statement must be submitted eight days prior to the motion hearing date.

### **5:7-2. Application Pendente Lite**

(a) Support Pendente Lite. Applications for support, counsel fees and costs *pendente lite*, whether made with the complaint or by notice of motion thereafter, shall be accompanied by a completed case information statement in the form set forth in Appendix V to these rules pursuant to R. 5:5-2. If this form has previously been submitted, amendments thereto must be filed with the court no later than eight days prior to the motion hearing date. A completed case information statement shall accompany the response to the application *pendente lite*. If previously submitted, amendments thereto must be filed with the court no later than eight days prior to the hearing date.

Motion practice in the family court is governed by R. 5:5-4 and R. 1:6-2. R. 1:6-2 requires the motion to specifically state the time and place it is to be presented, the grounds upon which it is made and the nature of the relief sought. It must include a proposed form of order. The form of order must state whether the motion was opposed or unopposed. A motion must also be supported by an affidavit or certification. Thus, a motion will usually consist of a notice of motion, certification in support of the motion, proposed form of order, case information statement and certification of services. A motion will be deemed uncontested unless an opposing certification is submitted in opposition to the motion or alternatively a notice of cross-motion is

filed with a certification in support of the notice of cross-motion. The moving party is permitted to file a responding certification to the cross-motion or the opposing certification. Thereafter, no other papers are permitted to be filed without leave of court, which is not usually granted.

### **1:6-1. Applicability of Rule**

Rule 1:6 shall apply to all trial courts, except the municipal courts and except as otherwise provided by R. 3:26-2(d) (motions for bail reductions), R. 5:5-4 (motions in civil family actions), and R. 6:3-3 (motions in the Special Civil Part).

### **1:6-2. Form of Motion; Hearing**

(a) Generally. An application to the court for an order shall be by motion, or in special cases, by order to show cause. A motion, other than one made during a trial or hearing, shall be by notice of motion in writing unless the court permits it to be made orally. Every motion shall state the time and place when it is to be presented to the court, the grounds upon which it is made and the nature of the relief sought, and, as to motions filed in the Law Division-Civil Part only, the discovery end date or a statement that no such date has been assigned. The motion shall be accompanied by a proposed form of order in accordance with R. 3:1-4(a) or R. 4:42-1(e), as applicable. The form of order shall note whether the motion was opposed or unopposed. If the motion or response thereto relies on facts not of record or not subject of judicial notice, it shall be supported by affidavit made in compliance with R. 1:6-6. The motion shall be deemed uncontested and there shall be no right to argue orally in opposition unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought. If the motion is withdrawn or the matter settled, counsel shall forthwith inform the court.

(b) Civil Motions in Chancery Division and Specially Assigned Cases; Affidavit of Non-Involvement in Medical Malpractice Actions.

(1) Generally. When a civil action has been specially assigned to an individual judge for case management and disposition of all pretrial and trial proceedings and in all cases pending in the Superior Court, Chancery Division, the judge, on receipt of motion papers, shall determine the mode and scheduling of the disposition of the motion. Except as provided in R. 5:5-4, motions filed in causes pending in the Superior Court, Chancery Division, Family Part, shall be governed by this paragraph.

(2) Motion for Dismissal Pursuant to N.J.S.A. 2A:53A-40. A party moving for dismissal of the action on the ground of non-involvement in the cause of action pursuant to N.J.S.A. 2A:53A-40 of the New Jersey Medical Care Access and Responsibility and Patients First Act, N.J.S.A. 2A:53A-37 to 42, shall annex to the notice of motion an affidavit of non-involvement that complies

with Rule 1:6-6. In the absence of opposition filed in accordance with Rule 1:6-3, the court shall enter an order dismissing the action as to the moving party. If opposition is filed, the court shall proceed in accordance with this rule.

(c) Civil and Family Part Discovery and Calendar Motions. Every motion in a civil case or a case in the Chancery Division, Family Part, not governed by paragraph (b), involving any aspect of pretrial discovery or the calendar, shall be listed for disposition only if accompanied by a certification stating that the attorney for the moving party has either (1) personally conferred orally or has made a specifically described good faith attempt to confer orally with the attorney for the opposing party in order to resolve the issues raised by the motion by agreement or consent order and that such effort at resolution has been unsuccessful, or (2) advised the attorney for the opposing party by letter, after the default has occurred, that continued non-compliance with a discovery obligation will result in an appropriate motion being made without further attempt to resolve the matter. A motion to extend the time for discovery shall have annexed thereto either a copy of all prior orders granting or denying an extension of the discovery period or a certification that there have been no such prior orders. The moving papers shall also set forth the date of any scheduled pretrial conference, arbitration proceeding scheduled pursuant to R. 4:21A, calendar call or trial, or state that no such dates have been fixed. Discovery and calendar motions shall be disposed of on the papers unless, on at least two days notice, the court specifically directs oral argument on its own motion or, in its discretion, on a party's request. A movant's request for oral argument shall be made either in the moving papers or reply; a respondent's request for oral argument shall be made in the answering papers.

(d) Civil and Family Part Motions-Oral Argument. Except as otherwise provided by R. 5:5-4 (family actions), no motion shall be listed for oral argument unless a party requests oral argument in the moving papers or in timely-filed answering or reply papers, or unless the court directs. A party requesting oral argument may, however, condition the request on the motion being contested. If the motion involves pretrial discovery or is directly addressed to the calendar, the request shall be considered only if accompanied by a statement of reasons and shall be deemed denied unless the court otherwise advises counsel prior to the return day. As to all other motions, the request shall be granted as of right.

(e) Oral Argument-Mode. The court in civil matters, on its own motion or on a party's request, may direct argument of any motion by telephone conference without court appearance. A verbatim record shall be made of all such telephone arguments and the rulings thereon.

(f) Order; Record Notation. If the court has made findings of fact and conclusions of law explaining its disposition of the motion, the order shall

indicate whether the findings and conclusions were written or oral and the date on which they were rendered. However, if the motion was argued and the court intends to place its findings on the record at a later date, it shall give all parties one day's notice, which may be telephonic, of the time and place it shall do so. If no such findings have been made, the court shall append to the order a statement of reasons for its disposition if it concludes that explanation is either necessary or appropriate. If the order directs a plenary or other evidential hearing, it shall specifically describe the issues to be so tried. A written order or record notation shall be entered by the court memorializing the disposition made on a telephone motion.

### **1:6-3. Filing and Service of Motions and Cross-Motions**

(a) Motions Generally. Other than an ex parte motion and except as otherwise provided by R. 4:46-1 (summary judgment) and R. 5:5-4(c) (post judgment motions), a notice of motion shall be filed and served not later than 16 days before the specified return date unless otherwise provided by court order, which may be applied for ex parte. Thus, for example, if the return date of the motion is a Friday, the motion must be filed and served not later than the Wednesday, 16 days prior. If a motion is supported by affidavit or certification, the affidavit or certification shall be filed and served with the motion. Except as provided by R. 4:49-1(b) (motion for new trial), any opposing affidavits, certifications or objections filed pursuant to R. 1:6-2 shall be filed and served not later than 8 days before the return date unless the court relaxes that time. Thus, for example, if the return date is on a Friday, any response must be filed and served no later than Thursday of the prior week. Reply papers responding to opposing affidavits or certifications shall be filed and served not later than 4 days before the return date unless the court otherwise orders. Thus, for example, such papers must be filed and served on Monday for a return date of the following Friday. No other papers may be filed without leave of court.

(b) Cross-Motions. A cross-motion may be filed and served by the responding party together with that party's opposition to the motion and noticed for the same return date only if it relates to the subject matter of the original motion, except in Family Part motions brought under Part V of these Rules where a notice of cross-motion may seek relief unrelated to that sought in the original motion. A cross-motion relating to the subject matter of the original motion shall, if timely filed pursuant to this rule, relate back to the date of the filing of the original motion. The original moving party's response to the cross-motion shall be filed and served as provided by paragraph (a) for reply papers. The court may, however, on request of the original moving party, or on its own motion, enlarge the time for filing an answer to the cross-motion, or fix a new



return date for both. No reply papers may be served or filed by the cross-movant without leave of court.

(c) Completion of Service. For purposes of this rule, service of motion papers is complete only on receipt at the office of adverse counsel or the address of a pro se party. If service is by ordinary mail, receipt will be presumed on the third business day after mailing.

#### **1:6-4. Superior Court; Place for Filing Motions, Orders to Show Cause and Orders**

The original of all motion papers, orders to show cause and orders in civil actions in the Superior Court shall be filed in accordance with R. 1:5-6(b), except that in all actions in the Chancery Division or specially assigned to a judge of the Law Division or, if the judge to whom the motion is assigned is known, a copy of all motion papers shall also be simultaneously submitted to the judge.

#### **1:6-5. Briefs**

The moving party's brief in support of a motion shall, pursuant to R. 1:6-3, be served and submitted to the court with the moving papers. The respondent shall serve and submit an answering brief at least 8 days before the return date. Except for a brief submitted in support of a dispositive motion or cross-motion, a brief submitted in the Civil Part or the Special Civil Part in support of a motion or cross-motion and any answering brief, exclusive of any tables of contents or authorities, shall not exceed 40 pages, with each page containing no more than 26 double-spaced lines of no more than 65 characters including spaces, and in no smaller than 10-pitch or 12-point type. A brief submitted in support of a dispositive motion or cross-motion, which includes for purposes of this rule only a motion to dismiss pursuant to R. 4:6-2(e), a motion for summary judgment pursuant to R. 4:46, and a motion for summary judgment pursuant to R. 4:69-2, and any answering brief, exclusive of any tables of contents or authorities, shall not exceed 65 pages, with each page containing no more than 26 double-spaced lines of no more than 65 characters including spaces, and in no smaller than 10-pitch or 12-point type. A reply brief, if any, shall be served and submitted at least 4 days before the return date. A reply brief shall not exceed 15 pages, with each page containing no more than 26 double-spaced lines of no more than 65 characters including spaces, and in no smaller than 10-pitch or 12-point type. Prior to the date on which the brief is due to be submitted and served, a party may make an application in writing to the court to file an over-length brief exceeding these limitations, which the court may permit when appropriate in light of the complexity of the issues raised and without awaiting a response from any other party concerning the request. No over-length briefs may be submitted without advance permission

to do so. Briefs may not be submitted after the time fixed by this rule or by court order, including the pretrial order, without leave of court, which may be applied for *ex parte*.

### **1:6-6. Evidence on Motions; Affidavits**

If a motion is based on facts not appearing of record or not judicially noticeable, the court may hear it on affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein. The court may direct the affiant to submit to cross-examination, or hear the matter wholly or partly on oral testimony or depositions.

### **1:6-7. Reading of Moving Papers and Briefs in Advance**

Insofar as possible judges shall read moving papers and briefs in advance of the hearing and to this end, when briefs are submitted in the trial courts, the matter shall be assigned insofar as possible to the judge in advance of the hearing. The parties shall promptly advise the court if a motion is withdrawn or the matter settled prior to the hearing date.

### **1:6-8. Issuance of Process and Entry of Judgment**

All motions and applications in the clerk's office for issuing original and mesne process, for issuing final process to enforce and execute judgments, for entering defaults and for other proceedings which do not require allowance or order of the court, are grantable of course by the clerk, whose action may be suspended or altered or rescinded by the court for good cause.

Motions are filed directly with the clerk of the county of venue. Opposing counsel or *pro se* party must also be served. R. 1:5-1, R. 1:5-2, R. 1:5-6(4). There is no testimony taken at *pendente lite* motions, but the argument of counsel can be requested in the notice of motion or in reply papers. The court shall ordinarily grant requests for oral argument on substantive and non-routine discovery motions and ordinarily deny requests for oral arguments on calendar and routine discovery motions. R. 5:5-4(a). At oral argument, counsel may argue only what has been submitted in the moving papers, and may not rely upon legal or factual contentions not of record and contained in the moving papers. It is a good practice to invite divorce clients to hear oral argument so they can be part of the system and hear the judge's questions and decisions. Your client's attendance at oral argument is not required by rule, although some judges do require parties to attend the oral argument. R. 5:5-4(e) permits the court to issue tentative decisions prior to the date set for oral argument. The parties must renew their request for oral argument if they are dissatisfied with the tentative decisions. Motions for *pendente lite* relief must be served and filed together with supporting affidavits and briefs, when necessary. Motions must be filed

24 days prior to the motion date, which in most counties is on every other Friday. The motion must be served on Tuesday for a motion date falling on Friday 24 days later. Opposing affidavits or certifications or cross-motions must be filed and served not later than 15 days before the return date, which would be on Thursday two weeks prior to the Friday return date. Answers or responses to any opposing affidavits, certifications, or cross-motion must be filed not later than eight days before the return date, which would be on the Thursday prior to the Friday return date. R. 1:6-3. At present, a \$50 fee is required for a filing of a motion or cross-motion. Certifications in support of motions are limited to 25 pages, which shall be allocated between the initial certification and the reply certification, as the movant deems appropriate. Opposing certifications or cross-motion certifications are limited to 25 pages. R. 5:5-4(b). Proof of proper service must be included by way of certification appended to the motion, separate affidavit of the person making service, or acknowledgement of service pursuant to R. 1:5-3.

### **1:5-1. Service: When Required**

(a) Civil Actions. In all civil actions, unless otherwise provided by rule or court order, orders, judgments, pleadings subsequent to the original complaint, written motions (not made *ex parte*), briefs, appendices, petitions and other papers except a judgment signed by the clerk shall be served upon all attorneys of record in the action and upon parties appearing *pro se*; but no service need be made on parties who have failed to appear except that pleadings asserting new or additional claims for relief against such parties in default shall be served upon them in the manner provided for service of original process. The party obtaining an order or judgment shall serve it on all parties who have not been electronically served through an approved Electronic Court System pursuant to R. 1:32-2A, nor served personally in court, as herein prescribed within 7 days after the date it was signed unless the court otherwise orders therein.

(b) Criminal and Municipal Actions. In criminal and municipal actions, unless otherwise provided by rule or court order, written motions (not made *ex parte*), briefs, appendices, petitions, memoranda and other papers shall be served upon all attorneys of record in the action, upon parties appearing *pro se* and upon such other agencies of government as may be affected by the relief sought.

### **1:5-2. Manner of Service**

Service upon an attorney of papers referred to in R. 1:5-1 shall be made by mailing a copy to the attorney at his or her office by ordinary mail, by handing it to the attorney, or by leaving it at the office with a person in the attorney's employ, or, if the office is closed or the attorney has no office, in the same manner as service is made upon a party. Service upon a party of such paper shall be made as provided in R. 4:4-4 or by registered or certified mail, return receipt requested, and simultaneously by ordinary mail to the

party's last known address; or if no address is known, despite diligent effort, by ordinary mail to the clerk of the court. Mail may be addressed to a post office box in lieu of a street address only if the sender cannot by diligent effort determine the addressee's street address or if the post office does not make street address delivery to the addressee. The specific facts underlying the diligent effort required by this rule shall be recited in the proof of service required by R. 1:5-3. If, however, proof of diligent inquiry as to a party's whereabouts has already been filed within six months prior to service under this rule, a new diligent inquiry need not be made provided the proof of service required by R. 1:5-3 asserts that the party making service has no knowledge of any facts different from those recited in the prior proof of diligent inquiry.

### **1:5-3. Proof of Service**

Proof of service of every paper referred to in R. 1:5-1 may be made (1) by an acknowledgment of service, signed by the attorney for a party or signed and acknowledged by the party, or (2) by an affidavit of the person making service, or (3) by a certification of service appended to the paper to be filed and signed by the attorney for the party making service. If service has been made by mail the affidavit or certification shall state that the mailing was to the last known address of the person served. A proof of service made by affidavit or certification shall state the name and address of each attorney served. Identifying the party that attorney represents, and the name and address of any pro se party. The proof shall be filed with the court promptly and in any event before action is to be taken on the matter by the court. Where service has been made by registered or certified mail, filing of the return receipt card with the court shall not be required. Failure to make proof of service does not affect the validity of the service, and the court at any time may allow the proof to be amended or supplied unless an injustice would result.

### **1:5-4. Service by Mail or Courier**

(a) Service by Ordinary Mail if Registered Of Certified Mail Is Required and Is Refused. Where under any rule, provision is made for service by certified or registered mail, service may also be made by ordinary mail simultaneously or thereafter, unless simultaneous service is required under these rules.

(b) Service Complete on Mailing. Except for motions that are governed by R. 1:5-1, service by mail of any paper referred to in R. 1:5-1, when authorized by rule or court order, shall be complete upon mailing of the ordinary mail. If no ordinary mailing is made, service shall be deemed complete upon the date of acceptance of the certified or registered mail. If service is simultaneously mailed by ordinary mail and certified or registered mail, service shall be deemed complete on mailing of the ordinary mail. If service is not made

simultaneously and the addressee accepts the certified or registered mail, service shall be deemed complete on the date of the acceptance. If the addressee fails to claim or refuses to accept delivery of certified or registered mail, service shall be deemed complete on mailing of the ordinary mail.

(c) Service by Commercial Courier. Service by a commercial courier of a paper referred to in R. 1:51, except for motions, which are governed by R. 1:6-3, shall be complete upon the courier's receipt of the paper from the sender, provided the courier's regular business is delivery service, and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender.

#### **5:5-4. Motions in Family Actions**

(a) Motions.

(1) General. 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.

(2) Motion Attachments for Establishing Alimony or Child Support. When a motion or cross-motion is filed to establish alimony or child support, the pleadings filed in support of or in opposition to the motion, shall include a copy of a current case information statement.

(3) Motion Attachments for Enforcement or Modification. When a motion is filed for enforcement or modification of a prior order or judgment a copy of the order or judgment sought to be enforced, modified or terminated shall be appended to the pleading filed in support of the motion.

(4) Motion Attachments for Modification or Termination of Alimony or Child Support Not Based on Retirement. When a motion or cross motion is filed for modification or termination of alimony or child support, other than an application based on retirement filed pursuant to N.J.S.A. 2A:34-23(j)(2) and (j)(3), the movant 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. If the court concludes that the party seeking relief has demonstrated a prima facie showing of a substantial change of circumstances or that there is other good cause, then the court shall order the opposing party to file a copy of a current case information statement.

(5) Motion Attachments for Modification or Termination of Alimony Based on Retirement. Upon application by the obligor to modify or terminate alimony based upon retirement pursuant to N.J.S.A. 2A:34-23(j)(2) and (j)(3), both the obligor's application to the court for modification or termination of alimony

and the obligee's response to the application shall be accompanied by current case information statements as well as the case information statements previously executed or filed, or other relevant financial documents if there was no case information statement executed or filed, in connection with the order, judgment or agreement sought to be modified. In the event the previous case information statement cannot be obtained after diligent efforts or was never prepared, a certification shall be submitted detailing said diligent efforts or the non-existence of said documents.

(b) Page Limits. Unless the court otherwise permits for good cause shown and except for the certification required by R. 4:42-9(b) (affidavit of service), all certifications in support of a motion shall not exceed a total of twenty-five pages. This twenty-five page limit shall be allocated between the initial certification(s) and reply certifications(s) as the movant deems appropriate. All certifications in opposition to a motion or in support of a cross-motion or both shall not exceed a total of twenty-five pages.

Larry Lawyer, Esq./ID#  
Filing Attorney, Esq./ID# \_\_\_\_\_  
1 New Street  
New Brunswick, New Jersey 09999  
555-555-5555/fax 555-555-5555  
Attorneys for Defendant

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JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	NOTICE OF MOTION
<i>Defendant.</i>	:	FOR <i>PENDENTE LITE</i> RELIEF
	:	(Returnable September 27, 2019)

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TO: MARK GRUBER, ESQ.  
GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
41 Lakeside Boulevard  
Hopatcong, NJ 07843

**PLEASE TAKE NOTICE** that on **September 27, 2019** at **9:00 o'clock** in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorney for the Defendant, **Mary Smith**, shall move before the Honorable Judge of the Superior Court, Chancery Division, Family Part, Sussex County Judicial Center, 43-47 High Street, Newton, New Jersey, for an Order as follows:

1. Awarding the Defendant joint legal custody of the unemancipated children Jeff Smith and Megan Smith.
2. Granting the Defendant primary residential custody of the unemancipated children, Jeff Smith and Megan Smith.
3. Directing the Plaintiff to pay \$282.35 per week child support for the unemancipated children of the marriage, payable through the Probation Department as a wage execution in the county where the Plaintiff resides, retroactive to the filing date of this motion.
4. Directing the Plaintiff to maintain the medical, optical, hospital, major medical, dental, drug, and diagnostic insurance presently available through Plaintiff's employment for the benefit of the Defendant and unemancipated children.

5. Directing the Plaintiff to pay 82.5% of all unreimbursed medical, optical, hospital, major medical, dental, drug, and diagnostic expenses for the Defendant and the unemancipated children.
6. Directing the Plaintiff to pay 85% of all work-related daycare expenses.
7. Directing the Plaintiff to pay alimony in the amount of \$250 per week to the Defendant, payable through the Probation Department as a wage execution in the county in which the Plaintiff resides.
8. Directing the Plaintiff to pay the mortgage, real estate taxes, and homeowner's insurance on the marital home located at 100 Main Street, Newton, New Jersey.
9. Directing the Plaintiff to maintain the present life insurance available through AT&T in the minimum amount of \$500,000, designating the Defendant and unemancipated children as irrevocable beneficiaries.
10. Directing the Plaintiff to pay the following:
  - (a) Automobile insurance for the 2014 Nissan Maxima;
  - (b) Auto repairs for the 2014 Nissan Maxima;
  - (c) Car loan to AT&T Credit Union for the 2014 Nissan Maxima; and
  - (d) All credit card indebtedness.
11. Restraining the Plaintiff from encumbering, disposing, or otherwise dissipating any and all assets, which are listed on the parties' Case Information Statements, and any other assets, which may be subject to equitable distribution.
12. Directing the Plaintiff to advance the sum of \$3,500 counsel fees payable to Larry Lawyer, Esq. within ten (10) days of the date of this Order as and for the Defendant's retainer in this action.
13. Directing that the Plaintiff pay to Defendant counsel fees in connection with this motion payable to Larry Lawyer, Esq., counsel for the Defendant, within ten (10) days of the date of this Order.
14. Directing the Plaintiff to pay to the Defendant \$500.00 for purposes of pension evaluation fees, payable within ten (10) days of the date of this Order.



**PLEASE TAKE FURTHER NOTICE** that, the undersigned shall rely upon the Certifications and Exhibits submitted on behalf of Defendant.

**PLEASE TAKE FURTHER NOTICE** that, the undersigned hereby requests oral argument.

**LAW OFFICES OF LAWYER, LLC**  
Attorney for Plaintiff

Dated: August, 2019

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Larry Lawyer, Esq.

### **CERTIFICATION OF FILING AND SERVICE**

I hereby certify that the originals and one copy of the attached Notice of Motion, supporting Certification of Defendant, Certification of Attorney Services, and proposed form of Order are being filed with the Clerk of the Superior Court of New Jersey, Chancery Division, Family Part, Sussex County Judicial Center, 43-47 High Street, Newton, New Jersey, via first class mail. Copies thereof are being forwarded to Plaintiff's attorney, via first class mail, to Mark Gruber, Esq., Gruber, Colabella, Liuzza, Thompson & Hiben, 41 Lakeside Boulevard, Hopatcong, NJ 07843, in the manner and within the time required by the Rules of Court.

**LAW OFFICES OF LAWYER, LLC**  
Attorney for Plaintiff

Dated: August, 2019

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Larry Lawyer, Esq.

### **NOTICE TO LITIGANTS: IF YOU WANT TO RESPOND TO THIS MOTION, YOU MUST DO SO IN WRITING.**

This written response shall be by Affidavit or Certification. (Affidavits and Certifications are documents filed with the court. In either document the person signing it swears to its truth and acknowledges that they are aware that they can be punished for not filing a true statement with the court. Affidavits are notarized and Certifications are not.) If you would also like to submit your own separate requests in a motion to the judge, you can do so by filing a cross-motion. Your response and/or cross-motion may ask for oral argument. That means you can ask to appear before the court to explain your position. However, you must submit a written response even if you request oral argument. Any papers you send to the court must be sent to the opposing side, either to the attorney, if the opposing party is represented by one, or to the other party if they represent themselves. **Two copies of all motions, cross-motions, certifications, and briefs shall be sent to the opposing side.**

The response and/or cross-motion must be submitted to the court by a certain date. **All motions must be filed on the Tuesday 24 days before the return date. A response and/or cross motion must be filed 15 days (Thursday) before the return date. Answers or responses to any opposing Affidavits and cross-motions shall be served and filed not later than 8 days (Thursday) before the return date.** No other response is permitted without permission of the court. If you mail in your papers, you must add three days to the above time periods.

Response to motion papers sent to the Court are to be sent to the following address:

**Motions Filing Clerk  
Superior Court of New Jersey  
Chancery Division, Family Part  
Sussex County Judicial Center  
43-47 High Street  
Newton, NJ 07860**

**Call the Family Division Manager's Office 862-397-5700**, if you have any questions on how to file a motion, cross-motion or any response papers. Please note that the Family Division Manager's Office cannot give you legal advice.

This Notice to Litigants is found in Rule 5:5-4(d) of the New Jersey Court Rules.

## B. PROPOSED FORM OF ORDER

A form of order must accompany the notice of motion *pendente lite* relief. A form of order is not required to be submitted with a cross-motion, although it is a good practice to include an order on cross-motions. The order must contain notices regarding probation collection, wage garnishment, modification every three years, use of Social Security numbers, and payment of medical benefits pursuant to R. 5:7-4(d) and (e) and N.J.S.A. 2A:34-31.2.

### 5:7-2. Application for Pendente Lite

(a) Support Pendente Lite. Applications for support, counsel fees and costs pendente lite, whether made with the complaint or by notice of motion thereafter, shall be accompanied by a completed case information statement in the form set forth in Appendix V to these rules pursuant to R. 5:5-2. If this form has previously been submitted, amendments thereto must be filed with the court no later than eight days prior to the motion hearing date. A completed case information statement shall accompany the response to the application pendente lite. If previously submitted, amendments thereto must be filed with the court no later than eight days prior to the hearing date.

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

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## SIGNIFICANT CASES

### ***Mallamo v. Mallamo*, 280 N.J. Super. 8 (App. Div. 1995)**

*Pendente lite* orders do not survive entry of final judgment unless expressly preserved or reduced to judgment. *Pendente lite* orders may be modified retroactively prior to entry of final judgment of divorce. *Pendente lite* support orders are subject to retroactive modification at time of final hearing.

### ***Pelow v. Pelow*, 300 N.J. Super. 634 (Ch. Div. 1996)**

A court may order the *pendente lite* sale of a house held in tenancy by entirety to prevent irreparable harm and will help to provide support and maintenance for children and spouse.

### ***Randazzo v. Randazzo*, 184 N.J. 101 (2005)**

The trial court may exercise its discretion to order the sale of the marital assets and utilize proceeds as is fit, reasonable and just, including reasons of financial need or to fund the litigation.

Larry Lawyer, Esq./ID# \_\_\_\_\_  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 1 New Street  
 New Brunswick, New Jersey 09999  
 555-555-5555/fax 555-555-5555  
 Attorneys for Defendant

_____	:	SUPERIOR COURT OF NEW JERSEY
JOHN SMITH,	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	ORDER FOR
<i>Defendant.</i>	:	<i>PENDENTE LITE RELIEF</i>
_____	:	(Returnable September 2, 2019)

**THIS MATTER** having been brought to the attention of the court by Larry Lawyer, Esq., Attorney for the Defendant, **Mary Smith** upon Notice of Motion; and Mark Gruber, Esq., of the law firm of Gruber, Colabella, Liuzza, Thompson & Hiben, Attorneys for the Plaintiff, **John Smith**; and the court having heard the arguments of counsel; and having read the papers submitted; and for good cause shown;

IT IS on this 27th day of September 2019;

ORDERED, as follows:

1. The effective date of this Order is \_\_\_\_\_.
2. The Defendant is awarded joint legal custody of the unemancipated children, Jeff Smith and Megan Smith.
3. The Defendant is granted primary residential custody of the unemancipated children, Jeff Smith and Megan Smith.
4. The Plaintiff is directed to pay \$282.35 child support for the unemancipated children of the marriage, payable through the Probation Department in the county where the Plaintiff resides, retroactive to the filing date of this motion on \_\_\_\_\_.

5. The Plaintiff is directed to maintain the medical, optical, hospital, major medical, dental, drug, and diagnostic insurance presently available through Plaintiff's employment for the benefit of the Defendant and unemancipated children.
6. The Plaintiff is directed to pay 82.5% of all unreimbursed medical, optical, hospital, major medical, dental, drug, and diagnostic expenses for the Defendant and the unemancipated children.
7. The Plaintiff is directed to pay all daycare expenses associated with the unemancipated children.
8. The Plaintiff is directed to pay alimony to the Defendant, payable through the Probation Department in the county in which the Plaintiff resides.
9. The Plaintiff is directed to pay the mortgage, real estate taxes, and homeowner's insurance on the marital home located at 100 Main Street, Newton, New Jersey.
10. The Plaintiff is directed to maintain the present life insurance available through AT&T in the minimum amount of \$500,000, designating the Defendant and unemancipated children as irrevocable beneficiaries.
11. The Plaintiff is directed to pay the following:
  - (a) Automobile insurance for the 2014 Nissan Maxima;
  - (b) Auto repairs for the 2014 Nissan Maxima;
  - (c) Car loan to AT&T Credit Union for the 2014 Nissan Maxima; and
  - (d) All credit card indebtedness.
12. The Plaintiff is restrained from encumbering, disposing, or otherwise dissipating any and all assets, which are listed on the parties' Case Information Statements, and any other assets, which may be subject to equitable distribution.
13. The Plaintiff is directed to advance the sum of \$3,500 counsel fees payable to Larry Lawyer, Esq. within ten (10) days of the date of this Order as and for the Defendant's retainer in this action.
14. The Plaintiff is directed to pay to Defendant counsel fees in connection with this motion payable to Larry Lawyer, Esq., counsel for the Defendant, within ten (10) days of the date of this Order.

15. The Plaintiff is directed to pay to the Defendant \$500.00 for purpose of pension evaluation fees, payable within ten (10) days of the date of this Order.

16. The attached Statutory Notices are made a part of this Order.

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J.S.C.

- Opposed
- Unopposed
- Oral Argument
- On the Papers
- On the Record
- Statement of Reasons Attached

## NOTICES

- (1) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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.



Larry Lawyer, Esq./ID#  
Filing Attorney, Esq./ID#  
1 New Street  
New Brunswick, New Jersey 09999  
555-555-5555/fax 555-555-5555  
Attorneys for Defendant

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JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	CERTIFICATION OF MARY SMITH
<i>Defendant.</i>	:	(Returnable September 27, 2019)
	:	

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I, Mary Smith, of full age, certify as follows:

1. I am the defendant and make this certification in support of my Notice of Motion for Pendente Lite Relief. The defendant and I were married on August 25, 2005, separated December 4, 2018, and a Complaint for Divorce was filed January 15, 2019. We have two children, Jeff, age 12, and Megan, age 4. The children live with me.
2. Since the children's births, I have been the primary care taker for them due to my husband's commitment to his work. Quite frankly, he is a workaholic and never had the time to care for the children. All of the childrearing tasks have been left to me from the children's' birth.
3. In October 2018, my husband sexually abandoned me and commenced an adulterous affair with a co-worker. He was even named as corespondent in her divorce action. Ever since the Domestic Violence Restraining Order, when I was beaten by my husband and he was restrained from the marital home, I have been responsible for the children.
4. I know that I am not permitted to leave the State of New Jersey without my husband's permission or a court order. I have friends and family in the Wildwood, New Jersey, area. I have rented a home in a beautiful community and I am now living there with the children. I am asking that the Court award me primary residential custody of the children. I am willing to work out a visitation schedule so that the children can visit with their father. Even if I am living in Wildwood, New Jersey, he will see the children as much as if I continued to live in Morristown.

5. I have submitted my Case Information Statement and, according to my income and my husband's income, I am asking that the Court award me \$282.35 per week in child support.
6. I am also asking that the Court direct my husband to maintain all of the medical, optical, hospital and dental insurance and that he pay 82.5% of all unreimbursed expenses for me and the children.
7. Because I am working, I ask that my husband pay all of the daycare expenses.
8. I only have an associate's degree and barely worked during our marriage. On the other hand, my husband has a career at AT&T and is earning almost \$75,000.00. I am asking that the Court award me temporary alimony based upon the budget, which I am submitting in my Case Information Statement.
9. My husband remains living at the marital home in Newton, New Jersey, and I ask that he be responsible for maintaining the mortgage, real estate taxes and homeowner's insurance so that we do not lose the house through foreclosure.
10. I am also asking that my husband maintain his life insurance policy naming me and the children as irrevocable beneficiaries.
11. I also ask that he maintain the automobile insurance for my car and be responsible for the car loan and car repairs.
12. We have substantial credit card indebtedness due to my husband's careless spending and I ask that he be made responsible for maintaining all of the consumer debts.
13. I am also asking that restraints be entered against my husband so that he does not sell off assets prior to the distribution.
14. I have no savings and no income at the present time. I have been unable to give my attorney a retainer and I ask that I be given \$3,500.00 retainer to prosecute this divorce case. In addition, I ask that I be awarded specific counsel fees in connection with this motion due to my husband's willful refusal to pay me support.
15. Lastly, I ask that my husband advance the cost of \$500.00 so that we may retain an expert to evaluate his pension.

*I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.*

Dated: \_\_\_\_\_

Mary Smith

**Mark Gruber, Esq./ID # \_\_\_\_\_**  
**Filing Attorney, Esq./ID # \_\_\_\_\_**  
**GRUBER, COLABELLA, LIUZZA,**  
**THOMPSON & HIBEN**  
 41 Lakeside Boulevard  
 Hopatcong, New Jersey 07843  
 Tel. No. (973) 398-7500  
 Fax No. (973) 398-2592  
 Attorneys for Plaintiff

	:	SUPERIOR COURT OF NEW JERSEY
<b>JOHN SMITH,</b>	:	CHANCERY DIVISION:FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<b><u>CIVIL ACTION</u></b>
<b>MARY SMITH,</b>	:	
	:	<b>NOTICE OFCROSS-MOTION</b>
	:	<b>FOR <i>PENDENTE LITE</i> RELIEF</b>
<i>Defendant.</i>	:	(Returnable September 27, 2019)
	:	

**TO:** Larry Lawyer, Esq.  
 Law Offices of Lawyer, LLC  
 P.O. Box 1000  
 50 Jefferson Street  
 Morristown, New Jersey 07963

**PLEASE TAKE NOTICE**, that on **September 27, 2019**, at **9:00 o'clock** in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorney for Plaintiff, **JOHN SMITH**, shall move before the Honorable Judge of the Superior Court at the Superior Court of New Jersey, Chancery Division, Family Part, Sussex County Family Division, Sussex County Judicial Center, 43-47 High Street, Newton, NJ 07860, for an Order as follows:

1. Granting the parties joint legal custody of the unemancipated children, Jeff Smith and Megan Smith.
2. Granting the plaintiff co-parenting time with the unemancipated children as

follows:

- a. Alternating weekends commencing Friday, October 4, 2019, from 6:00 p.m. until Sunday 7:00 p.m.;
  - b. Each Wednesday evening from 6:00 p.m. to 8:00 p.m.;
  - c. Thanksgiving holiday in odd years from the Wednesday before Thanksgiving at 6:00 p.m. until the Friday after Thanksgiving at 6:00 p.m.
  - d. Christmas Eve in even years from after school on December 24 through noon on Christmas Day;
  - e. Christmas Day in odd years from noon until 6:00 p.m. the following day;
  - f. One-half of Christmas vacation from each school year;
  - g. One-half of all school closings including, but not limited to, winter break, spring break, teachers' convention, and other school closings.
  - h. July each year; and
  - i. At other times to be agreed upon.
3. Reducing child support by fifty (50%) percent during the times that Plaintiff has co-parenting time with the children for the period of time of one(1) week or more.
  4. Directing Defendant to provide Plaintiff with copies of all school notices, report cards, parent/teacher conferences, attendance reports, and/or health reports immediately upon receipt of same.
  5. Directing Defendant to transport the children to Plaintiff's residence at the commencement of each visitation period and permitting Plaintiff or his designee to return the children at the conclusion of the visitation.

6. Denying Defendant's request for contribution toward daycare or, alternatively, directing the parties to equally share the daycare expenses that is necessitated only by Defendant's work schedule, upon the condition that Plaintiff first be consulted as to the cost and reasonableness of the daycare expense and, further, upon the condition that Plaintiff be permitted to provide the daycare himself.

7. Directing that the parties participate in the Sussex County Custody Mediation Program, and directing the parties to contact \_\_\_\_\_ immediately upon receipt of this order.

8. Appointing \_\_\_\_\_ as the court-appointed expert to conduct a best interest evaluation of the parties and the children. The parties will equally share the expense of the same.

9. Appointing \_\_\_\_\_ as a joint expert to conduct a pension evaluation of Plaintiff's pension benefits. The cost of same shall be equally shared between the parties.

10. Restraining Defendant from encumbering, disposing, or otherwise dissipating any and all assets which are listed on the parties' Case Information Statements and any other assets which may be subject to equitable distribution.

11. Restraining Defendant from discussing issues of the divorce to or in the presence of the unemancipated children and further restraining Defendant from making derogatory remarks about Plaintiff to or in front of the unemancipated children.

12. Directing Defendant to undergo interview and examination by the employability expert retained by Plaintiff.

13. For such further relief as the court may deem equitable and just.

**PLEASE TAKE FURTHER NOTICE** that the undersigned shall rely upon the Certification of the Plaintiff, John Smith.

**PLEASE TAKE FURTHER NOTICE** that the undersigned requests oral argument.

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**  
Attorneys for Plaintiff

**Dated:**

*By:*

\_\_\_\_\_  
**Mark Gruber, Esq.**

**CERTIFICATION OF FILING AND SERVICE**

I hereby certify that the originals of the attached Notice of Cross-Motion; Certification of John Smith; and proposed form of Order have been filed with the Clerk of the Superior Court at the Superior Court of New Jersey, Chancery Division, Family Part, Sussex County Family Division, Sussex County Judicial Center, 43-47 High Street, Newton, NJ 07860, via First Class Mail. Copies thereof are being served upon the Defendant's attorney, Larry Lawyer, Esq., Law Offices of Lawyer, LLC, P.O. Box 1000, 50 Jefferson Street, Morristown, New Jersey 07963, via First Class Mail in the manner and within the time required by the Rules of Court.

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**  
Attorneys for Plaintiff

**Dated:**

*By:*

\_\_\_\_\_  
**Mark Gruber, Esq.**

**NOTICE TO LITIGANTS: IF YOU WANT TO RESPOND TO THIS MOTION, YOU MUST DO SO IN WRITING.**

This written response shall be by Affidavit or Certification. (Affidavits and Certifications are documents filed with the court. In either document the person signing it swears to its truth and acknowledges that they are aware that they can be punished for not filing a true statement with the court. Affidavits are notarized and Certifications are not.) If you would also like to submit your own separate requests in a motion to the judge, you can do so by filing a cross-motion. Your response and/or cross-motion may ask for oral argument. That means you can ask to appear before the court to explain your position. However, you must submit a written response even if you request oral argument. Any papers you send to the court must be sent to the opposing side, either to the attorney, if the opposing party is represented by one, or to the other party if they represent themselves. **Two copies of all motions, cross-motions, certifications, and briefs shall be sent to the opposing side.**

The response and/or cross-motion must be submitted to the court by a certain date. **All motions must be filed on the Tuesday 24 days before the return date. A response and/or cross motion must be filed 15 days (Thursday) before the return date. Answers or responses to any opposing Affidavits and cross-motions shall be served and filed not later than 8 days (Thursday) before the return date.** No other response is permitted without permission of the court. If you mail in your papers, you must add three days to the above time periods.

Response to motion papers sent to the Court are to be sent to the following address:

**Motion's Filing Clerk  
Sussex County Family Division  
Sussex County Judicial Center  
43-49 High Street  
Newton, NJ 07860**

**Call the Family Division Intake (862) 397-5700 x75184** if you have any questions on how to file a motion, cross-motion or any response papers. Please note that the Family Division Manager's Office cannot give you legal advice.

This Notice to Litigants is found in *Rule 5:5-4(d)* of the New Jersey Court Rules.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	CERTIFICATION OF JOHN SMITH
	:	(Returnable September 27, 2019)

I, John Smith, of full age, certify as follows:

1. I am the plaintiff and make this certification in support of my Cross-Motion and in opposition to the Motion filed by my wife. My wife and I have been separated since December 4, 2018, when she took the children from the marital home and moved to 15A Broad Street, Morristown, New Jersey. The children have been enrolled in the Morristown school system since that date and have been doing well.
  
2. I am opposed to my wife and children moving to Wildwood, New Jersey, and ask that they be returned to Morristown, where they belong. It is not in the children’s best interest to have up-rooted them in December of last year and again this year to move to Wildwood. I believe that my wife is moving to Wildwood strictly to defeat my visitation with the children. I have been a devoted father and have very close relationships with both of my children. I co-parent the children every other weekend from Friday at 6:00 p.m. until Sunday night at 7:00 p.m. I often see the children one evening during the week and I have been equally sharing their school closings and holidays. If the children move to Wildwood my co-parenting rights will be infringed upon and the children and I will not be able to maintain our close relationship considering the distance between Newton and Wildwood. I request that she be restrained from moving to Wildwood and be required to move back to Morristown until a hearing can be held.



3. I also ask that she be restrained from liquidating any marital assets she might utilize to fund her move or otherwise dissipate and impede my rights of equitable distribution.
4. I am also asking that a psychologist be appointed to conduct a best interest evaluation to see who should have custody of the children.
5. Until a hearing can be held, I am asking for visitation alternating weekends from Friday at 6:00 p.m. until Sunday at 7:00 p.m., each Wednesday evening from 6:00 p.m. until 8:00 p.m., Thanksgiving holidays in odd years, Christmas Eve in even years, Christmas Day in odd years, one-half of the Christmas vacation, one-half of school closings, and the month of July each year.
6. I also request that child support be reduced by fifty (50%) percent when I have the children for one week or more. I also am requesting that I be provided with all school notices, report cards, teacher conferences and other information concerning the children because my wife has been secretive about providing information to me.
7. The transportation of the children should be equally shared, and my wife should drop the children off at the beginning of each visitation and I will return them at the conclusion. Until such time as my wife is working, she should be responsible for any daycare of the children. When she does wake up and realize that she should be working, she must realize that she too has an obligation to contribute to the financial support of our children, as well as herself. When she does begin employment, I will share the daycare only if it is reasonable and necessary and it is work related. I would also like the opportunity to provide the daycare rather than incur the expense.
8. My attorney has told me about the mediation program and I am asking that she be compelled to attend mediation.
9. Considering the irrational behavior of my wife and the best interest of the children, I believe that I may be the preferred parent. I am asking that a psychological evaluation be undertaken and that an expert be appointed.
10. Speaking of experts, I am willing to share the expense of a joint expert to evaluate my AT&T pension.
11. I am asking that certain restraints be entered against my wife. She should be restrained from dissipating any assets. She should be restrained from discussing the divorce or her hostility toward me with or in front of the children.
12. Lastly, I ask that my employability expert interview her.

I certify that the foregoing statements made by me are true. I am unaware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 2019

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John Smith

Mark Gruber, Esq./ID# \_\_\_\_\_  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
<i>Plaintiff,</i>	:	SUSSEX COUNTY
	:	
vs.	:	DOCKET NO. FM-19-
	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	ORDER ON NOTICE OF CROSS-MOTION
<i>Defendant.</i>	:	FOR <i>PENDENTE LITE</i> RELIEF
	:	(Returnable September 27, 2019)
	:	

THIS MATTER having been brought to the attention of the court by Larry Lawyer, Esq., Attorney for the Defendant, Mary Smith, upon Notice of Motion; and a Notice of Cross-Motion having been filed by Mark Gruber, Esq., of the law firm of Gruber, Colabella, Liuzza, Thompson & Hiben, Attorneys for the Plaintiff, John Smith; and the court having heard the arguments of counsel; and having read the papers submitted; and for good cause shown;

IT IS on this \_\_\_\_ day of \_\_\_\_\_, 2019,

ORDERED as follows:

1. The effective date of this Order is \_\_\_\_\_.
2. The parties are granted joint legal custody of the unemancipated children, Jeff Smith and Megan Smith.
3. The Plaintiff is granted co-parenting time with the unemancipated children as follows:
  - (a) Alternating weekends commencing Friday, October 4, 2019, from 6:00 p.m. until Sunday 7:00 p.m.;
  - (b) Each Wednesday evening from 6:00 p.m. to 8:00 p.m.;

- (c) Thanksgiving holiday in odd years from the Wednesday before Thanksgiving at 6:00 p.m. until the Friday after Thanksgiving at 6:00 p.m.;
  - (d) Christmas Eve in even years from after school on December 24th through noon on Christmas Day;
  - (e) Christmas Day in odd years from 12 noon until 6:00 pm the following day;
  - (f) One-half of Christmas vacation from school each year;
  - (g) One-half of all school closings including, but not limited to, winter break, spring break, teachers' convention, and other school closings.
  - (h) July each year; and
    - (i) At other times to be agreed upon.
4. Child support shall be reduced by fifty (50%) percent during the times that the Plaintiff has co-parenting time with the children for the period of time of one (1) week or more.
  5. The Defendant is directed to provide the Plaintiff with copies of all school notices, report cards, parent/teacher conferences, attendance reports, and/or health reports immediately upon receipt of same.
  6. The Defendant is directed to transport the children to the Plaintiff's residence at the commencement of each visitation period and shall permit the Plaintiff or his designee to return the children at the conclusion of the visitation.
  7. The Defendant's request for contribution toward daycare is denied and the parties are directed to equally share the daycare expense that is necessitated only by the Defendant's work schedule, upon the condition that the Plaintiff first be consulted as to the cost and reasonableness of the daycare expense and, further, upon the condition that the Plaintiff be permitted to provide the daycare himself.
  8. The parties are directed to participate in the Sussex County Custody Mediation Program, and the parties shall contact \_\_\_\_\_, immediately upon receipt of this Order to schedule an appointment.
  9. \_\_\_\_\_ is hereby appointed as the expert to conduct a best interest evaluation of the parties and the children. The parties will equally share the expense of the same.

10. \_\_\_\_\_ is hereby appointed as a joint expert to conduct a pension evaluation of the Plaintiff's pension benefits. The cost of same shall be equally shared between the parties.
11. The Defendant is restrained from encumbering, disposing, or otherwise dissipating any and all assets, which are listed on the parties' Case Information Statements, and any other assets, which may be subject to equitable distribution.
12. The Defendant is restrained from discussing issues of the divorce to or in the presence of the unemancipated children and, further, the Defendant is restrained from making derogatory remarks about the Plaintiff to or in front of the unemancipated children.
13. The Defendant is directed to undergo interview and examination by the employability expert retained by the Plaintiff.
14. The attached Statutory Notices are made a part of this Order.

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J.S.C.

- Opposed
- Unopposed
- Oral Argument
- On the Papers
- On the Record
- Statement of Reasons Attached

(Statutory notices omitted)

## C. PAYMENT OF SUPPORT THROUGH PROBATION

The Court Rules require support to be paid through the probation department of the payor's residence unless the court, upon good cause shown, orders direct payment.

### 5:7-4. Alimony and Child Support Payments

(a) Allocation of Support. In awarding alimony, maintenance or child support, the court shall separate the amounts awarded for alimony or maintenance and the amounts awarded for child support, unless for good cause shown the court determines that the amounts should be unallocated. In awarding child support, payments for health care, child care and other expenses necessary to maintain the child or children shall be designated as part of the child support award unless good cause is shown why such amounts should be separated.

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

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

(c) Establishment of Support Arrears at the Hearing. At an establishment hearing in any new dissolution, non-dissolution, or domestic violence case, when the payment of support is ordered, the judge, child support hearing officer, attorneys, or court staff, as appropriate, shall calculate the child support obligation, payment on arrears, and total arrears owed so that these amounts will be known to the parties before they leave court. When establishing arrears, findings shall be made on (1) any direct payments made by the obligor to the obligee between the effective date of the order and the date of the hearing, on a showing of credible proof, and (2) the amount and frequency of regular payments to be made toward the arrears. The forms and procedures to implement the provisions of this rule shall be prescribed by the Administrative Director of the Courts.

(d) Payments to the New Jersey Family Support Payment Center. All orders which include payment of child support, or spousal support in conjunction with child support on the same order, shall be entered onto the statewide automated child support enforcement system, and presumptively deemed payable to the New Jersey Family Support Payment Center, and supervised by the Probation Division, unless the court orders otherwise, for good cause shown.

(e) Income Withholding. All complaints, notices, pleadings, orders and judgments which include child support filed or entered on or after October 1, 1990 shall comply with the income withholding provisions of Rule 5:7-4A.

(f) Electronic Signatures on Child Support Orders.

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

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

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

**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**

(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 and R. 5:3-7(b). 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(b). 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 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 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 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.

(3) *Transmittal of Order Suspending or Revoking License.* The Probation Division shall immediately forward a copy of the order denying, suspending, or revoking an obligor's license to the obligor and the appropriate licensing authorities. If the order notifies the Supreme Court to suspend the obligor's license to practice law in New Jersey, the Probation Division shall also forward a copy of the order to the Clerk of the Supreme Court and Office of Attorney Ethics, and the suspension shall be governed by R. 1:20-11A.

(4) *Term of Suspension/Restoration of License.* A court order denying, suspending, or revoking an obligor's license shall remain 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.

(c) *Execution on Assets to Collect Alimony and Child Support.* If an order is issued pursuant to R. 4:59-1(c) authorizing the Probation Division to execute on cash or cashequivalent assets as defined therein to collect alimony and child support judgments payable through the Probation Division, the Probation Division may assist judgment creditors by preparing the writ of execution, serving the writ on the holder of the debtor's asset by registered or certified mail, and scheduling the matter before the court to obtain an order to turn over funds. Service of the writ shall freeze the asset for the amount of the judgment, but no turnover of funds shall be made or required to be made until ordered by the court. The writ of execution shall be signed by the judgment creditor or the attorney for the judgment creditor and may, subject to the limitations of this rule, be issued by the Vicinage Chief Probation Officer acting as deputy clerk of the Superior Court pursuant to R. 4:59-1(c). The Probation Division shall mail a notice to the debtor as required by R. 4:59-1(h) immediately after the writ has been served on the holder of the asset. The Probation Division shall send a copy of all writs of execution issued pursuant to R. 4:59-1(c) to the Family Division Case Management Office. No costs or fees shall be assessed by the Probation Division for aiding in the execution of a judgment for alimony or child support. With respect to assets other than cash or cashequivalents as defined in R. 4:59-1(c), the Probation Division may assist the judgment creditor in preparing the writ of execution and such other forms relating to the execution as may be required, and in referring the judgment creditor to the sheriff of the county where the asset is located.

(d) *Child Support Judgments and Post-judgment Interest.* In accordance with N.J.S.A. 2A:17-56.23a, past-due child support payments are a judgment by operation of law on or after the date due and are subject to post-judgment

interest at the rates prescribed in Rule 4:42-11 at the time of satisfaction or execution. Past-due child support payable through the Probation Division shall be automatically docketed as civil judgments with the Clerk of the Superior Court on the first day of the month following the date the payment was due. The Probation Division may, with the authorization of a child support judgment creditor, assist that party in calculating post-judgment interest in accordance with Rule 4:42-11 at the time an offer of satisfaction is tendered or an execution of assets is initiated. For child support that is not payable through the Probation Division, the obligee shall file a motion with the court asking that the amount of past-due child support be fixed and that a judgment be entered for that amount. The obligee shall be responsible for filing the judgment with the Clerk of the Superior Court. Alternatively, the obligee may procure a judgment by filing an application with the Probation Division requesting that past-due and future child support payments be made through that office in accordance with Rule 5:7-4(b).

The courts are now required to have all parties whose support is payable through probation complete an application for child support services. The application and instructions follow.

## Contact Information - 1-877-655-4371 (1-877-NJKIDS1)

<b>Family</b>	<b>Probation</b>	<b>Welfare</b>
<b>Atlantic</b>		
Atlantic County Civil Court Building 1201 Bacharach Blvd Atlantic City, NJ 08401	Atlantic County Child Support 1201 Bacharach Blvd. PO Box 5129 Atlantic City, NJ 08401	Atlantic County Department of Family & Community Development 1333 Atlantic Ave, 3rd Floor PO Box 869 Atlantic City, NJ 08401
<b>Bergen</b>		
Bergen County Superior Court Family Part 10 Main St., Room 163 Bergen County Courthouse Hackensack, NJ 07601	Bergen County Child Support 10 Main St., Bldg. 39 Hackensack, NJ 07601	Bergen County Board of Social Services 218 Route 17 North Rochelle Park, NJ 07662
<b>Burlington</b>		
Burlington County Courts Facility 49 Rancocas Road, 3rd Floor Mount Holly, NJ 08060	Burlington County Child Support Enforcement Services 50 Rancocas Road, 2nd Floor PO Box 6555 Mount Holly, NJ 08060	Burlington County Board of Social Services Burlington County Human Services Facility 795 Woodlane Road Mount Holly, NJ 08060
<b>Camden</b>		
Camden County Hall of Justice 101 S.5th St. Camden, NJ 08103-4001	Camden County Child Support Probation 5 Executive Campus, Suite 200 PO Box 8107 Cherry Hill, NJ 08002	Camden County Board of Social Services County Administration Bldg. 600 Market St. Camden, NJ 08102-1255
<b>Cape May</b>		
Cape May County Family Division, Court Complex 4 Moore Road Cape May Courthouse, NJ 08210	Cape May County Probation Enforcement Court Complex 9 N.Main St., Cape May Courthouse, NJ 08210	Cape May County Board of Social Services Social Services Bldg. 4005 Route 9 South Rio Grande, NJ 08242-1911
<b>Cumberland</b>		
Cumberland County Family Division Courthouse Broad and Fayette streets PO Box 866 Bridgeton, NJ 08302	Cumberland County Child Support 60 W. Broad St. Bridgeton, NJ 08302	Cumberland County Board of Social Services 275 N. Delsea Drive Vineland, NJ 08360-3607
<b>Essex</b>		
Essex County Family Division Central Intake Unit 212 Washington St. Newark, NJ 07102	Essex County Child Support 212 Washington St., 11th Floor Newark, NJ 07102	Essex County Div. of Welfare 18 Rector St., 9th floor Newark, NJ 07102

## Contact Information - 1-877-655-4371 (1-877-NJKIDS1)

Family	Probation	Welfare
<b>Gloucester</b>		
Gloucester County Family Div. 70 Hunter St. Woodbury, NJ 08096	Gloucester County Child Support 1893 Hurffville Road Sewell, NJ 08080	Gloucester County Board of Social Services 400 Hollydell Dr. Sewell, NJ 08080
<b>Hudson</b>		
Hudson County Family Division Administration Building 595 Newark Ave, Room 203 Jersey City, NJ 07306	Hudson County Child Support Child Support Enforcement Unit 595 Newark Ave, Room 301, 3rd floor Jersey City, NJ 07306	Hudson County Department of Social Services Division of Welfare JFK Office Bldg. 257 Cornelison Ave. Jersey City, NJ 07302
<b>Hunterdon</b>		
Hunterdon County Justice Center 65 Park Ave., PO Box 578 Flemington, NJ 08822	Hunterdon County Child Support 65 Park Ave. Flemington, NJ 08822	Hunterdon County Division of Social Services, Community Services Center 6 Gauntt Place PO Box 2900 Flemington, NJ 08822
<b>Mercer</b>		
Mercer County Family Court 175 S. Broad St. PO Box 8068 Trenton, NJ 08650	Mercer County Child Support 175 S. Broad St. PO Box 8068 Trenton, NJ 08650	Mercer County Board of Social Services 200 Woolverton St. PO Box 1450 Trenton, NJ 08650
<b>Middlesex</b>		
Middlesex County Family Courthouse 120 New St. PO Box 2691 New Brunswick, NJ 08903	Middlesex County Child Support 189 New St PO Box 789 New Brunswick, NJ 08901	Middlesex County Board of Social Services 181 How Lane PO Box 509 New Brunswick, NJ 08903
<b>Monmouth</b>		
Monmouth County Courthouse 71 Monument Park P.O. Box 1252 Freehold, NJ 07728-1252	Monmouth County Probation 30 Mechanic St. PO Box 1259 Freehold, NJ 07728-1259	Monmouth County Division of Social Services PO Box 3000 Kozłowski Road Freehold, NJ 07728
<b>Morris</b>		
Morris County Courthouse Washington Street PO Box 910 Morristown, NJ 07963-0910	Morris County Child Support Administration & Records Bldg. 10 Court St., PO Box 910 Morristown, NJ 07963-0910	Morris County Office of Temporary Assistance 340 W. Hanover St. PO Box 900 Morristown, NJ 07963-9904

## Contact Information - 1-877-655-4371 (1-877-NJKIDS1)

<b>Family</b>	<b>Probation</b>	<b>Welfare</b>
<b>Ocean</b>		
Ocean County Justice Complex 120 Hooper Ave. PO Box 2191 Toms River, NJ 08754	Ocean County Child Support 213 Washington St., 2nd Floor PO Box 2191 Toms River, NJ 08754	Ocean County Board of Social Services 1027 Hooper Ave. PO Box 547 Toms River, NJ 08754
<b>Passaic</b>		
Passaic County Administration Bldg. 401 Grand St., 8th and 9th floors Paterson, NJ 07505	Passaic County Child Support 100 Hamilton St., 2nd floor Paterson, NJ 07505	Passaic County Board of Social Services 80 Hamilton St. Paterson, NJ 07505
<b>Salem</b>		
Salem County Courthouse 92 Market St. PO Box 223 Salem, NJ 08079	Salem County Child Support 85 Market St., Fenwick Bldg. PO Box 221 Salem, NJ 08079	Salem County Board of Social Services 147 S. Virginia Ave. Penns Grove, NJ 08069
<b>Somerset</b>		
Somerset County Courthouse North Bridge and High streets 2nd floor, P.O. Box 3000 Somerville, NJ 08876	Somerset County Child Support Somerset County Courthouse 20 N. Bridge St. PO Box 3000 Somerville, NJ 08876	Somerset County Board of Social Services 73 E. High St. PO Box 936 Somerville, NJ 08876
<b>Sussex</b>		
Family Intake Unit Judicial Complex 43-47 High St. Newton, NJ 07860	Sussex County Child Support Sussex County Courthouse 43-47 High St. Newton, NJ 07860	Sussex County Division of Social Services 83 Spring St PO Box 218 Newton, NJ 07860
<b>Union</b>		
Union County Courthouse Annex New Annex Building 2 Elizabeth Plaza, 2nd floor Elizabeth, NJ 07205	Union County Child Support 1143-1145 E. Jersey St. Elizabeth, NJ 07201	Union County Division of Social Services 342 Westminster Ave. Elizabeth, NJ 07208
<b>Warren</b>		
Warren County Family Case Management 413 Second St. Courthouse, PO Box 900 Belvidere, NJ 07823	Warren County Child Support 413 Second St. PO Box 900 Belvidere, NJ 07823	Warren County Division of Temporary Assistance and Social Services County House Annex 501 Second St (mail) Second and Hardwick streets Belvidere, NJ 07823

**Administrative Office of the Courts (AOC)**

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**Mailing Address**

Family Division  
P.O. Box 983  
Trenton, NJ 08625  
Child Support Hearing Officer Program

**Mailing Address**

Probation Child Support Enforcement  
P.O. Box 976  
Trenton, NJ 08625

**How to apply for IV-D services:**

Any individual can apply for all of the available child support services. This application is used to process support under the Title IV-D Child Support Program, funded through the Federal and State governments and managed in New Jersey by the Department of Human Services, Division of Family Development in partnership with the Superior Court Family and Probation Divisions.

Before we can help you collect support or provide you with the appropriate service for you and your child or children, you should read the program information on the following pages which should answer any questions that you may have about child support services in New Jersey and your responsibilities as a client of the Child Support Agency (CSA).

You must complete and sign the Child Support Services Application and the Child Support Case Information form and return both documents to us at your earliest convenience. The sooner you give us permission to work on your case and provide us with the required information, the faster the Child Support Agency starts to take steps to collect support for your children.

After you have read and completed the application, you should take the application to the following places for processing:

The Family Division, in your residence to have a court order established. You must know where the other parent or party lives.

**or**

The County Welfare Agency, in your residence, if you don't know where the other parent or party lives or works, and you need help in locating them for court purposes.

We look forward to working with you to help get the child support your family deserves.

**For location-only services:**

Division of Social Services

**To establish paternity or a support order:**

Family Division

**For support enforcement:**

Probation Division



## Part A – HOW THE CHILD SUPPORT PROGRAM WORKS

**Part A** answers some questions you might have about the child support program.

**What are child support services?** Child support services include: locating the parent who has a duty to support your child(ren), legally determining if a person is the biological parent of your child, obtaining an order for child support and medical support services (if available at a reasonable cost), collecting support payments, keeping accurate records of payments and enforcing the support order.

**Who provides these services?** In New Jersey, the Department of Human Services (DHS) - Division of Family Development (DFD) - Office of Child Support Services (OCSS) (the State Title IV-D agency), County Welfare Agencies (CWA), the Administrative Office of the Courts (AOC), the County Family Divisions of the Superior Court, and County Probation Division work together to provide support services to your family.

**What does the Office of Child Support Services do?** The DFD/OCSS is responsible for ensuring that the state's child support program is operated properly, efficiently and effectively, and that all of its agents are in compliance with all aspects of the Federal Law.

**What does the County Welfare Agency Child Support Unit do?** The CWA locates obligors and files non-support complaints on active *Temporary Assistance for Needy Families (TANF)* with the Family Division.

**What does the Family Division do?** The Family Division is responsible for the establishment of paternity, support and medical orders.

**What does the Probation Division do?** The Probation Division monitors and enforces court orders, including those for child support, medical support and alimony. The Probation Division may become involved in the case after a support order is entered. All support orders are payable through the New Jersey Family Support Payment Center (NJFSPC), unless the court orders otherwise.

**Does Probation represent me in court?** **No.** Probation does not represent you. It is the part of the court system that sees that the court's orders are obeyed. Probation does not side with either parent. If you have to come to court, you can either represent yourself or hire an attorney.

**Who can apply for these services?** Any parent or person with custody of a child who needs help to establish a child support or medical support order or to collect support payments can apply for child support enforcement services. People who have received assistance under the *Temporary Assistance for Needy Families (TANF)*, *Medicaid* and *Federally assisted Foster Care* programs are automatically referred for child support enforcement services.

- Although the majority of custodial parents are mothers, keep in mind that either the mother or father may have primary custody of the child.
- Either parent can get help to have a child support order reviewed at least every three years, or whenever there is a substantial change of circumstances, to ensure that the order remains fair.
- An unmarried father can apply for services to establish paternity – a legal relationship with his child.

A *non-custodial parent* whose case is not in the CSE Program can apply for services and make payments through the Program. Doing so ensures that there is a record of payments made.

- Location services are available for non-custodial parents whose children have been hidden from them in violation of a custody or visitation order.

**Is there a fee for this service?** **Yes.** There may be a nominal fee. Please see Part D of the application.

**Who is the obligee?** The obligee is the person who receives the court ordered support.

**Who is the obligor?** The obligor is the person who is ordered to pay the court ordered support.

**What is NJKiDS?** NJKiDS (New Jersey Kids Deserve Support) is the computer system used by Child Support Staff, to monitor, track and store information about your case.

**How do I establish paternity?** Paternity can be established in the following ways:

- If the child is born during a marriage the husband is presumed to be the father and paternity does not have to be established.
- If the child is born outside of a marriage a Certificate of Parentage can be signed by both parents.
- A complaint can be filed with the Family Division to get a legal determination of paternity. Paternity can be established either by consent or genetic testing.

**How does the court set the amount of my child support and medical support?** Generally, the court sets the amount of support using the New Jersey child support guidelines. The support amount is based on the income of both parents and the average amount that intact families spend on their children. The support guidelines are in Appendix IX-A of the New Jersey Court Rules. The Court Rules can be found in either the law library at the county courthouse or the county's public library. The Court Rules are also on the New Jersey Judiciary website, [www.njcourts.gov](http://www.njcourts.gov).

**How are payments received?** In almost all cases, the obligor must make payments through the New Jersey Family Support Payment center (NJFSPC). Once payment is received the obligor's account is credited and payment is sent by direct deposit, debit card or check to the obligee. **The obligee should not accept payments directly from the obligor without the court's prior approval.** If the obligee is on public assistance, the check goes to the agency that provides the assistance. However, the obligee will receive the first \$50 of each month's current child support payment.

**What if the obligor doesn't pay?** If the obligor doesn't pay, the Probation Division will take steps to enforce the order. These steps will include: requiring the obligor's employer to take the support amount out of his or her income, having the past-due amount taken out of the obligor's tax refund or lottery winnings, returning the case to court, reporting the delinquency to a credit reporting agency, or executing on the obligor's property such as bank accounts, insurance proceeds or real estate.

**What if the obligor moves to another state?** If the obligor moves out of New Jersey, the Probation Division may be able to get an out of state employer to withhold the support amount from the obligor's income. If this doesn't work, you may have to file a petition asking the other state to enforce your support order through its courts. The Probation Division will inform you if this is necessary and will help you file the papers. Although there is no cost for filing the petition, some states charge a small fee for processing payments and may deduct the fee from the collection before it is sent to you.

**How long will it take for a support order to be established?** That depends on the circumstances of your case and the services you request. After you file the application for services it takes time to notify all parties of the hearing. The establishment of a support order through the Family Division usually takes 90 days or less if both parties live in New Jersey. If either party resides out of state this process may take longer.

**How long will it be before I start to receive payments?** Once the order is established, the obligor is responsible for sending in payments directly to the NJFSPC. As soon as a payment is received it will be processed by the payment center and sent within 2 business days to the obligee. If income withholding has been ordered it may take up to 4 weeks for payment to be remitted by the employer.

## YOU WILL NOT RECEIVE A SUPPORT PAYMENT IF THE OBLIGOR DOES NOT PAY

**How can I find out if a payment has been made?** To access any child support information you will need to provide your child support case ID (it begins with "CS").

There are two options to obtain information on a 24 hour basis:

1. Call the toll-free Child Support Hotline at **1-877-NJKIDS1 (655-4371)** for payment information.
2. Visit the Child Support website at [www.njchildsupport.org](http://www.njchildsupport.org) for payment and case information.

Information about your case is updated every night.

### When will my support order end?

- A child who turns 18 is not automatically emancipated. A party must file an application with the family court if they are seeking to emancipate a child **and** be relieved of their obligation to pay child support if it has not been previously ordered. Only the court may enter an order of emancipation after reviewing the facts of the case.
- Pursuant to the Termination of Obligation to Pay Child Support Law at N.J.S.A. 2A:17-56.67 et seq., all child support and/or medical support obligations established in New Jersey shall automatically terminate upon the child's 19<sup>th</sup> birthday unless another termination date is specified in a court order. The court may extend the child support and/or medical support obligation no later than the child's 23<sup>rd</sup> birthday if the child is enrolled in high school, is attending college or other postsecondary institution on a full-time basis or is disabled as determined by a federal or state government agency.
- The child support and/or medical support obligation shall also automatically terminate on the date that a child who is less than 19 years of age marries, enters the military service or passes away.

**What if I need an increase in my child support order or medical support for my children?** Anytime there is a substantial change of circumstances, a motion can be filed with the Family Division to modify the terms of the court order. You may also request a review of the amount of your child support order at least once every 3 years from the date the order was entered or modified by the court. Reviews are completed by your local County Welfare Agency Child Support Unit (CWA/CSU). This service is available to you even if you have never been a recipient of Temporary Assistance to Needy Families (TANF). Additionally you can ask for assistance in obtaining medical support for your child if it is not included in your current order. The phone numbers for the CWA are listed on pages 1-4 of the application.

**PLEASE NOTE:** The law also requires that all child support orders entered, modified, or enforced on or after September 1, 1998 be reviewed every two years to reflect changes in the cost of living. Cost of Living Adjustment (COLA) is an automatic review and adjustment of child support orders being enforced under Title IV-D. COLA is not a modification of the order.

**Who can I call for more information?** Prior to the entry of a support order, contact either the Family Division or the local County Welfare Agency. After the order is entered, contact the local Probation Division in your county. The phone numbers for all three agencies are listed on the cover of this application.

**For the Child Support Agency (CSA) to help you properly, you must:**

- Provide all available information and documentation when you file the application to assist us in handling your case and immediately inform the CSA of any new or changed information.
- Supply accurate identifying and location information on the obligor.
- As requested, complete all documents needed for the CSA to establish and/or enforce a support order.
- Appear for genetic tests (if you have requested that paternity be established) or court hearings as notified.
- Upon request, appear at the designated CSA office to provide written or verbal information.
- Notify the CSA immediately if there is a change in your address, telephone number or custody of a child.

**Additionally, you should understand that:**

- You may hire an attorney to represent you or you may represent yourself at any time. If you retain an attorney, you agree to inform the CSA of the name and address of your attorney. If a court action is started by you or your attorney, you agree to provide the CSA with a copy of any court order resulting from that action.
- The quality of information you provide affects the priority assigned to your case and the success of providing the requested services.
- The information provided by you or collected by the CSA is confidential and subject to state and federal safeguarding requirements. It will not be released to third parties without your authorization.
- Any record, correspondence, memorandum or other document not required to be maintained by law is not public information and is not available for public inspection.

**PART B – YOUR RESPONSIBILITIES AS THE OBLIGEE (continued)**

If you receive any support payments that have not been processed through the New Jersey Family Support Payment Center, such as direct payments from the obligor, another state CSA, as satisfaction of a lien or from any other legal mechanism, that you agree to send such payment to NJFSPC immediately upon receipt so that it can be applied to the obligor's account.

- The CSA will assist you in establishing a court order for the obligor to provide health insurance for your child(ren). If you or your child(ren) is/are recipients of Medicaid benefits under Title XIX of the Social Security Act, the CSA will report the health insurance information to the State Division of Medical Assistance and Health Services.
- The CSA may request that the State or Federal government intercept the obligor's tax refund to recover past-due support owed to you or to the State. Regulations of the Tax Offset Program require that:
  - Intercepted tax refunds be used to pay-off debts owed to the State for public assistance before past-due support owed to your child(ren).
  - If the tax refund involves a joint return, the money may not be distributed for six months; and

If the obligor and the obligor's spouse file a joint return, the spouse may file an amended tax return requesting a share of the tax refund. If the IRS determines that the spouse is due a share of the refund that you received, you must reimburse the State for the amount owed the spouse.

## **PART C – OTHER INFORMATION ON SERVICES**

**Part C** lists other information about child support services that you should know. Again, read it carefully. If you don't understand something in this section, ask the Child Support Agency's staff to explain it to you.

**Selection of Enforcement Method** – The Child Support Agency selects the enforcement technique based on the quality and availability of case information and state law. **An obligee cannot choose how the order will be enforced.**

**Termination of Services** – Child support services **may** be terminated if:

- The Obligee fails to cooperate and that cooperation is needed to establish or enforce the order;
- The Obligee cannot be contacted for sixty days and mail sent to that person's address is being returned;
- Paternity cannot be established;
- The obligor dies, is institutionalized, moves to a foreign country without reciprocity, or cannot be located; or
- A support obligation is no longer owed to the family and no past-due support is owed.

**The obligee will be notified, in writing 60 days before action is taken to terminate child support services.**

**Limitations of the Child Support Agency** – The Child Support Agency **is not authorized to:**

- Act as your legal representative or assign an attorney to your case;
- Handle matters involving visitation, custody or property settlements (court action required);
- Arrest the obligor or issue a warrant (court action required); or
- Sign papers on your behalf (for example, bankruptcy claims, a Warrant of Satisfaction or Release of Lien for judgments, or request to emancipate a child).

## **PART D – DESCRIPTION OF AVAILABLE CHILD SUPPORT SERVICES**

**Part D** explains the services that are available. Later, you will have a chance to select the services you want. We recommend Full Child Support Services since it includes all services and has the lowest applicant fee. .

The applicant may request one of the following service categories from the Child Support Agency (CSA):

**Full IV-D Child Support Services** – Services provided by the CSA under this category include: paternity establishment, location of the obligor, establishment of the support order, collection of past-due support from tax refunds, collection and monitoring of support payment, income withholding (automatic deduction from an income source such as wages, unemployment, etc), judgment processing, credit reporting, medical support services, court enforcement of support orders, and periodic review and adjustment of the support award. Not all applications require all services. The CSA will provide all appropriate IV-D services (defined below) There is a **\$6.00** fee for full IV-D Child Support Services. **NOTE: THIS OPTION INCLUDES ALL SERVICES LISTED BELOW AND HAS THE LOWEST FEE.**

- **Location Services** – The CSA will try to find the obligor using the State Parent Locator Service (SPLS) and Federal Parent Locator Service (FPLS). The SPLS checks the records of the other State agencies such as the Division of Motor Vehicles, the Division of Taxation, the Department of Labor and the Department of Corrections. FPLS searches the records of the Internal Revenue Service, the Department of Defense, the National Personnel Records Center, the Social Security Administration and the Veterans Administration.
- **Paternity Services** – The CSA will file a complaint with the court or utilize other resources to legally determine the father of your child. To assist in determining who the father is, the court may order a blood or a genetic test. Additionally, the court may require that you pay for the genetic testing if the person that you name is not the biological father.
- **Support Services** – The CSA will file a complaint and schedule a hearing with the court for purposes of establishing a support order against the non-custodial parent.
- **Medical Support Services** – The CSA will pursue a court order requiring the obligor to provide health insurance coverage for your child(ren).

**Monitoring Services Only** – Services provided by the CSA under this category include: establishment of the support order, collection and monitoring of payments, and use of income withholding. **Monitoring only services do not include the following:** location of obligors using the State and Federal Parent Locator Service, payment of the costs to establish paternity and enforcement of the support obligation using the tax intercept programs. An annual fee of **\$25** will be charged for these services.

## CHILD SUPPORT CASE INFORMATION

### SECTION I – APPLICANT CHILD SUPPORT INFORMATION

<b>APPLICANT INFORMATION – Please complete this information about yourself.</b>	
Your relationship to the child(ren): <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Aunt <input type="checkbox"/> Uncle <input type="checkbox"/> Paternal Grandparent <input type="checkbox"/> Maternal Grandparent <input type="checkbox"/> Guardian <input type="checkbox"/> Other	
Does the child(ren) live with you? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, who does the child(ren) live with? Name: _____ Address: _____ City: _____                      State: _____                      Zip Code: _____	
Are you currently receiving Public Assistance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Did you ever receive Public Assistance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Did you ever receive Medicaid?	<input type="checkbox"/> Yes <input type="checkbox"/> No

### APPLICANT INFORMATION REGARDING CURRENT AND/OR PAST CHILD SUPPORT ARRANGEMENTS

<b>Please provide all available details regarding your current and/or past support arrangements.</b>	
Have you ever made a private agreement with the other parent for child support? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, amount: \$_____ every <input type="checkbox"/> week <input type="checkbox"/> two weeks <input type="checkbox"/> month, beginning on _____	
Are there any court actions pending in any state to establish or enforce support for your child(ren)? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, court (county, state): _____                      date filed: _____	
Do you have an existing court order for child support? <input type="checkbox"/> Yes <input type="checkbox"/> No \$_____ every <input type="checkbox"/> week <input type="checkbox"/> two weeks <input type="checkbox"/> month, beginning on _____ What court entered this order (county, state)? _____	
The current support order requires payments to be made (check one) <input type="checkbox"/> directly to me <input type="checkbox"/> to a child support enforcement agency (county, state) _____ <input type="checkbox"/> by income withholding directly to me <input type="checkbox"/> by income withholding to a child support enforcement agency (county, state) _____	



**SECTION II – APPLICANT INFORMATION**

<b>APPLICANT PERSONAL INFORMATION – Please complete this information about yourself.</b>				
Last Name: _____ First Name: _____ Middle Name: _____ Suffix: _____		Date of Birth ____/____/____ MM/DD/YYYY	SSN or Tax ID Number ____-____-____ 999-99-9999	
Maiden Name and/or Other Names used		U.S. Citizen <input type="checkbox"/> Yes <input type="checkbox"/> No If No, What Country? _____ Alien Registration No. _____		
Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> American Indian, Eskimo or Aleutian <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> Hispanic <input type="checkbox"/> Other		Ethnicity: <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic		Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female
Primary spoken language _____ Do you need an interpreter? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, specify language _____		Home Phone _____ Cell Phone _____		Drivers License number _____ Issuing State _____
Email Address: _____				
Home Address _____		City _____	State _____	Zip Code _____ County _____
Mailing Address if different from home address _____		City _____	State _____	Zip Code _____
Your current Marital Status: <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Widowed <input type="checkbox"/> Never Married <input type="checkbox"/> Single <input type="checkbox"/> Civil Union				
Are you married to the parent of the child(ren)? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, Date: _____ City, State of Marriage _____		Are you divorced from the parent of the child(ren)? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, Date: _____ City, State of Divorce _____		

<b>APPLICANT EMPLOYMENT INFORMATION</b>				
Employer Name _____		<input type="checkbox"/> Self-employed (company name)		Active Military Status <input type="checkbox"/> Yes <input type="checkbox"/> No Military Branch _____
Employer Address _____		City _____	State _____	Zip Code _____
May we contact you at work? <input type="checkbox"/> Yes <input type="checkbox"/> No	Work Phone: _____ FAX Number: _____		Work Email ID: _____	

<b>APPLICANT ATTORNEY INFORMATION</b>				
Your Attorney's Name (if you have an attorney for this case) _____			Phone: _____ Fax: _____ Email: _____	
Attorney's Address _____				
City _____	State _____	Zip Code _____		

**SECTION III – PARENT INFORMATION**

<b>PARENT PERSONAL INFORMATION- Please complete this information about the parent you are filing this application against.</b>			
Last Name: _____ First Name: _____ Middle Name: _____ Suffix: _____		Social Security Number or TAX Identification Number: _____	
Date of Birth _____	Place of Birth: City: _____ State: _____ Country: _____	Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	
Maiden Name and/or Other Names used		U.S. Citizen <input type="checkbox"/> Yes <input type="checkbox"/> No If No, What Country? _____ Alien Registration No. _____	
Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> American Indian, Eskimo or Aleutian <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> Hispanic <input type="checkbox"/> Other		Ethnicity: <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic	

<b>PARENT IDENTIFYING INFORMATION: Please complete this information about the parent you are filing this application against.</b>			
Hair Color: <input type="checkbox"/> Balding <input type="checkbox"/> Black <input type="checkbox"/> Blond <input type="checkbox"/> Brown <input type="checkbox"/> Gray/White <input type="checkbox"/> Red <input type="checkbox"/> None/Bald <input type="checkbox"/> Unknown <input type="checkbox"/> Other		Eye Color: <input type="checkbox"/> Black <input type="checkbox"/> Brown <input type="checkbox"/> Blue <input type="checkbox"/> Green <input type="checkbox"/> Gray Hazel <input type="checkbox"/> Other	
Height: Weight:		Facial Hair:	
Distinguishing Features (Scars, Marks, Tattoos, Glasses): _____ _____			

<b>PARENT CONTACT INFORMATION: Please complete this information about the parent you are filing this application against.</b>				
Primary spoken language _____ Do you need an interpreter? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, specify language _____		Home Phone Cell Phone Email Address: _____		Drivers License number Issuing State
Last Known Home Address		City	State	Zip Code County
Lives with: <input type="checkbox"/> Parent <input type="checkbox"/> Relative <input type="checkbox"/> Friend <input type="checkbox"/> Alone <input type="checkbox"/> Spouse <input type="checkbox"/> Other				
Name: _____				

Last Known Mailing Address if different from home address	City	State	Zip Code
Is the parent currently incarcerated or institutionalized <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, provide details: Name of the prison/jail/institution: _____ City, State: _____		

<b>PARENT'S EMPLOYER INFORMATION – Please provide information , if known, about the parent you are filing this application against.</b>			
Employer Name	<input type="checkbox"/> Self-employed (company name)	Phone Number:	
Address	City	State	Zip Code
Salary \$ _____ every <input type="checkbox"/> week <input type="checkbox"/> 2 weeks <input type="checkbox"/> month <input type="checkbox"/> year	Type of work performed _____		
Belong to Union? <input type="checkbox"/> Yes <input type="checkbox"/> No		Local # _____	
If Yes, Union Name _____		Phone Number:	
Additional Employment		Phone Number:	
Address	City	State	Zip Code
Salary \$ _____ every <input type="checkbox"/> week <input type="checkbox"/> 2 weeks <input type="checkbox"/> month <input type="checkbox"/> year	Type of work performed _____		
Military Service <input type="checkbox"/> Yes <input type="checkbox"/> No	Status?		
Branch: <input type="checkbox"/> Army <input type="checkbox"/> Navy <input type="checkbox"/> Air Force <input type="checkbox"/> Marines <input type="checkbox"/> Coast Guard	<input type="checkbox"/> Active <input type="checkbox"/> Reserve <input type="checkbox"/> Retired _____ (mm/yyyy) <input type="checkbox"/> Discharged _____ (mm/yyyy)		
Duty Station: (Base/Post/Ship and City/State)			

<b>PARENT'S HEALTH CARE INFORMATION - Please provide information, if known, about the parent you are filing this application against.</b>	
Health insurance provider: <input type="checkbox"/> Employer 1 <input type="checkbox"/> Employer 2	Child(ren) named in this application covered? <input type="checkbox"/> Yes <input type="checkbox"/> No
Policy Number: _____	Date coverage began: _____

<b>PARENT'S FINANCIAL INFORMATION - Please provide information, if known, about the parent you are filing this application against.</b>		
Does the parent receive any of the following types of income?		
<input type="checkbox"/> Unemployment Compensation	<input type="checkbox"/> Veteran's Administration Pension	
<input type="checkbox"/> Legal Settlement Income	<input type="checkbox"/> Railroad Retirement Pension	
<input type="checkbox"/> Pension	<input type="checkbox"/> Investment Income	<input type="checkbox"/> Social Security Retirement
<input type="checkbox"/> Worker's Compensation	<input type="checkbox"/> Trust Income	<input type="checkbox"/> Social Security Disability
<input type="checkbox"/> Commissions	<input type="checkbox"/> Dividend Income	
<input type="checkbox"/> Supplemental Security Income	<input type="checkbox"/> Royalties	<input type="checkbox"/> Rental Income
<input type="checkbox"/> Other Disability	<input type="checkbox"/> Annuities	<input type="checkbox"/> Lottery Winnings

<input type="checkbox"/> <b>Public Assistance (Welfare)</b> _____ <input type="checkbox"/> <b>Other Income Source</b> _____	
<b>Parent Bank Account Number</b> _____	<input type="checkbox"/> <b>Savings</b> <input type="checkbox"/> <b>Checking</b>
<b>Bank Name and Address</b> _____	

<b>PARENT'S ATTORNEY INFORMATION– Please provide information, if known, about the parent you are filing this application against.</b>	
<b>Parent Attorney's Name</b>	<b>Phone:</b>
<b>Attorney's Address, City, State Zip Code</b>	<b>Fax:</b>
	<b>Email:</b>

CHILD 1:

<b>Last Name:</b> <b>First Name:</b> <b>Middle Name:</b> <b>Suffix:</b> <b>Paternity established?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Date of Birth</b>	<b>City/State of Birth:</b>	<b>SSN#:</b> _____ 999-99-9999
<b>Race:</b> <input type="checkbox"/> White <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> American Indian, Eskimo or Aleutian <input type="checkbox"/> Other	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic	<b>Ethnicity:</b> <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic	<b>Sex:</b> <input type="checkbox"/> Male <input type="checkbox"/> Female

CHILD 2:

<b>Last Name:</b> <b>First Name:</b> <b>Middle Name:</b> <b>Suffix:</b> <b>Paternity established?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Date of Birth</b>	<b>City/State of Birth:</b>	<b>SSN#:</b> _____ 999-99-9999
<b>Race:</b> <input type="checkbox"/> White <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> American Indian, Eskimo or Aleutian <input type="checkbox"/> Other	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic	<b>Ethnicity:</b> <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic	<b>Sex:</b> <input type="checkbox"/> Male <input type="checkbox"/> Female

CHILD 3:

<b>Last Name:</b> <b>First Name:</b> <b>Middle Name:</b> <b>Suffix:</b> <b>Paternity established?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Date of Birth</b>	<b>City/State of Birth:</b>	<b>SSN#:</b> _____ 999-99-9999
<b>Race:</b> <input type="checkbox"/> White <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> American Indian, Eskimo or Aleutian <input type="checkbox"/> Other	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic	<b>Ethnicity:</b> <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic	<b>Sex:</b> <input type="checkbox"/> Male <input type="checkbox"/> Female

<b>Last Name:</b> <b>First Name:</b> <b>Middle Name:</b> <b>Suffix:</b> <b>Paternity established?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Date of Birth</b>	<b>City/State of Birth:</b>	<b>SSN#:</b> <hr/> 999-99-9999
<b>Race:</b> <input type="checkbox"/> White <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> American Indian, Eskimo or Aleutian <input type="checkbox"/> Other	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic	<b>Ethnicity:</b> <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic	<b>Sex:</b> <input type="checkbox"/> Male <input type="checkbox"/> Female

CHILD 5:

<b>Last Name:</b> <b>First Name:</b> <b>Middle Name:</b> <b>Suffix:</b> <b>Paternity established?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Date of Birth</b>	<b>City/State of Birth:</b>	<b>SSN#:</b> <hr/> 999-99-9999
<b>Race:</b> <input type="checkbox"/> White <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> American Indian, Eskimo or Aleutian <input type="checkbox"/> Other	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic	<b>Ethnicity:</b> <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic	<b>Sex:</b> <input type="checkbox"/> Male <input type="checkbox"/> Female

**SECTION V – APPLICANT FINANCIAL INFORMATION:**

Provide us with information about your income and financial situation. Complete this section only if you are requesting the establishment of a support order for the child(ren) listed on this application. The other parent will be asked to complete a similar form. The court uses the financial information on these forms to set the amount of child support. Additionally, it may be used to determine if the support award should be increased or decreased in the future.

**IMPORTANT: You must provide a copy of your most recent federal tax form or your three most recent pay stubs to verify your income. Self-employed persons and business owners must also provide a copy of the most recent federal tax forms for their business. If you are requesting a credit or deduction, you must provide proof of your expenses or obligations.**

<b>Information about your Financial Status.</b>	
<b>Gross Weekly Income. Report your weekly gross income. Divide monthly income by 4.3 and bi-weekly income by 2.6. You will be required to provide proof of your income when requesting support establishment services.</b>	
<b>1. Salary, wages, commissions, bonuses and other payments for services performed</b>	<b>\$</b>
<b>2. Income from operating a business minus ordinary and necessary expenses</b>	<b>\$</b>
<b>3. Social security disability</b>	<b>\$</b>
<b>4. Social Security retirement</b>	<b>\$</b>
<b>5. Veteran’s Administration pension</b>	<b>\$</b>
<b>6. Worker’s compensation</b>	<b>\$</b>
<b>7. Other pensions, disability or retirement income</b>	<b>\$</b>
<b>8. Unemployment compensation</b>	<b>\$</b>
<b>9. Interest, dividends, annuities or other investment income</b>	<b>\$</b>
<b>10. Income from the sale, trade or conversion of capital assets</b>	<b>\$</b>
<b>11. Income from an estate of a decedent (a will)</b>	<b>\$</b>
<b>12. Alimony or separate maintenance from a previous marriage</b>	<b>\$</b>
<b>13. Income from trusts</b>	<b>\$</b>
<b>14. Other income (specify)</b>	<b>\$</b>
<b>15. Other income (specify)</b>	<b>\$</b>
<b>Total Gross Income (add lines 1 through 15)</b>	<b>\$</b>

<b>Weekly Exemptions. Report the following deductions from your weekly income.</b>	
<b>1. Number of tax exemptions claimed</b>	
<b>2. Mandatory union dues</b>	\$
<b>3. Mandatory retirement contributions</b>	\$
<b>4. Health insurance premium (must include child(ren) named in the complaint)</b>	\$
<b>5. List each alimony or child support order paid by you, if applicable.</b>	
<b>A) State and Case Number</b>	
<b>B) State and Case Number</b>	\$

<b>Other Dependent Deduction:</b> Complete this section if (1) you are legally responsible for supporting a child or children other than those named in the support complaint or application, (2) the child or children are living with you and (3) you are requesting credit for the amount spent on raising the other child or children when the support award is calculated. You are legally responsible for all children that are yours by birth or adoption. Answer the questions about the other parent of the child or children (for example, your current spouse who is the biological father of at least one of your children).	
<b>1. Number of other legal dependents (you must provide proof of the legal relationship)</b>	
<b>2. Number of tax exemptions that parent of the other child(ren) claims</b>	
<b>3. Weekly gross income of the parent of the other child(ren)</b>	\$
<b>4. Mandatory union dues of the parent of the other child(ren)</b>	\$
<b>5. Mandatory retirement contributions of the parent of the other child(ren)</b>	\$
<b>6. Health insurance premiums paid by the parent of the other child(ren)</b>	\$
<b>7. Alimony or child support orders paid by the parent of the other child(ren)</b>	\$



SECTION V – APPLICANT FINANCIAL INFORMATION Continued...

**Credit for Child Care Expenses:** Complete this section only if (1) you pay for work related child care for a child or children for whom you and the other parent share a legal responsibility to support and (2) you are requesting a credit for these expenses when your support amount is calculated.

<b>1. Annual child care cost (if paid weekly multiply by 52; if monthly multiply by 12)</b>			<b>\$</b>	
<b>Child care provider name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>

**Income Received by the Child(ren) from the other parent:** Complete this section if your child(ren) receive regular payments in the name of the other parent (e.g., social security supplements or veteran's benefits apportionment's).

<b>1. Source of benefit(s);</b>	
<b>2. Weekly amount of benefits (requires proof)</b>	<b>\$</b>

**Health Insurance Benefits. Provide the following information about your health insurance benefits.**

<b>Health Insurance Provider:</b>	<b>Includes child(ren) <input type="checkbox"/> Yes <input type="checkbox"/> No</b>
<b>Policy Carrier:</b>	<b>Date coverage began:</b>

**CERTIFICATION**

I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements are wilfully false, I am subject to punishment.

<b>Date:</b>	<b>Signature:</b>

**SECTION VI - PARENT LOCATION INFORMATION**

<b>BACKGROUND INFORMATION ON THE PARENT. Please provide information, if known, about the parent you are filing this application against.</b>		
Does the parent have a criminal record?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, City: _____	State: _____	Date: _____
Education: School/College Name	City, State	Date of Attendance
Does the parent belong to any professional/trade associations?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, Name:	City	State
Does the parent have any professional/trade licenses?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, License Number:	Type:	Issuing State:

<b>PARENT'S FRIENDS AND RELATIVES – Please provide information, if known, about the parent you are filing this application against.</b>		
Maiden Name of the parent's mother	<input type="checkbox"/> Living <input type="checkbox"/> Deceased	
Address: _____	City	State Zip Code
Name of the parent's father	<input type="checkbox"/> Living <input type="checkbox"/> Deceased	
Address: _____	City	State Zip Code
Spouse/Other – Name:	Relationship:	
Address: _____	City	State Zip Code
Does the parent have any other children besides yours?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Child Name	Court Order State	Other Parent Name on the order

<b>PARENT FINANCIAL ASSETS INFORMATION. Please provide information, if known.</b>	
Does the parent own any homes or real estate?	
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the address below.	
Address of Property (address, city, state, zip code):	
Address of Property (address, city, state, zip code):	

Does the parent own a motor/recreational vehicle? If Yes, please identify below, about the parent you are filing this application against. <input type="checkbox"/> Yes <input type="checkbox"/> No				
Make	Model	Color	State where registered	License No
Make	Model	Color	State where registered	License No
Does the parent own a boat? If Yes, please identify below.				<input type="checkbox"/> Yes <input type="checkbox"/> No
Make	Registration No.	Moored at:		

<b>PARENT PAST EMPLOYMENT INFORMATION List the other parent's past employer(s), if known, about the parent you are filing this application against.</b>			
Employer Name	Start Date: _____	End Date: _____	
Address	City	State	Zip Code
Employer Name	Start Date: _____	End Date: _____	
Address	City	State	Zip Code

**CHILD SUPPORT SERVICES APPLICATION**

<b>FULL SERVICES – Check if requesting full IV-D Child Support Services</b>
<input type="checkbox"/> <b>FULL IV-D CHILD SUPPORT SERVICES (\$6 Fee)</b> (This agency will furnish the appropriate services for location; paternity, support and/or medical support establishment; and enforcement actions to which you are entitled.)
<b>OTHER SERVICES – Please check if not requesting full services</b>
<input type="checkbox"/> <b>Monitoring Services Only (\$25 Annual Fee)</b> (The selection of this service means that certain enforcement options will not be available.)

**AUTHORIZATION**

**This portion of the application** gives us permission to work on your case on behalf of your child(ren). You also agree to cooperate with us and follow the rules of the program. Again, if you do not understand this section, please ask the Child Support Agency’s staff to explain it to you.

*By signing this application, I agree to the following:*

- (1) The Child Support Agency may pursue and use all sources of information legally available to support its investigation of my case and perform the services that I have requested;
- (2) I will cooperate with the Child Support Agency in its efforts to provide the requested services and comply with the obligee’s responsibilities listed in Part B of this application;
- (3) **I will not accept court ordered support payments directly** from the obligor or, if any are received, I will immediately forward them to the New Jersey Family Support Payment Center (NJFSPC);
- (4) I am not entitled to interest on any child support payment for the time it is held in the NJFSPC bank account pending distribution;
- (5) In accordance with N.J.S.A. 2A:17-56.60, the Child Support Agency may use my Social Security Number as an internal identifier for all child support and paternity purposes. I understand that my Social Security Number, my address and personal information about myself will remain confidential unless I authorize its release; and

The Child Support Agency may terminate my case if I fail to cooperate or conform to the responsibilities documented in this application.

\_\_\_\_\_   
Date

\_\_\_\_\_   
Applicant’s Signature

\_\_\_\_\_   
Applicant’s Name (Please Print)

## D. ORDERS AND THE FIVE-DAY RULE

At the conclusion of a motion there are several ways to enter an order. The court may take it upon itself to utilize the proposed form of order, mark it up, sign and file it without any input from the attorneys. However, it is common practice at the conclusion of oral argument for the court to ask the attorneys to conform the proposed form of order to the decision on the motion that has just been rendered. In that event, the attorneys will work on the language of the order, and at the bottom of the order will make a notation “we hereby consent to the form of the within Order.”

Occasionally a judge will ask an attorney to re-draft an order and submit it under the five-day rule. R. 4:42-1(c) provides that an order may be submitted to the court with a copy served upon the adversary, and if there is no objection within five days the court will enter the order. If objections are made, the judge may sign the order or list it for a hearing to settle the form of the order.

### **4:42-1. Form; Settlement**

(a) Form; Contents. A judgment or order shall not contain a recital of the pleadings or the record of prior proceedings. It shall, however, include the following:

- (1) A designation of the subject of the judgment or order (i.e., Summary Judgment Dismissing Complaint, Order Modifying Alimony);
- (2) The date or dates on which the matter was heard or submitted;
- (3) The appearances of counsel and parties appearing pro se;
- (4) A separate numbered paragraph for each separate substantive provision of the judgment or order;
- (5) The effective date of the judgment or order or of each provision if the effective date of any provision is different from the date of entry;
- (6) A notation of whether the matter was opposed or unopposed as required by R. 1:6-2(a); and
- (7) The notation prescribed by R. 1:6-2(f) respecting findings and conclusions and the annexation of a statement of reasons if required by that rule or by R. 1:7-4.

(b) Settlement by Motion or Consent. Except as otherwise provided by paragraphs (c) and (d) of this rule, by other rule or by law, and except for ex parte matters, no judgment or order shall be signed by the court unless the form thereof has been settled on motion on notice to all parties affected thereby who are not in default for failure to appear, or unless the written approval of such attorneys or parties to the form thereof is endorsed thereon. Formal written judgments or orders shall be presented to the court for

execution within 10 days after its decision is made known, unless such time is enlarged for good cause.

(c) Settlement on Notice. In lieu of settlement by motion or consent, the party proposing the form of judgment or order may forward the original thereof to the judge who heard the matter and shall serve a copy thereof on every other party not in default together with a notice advising that unless the judge and the proponent of the judgment or order are notified in writing of specific objections thereto within 5 days after such service, the judgment or order may be signed in the judge's discretion. If no such objection is timely made, the judge may forthwith sign the judgment or order. If objection is made, the matter may be listed for hearing in the discretion of the court.

(d) Form of Consent Judgments and Orders. The court may enter a consent judgment or order without the signatures of all counsel of record and parties pro se who have filed a responsive pleading or who have otherwise entered an appearance in the action, provided the form of judgment or order contains the recital that all parties have in fact consented to the entry of the judgment or order in the form submitted. If any party to be bound by the consent judgment has not filed a responsive pleading or entered an appearance in the action, the consent judgment must bear the signature of each such party or such party's attorney, indicating consent to the form and entry of the judgment. No supporting papers shall be required for the entry of a consent judgment unless the court specifically finds good cause to require the filing of such submissions. Consent judgments may be entered in accordance with this rule at any time following service of the complaint, whether or not an answer or any other responsive pleading has been served or filed.

(e) Submission and Filing of Orders and Judgments. An original and one copy of all forms of orders and judgments shall be submitted to the judge together with a self-addressed, stamped envelope. The judge signing the order or judgment shall file the original in accordance with R. 1:5-6(b), and the copy shall be returned by the judge to the attorney submitting the order or judgment. The proponent may transmit the copy to the Clerk of the Superior Court, together with the fee prescribed by N.J.S.A. 22A:2-7, for appropriate disposition pursuant to R. 4:101. In matrimonial matters such additional copies of the orders shall be submitted as required by the court.

# GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN

Attorneys at Law

Mark Gruber, L.L.M. \* + ◊  
Chris H. Colabella •  
Natalie L. Thompson (NJ & NY Bar)  
Racquel G. Hiben

Kristen C. Montella (NJ & NY Bar)  
Daniel P. Agatino, Ph.D. ■  
Rachel Alexander ◻■ (NJ, NY & MD Bar)  
C. William Bowkley, Jr. ■

Carmen J. Liuzza, Jr.  
(1970-2018)

41 Lakeside Boulevard  
Hopatcong, NJ 07843  
Tel. No. 973-398-7500  
Fax No. 973-398-2592

Mark Gruber, Esq.  
E-mail: [mg@gruberlaw-nj.com](mailto:mg@gruberlaw-nj.com)

*visit our website at*  
[www.gruberlaw-nj.com](http://www.gruberlaw-nj.com)

*Please reply to*  
*Hopatcong office*

- \* Certified by the Supreme Court of NJ as a Matrimonial Law Attorney
- + Fellow, American Academy of Matrimonial Lawyers
- Admitted to Practice before The U. S. Supreme Court
- ◊ Admitted to Practice before The U.S. Court of Appeals, 3<sup>rd</sup> Circuit
- Court Approved Mediator and Mentor
- Of Counsel

**Newton Office:**  
49 High Street  
Newton, NJ 07860  
Tel. No. 973-579-5700  
Fax No. 973-579-0137

October 30, 2019

Honorable Michael C. Gaus, J.S.C.  
Superior Court of New Jersey  
Chancery Division – Family Part  
Sussex County Courthouse  
43-47 High Street, 2nd Floor  
Newton, New Jersey 07860

**RE: John Smith v. Mary Smith  
Docket No. FM-19-**

Dear Judge Gaus:

Enclosed please find original and three copies of proposed Order in the within matter which I am submitting to you under the five-day Rule. If there are no objections within five days and the same meets with your Honor's approval, I ask that you sign, file and return a filed copy to me in the self-addressed stamped envelope provided.

Very truly yours,

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**

Mark Gruber

MG/apc  
Encl.

cc: Larry Lawyer, Esq. (w/encl.)  
John Smith (w/encl.)

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## **E. ORDER TO SHOW CAUSE**

During the pendency of an action, either a temporary restraint or an interlocutory injunction may be applied for by order to show cause. R. 4:52-2. The procedure is set forth in R. 4:52-1. An application must be made to the court utilizing the forms provided herein. The movant must establish immediate and irreparable damage will result if the relief sought is not granted. In rare instances, the order to show cause may include temporary restraints or other interim relief prior to notice, but the order must contain a provision that the non-moving party will have leave to move for dissolution or modification of the restraint on two days' notice or on such other notice as the court fixes in the order.

### **Rule 4:52-1. Temporary Restraint and Interlocutory Injunction-- Application on Filing of Complaint**

(a) Order to Show Cause with Temporary Restraints. On the filing of a complaint seeking injunctive relief, the plaintiff may apply for an order requiring the defendant to show cause why an interlocutory injunction should not be granted pending the disposition of the action. The proceedings shall be recorded verbatim provided that the application is made at a time and place where a reporter or sound recording device is available. The order to show cause shall not, however, include any temporary restraints or other interim relief unless the defendant has either been given notice of the application or consents thereto or it appears from specific facts shown by affidavit or verified complaint that immediate and irreparable damage will probably result to the plaintiff before notice can be served or informally given and a hearing had thereon. If the order to show cause includes temporary restraints or other interim relief and was issued without notice to the defendant, provision shall be made therein that the defendant shall have leave to move for the dissolution or modification of the restraint on 2 days' notice or on such other notice as the court fixes in the order. The order may further provide for the continuation of the restraint until the further order of the court and shall be returnable within such time after its entry as the court fixes but not exceeding 35 days after the date of its issuance, unless within such time the court on good cause shown extends the time for a like period or unless the defendant consents to an extension for a longer period.

(b) Order to Show Cause as Process; Service. If the order to show cause issues upon the filing of the complaint, no summons shall issue in the action if the order contains the name and address of plaintiff's attorney, if any, otherwise plaintiff's address; the time within which defendant shall serve and file an answer upon plaintiff or plaintiff's attorney as provided by these rules; and a notice to defendant that upon failure to so file and serve an answer, judgment by default may be rendered against the defendant for the relief demanded in the complaint. The order shall be served upon defendant together with a

copy of the complaint and any supporting affidavits at least 10 days before the return date and in the manner prescribed by R. 4:4-3 and 4:4-4 for service of summons, unless the court orders a shorter or longer time or other manner of service.

(c) Hearing; Briefs. Oral testimony may be taken in the court's discretion on the return date of the order to show cause and on the return date of defendant's motion to dissolve or modify the temporary restraint. Briefs shall be submitted in support of the application for an interlocutory injunction.

In practice, counsel for the moving party should notify the adversary of the nature of the emergent relief being sought by way of order to show cause. Most family judges require that you call and speak with their law clerks and advise them of the nature of the relief being sought. Some counties require the order to show cause to be personally filed by the attorney or moving party. When you call the law clerk, you will receive instructions on the filing of the order to show cause. Most family part judges will consider the order to show cause within a day or two, and then schedule a return date within a week to 10 days, and sometimes sooner in the event of real emergencies, when the court will conduct a hearing or have oral argument. A letter brief must accompany the order to show cause, which should set forth the immediate and irreparable harm that will result if the requested relief is not granted

## **1. *Pendente Lite* Orders to Show Cause**

After the complaint has been served, the forms of order to show cause are governed by Directive #09-20 dated March 16, 2020.




**GLENN A. GRANT, J.A.D.**  
Acting Administrative Director of the Courts

Richard J. Hughes Justice Complex • P.O. Box 037 • Trenton, NJ 08625-0037 njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

**To: Assignment Judges  
Trial Court Administrators**

**Directive #09-20**  
[Questions or comments may be directed to (609) 815-2900, ext. 55350]

**From: Glenn A. Grant, J.A.D.** 

**Subj: Family - Order to Show Cause - Model Form for Dissolution, Non-Dissolution, and Domestic Violence (FM, FD & FV) Dockets**

**Date: March 16, 2020**

Directives #16-05 and #08-08, promulgated four Order to Show Cause forms for use in the Civil, Family, General Equity, Special Civil, and Probate Parts. The order templates in the original directives did not include language specific to Family Division emergent applications. This directive is being issued specifically to address Family Division matters. It thus supersedes Directive #16-05 and Directive #08-08, as to their application to Family Division matters, and promulgates for immediate use in Family Division matters two new standard forms: (1) Emergent Application (CN 11523), and (2) Order to Show Cause (CN 12547).

R. 4:52-1 applies to persons who have emergent matters, including those in the Family Division seeking relief to prevent immediate and irreparable harm from occurring if it is not addressed right away. The attached forms are to be used to apply for an emergent hearing in the Family Division for reliefs such as emergency custody, termination of visitation, or temporary prevention of relocation of a child outside New Jersey boundaries.

If the filing for an Order to Show Cause is under the Dissolution docket (FM) or the Domestic Violence docket (FV), only the two forms attached to this directive must be completed and filed with the court.

If the filing is under a Non-Dissolution docket (FD), either a verified complaint (CN#11492) or a post-disposition application (CN#11487) must accompany the attached two forms. The Non-Dissolution Complaint and post-disposition application forms with instructions are available on the court's website: [www.njcourts.gov](http://www.njcourts.gov).



Directive #09-20  
March 16, 2020  
Page 2 of 2

Questions regarding this directive may be directed to the Administrative Office of the Courts, Family Practice Division, at (609) 815-2900 ext. 55350.

---

Attachments:

Emergent Application (CN 11523)  
Order to Show Cause (CN 12547)

cc: Chief Justice Stuart Rabner  
Steven D. Bonville, Chief of Staff  
Jennifer M. Perez, Director  
Joanne M. Dietrich, Assistant Director  
Special Assistants to the Administrative Director  
Amelia Wachter-Smith, Chief, Family Practice  
Assistant Family Division Managers

## **Emergent Hearing (Order to Show Cause)**

Orders to Show Cause are generally used to avert or prevent irreparable harm to a child or to protect their health, safety, and welfare. Prevention of harm is the reason to seek emergent remedy with the court. The court, in its discretion, may issue an emergency order. Only a judge can determine if an emergency hearing is necessary.

Examples of issues that may be raised in an Order to Show Cause are: emergency custody, termination of visitation or temporary prevention of relocation of a child outside New Jersey boundaries. Non-payment of spousal support, if a family is facing immediate eviction, may be an issue for an Order to Show Cause. Non-payment of child support is NOT an issue for an Order to Show Cause.

If you wish to apply for an emergency hearing the following steps must be completed:

### **New Cases**

1. If this is your first filing of an **FD case** (no previous FD docket # concerning the same people), complete the “Initial Application/Cross Application” and all forms required for a new case.
2. If you are filing a **new complaint for divorce IFMi**, then you will need to complete the Emergent Application and the Order to Show Cause forms.
3. Check “other Relief” and write that you are requesting an emergency hearing.
4. Complete the “Emergent Application” form in its entirety. Use the “**Additional Information form**” to further explain why your case is an emergency. Sign and date both forms.

### **Reopen Cases**

5. If you already have a FD docket # involving the same people, complete the “Application/Cross Application to Modify a Court Order” form and all accompanying forms required to reopen your case. On the “Application to Modify a Court Order”, check number 6, “The relief I am seeking is not listed above”. Check “I am seeking the following from the court”. Write that you are requesting an emergent hearing.
6. If you already have a FM or FV docket # involving the same people, complete both the Emergent Application and the Order to Show Cause forms.
7. Complete the “Emergent Application” form in its entirety. Use the “**Additional Information form**” to further explain why your case is an emergency. Sign and date both forms.

Superior Court of New Jersey  
Chancery Division - Family Part

County: \_\_\_\_\_

Docket Number: F \_\_\_ - \_\_\_\_\_

CS Number: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

\_\_\_\_\_  
Defendant

Civil Action

**Emergent Application**  
(Order to Show Cause)

**Attach to AH Applications When Filing for an Order to Show Cause:**

**PI** This application is an emergency, which cannot be handled through the normal court procedures because:

Threats have been made to remove the child(ren) from the State of New Jersey which would violate the NJ Anti-removal statute, N.J.S.A. 9:2-2.

**H** Without my consent or approval, the child(ren) were removed/abducted on \_\_\_\_\_ from the State of New Jersey in violation of my parental rights and New Jersey law.

The child(ren) were not returned after a parenting time period.

The child(ren) will suffer substantial and irreparable harm unless the **Q** defendant **Q** plaintiff is immediately:

Restrained from taking the child(ren) from my custody and removing them from their current home in New Jersey.

Required to return the child(ren) to me.

Other. Explain.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other Information required for Emergent Application.

**Q** There is no other person who is a party to this matter that has physical custody of the child(ren) or claims to have custody or parenting time rights.

Other person(s) who is/are party/parties in this matter having physical custody of the child(ren) or claiming to have custody or parenting time rights include:

Names and Addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A complaint for  support  parenting time  custody has been filed on this date simultaneously with this emergent application since there is no existing court order involving the plaintiff, the defendant and the status of the child(ren) in this State or any other jurisdiction.

If my request is not granted, I believe that I and/or the child(ren) will suffer immediate and irreparable harm (damage that cannot be corrected, compensated or undone) as follows:

---

---

---

I/We certify that **all** the statements made above are true. I am aware that if **any** of the statements made by me/us are willfully false, I/we am subject to punishment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Plaintiff

Plaintiff / Cross Applicant

Defendant

Defendant / Cross Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Co-Plaintiff

Co-Plaintiff / Co-Cross Applicant

Co-Defendant

Co-Defendant / Co-Cross Applicant

\_\_\_\_\_  
 Plaintiff(s)  
 v.  
 \_\_\_\_\_  
 Defendant(s)

Superior Court of New Jersey  
 \_\_\_\_\_ **Division** - \_\_\_\_\_ **Part**  
 - Select County - \_\_\_\_\_ County  
 Docket Number \_\_\_\_\_  
 CS Number \_\_\_\_\_

**Civil Action**  
**Order to Show Cause**

THIS MATTER being brought before the Court by \_\_\_\_\_ ( plaintiff  defendant),  
 and it appearing that:

- plaintiff/defendant has received notice of this application OR
- plaintiff/defendant consents to plaintiff\*/s/defendant's application OR
- immediate and irreparable harm may result before notice can be given and a hearing held

And for good cause shown;

It is on this \_\_\_\_ **day of** \_\_\_\_\_, 20\_\_\_\_, ORDERED that  
 ( plaintiff  defendant) appear and show cause before the Superior Court at the \_\_\_\_\_ County  
 Courthouse in \_\_\_\_\_, New Jersey at \_\_\_\_ o'clock  am  pm or as soon thereafter  
 as can be heard, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, why judgment should not be entered for (set forth with  
 specificity the return date relief that the filer is seeking):

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. Granting such other relief as the court deems equitable and just.

And it is further ORDERED that pending the return date herein, the plaintiff/defendant is [temporarily]  
 restrained from:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

And it is further ORDERED that pending the return date herein, the following temporary relief shall be granted  
 to the moving party:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

And it is further ORDERED that the plaintiff/defendant may move to vacate the temporary relief in two days'  
 notice to the moving party.

And it is further ORDERED that:

1. A copy of this order to show cause, verified complaint or post-disposition application, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the  plaintiff  defendant [*personally or alternate: describe form of substituted service*] within \_\_\_ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process. **If this order to show cause is in reference to a FV docket anchor if there is a standing Restraining Order between the plaintiff and defendant in this matter, service will be conducted by the court.**
2. The plaintiff/defendant must file with the court their proof of service of the pleadings on the plaintiff/defendant no later than three (3) days before the return date. Proof of service shall include a certification which must state the method of service as well as proof of service as appropriate (he. Certified mail number).
3. Plaintiff/Defendant shall file and serve a written response to this order to show cause and proof of service by \_\_\_\_\_, 20\_\_\_. The original documents must be filed with the Family Division in the county listed above. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. **If this order to show cause is in reference to a FV docket and/or if there is a standing Restraining Order between the plaintiff and defendant in this matter, service will be conducted by the court.**
4. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than \_\_\_ days before the return date.

\_\_\_\_\_, J.S.C.

## F. DISCOVERY MOTIONS

Motions that address issues of discovery may be made at any time pending the litigation. Prior to filing a discovery motion there are special rules that apply in the family part, as well as in other civil cases. The attorney for the moving party must personally confer orally or make a good faith attempt to confer orally with the other attorney to resolve the issues raised by the motion. If the effort is unsuccessful, the moving party must certify that the effort has been made. The moving papers must also set forth the pre-trial conference date, calendar call or trial date, or state that no dates have been fixed. There is no oral argument unless the court requests oral argument two days before the motion date. Discovery motions are governed by R. 1:6-2(c).

### **1:6-2. Form of Motion; Hearing**

...

(c) Civil and Family Part Discovery and Calendar Motions. Every motion in a civil case or a case in the Chancery Division, Family Part, not governed by paragraph (b), involving any aspect of pretrial discovery or the calendar, shall be listed for disposition only if accompanied by a certification stating that the attorney for the moving party has either (1) personally conferred orally or has made a specifically described good faith attempt to confer orally with the attorney for the opposing party in order to resolve the issues raised by the motion by agreement or consent order and that such effort at resolution has been unsuccessful, or (2) advised the attorney for the opposing party by letter, after the default has occurred, that continued non-compliance with a discovery obligation will result in an appropriate motion being made without further attempt to resolve the matter. A motion to extend the time for discovery shall have annexed thereto either a copy of all prior orders granting or denying an extension of the discovery period or a certification that there have been no such prior orders. The moving papers shall also set forth the date of any scheduled pretrial conference, arbitration proceeding scheduled pursuant to R. 4:21A, calendar call or trial, or state that no such dates have been fixed. Discovery and calendar motions shall be disposed of on the papers unless, on at least two days' notice, the court specifically directs oral argument on its own motion or, in its discretion, on a party's request. A movant's request for oral argument shall be made either in the moving papers or reply; a respondent's request for oral argument shall be made in the answering papers.

...



With some limitations, discovery is broadly permitted in divorce actions. R. 5:5-2 permits interrogatories; depositions of any person, excluding family members under the age of 18; production of documents; requests for admissions and copies of documents.

### **5:5-1. Discovery**

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

- (a) Interrogatories as to all issues in all family actions may be served by any party as of course pursuant to R. 4:17.
- (b) An interrogatory requesting financial information may be answered by reference to the case information statement required by R. 5:5-2.
- (c) Depositions of any person, excluding family members under the age of 18, and including parties or experts, as of course may be taken pursuant to R. 4:11 et seq. and R. 4:10-2(d)(2) as to all matters except those relating to the elements that constitute grounds for divorce, dissolution of civil union, or termination of domestic partnership.
- (d) All other discovery in family actions shall be permitted only by leave of court for good cause shown except for production of documents (R. 4:18-1); request for admissions (R. 4:22-1); and copies of documents referred to in pleadings (R. 4:18-2) which shall be permitted as of right.
- (e) Discovery shall be completed within 90 days from the date of service of the original complaint in actions assigned to the expedited track and within 120 days from said date in actions assigned to the standard track. In actions assigned to the priority or complex track, time for completion of discovery shall be prescribed by case management order.

## A. INTERROGATORIES

R. 4:17-1(a) permits an interrogatory relating to any matter that may be required pursuant to R. 4:10-2. The interrogatory may include a request for a copy of any paper or document.

### **4:17-1. Service, Scope of Interrogatories**

(a) Generally. Any party may serve upon any other party written interrogatories relating to any matters which may be inquired into under R. 4:10-2. The interrogatories may include a request, at the propounder's expense, for a copy of any paper.

(b) Uniform Interrogatories in Certain Actions.

(1) Limitations on Interrogatories. In all actions seeking recovery for property damage to automobiles and in all personal injury cases other than wrongful death, toxic torts, cases involving issues of professional malpractice other than medical malpractice, and those products liability cases either involving pharmaceuticals or giving rise to a toxic tort claim, the parties shall be limited to the interrogatories prescribed by Forms A, B and C of Appendix II, as appropriate, provided, however, that each party may propound ten supplemental questions, without subparts, without leave of court. Any additional interrogatories shall be permitted only by the court in its discretion on motion.

(2) Automatic Service of Uniform Interrogatories. A party defendant served with a complaint in an action subject to uniform interrogatories as prescribed by subparagraph b(1) of this rule shall be deemed to have been simultaneously served with such interrogatories. The defendant shall serve answers to the appropriate uniform interrogatories within 60 days after service by that defendant of the answer to the complaint. The plaintiff in such an action shall be deemed to have been served with uniform interrogatories simultaneously with service of defendant's answer to the complaint and shall serve answers to the interrogatories within 30 days after service of the answer to the complaint. In all actions commenced prior to September 5, 2000, however, answers to uniform interrogatories shall be demanded by letter of demand served upon all adverse parties within the time prescribed by R. 4:17-2, and answers shall be served within the time prescribed by R. 4:17-4(b).

(3) Claims of Privilege, Protection. Privileged information need not be disclosed provided the claim of privilege is made pursuant to R. 4:10-2(e). Nor need information be disclosed if it is the subject of an identified protective order issued pursuant to R. 4:10-3.

(4) Obligation to Answer Every Question. Except as otherwise provided in subparagraph (b)(3) of this rule, every question propounded by a uniform interrogatory must be answered unless the court has otherwise ordered.

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

_____	:	SUPERIOR COURT OF NEW JERSEY
JOHN SMITH,	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	INTERROGATORIES
_____	:	

TO: LARRY LAWYER, ESQ.  
 LAW OFFICES OF LAWYER, LLC  
 PO Box 1000  
 50 Jefferson Street  
 Morristown, NJ 07963

**DEMAND** is hereby made by the **Plaintiff** of the **Defendant** for answers, under oath or certification, to the following Interrogatories within the time and in the manner prescribed by the rules of this Court.

**NOTE:** Questions concerning marriage, children and marital offenses are with relation to other party to this suit, unless otherwise indicated.

State your full name, age, residence and post office address, home telephone number, Social Security number and present military status.

1. State your residence address from the time commencing three years prior to the date of the marital offense or cause of action charged in the complaint up to the present time, indicating periods of residence at each address.
2. State the names, birth dates and present addresses of all children born of or adopted during this marriage, indicating who has custody of each dependent child; whether any dependent child is in need of unusual or extraordinary medical or mental care or has special

financial needs and whether any dependent child has made known or otherwise indicated a preference as to custody and rights of visitation.

3. If there were any previous proceedings with reference to this marriage or its dissolution, or support and maintenance of either spouse and of any dependent children of this marriage or their custody and rights of visitation, state (a) date (b) Court (c) names and addresses of attorneys for each party (d) nature of determination or other results of each proceeding.
4. With reference to any other marriage by you, state (a) date and place thereof (b) name of your spouse (c) names, ages and addresses of who has custody of any dependent children thereof (d) date, place and reason or cause of termination or dissolution thereof.
5. State the names, addresses and telephone numbers of your employers; the hours and rate of pay or earnings; your position, gross average weekly salary, wages, commissions and overtime pay; any bonuses, gratuities, expense and drawing accounts and allowances for transportation and other accommodations and expenses; all pensions, stock-purchase options, retirements plans, insurance, profit-sharing or other benefit plans. If there is a contract of employment, state the terms thereof or, if in writing, attach a copy hereto.
6. If you are self-employed, employed by a business in which you have a financial interest or conduct business or a profession as a sole proprietor, partner or corporation, state (a) which it is (b) the nature thereof (c) the name, address and telephone number thereof. If a partnership, list the names and addresses of all partners and the extent of their interest therein. If a corporation, list the names and addresses of all directors, officers and shareholders, the extent of their shareholdings and the relationship to you of all partners, shareholders, directors and officers.
7. With reference to the business listed in number 7, set forth in detail the same information as asked in number 6.
8. State the extent, type and location of all books, papers, records and other financial statements known to you that reflect your income or assets for the last three years, or the income or assets of any business set forth in answer to number 7, including the location thereof, the name of the person in charge thereof and the name and address of any accountants whose services were used.
9. State (a) your average weekly take home pay (b) itemize all deductions taken from your gross earnings or other emoluments, including but not limited to taxes, insurance, savings or loans. As to each of your federal income tax returns for the last three years, state (c) gross income and sources thereof (d) net taxable income. Attach copies of the returns hereto.

10. If there is a wage execution or order to pay out of income earnings, state how much is taken from your earnings each week for whose benefit and the balance due.
11. Itemize all income, benefits and other emoluments from any and all sources not already included in your answers to any preceding questions, such as, but not limited to pensions, annuities, inheritances, retirement plans, Social Security benefits, lottery prizes, bank interest, dividends, etc., showing the source, amount and frequency of each.
12. If you own or have any interest in an automobile, truck, camper, mobile home, motorcycle, boat, airplane or vehicle of any nature, household goods, furniture, jewelry, furs and other things of value, identify each and your interest therein, stating the make, model, year, price paid, present value, location and the name and address of any co-owners.
13. State the nature of any lien or security interest to which any of the items listed by you in your answer to number 13 are subject, indicating the name and address of the holder thereof, the holder's relationship to you, the amount and frequency of payments you make thereon and the balance due.
14. Itemize all bank and savings and loan association accounts, time deposits, certificates of deposit, savings clubs and checking accounts in your name or in which you have an interest, showing the name and address of each depository, the present balance therein, the name and address to which each is registered and the present location and custodian of the deposit books or certificates.
15. If you have a safe deposit box, state where it is located, in whose name it is registered, its contents and who has access to it.
16. Itemize all shares of stock, securities, bonds, mortgages and other investments, other than real estate, in your name or in which you have an interest, identifying each, showing where and in whose name they are registered, their market value, the amount of dividends or other income paid by you, and the present location and custodian of all certificates or evidence of such investments.
17. As to all real estate which you own or in which you have any interest, state (a) location, type of property and deed references (b) date of purchase and price paid (c) name and address of all co-owners and the amount of their interest (d) amount of mortgages thereon, the balance due thereon and the name and address of the mortgagee (e) if income property, name all tenants or occupants and annual rent paid by each (f) itemize operating expenses, including but not limited to taxes, mortgage payments, insurance, heating fuel, water and other utilities.

18. Set forth, in detail, all assets owned by you within the last three years that are not listed as present assets in your answers to numbers 13 to 18. State how the asset was sold, transferred or otherwise disposed of, the date of transfer, the consideration received and the disposition of the proceeds thereof.
19. Set forth, in detail, any and all debts or outstanding obligations owed by you and to you. Attach copies of all relevant documents, including the full history of how and why each debt was incurred and the disposition of all funds received. Include all claims for damages of any nature, including personal injury or property damage.
20. List all life insurance policies in which you are the insured or beneficiary, showing for each policy (a) name of company, face amount and policy number (b) name of insured, beneficiary and relationship to you (c) annual premiums and who pays them (d) present cash surrender value.
21. List any and all property or thing of value you hold in trust for anyone, or which is held in trust for your benefit, showing (a) nature of the property regarding its location and custodian (b) present value and original cost of each (c) name and address of each beneficiary and the person's relationship to you (d) the conditions or terms of the trust (e) how such property was acquired and who paid the consideration.
22. Attach a full and complete budget of your expenses on a monthly basis. Include the names of all persons who reside with you, their relationship to you, the amount (if any) of their financial contributions toward your monthly living expenses and extent to which you contribute to their expenses.
23. If you contribute to anyone's support or welfare, list (a) the name and address of those whom you support (b) their relationship to you (c) amount and frequency of support payments (d) whether voluntary or by court order (e) name and address of court and every attorney involved.
24. If you are presently unemployed, either permanently or temporarily, state (a) commencement date (b) reason therefore (c) when you expect to return to employment (d) name and address of last employer (e) amount of sick pay, worker's compensation awards, disability, unemployment or insurance benefits (f) amount of any other judgments or settlements resulting from any claim by you for injuries causing your unemployment.
25. State what counsel fees and costs you have paid or agree to pay for services rendered in this action.

26. State the names and addresses of all persons who were witnesses to or have knowledge or information of any relevant facts relating to this action or who possess proof of the incidents or acts involved, their relationship to you and indicate which were eyewitnesses. Provide a statement or summary of the knowledge possessed by each person. Attach copies of all written statements and summaries of all oral statements.
27. State the names, addresses and area of expertise of any and all proposed expert witnesses and annex true copies of all written reports rendered to you by any such proposed expert witnesses. If a report is not written, supply a summary of any oral report rendered to you.

### **CERTIFICATION**

*I, Defendant, Mary Smith, hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

*I, Defendant, Mary Smith, hereby certify that the copies of the documents annexed hereto are exact copies of the entire document or documents; that the existence of other documents are unknown to me; and if such become later known or available, I shall serve them promptly upon the propounding party.*

Dated:

---

Mary Smith

Initial interrogatories must be served within 40 days after the expiration of the time allowed for service of the last permissible pleading.

#### **4:17-2. Time to Serve Interrogatories**

Interrogatories may, without leave of court, be served upon the plaintiff or answers demanded pursuant to R. 4:17-1(b) after commencement of the action and served upon or demanded from any other party with or after service of the summons and complaint upon that party. Except as provided in R. 4:17-1(b)(2), initial interrogatories shall be served by plaintiff as to each defendant within 40 days after service of that defendant's answer and each defendant shall serve initial interrogatories within said 40-day period.

An original and two copies of the interrogatories must be served.

Interrogatories must be answered within 60 days of being served. Only the answer to the interrogatories must be supplied to the propounder, who must serve copies on all other parties. Experts' reports are required to be annexed to the interrogatory answers if requested.

#### **4:17-4. Form, Service and Time of Answers**

(a) Form of Answers; By Whom Answered. Except as otherwise provided in this rule, interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if a public or private corporation, a partnership or association, or governmental agency, by an officer or agent who shall furnish all information available to the party. If a party is unavailable, the interrogatories may be answered by an agent or authorized representative, including a liability carrier who is conducting the defense, whose answers shall bind the party. The party shall furnish all information available to the party and the party's agents, employees, and attorneys. The person answering the interrogatories shall designate which of such information is not within the answerer's personal knowledge and as to that information shall state the name and address of every person from whom it was received, or, if the source of the information is documentary, a full description including the location thereof. Each question shall be answered separately, fully and responsively either in the space following the question or on separate pages. Except as otherwise provided by paragraph (d) of this rule, if in any interrogatory a copy of a paper is requested, the copy shall be annexed to the answer. If the interrogatory requests the name of an expert or treating physician of the answering party or a copy of the expert's or treating physician's report, the party shall comply with the requirements of paragraph (e) of this rule.



(b) Service of Answers; Time; Enlargement of Time. Except as otherwise provided by R. 4:17-1(b)(2), the party served with interrogatories shall serve answers thereto upon the party propounding them within 60 days after being served with the interrogatories. For good cause shown the court may enlarge or shorten such time upon motion on notice made within the 60-day period. Consent orders enlarging the time are prohibited.

(c) Copies; Service by Propounding Party. The original of the answers shall be served upon the propounding party, who shall then serve a copy of the interrogatories and answers upon each of the other parties. Parties against whom default has been entered need not, however, be served, and parties represented by the same attorney need be served with one copy.

(d) Option to Produce Business Records. When the answer to an interrogatory may be derived or ascertained from or requires annexation of copies of the business records of the party on whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation abstract or summary based thereon, or from electronically stored information, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(e) Expert's or Treating Physician's Names and Reports. If an interrogatory requires a copy of the report of an expert witness or treating or examining physician as set forth in R. 4:10-2(d)(1), the answering party shall annex to the interrogatory an exact copy of the entire report or reports rendered by the expert or physician. The report shall contain a complete statement of that person's opinions and the basis therefor; the facts and data considered in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and whether compensation has been or is to be paid for the report and testimony and, if so, the terms of the compensation. If the answer to an interrogatory requesting the name and report of the party's expert or treating physician indicates that the same will be supplied thereafter, the propounder may, on notice, move for an order of the court fixing a day certain for the furnishing of that information by the answering party. Such order may further provide that an expert or treating physician whose name or report is not so furnished shall not be permitted to testify at trial. Except as herein provided, the communications between counsel and expert deemed trial preparation materials pursuant to R. 4:10-2(d)(1) may not be inquired into.

Objections to interrogatories are governed by R. 4:17-5. A party upon whom interrogatories are served may object to a question as improper by stating “the question is improper,” or may move to strike the question within 20 days. The propounder of the question may move within 20 days after being served with the answers and serve a motion to compel an answer. In lieu of providing copies of all documents, the answering party may invite the propounder to inspect documents at a designated time and place.

Frivolous interrogatories or interrogatories designed solely for the purpose of delay or harassment may lead to a motion for counsel fees.

#### **4:17-5. Objections to Interrogatories**

(a) Objections to Questions; Motions. A party upon whom interrogatories are served who objects to any questions propounded therein may either answer the question by stating “The question is improper” or may, within 20 days after being served with the interrogatories, serve a notice of motion, to be brought on for hearing at the earliest possible time, to strike any question, setting out the grounds of objection. The answering party shall make timely answer, however, to all questions to which no objection is made. Interrogatories not stricken shall be answered within such unexpired period of the 60 days prescribed by R. 4:17-4(b) as remained when the notice of motion was served or within such time as the court directs. The propounder of a question answered by a statement that it is improper may, within 20 days after being served with the answers, serve a notice of motion to compel an answer to the question, and, if granted, the question shall be answered within such time as the court directs.

(b) Objections to Request for Copies of Papers. A party served with interrogatories requesting copies of papers who objects to the furnishing thereof shall, in lieu of complying with the request, either state with specificity the reasons for noncompliance or invite the propounder to inspect and copy the papers at a designated time and place. The propounder of a request for a copy of a paper which is not complied with, may, within 20 days after being served with the answers, serve a notice of motion directing compliance with the request or for other appropriate relief.

(c) Interrogatory Motions; Form. Motions to strike interrogatories or to compel more specific answers thereto shall include a short statement of the nature of the action and shall have annexed thereto the text of the questions and answers, if any, objected to.

(d) Costs and Fees on Motion. If the court finds that a motion made pursuant to this rule was made frivolously or for the purpose of delay or was necessitated by action of the adverse party that was frivolous or taken for the

purpose of delay, the court may order the offending party to pay the amount of reasonable expenses, including attorney's fees, incurred by the other party in making or resisting the motion.

#### **4:17-6. Limitation of Interrogatories**

Except as otherwise provided by R. 4:17-1(b), the number of interrogatories or of sets of interrogatories to be served is not limited except as required to protect the party from annoyance, expense, embarrassment, or oppression. The party to whom interrogatories are propounded may apply for a protective order in accordance with R. 4:10-3.

#### **4:17-7. Amendment of Answers**

Except as otherwise provided by R. 4:17-4(e), if a party who has furnished answers to interrogatories thereafter obtains information that renders such answers incomplete or inaccurate, amended answers shall be served not later than 20 days prior to the end of the discovery period, as fixed by the track assignment or subsequent order. Amendments may be allowed thereafter only if the party seeking to amend certifies therein that the information requiring the amendment was not reasonably available or discoverable by the exercise of due diligence prior to the discovery end date. In the absence of said certification, the late amendment shall be disregarded by the court and adverse parties. Any challenge to the certification of due diligence will be deemed waived unless brought by way of motion on notice filed and served within 20 days after service of the amendment. Objections made thereafter shall not be entertained by the court. All amendments to answers to interrogatories shall be binding on the party submitting them. A certification of the amendments shall be furnished promptly to any other party so requesting.

Interrogatories must be amended as discovery continues. Amended answers shall be served not later than 20 days prior to the first date fixed for trial. Amendments will not be allowed at trial if it appears that the evidence sought to be introduced was known to the party more than 10 days prior to trial. This is an important rule, because it may lead to the exclusion of otherwise admissible and important evidence.

## **B. NOTICE TO PRODUCE DOCUMENTS**

R. 4:18-1 permits a party to serve upon another party a request for the production of documents. The other party has 30 days after service of the request to respond, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. This rule does not permit the requesting party to serve a notice to produce documents upon a non-party. A non-party may only be required to produce documents pursuant to R. 4:14-7(c) and in conjunction with a subpoena and deposition.

### **4:18-1. Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes; Pre-Litigation Discovery**

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on behalf of that party, to inspect, copy, test, or sample any designated documents (including writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, by the respondent into reasonably usable form), or to inspect, copy, test, or sample any designated tangible things that constitute or contain matters within the scope of R. 4:10-2 and that are in the possession, custody or control of the party on whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party on whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of R. 4:10-2.

(b) Procedure; Continuing Obligation; Failure to Respond; Objections; Motions.

(1) Procedure for Request. The request may, without leave of court, be served on the plaintiff after commencement of the action and on any other party with or after service of the summons and complaint on that party. A copy of the request shall also be simultaneously served on all other parties to the action. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(2) Procedure for Response. The party on whom the request is served shall serve a written response within 35 days after the service of the request, except

that a defendant may serve a response within 50 days after service of the summons and complaint on that defendant. On motion, the court may allow a shorter or longer time. The written response shall be made by the party upon whom it is served if an individual, or, if a governmental, commercial, or charitable entity, by an officer or agent thereof. The person making the response shall swear or certify in the form prescribed by paragraph (c) of this rule that it is complete and accurate based on personal knowledge and/or upon information if provided by others, whose identity and source of knowledge shall be disclosed. The written response shall be served on the requesting party and a copy on all other parties. The written response shall either include the requested documents or other material or state, with respect to each item or category, that inspection and related activities will be permitted as requested. If the written response provides documents to the requesting party, those documents shall be provided to or made available to any other party upon request.

Unless the parties otherwise agree, or the court otherwise orders:

(A) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

(B) if a request does not specify the form or forms for producing electronically stored information, a responding party shall produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(C) a party need not produce the same electronically stored information in more than one form.

(3) Continuing Obligation. If a party who has furnished a written response to a request to produce or who has supplied documents in response to a request to produce thereafter obtains additional documents that are responsive to the request, a supplemental written response and production of such documents, as appropriate, shall be served promptly.

(4) Objections; Failure to Respond; Motions. General objections to the request as a whole are not permitted and shall be disregarded by the court and adverse parties. The party upon whom the request is served may, however, object to a request on specific grounds and, if on the ground of privilege or accessibility of electronically stored information, the objection shall be made in accordance with R. 4:10-2(e) and (f) respectively. The requesting party may move for an order of dismissal or suppression or an order to compel pursuant to R. 4:23-5 with respect to any objection to or other failure to respond to the request or any part thereof or any failure to permit inspection as requested. The provisions of R. 4:23-1(c) apply to the award of expenses incurred in relation to motions made pursuant to this rule.

(c) Certification or Affidavit of Completeness. The person responding to the request shall submit with the response a certification stating or affidavit averring as follows:

I hereby certify (or aver) that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to the request. I further certify (or aver) that as of this date, to the best of my knowledge and information, the production is complete and accurate based on ( ) my personal knowledge and/or ( ) information provided by others. I acknowledge my continuing obligation to make a good faith effort to identify additional documents that are responsive to the request and to promptly serve a supplemental written response and production of such documents, as appropriate, as I become aware of them. The following is a list of the identity and source of knowledge of those who provided information to me:

(d) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. Pre-litigation discovery within the scope of this rule may also be sought by petition pursuant to R. 4:11-1.

Mark Gruber, Esq./ID#021201976  
Filing Attorney, Esq./ID# \_\_\_\_\_  
GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
41 Lakeside Boulevard  
Hopatcong, NJ 07843  
973-398-7500/fax 973-398-5579  
Attorneys for Plaintiff

---

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	NOTICE TO PRODUCE
	:	PURSUANT TO <u>R. 4:18</u>

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TO: LARRY LAWYER, ESQ.  
LAW OFFICES OF LAWYER, LLC  
PO Box 1000  
50 Jefferson Street  
Morristown, NJ 07963

**PLEASE TAKE NOTICE** that pursuant to R. 5:5-1(d) and R. 4: 18-1, request is hereby made by the Plaintiff, **John Smith**, of the Defendant, **Mary Smith**, for the production, inspection and copying of the following documents on **Tuesday, December 27, 2019**, at the office of Gruber, Colabella, Liuzza, Thompson & Hiben, located at 41 Lakeside Boulevard, Hopatcong, New Jersey 07843.

**PLEASE TAKE FURTHER NOTICE** that, each response must contain a listing of each document provided as well as a clear statement as to which numbered demand to each document is being provided for.

**PLEASE TAKE FURTHER NOTICE** that, this demand is to be deemed continuing and the party upon whom this request is made shall be obligated to supplement and amend the responses hereto up to and including the time of trial in accordance with the Rules of the Court.

Failure to comply with this Demand may subject you and the above-named party to this action to such sanctions as the Rules of this Court may allow and the Court shall direct.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorney for Plaintiff

Dated: November 26, 2019

BY: \_\_\_\_\_  
Mark Gruber, Esq.

1. All personal checking account records for all accounts maintained by you, or on your behalf, during the last three calendar years, including all canceled checks, check registers and monthly bank statements.
2. All records of all savings accounts maintained by you or in your behalf, or jointly maintained by you and your spouse and/or children born of the marriage, or maintained in trust for you or the children, including all passbooks, canceled or current, for the last three years.
3. Photocopies of all credit card statements, revolving charge cards, or other statements of indebtedness incurred by you or on your behalf for the last three years.
4. All stock certificates brokers' account statements, etc., in possession or maintained by you for the last three years.
5. Proof of all expenditures for all home maintenance paid by you in the last three years.
6. Copies of all telephone bills for the last year.
7. Federal and state income tax returns filed by you for the last 10 years (personal and business).
8. Proof of current salary, current income and current earnings for the last three years, including all paychecks, evidence and proof of all ancillary employment and benefits, reimbursements, pension and profit-sharing benefits, and current statement concerning value and amount of the same.
9. Copies of any and all insurance policies owned equitably or legally by you as well as proof of current value of the same.
10. Proof of any and all debts owned jointly or severally by you and your spouse and proof of any and all other indebtedness of Plaintiff and spouse as surety or guarantor.
11. All bank books and savings accounts, time deposits, certificates of deposit, and all other negotiable instruments in which you have any interest, direct or indirect, equitable or legal, and of value of same.
12. Proof of all current expenses, personal and business.
13. Proof of all assets owned by you, legally, equitably, directly or indirectly, in whole or in part at the time of the marriage of the within parties.



14. Proof as to all sources of all funds used for the purchase of all assets owned by the parties during the marriage.
15. Evidence of all debts owed by you and/or your spouse to all banks and institutions.
16. Evidence of disposition of any and all monies or assets received for any and all debts owed by you or your spouse.
17. All information and proof of all property claimed not to be subject to equitable distribution.
18. All information and/or evidence of value of all property claimed by you to be subject to equitable distribution.
19. Copies of any and all contracts, loan applications, lease applications, business or personal, entered into by you in the last three years.
20. All books and records of any business maintained by you for the last three years.
21. A detailed statement by your employer concerning the value, present value, regulations and/or other information concerning pensions, retirement plans, or profit sharing.
22. All accounts, deposits, wills, trusts, and other evidence of inheritance received by you.
23. Other.

## CERTIFICATION

*I, Defendant, Mary Smith, hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.*

*I, Defendant, Mary Smith, hereby certify that the copies of the documents annexed hereto are exact copies of the entire document or documents; that the existence of other documents are unknown to me; and if such become later known or available, I shall serve them promptly upon the propounding party.*

Dated:

\_\_\_\_\_  
Mary Smith

## C. DEPOSITIONS

Depositions may be taken upon 10 days' notice to a party or a subpoena to a non-party. A party may also be requested to produce documents at the taking of the deposition. Depositions are governed by the following rules.

### **4:14-1. When Depositions May Be Taken**

Except as otherwise provided by R. 4:14-9(a), after commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 35 days after service of the summons and complaint upon the defendant by any manner, except that leave is not required if the defendant has already served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in R. 4:14-7. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

### **4:14-2. Notice of Examination; General Requirements; Deposition of Organization**

(a) Notice. Except as otherwise provided by R. 4:14-9(b), a party desiring to take the deposition of any person upon oral examination shall give not less than 10 days' notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition, which shall be reasonably convenient for all parties, and the name and address of each person to be examined, if known, and, if the name is not known a general description sufficient to identify the person or the particular class or group to which the person belongs. If a defendant fails to appear or answer in any civil action within the time prescribed by these rules, depositions may be taken without notice to that defendant.

(b) Time. The court may for cause shown enlarge or shorten the time for taking the deposition.

(c) Organizations. A party may in the notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth for each person designated the matters on which testimony will be given. The person so designated shall testify as to matters known or reasonably available to the organization.

(d) Production of Things. The notice to a party deponent may be accompanied by a request made in compliance with and in accordance with the procedure stated in R. 4:18-1 for the production of documents and tangible things at the taking of the deposition.

#### **4:14-6. Certification and Filing by Officer; Exhibits; Copies**

(a) Certification and Filing. The officer shall certify on the deposition that the witness was duly sworn and that the deposition was a true record of the testimony. The officer shall then promptly file with the deputy clerk of the Superior Court in the county of venue a statement captioned in the cause setting forth the date on which the deposition was taken, the name and address of the witness, and the name and address of the reporter from whom a transcript of the deposition may be obtained by payment of the prescribed fee. The reporter shall furnish the party taking the deposition with the original and a copy thereof. Depositions shall not be filed unless the court so orders on its or a party's motion. The original deposition shall, however, be made available to the judge to whom any proceeding in the matter has been assigned for disposition at the time of the hearing or as the judge may otherwise request. Filed depositions shall be returned by the court to the party taking the deposition after the termination of the action. A videotaped deposition shall be sealed and filed in accordance with R. 4:14-9(d).

(b) Documentary Evidence. Documentary evidence exhibited before the officer or exhibits proved or identified by the witness, may be annexed to and returned with the deposition; or the officer shall, if requested by the party producing the documentary evidence or exhibit, mark it as an exhibit in the action, and return it to the party offering the same, and the same shall be received in evidence as if annexed to and returned with the deposition.

(c) Copies. The party taking the deposition shall bear the cost thereof and of promptly furnishing a copy of the transcript to the witness deposed, if an adverse party, and if not, to any adverse party. The copy so furnished shall be made available to all other parties for their inspection and copying. Copies of videotaped depositions shall be made and furnished in accordance with R. 4:14-9(d).

#### **4:14-7. Subpoena for Taking Depositions**

(a) Form; Contents; Scope. The attendance of a witness at the taking of depositions may be compelled by subpoena, issued and served as prescribed by R. 1:9 insofar as applicable, and subject to the protective provisions of R. 1:9-2 and R. 4:10-3. The subpoena may command the person to whom it is directed to produce designated books, papers, documents or other objects which constitute or contain evidence relating to all matters within the scope of examination permitted by R. 4:10-2.

(b) Time and Place of Examination by Subpoena; Witness' Expenses.

(1) Fact Witnesses. A resident of this State subpoenaed for the taking of a deposition may be required to attend an examination only at a reasonably convenient time and only (A) in the county of this State in which he or she resides, is employed or transacts business in person; or (B) at a location in New Jersey within 20 miles from the witness's residence or place of business; or (C) at such other convenient place fixed by court order. A nonresident of this State subpoenaed within this State may be required to attend only at a reasonably convenient time and only in the county in which he or she is served, at a place within this State not more than 40 miles from the place of service, or at such other convenient place fixed by court order. The party subpoenaing a witness, other than one subject to deposition on notice, shall reimburse the witness for the out-of-pocket expenses and loss of pay, if any, incurred in attending at the taking of depositions.

(2) Expert Witnesses and Treating Physicians. If the expert or treating physician resides or works in New Jersey, but the deposition is taken at a place other than the witness' residence or place of business, the party taking the deposition shall pay for the witness' travel time and expenses, unless otherwise ordered by the court. If the expert or treating physician does not reside or work in New Jersey, the proponent of the witness shall either (A) produce the witness, at the proponent's expense, in the county in which the action is pending or at such other place in New Jersey upon which all parties shall agree, or (B) pay all reasonable travel and lodging expenses incurred by all parties in attending the witness' out-of-state deposition, unless otherwise ordered by the court.

(c) Notice; Limitations. A subpoena commanding a person to produce evidence for discovery purposes may be issued only to a person whose attendance at a designated time and place for the taking of a deposition is simultaneously compelled. The subpoena shall state that the subpoenaed evidence shall not be produced or released until the date specified for the taking of the deposition and that if the deponent is notified that a motion to quash the subpoena has been filed, the deponent shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by all parties to the action. The subpoena shall be simultaneously served no less than 10 days prior to the date therein scheduled on the witness and on all parties, who shall have the right at the taking of the deposition to inspect and copy the subpoenaed evidence produced. If evidence is produced by a subpoenaed witness who does not attend the taking of the deposition, the parties to whom the evidence is so furnished shall forthwith provide notice to all other parties of the receipt thereof and of its specific nature and contents, and shall make it available to all other parties for inspection and copying.

Only objections as to form, privilege, confidentiality, or as directed by court order can be asserted at the time of deposition. Other grounds of objection are reserved. Objections must state the reason not to permit the interrogation or amend the question. The objection cannot suggest the answer. Nor does the attorney for the deponent have the right to discuss answers or give advice to the deponent after swearing in, except regarding privilege or confidentiality.

**4:14-3. Examination and Cross-Examination; Record of Examination; Oath; Objections**

(a) Examination and Cross-Examination. Examination and cross-examination of deponents may proceed as permitted in the trial of actions in open court, but the cross-examination need not be limited to the subject matter of the examination in chief.

(b) Oath; Record. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be recorded and transcribed on a typewriter unless the parties agree otherwise.

(c) Objections. No objection shall be made during the taking of a deposition except those addressed to the form of a question or to assert a privilege, a right to confidentiality or a limitation pursuant to a previously entered court order. The right to object on other grounds is preserved and may be asserted at the time the deposition testimony is proffered at trial. An objection to the form of a question shall include a statement by the objector as to why the form is objectionable so as to allow the interrogator to amend the question. No objection shall be expressed in language that suggests an answer to the deponent. Subject to R. 4:14-4, an attorney shall not instruct a witness not to answer a question unless the basis of the objection is privilege, a right to confidentiality or a limitation pursuant to a previously entered court order. All objections made at the time of the examination to the qualifications of the officer taking the deposition or the person recording it, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidential objections to a videotaped deposition of a treating physician or expert witness which is taken for use in lieu of trial testimony shall be made and proceeded upon in accordance with R. 4:14-9(f).

(d) No Adjournment. Except as otherwise provided by R. 4:14-4 and R. 4:23-1(a) all depositions shall be taken continuously and without adjournment unless the court otherwise orders or the parties and the deponent stipulate otherwise.

(e) Written Questions. In lieu of participating in an oral examination, parties may serve written questions in a sealed envelope on the party taking

the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(f) Consultation With the Deponent. Once the deponent has been sworn, there shall be no communication between the deponent and counsel during the course of the deposition while testimony is being taken except with regard to the assertion of a claim of privilege, a right to confidentiality or a limitation pursuant to a previously entered court order.

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## SIGNIFICANT CASES

***Crescenzo v. Crane*, 350 N.J. Super. 531 (App. Div. 2002), cert. denied, 174 N.J. 364**

Where an attorney failed to properly follow R. 4:14-7(c), which requires a subpoena and a deposition on a third party for production of documents, notice to adversary, and the limitations of the statute, the attorney and the doctor who released privileged information are liable for damages.

***Welch v. Welch*, 401 N.J. Super. 438 (Ch. Div. 2008); affirmed in part; reversed in part by *Welch v. Welch*, 401 N.J. Super. 438 (2010)**

A subpoena of police records post-judgment may only be issued if the court orders so and an attorney may not issue a subpoena upon a third party post-judgment until such time there is an order to do so. The police records in this case were not admitted and attorney's fees were assessed.

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Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	
<i>Defendant.</i>	:	NOTICE TO TAKE ORAL DEPOSITION
	:	AND PRODUCTION OF DOCUMENTS

TO: LARRY LAWYER, ESQ.  
 LAW OFFICES OF LAWYER, LLC  
 PO Box 1000  
 50 Jefferson Street  
 Morristown, NJ 07963

PLEASE TAKE NOTICE that, in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before Taylor & Friedberg, Certified Shorthand Reporters, of the State of New Jersey, or a person authorized by the laws of the State of New Jersey to administer oaths on **January 27, 2020, at 9:30 a.m.** at the offices of Gruber, Colabella, Liuzza, Thompson & Hiben, located at 41 Lakeside Boulevard, Hopatcong, New Jersey, with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following person(s) whose testimony is to be taken:

**MARY SMITH**

PLEASE TAKE FURTHER NOTICE that, the deposition shall continue on the date stated aforesaid and on any adjourned date thereof, and from day to day thereafter until completed, pursuant to R. 4:14-2(c).



**PLEASE TAKE FURTHER NOTICE** that, pursuant to R. 4:14-2 and R. 4:18-1 of the Rules of Civil Practice and Procedure, the deponent is to bring with her and produce at the aforesaid time and place, legible copies of the documents requested in the Notice to Produce dated August 26, 2011, a copy of which is attached (OMITTED), as well as all bank statements for the Sussex Bank Account No. \_\_\_\_\_ from 2006 to present.

Failure to comply with this demand may subject you and the above-named party to this action to such sanctions as the Rules of this Court may allow and the Court shall direct.

Dated: December 27, 2019

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorney for Plaintiff**

Dated: December 27, 2019

BY: \_\_\_\_\_  
Mark Gruber, Esq.

cc: Taylor & Friedberg  
**Certified Shorthand Reporters**  
60 Washington Street  
Morristown, NJ 07960

Mark Gruber, Esq./ID # \_\_\_\_\_  
Filing Attorney, Esq./ID # \_\_\_\_\_  
**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**  
41 Lakeside Boulevard  
Hopatcong, New Jersey 07843  
Tel. No. (973) 398-7500  
Attorneys for Plaintiff

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<b>JOHN SMITH,</b>	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION:FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<b><u>CIVIL ACTION</u></b>
<b>MARY SMITH,</b>	:	
	:	<b>NOTICE TO TAKE ORAL DEPOSITIONS</b>
<i>Defendant.</i>	:	<b>AND FOR</b>
	:	<b>PRODUCTION OF DOCUMENTS</b>

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**TO: Larry Lawyer, Esq.**  
**Law Offices of Lawyer, LLC**  
P.O. Box 1000  
50 Jefferson Street  
Morristown, NJ 07963

**PLEASE TAKE NOTICE** that in accordance with the Rules of Civil Practice and Procedure, R. 4:14-1, testimony will be taken by deposition upon oral examination before Taylor & Friedberg, Certified Shorthand Reporters of the State of New Jersey, or other person authorized by the laws of the State of New Jersey, to administer oaths on **Tuesday, February 22, 2022 at 1:30 p.m.** via Zoom, hosted by Taylor & Friedberg Certified Shorthand Reporters, who will send you a Zoom invitation, with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following person(s) whose testimony is to be taken:

**MARY SMITH**

**PLEASE TAKE FURTHER NOTICE**, that the deposition shall continue on the date stated aforesaid and on any adjourned date thereof, and from day to day thereafter until completed, pursuant to R. 4:14-2(c).

**PLEASE TAKE FURTHER NOTICE**, that pursuant to R. 4:14-2 and R. 4:18-1 of the Rules of Civil Practice and Procedure, the deponent is to bring with her and produce at the aforesaid time and place, legible copies of the documents requested in the attached Notice to Produce Documents (omitted) as well as all bank statements for the Sussex Bank Account No. \_\_\_\_\_ from 2016 to present.

**PLEASE TAKE FURTHER NOTICE** attorneys will be sent a Zoom invitation and will be responsible for forwarding the invitation to their client.

**Appearances will be conducted virtually. You will be provided a link to upload the requested documents. Recording of the Zoom deposition is prohibited by Court Rule.**

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**  
Attorney for Plaintiff

Dated:

By: \_\_\_\_\_  
**Mark Gruber, Esq.**

cc: John Smith  
Taylor & Friedberg

Mark Gruber, Esq./ID#021201976  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
 GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

JOHN SMITH,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
MARY SMITH,	:	
	:	SUBPOENA DUCES TECUM/NOTICE OF
<i>Defendant.</i>	:	DEPOSITION AND PRODUCTION OF
	:	DOCUMENTS BY A NON-PARTY

THE STATE OF NEW JERSEY TO: MARVIN MORAL  
 1234 Duty Street  
 Comply, NJ 07811

PLEASE TAKE NOTICE that, in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before Taylor & Friedberg, Certified Shorthand Reporters, of the State of New Jersey, or a person authorized by the laws of the State of New Jersey to administer oaths on **January 27, 2020, at 9:30 a.m.** at the offices of Gruber, Colabella, Liuzza, Thompson & Hiben located at 41 Lakeside Boulevard, Hopatcong, New Jersey, with respect to all matters relevant to the subject matter involved in this action, at which time and place you bring with you and produce the following:

1. Your checking account check registers for the past two years;
2. Copies of cancelled checks for the past two years;
3. Copies of statements of any checking accounts or savings accounts that you possess for the past two years;
4. Copies of credit cards in your name with others for the past two years;

5. Copies of any leases that you may have had on residences that you have resided at for the past five years;
6. Proof of any payments or gifts made to you by \_\_\_\_\_ in the last three years;
7. Proof of any money spent by Mary Smith on you in the past three years.

**PLEASE TAKE FURTHER NOTICE** that this demand is to be deemed continuing and the party upon whom this request is made shall be obligated to supplement and amend the responses hereto up to and including the time of trial in accordance with the Rules of Court.

The subpoenaed evidence shall not be produced or released until the date specified herein. If you are notified that a motion to quash the Subpoena has been filed, you shall not produce or release the subpoenaed evidence until ordered to do so by the Court or the release is consented to by all parties to the action.

Failure to comply with this Demand may subject you and the above-named party to this action to such sanctions as the Rules of Court may allow and the Court shall direct.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorney for Plaintiff**

---

Mark Gruber, Esq.

---

Michelle M. Smith /s./  
Acting Superior Court Clerk

cc: Taylor & Friedberg  
**Certified Shorthand Reporters**  
60 Washington Street  
Morristown, NJ 07960



5. **Copies of any leases that you may have had on residences that you have resided at for the past five years;**
6. **Proof of any payments or gifts made to you by \_\_\_\_\_ in the last three years;**
7. **Proof of any money spent by Mary Smith on you in the past three years.**

**PLEASE TAKE FURTHER NOTICE** that, this demand is to be deemed continuing and the party upon whom this request is made shall be obligated to supplement and amend the responses hereto in accordance with the Rules of Court.

The subpoenaed evidence shall not be produced or released until the date specified herein. Because the depositions are virtual, you are requested to upload all documents no later than September 6, 2021. Please provide an e-mail address for instructions on how to upload documents.

Failure to comply with this Demand may subject you and the above-named party to this action to such sanctions as the Rules of Court may allow and the Court shall direct.

**Contact this office with your phone and e-mail contact information. Appearances will be conducted virtually. Recording of the Zoom deposition is prohibited by Court Rule.**

**DATED: September 1, 2021**

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN  
Attorneys for Plaintiff**

\_\_\_\_\_  
**Mark Gruber, Esq.**

\_\_\_\_\_  
*/s/ Michelle M. Smith*  
**Superior Court Clerk**

cc: **John Smith**  
**Taylor & Friedberg**  
Certified Shorthand Reporters, 60 Washington Street, Morristown, NJ 07960  
**Larry Lawyer, Esq.**

## D. REQUESTS FOR ADMISSIONS

R. 4:22-1 permits requests for admissions upon any party at any time after service of the summons and complaint, and requires the request to be answered within 30 days.

### **4:22-1. Request for Admission**

A party may serve upon any other party a written request for the admission for purposes of the pending action only, of the truth of any matters of fact within the scope of R. 4:10-2 set forth in the request, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after being served with the summons and complaint. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless stating that a reasonable inquiry was made and that the information known or readily obtainable is insufficient to enable an admission or denial. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial, may not, on that ground alone, object to the request but may, subject to the provisions of R. 4:23-3, deny the matter or set forth reasons for not being able to admit or deny.

Requests for admission and answers thereto shall be served pursuant to R. 1:5-1 and shall not be filed unless the court otherwise directs.



The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The provisions of R. 4:23-1(c) apply to the award of expenses incurred in relation to the motion.

## **E. SCOPE OF DISCOVERY**

The scope of discovery is the same for divorce actions as in other civil actions except for the rule prohibiting the taking of a deposition on the issue of the cause of action for divorce. R. 4:10-2 permits discovery regarding any matter, not privileged, which is relevant. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

### **4:10-2. Scope of Discovery; Treating Physician**

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; nor is it ground for objection that the examining party has knowledge of the matters as to which discovery is sought.

(b) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(c) Trial Preparation; Materials. Subject to the provisions of R. 4:10-2(d), a party may obtain discovery of documents, electronically stored information, and tangible things otherwise discoverable under R. 4:10-2(a) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of R. 4:23-1(c) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Trial Preparation; Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of R. 4:10-2(a) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) A party may through interrogatories require any other party to disclose the names and addresses of each person whom the other party expects to call at trial as an expert witness, including a treating physician who is expected to testify and, whether or not expected to testify, of an expert who has conducted an examination pursuant to R. 4:19 or to whom a party making a claim for personal injury has voluntarily submitted for examination without court order. The interrogatories may also require, as provided by R. 4:17-4(a), the furnishing of a copy of that person's report. Discovery of communications between an attorney and any expert retained or specially employed by that attorney is limited to facts and data considered by the expert in rendering the report. Except as otherwise expressly provided by R. 4:17-4(e), all other communications between counsel and the expert constituting the collaborative process in preparation of the report, including all preliminary or draft reports produced during this process, shall be deemed trial preparation materials discoverable only as provided in paragraph (c) of this rule.

(2) Unless the court otherwise orders, an expert whose report is required to be furnished pursuant to subparagraph (1) may be deposed as to the opinion stated therein at a time and place as provided by R. 4:14-7(b)(2). Unless otherwise ordered by the court, the party taking the deposition shall pay the expert or treating physician a reasonable fee for the appearance, to be determined by the court if the parties and the expert or treating physician cannot agree on the amount therefor. The fee for the witness's preparation for the deposition shall, however, be paid by the proponent of the witness, unless otherwise ordered by the court.

(3) A party may discover facts known or opinions held by an expert (other than an expert who has conducted an examination pursuant to R. 4:19) who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impractical for the party seeking discovery to obtain facts or opinions on the same subject by other means. If the court permits such discovery, it shall require the payment of the expert's fee provided for by R. 4:10-2(d)(2), and unless manifest injustice would result, the payment by the party seeking discovery to the other party of a fair portion of the fees and expenses which had been reasonably incurred by the party retaining the expert in obtaining facts and opinions from that expert.

(4) A party shall not seek a voluntary interview with another party's treating physician unless that party has authorized the physician, in the form set forth in Appendix XII-C, to disclose protected medical information.

(e) Claims of Privilege or Protection of Trial Preparation Materials.

(1) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(2) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable efforts to retrieve it.

The producing party must preserve the information until the claim is resolved.

(f) Claims that Electronically Stored Information is not Reasonably Accessible.

Metadata in Electronic Documents. A party may request metadata in electronic documents. When parties request metadata in discovery, they should consult and seek agreement regarding the scope of the request and the format of electronic documents to be produced. Absent an agreement between the parties, on a motion to compel discovery or for a protective order, the party from whom discovery is sought shall demonstrate that the request presents undue burden or costs. Judges should consider the limitations of R. 4:10-2(g) when reviewing such motions.

Claims that Electronically Stored Information is Not Reasonably Accessible.

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery or for a protective order, the party from whom discovery is sought shall demonstrate that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court nevertheless may order discovery from such sources if the requesting party establishes good cause, considering the limitations of R. 4:10-2(g). The court may specify conditions for the discovery.

(g) Limitation on Frequency of Discovery. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (3) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act pursuant to a motion or on its own initiative after reasonable notice to the parties.

## F. DISCOVERY MASTER

In extremely complex divorce cases where there is an abundance of financial data or other voluminous discovery or when discovery is being thwarted by a party, the courts have the authority to appoint a discovery master. Often, a party not receiving the discovery that has been requested and/or previously ordered by the court, will make an application to the court for the appointment of a discovery master, which application can contain specific details of what is to be discovered, who is to be appointed, and who is to pay for the same, and potential sanctions for failure to comply.

A discovery master in a divorce case has a limited role. The master's role is to collect discovery and provide it to the party requesting it by way of interrogatory, notice to produce, request for admission, or court order. A discovery master has no authority to analyze or value the discovery provided, except when R. 4:41-1 governs the judicial appointment of a master. The rule provides for compensation, the master's powers, the proceedings, and the issuing of a report. R. 4:41-1 *et seq.* is set forth below.

### **4:41-1. Reference**

The reference for the hearing of a matter by a judge of the Superior Court shall be made to a master only upon approval by the Assignment Judge, and then only when all parties consent or under extraordinary circumstances. The order of reference shall state whether the reference is consensual and, if not, shall recite the extraordinary circumstances justifying the reference.

### **4:41-2. Compensation**

The master's compensation shall be fixed by the court and charged upon such of the parties or paid out of any fund or property as the court directs. The master is entitled to a writ of execution against a party failing to comply with an order for compensation.

### **4:41-3. Powers**

The order of reference may specify or limit the master's powers and may direct the master to report only upon particular issues or to do particular acts or to receive and report evidence only. Subject to such specifications and limitations, the master has and shall exercise the power to regulate all proceedings in every hearing, to pass upon the admissibility of the evidence and to do all acts necessary or proper for the efficient performance of the duties directed by the order. The master may require the production of testimonial and documentary evidence upon all matters within the scope of the reference and shall have the authority to put witnesses on oath and call the parties to the action and examine them on oath. Unless the order

of reference otherwise directs, the master shall cause the proceedings to be recorded verbatim, shall rule upon the admissibility of evidence, and shall make a record of evidence offered and excluded as provided by R. 1:7-3 for a court sitting without a jury. No objection to the admission or exclusion of evidence may be made before the court unless it was made before the master.

#### **4:41-4. Proceedings**

(a) Meetings. Upon the entry of an order of reference the court shall forthwith transmit a copy thereof to the master who shall, unless the order otherwise provides, forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 10 days after the date of the order and notify the parties or their attorneys thereof. The hearings shall thereafter be held continuously on all regular court days unless otherwise ordered by the court due to unusual circumstances stated at length in the order. Any party, on notice to the parties and master, may apply to the court for an order requiring the master to expedite the proceedings and to make a report. If a party fails to appear at the time and place appointed, the master may proceed *ex parte* or adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(b) Witnesses. The parties may compel the attendance of witnesses before the master by the issuance and service of subpoenas as provided by R. 1:9. A witness failing to appear or give evidence may be punished as for a contempt and subjected to the sanctions provided by R. 1:9 and R. 4:23-1 to 4:23-4, inclusive.

(c) Statement of Accounts. When matters of accounting are in issue, the master may prescribe the form in which the accounts shall be submitted and may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

#### **4:41-5. Report**

(a) Contents and Filing. The master shall prepare a report upon the matters submitted including any findings of fact and conclusions of law required by the order. The master shall file the report with the court within 10 days after the conclusion of the hearings, unless the court extends the time within such 10-day period by order reciting the unusual circumstances requiring such extension. The court shall forthwith notify all parties by mail of the filing of the report. Unless otherwise ordered, the master shall file the original

transcript of the proceedings and the original exhibits with the deputy clerk of the Superior Court in the county where the case is to be tried, who shall, if the reference was made in an action pending in the Superior Court, transmit them to the Clerk of the Superior Court 3 years after the filing of the complaint, unless the court otherwise directs.

(b) In Non-jury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless contrary to the weight of the evidence. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties and may move the court for action upon the report and the objections thereto. The court after hearing on the motion may adopt the report, modify or reject it in whole or in part, receive further evidence, or recommit it with instructions. A party failing to object in the trial court to the master's findings shall be precluded from raising objections to the findings on appeal.

(c) In Jury Actions. In an action to be tried by a jury the findings of the master upon the issues submitted are admissible as evidence of the matters found, and may together with the evidence taken before the master be read to the jury, subject to the ruling of the court upon objections to the report or the evidence.

(d) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report may thereafter be considered.

(e) Draft Report. Before filing the report a master may submit a draft thereof to the attorneys for all parties for the purpose of receiving their suggestions.





# DOMESTIC VIOLENCE

## CHAPTER

# 7

Very few areas of the law have drawn more attention than domestic violence. Effective on April 9, 1982, an act entitled the Prevention of Domestic Violence Act heralded the first statutory enactment in New Jersey to deal with domestic abuse. The act continues to protect victims of domestic violence from abuse and to provide civil remedies for victims. The Prevention of Domestic Violence Act, with amendments effective Aug. 11, 1994, is reprinted following this summary.

### **A. LEGISLATIVE FINDINGS**

The framers of the act codified the legislative findings and public policy concerning domestic violence. N.J.S.A. 2C:25-18 declares that domestic violence is a serious crime against society and that a significant number of victims are women from all social and economic backgrounds and ethnic groups, as well as the elderly and disabled. There are findings to indicate that there is a correlation between spousal abuse and child abuse, and those children, even if they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. The Legislature also acknowledged that victims experience substantial difficulty in gaining access to protection from the judicial system due to a lack of ability of a prompt response to emergency situations. Therefore, the Legislature concluded that law enforcement officers must quickly respond and the courts must enforce the laws designed to protect victims.

### **B. DEFINITION OF DOMESTIC VIOLENCE AND VICTIM**

Domestic violence is defined as the occurrence of one or more of the following criminal acts committed by an adult or an emancipated minor: homicide, assault, terroristic threats, kidnapping, criminal restraint, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary, criminal trespass, harassment, stalking. N.J.S.A. 2C:25-19(a).

A victim of domestic violence is a person 18 years of age or older or an emancipated minor who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member. A victim is also any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, or who has had a dating relationship with the other person. N.J.S.A. 2C:25-19(d).

## **C. INITIATING THE DOMESTIC VIOLENCE PROCEDURES**

Victims may file a complaint alleging an act of domestic violence with the Chancery Division, Superior Court, Family Part, directly with the assistance of the Family Part intake officer when court is in session or through a municipal court judge who is assigned to accept complaints and issue emergency relief on weekends, holidays and other times when the court is closed. Law enforcement officers receiving complaints now advise all potential victims of the procedures. The petitioner's place of residence is not required to appear on the complaint. N.J.S.A. 2C:25-28. Victims may additionally file criminal complaints for the same act. Law enforcement officers may arrest a person or sign a criminal complaint, or both, where there is probable cause to believe that an act of domestic violence has been committed.

## **D. TEMPORARY RESTRAINING ORDERS**

A municipal judge or Family Part judge may enter an *ex parte* order when necessary to protect the life, health or well-being of a victim if it appears the plaintiff is in danger of domestic violence upon sworn testimony or complaint of an applicant who is not physically present. N.J.S.A. 2C:25-28 and R. 5:7A.

Emergent, *ex parte* relief may be granted upon good cause shown, and may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing firearms or other weapons, an order for the search and seizure of any weapons at any location where the judge has reasonable cause to believe the weapon is located, and any other appropriate relief. The emergent order, along with the complaint, must immediately be forwarded to the law enforcement agency for service upon the defendant and to the police in the municipality where the defendant resides.

## E. DOMESTIC VIOLENCE HEARING

A domestic violence hearing must be held within 10 days of the filing of the complaint. Testimony given by the plaintiff or defendant may not be used in a subsequent criminal proceeding against the defendant arising out of the same act, except for domestic violence contempt matters. N.J.S.A. 2C:25-29. The standard of proof is a preponderance of the evidence. At the hearing, the court must consider the following factors:

(a) Previous history of domestic violence between the plaintiff and the defendant, including threats, harassment and physical abuse; (b) existence of immediate danger to person or property; (c) financial circumstances of the plaintiff and the defendant; (d) the best interest of the victim and any child; (e) protection of the victim's safety in an award of custody or visitation; (f) the existence of a verifiable order of protection from another jurisdiction.

The issue of whether a violation of the act has occurred, including an act of contempt under the act, may not be subject to mediation or negotiation in any form. The parties may not be ordered to participate in mediation on the issue of custody or visitation where a temporary or final order has been issued.

Relief is available under the domestic violence act. The court may grant various forms of relief only after a finding of domestic violence or an admission to an act of domestic violence. The following forms of relief are available pursuant to N.J.S.A. 2C:25-29(b):

- (1) Restraining the defendant from subjecting the victim to domestic violence.
- (2) Exclusive possession of the residence or household regardless of ownership, including payment of rent.
- (3) Parenting Time. The court may, upon request, order an investigation or evaluation by the appropriate agency to assess the risk of harm to a child or children prior to the entry of a parenting order (known as risk assessment).
- (4) Monetary compensation for losses suffered as a direct result of the act of domestic violence, including but not limited to loss of earnings or other support, out-of-pocket losses for injuries, cost of repair or replacement of real or personal property damaged or destroyed, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. The court may also order punitive damages.
- (5) Counseling and/or anger counseling.
- (6) Restraints from entering residence, property, school, place of employment.
- (7) Restraining any contact with the plaintiff directly or through third persons.
- (8) Payment of rent or mortgage payments, as long as the issue has not been resolved or is being litigated in another action.

- (9) Temporary possession of personal property, such as automobiles.
- (10) Emergency monetary relief including child support.
- (11) Temporary custody of a minor child. There is a presumption that the best interest of the child is served by an award of custody to the non-abusive parent.
- (12) Supervision of the removal of personal belongings.
- (13) Any other appropriate relief for the plaintiff and dependent children.
- (14) Requiring monitoring of the final order by the Family Part In-Take Unit.
- (15) Preventing the defendant from possessing firearms or weapons and/or ordering the search for and seizure of any weapons at any location where the judge has reason to believe a weapon is located.
- (16) Restraint against stalking, following or threatening to harm the complainant or any other person named in the order.
- (17) Psychiatric evaluation of the defendant.

## **F. VIOLATION OF ORDERS AND CONTEMPT PROCEEDINGS**

A violation of a domestic violence order constitutes contempt of court pursuant to N.J.S.A. 2C:29-9, and such violation shall be heard in the Chancery Division, Superior Court, Family Part. A person convicted of a second or subsequent non-indictable domestic violence contempt defense shall serve a minimum mandatory term of not less than 30 days. N.J.S.A. 2C:25-30. When a law enforcement officer finds there is probable cause that a defendant has committed contempt of a domestic violence order, the officer shall arrest, take into custody, and sign a contempt complaint against the defendant.

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### **SIGNIFICANT CASES**

***Roberts v. Roberts*, 106 N.J. Super. 108 (Ch. Div. 1969)**

The court has equitable power to restrain a person from the marital home after a hearing.

***Murray v. Murray*, 267 N.J. Super. 406 (App. Div. 1993)**

The Appellate Division held that statements by the defendant that he no longer loved or felt attracted to her, although meaning to belittle her and demean her and inflict emotional abuse upon her, did not constitute domestic violence.

***Peranio v. Peranio*, 280 N.J. Super. 47 (App. Div. 1995)**

The Appellate Division held that domestic violence is a term of art that defines a pattern of abusive and controlling behavior. In order to find domestic violence based upon harassment, the court must find a purpose to harass, a course of alarming conduct or repeated acts intended to alarm or seriously annoy another, and immediate danger to person or property.

***Corrente v. Corrente*, 281 N.J. Super. 243 (App. Div. 1995)**

The Appellate Division held that although the defendant had threatened the plaintiff verbally and had carried out his threat with a childish act of turning off the telephone, it did not constitute domestic violence because the plaintiff was neither harmed nor subjected to injury or potential injury.

***Carfagno v. Carfagno*, 288 N.J. Super. 424 (Ch. Div. 1995)**

The court lists 11 factors required to dissolve a restraining order: (1) whether the victim consented to lift the restraining order; (2) whether the victim fears the defendant; (3) the nature of the relationship between the parties today; (4) the number of times the defendant has been convicted of contempt in violation of the order; (5) whether the defendant has a continuing involvement in drug or alcohol abuse; (6) whether the defendant has been involved in other violent acts with other persons; (7) whether the defendant has engaged in counseling; (8) age and health of the defendant; (9) whether the victim is acting in good faith when opposing the defendant's request; (10) whether another jurisdiction has entered a restraining order protecting the victim from the defendant; and (11) other factors deemed relevant by the court.

***In the Matter of the Return of Weapons to J.W.D.*, 149 N.J. 108 (1997)**

Dismissal of the domestic violence action does not prevent permanent forfeiture of weapons if the court finds "threat to public health, safety or welfare."

***State v. Hoffman*, 149 N.J. 564 (1997)**

New Jersey Supreme Court held that harassment under subsection (a) likely to cause annoyance or alarm does not require serious annoyance required by subsection (c) of N.J.S.A. 2C:33-4.

***State v. Wilmouth*, 302 N.J. Super. 20 (App. Div. 1997)**

Contempt reversed as "trivial" and "unmeritorious" when the defendant asked the plaintiff if he was going to see his daughter tomorrow.

***Depos v. Depos*, 307 N.J. Super. 396 (1997)**

Good cause did not exist to take pre-trial deposition of a victim in a domestic violence case.

***J.N.S. v. D.B.S.*, 302 N.J. Super. 525 (App. Div. 1997)**

A husband's conduct does not constitute harassment where evidence reveals that the separated couple mutually annoy one another.

***Cesare v. Cesare*, 154 N.J. 394 (1998)**

One incident of harassment, in light of the circumstances, can qualify as domestic violence.

***J. F. v. B. K.*, 308 N.J. Super. 387 (App. Div. 1998)**

Allegations of previous abuse are barred by *res judicata* and collateral estoppel when those allegations were contained in a prior action that was dismissed.

***Kamen v. Egan*, 322 N.J. Super. 222 (App. Div. 1999)**

A single act of trespass unaccompanied by violence or threat of violence was not sufficient to justify a finding of domestic violence.

***L.D. v. W.D., Jr.*, 327 N.J. Super. 1 (App. Div. 1999)**

It is an error to make a finding of domestic violence on acts or a course of conduct not mentioned in the complaint.

***I.J. v. I.S.*, 328 N.J. Super. 166 (Ch. Div. 1999)**

A plaintiff who wants to dissolve a restraining order need only show there was no coercion and the request is voluntary.

***State v. Sanders*, 327 N.J. Super. 385 (App. Div. 2000)**

It is irrelevant in a criminal contempt proceeding from a violation of a temporary restraining order that the restraining order is later vacated or dismissed, or that no permanent restraint issued. The state must only prove the order was in existence at the time of the alleged complaint.

***State v. Reyes*, 172 N.J. 154 (2002)**

A non-resident's two acts of harassment in New Jersey, either individually or in combination, vested jurisdiction in state courts to issue injunctive relief in the form of a domestic violence restraining order.

***T.M. v. J.C.*, 348 N.J. Super. 101 (App. Div. 2002)**

Conditional dismissal of a temporary restraining order is improper.

***A.R. v. M.R.*, 351 N.J. Super. 512 (App. Div. 2002)**

New Jersey has jurisdiction to enter a temporary restraining order over the victim's husband, who lives in Mississippi, where the husband threatened to track down the victim and kill her and made repeated calls to New Jersey to locate her when she fled from Mississippi.

***H.E.S. v. J.C.S.*, 175 N.J. 309 (2003)**

Serving a domestic violence complaint on a defendant less than 24 hours before hearing violated due process. The husband's alleged videotaping of the wife's bedroom could constitute harassment and stalking as predicate of offenses to domestic violence.

***Tribuzio v. Roder*, 356 N.J. Super. 590 (App. Div. 2003)**

A former dating partner, after a three-year dating hiatus, was a “protected person” under the Domestic Violence Act.

***Andrews v. Rutherford*, 363 N.J. Super. 252 (Ch. Div. 2003)**

Six factors to be considered to determine if a dating relationship existed include: 1) minimum social bonding above mere fraternization; 2) how long dating activities existed prior to acts of alleged domestic violence; 3) nature and frequency of the parties’ interactions; 4) parties’ expectations with regard to the relationship; 5) whether the parties affirmed their relationship in the presence of others, by conduct or statements; and 6) any other reason to find the existence of a dating relationship.

***Shah v. Shah*, 184 N.J. 125 (2005)**

New Jersey courts have the authority to enter an *ex-parte* temporary restraining order for prohibitive relief only for a person seeking refuge in New Jersey, and there is no jurisdiction over the abuse. The temporary order will remain in effect until further order of the court

***Wine v. Quezada*, 379 N.J. Super. 287 (Ch. Div. 2005)**

Victim’s request for counsel fees is not governed by family law criteria (*i.e.*, good versus bad faith on financial circumstances), but is rather an element of compensatory damages. Fees are only limited to R.P.C. 1:5(a) reasonableness and should be awarded. Defendant’s request for fees is not permitted except in a separate action under the frivolous litigation statute, N.J.S.A. 2A:15-58.1.

***Mitchell v. Oksienik*, 380 N.J. Super. 119 (App. Div. 2005)**

Domestic violence court has authority to order sale and distribution of home owned by non-married litigants.

***Pazienza v. Camarata*, 381 N.J. Super. 173 (App. Div. 2005)**

Due process requires granting a party a reasonable adjournment if confronted by new allegations at trial. Pages two and three of the confidential victim information sheet must be provided in discovery.

***Finamore v. Aronson*, 382 N.J. Super. 514 (App. Div. 2006)**

Domestic violence court can permit both parents to attend child’s activities in a restraining order.

***Silver v. Silver*, 387 N.J. Super. 112 (App. Div. 2006)**

The court, after finding that a predicate act of domestic violence has occurred, must then determine whether a domestic violence restraining order is necessary to protect plaintiff from immediate danger or further acts of domestic violence.

***Coleman v. Romano*, 388 N.J. Super. 342 (Ch. Div. 2006)**

Court should consider the following six factors to determine whether parties are “former household members” within the Prevention of Domestic Violence Act: 1) nature and duration of prior relationship; 2) whether past domestic relationship provides a special opportunity for abuse and controlling behavior; 3) the passage of time since the relationship ended; 4) the extent and nature of any intervening contacts; 5) the nature of the precipitating incident; and 6) the likelihood that contact or a relationship will be ongoing.

***M.A. v. E.A.*, 388 N.J. Super. 612 (App. Div. 2006)**

An unemancipated minor who has been sexually assaulted by her stepfather cannot obtain a restraining order against him because an unemancipated minor is not a victim under the Prevention of Domestic Violence Act. The mother of the child does not have standing to request a restraining order against the stepfather, because victims are the only individuals covered by the act and parents do not have standing to file complaints on behalf of their children.

***McGowan v. O'Rourke*, 391 N.J. Super. 502 (App. Div. 2007)**

Request for attorney fees under Domestic Violence Act does not require determination of girlfriend's need for fees, defendant's ability to pay and good faith position advanced by the parties.

***State v. Brown*, 394 N.J. Super. 492 (App. Div. 2007)**

Collateral estoppel and fundamental fairness do not preclude criminal prosecution for the same events that resulted in the Family Part's denial of a final restraining order and dismissal of a domestic violence complaint. The state was not in privity with the alleged victim.

***Crespo v. Crespo*, 201 N.J. 207 (2010)**

The Prevention of Domestic Violence Act, by allowing the seizure of a defendant's firearms upon a finding of domestic violence, does not permit the deprivation of an individual's Second Amendment right to bear arms.

***S.D. v. M.J.R.*, 415 N.J. Super. 417 (App. Div. 2010)**

The free exercise clause (of religion) does not require that a defendant be exempted from a finding that he committed sexual assault and sexual contact, and thus violated the Prevention of Domestic Violence Act.

***J.L. v. G.D.* 422 N.J. Super. 487 (Ch. Div. 2010)**

Plaintiff who was a minor seeking a domestic violence restraining order against an adult with whom she had been in a dating relationship was entitled, under rules of general application for civil proceedings, to appointment of a guardian *ad litem* or counsel to provide her with an adult voice and assistance at the domestic violence hearing, though Prevention of Domestic Violence



Act itself and *Domestic Violence Procedures Manual* did not expressly authorize appointment of a guardian *ad litem* for a minor plaintiff.

***J.D. v. M.D.F.*, 207 N.J. 458 (2011)**

A defendant is entitled to a rehearing where due process rights were violated during the proceeding, which resulted in the issuance of a final restraining order.

***C.M.F. v. R.G.F.*, 418 N.J. Super. 396 (App. Div. 2011)**

The father's public verbal abuse of the mother at the children's basketball game was sufficient to show intent to harass the mother.

***L.M.F. v. J.A.F., Jr.*, 421 N.J. Super. 523 (App. Div. 2011)**

Excessive texting from one divorced parent to the other does not necessarily amount to harassment, where purpose of texts was not to harass, but rather to inquire about the parties' daughter.

***State v. Duprey*, 427 N.J. Super. 314 (App. Div. 2012)**

Testimony from a domestic violence trial may be used for impeachment purposes during cross-examination for a subsequent criminal trial.

***J.D. v. M.A.D.*, 429 N.J. Super. 34 (App. Div. 2012)**

There is no statutory authorization for the court to award the defendant in the domestic violence final restraining order custody of the parties' children and exclusive possession of the marital home. This violates the presumption in N.J.S.A. 2C:25-29(b)(11).

***State v. D.G.M.*, 439 N.J. Super. 630 (App. Div. 2015)**

Defendant's brief filming on cellphone of domestic violence victim constitutes violation of no contact or communication provision of final restraining order

***O.P. v. L.G.-P.*, 440 N.J. Super. 146 (App. Div. 2015)**

Where final restraining order did not exist at time of marital settlement agreement but is later entered, provision of marital settlement agreement requiring parties to engage in mediation prior to motion practice cannot be enforced.

***N.T.B. v. D.D.B.*, 442 N.J. Super. 205 (App. Div. 2015)**

Parties to a jointly owned home hold a separate and distinct interest in their home as tenants by the entirety and, therefore, engaging in harm to the home destroys property of another and may constitute an act of criminal mischief for purposes of final restraining order.

***T.M. v. RMW.*, 456 N.J. Super. 446 (App. Div. 2017)**

Sporadic sexual involvement is sufficient to allow a victim to avail themselves to the New Jersey Prevention of Domestic Violence Act. Past sexual encounters in which parties engaged in slapping, choking and hairpulling in conjunction with the plaintiff not immediately objecting when punched by defendant during sex illustrated that consent to such abuse was a viable affirmative defense.

***M.C. v. G.T.*, 452 N.J. Super. 509 (App. Div. 2018)**

A trial court cannot exercise its equitable powers to issue restraints in a failed domestic violence action unless there is a concurrent matrimonial action pending between the parties.

***G.M. v. C.V.*, 453 N.J. Super. 1 (App. Div. 2018)**

When a defendant is unable through no fault of his own to produce a transcript of a final restraining order hearing, the trial court must attempt to reconstruct the hearing so that an evaluation of whether changed circumstances exist to dissolve the final restraining order.

***E.S. v. C.D.*, 460 N.J. Super. 326, 214 A.3d 1235 (Ch. Div. 2018)**

Mother, who sought restraining order against her former nanny, was a protected party under Prevention of Domestic Violence Act (PDVA), notwithstanding the economic relationship of the parties; mother and nanny were former household members, and nanny had resided in mother's home for seven months with mother and her child

***S.C. v. J.D.*, 462 N.J. Super. 452, 227 A.3d 861 (Ch. Div. 2019)**

Adult half-siblings' youthful relationship was close, meaningful, and of a long duration with regular physical presence, and thus in relation to half-sister, half brother was a household member for purposes of Prevention of Domestic Violence Act (PDVA) protections, although brother primarily resided at his mother's home, where siblings developed meaningful relationship as a result of brother's regular and consistent overnight visits at family home with sister

***C.C. v. J.A.H.*, 463 N.J. Super. 419, 232 A.3d 505 (App. Div.), cert. denied, 244 N.J. 339, 240 A.3d 389 (2020)**

Gym manager and gym attendee were involved in a "dating relationship," such that gym manager could be found to be a victim of domestic violence supporting issuance of a final restraining order against gym attendee under the Prevention of Domestic Violence Act, even though parties never experienced an in-person date; gym attendee and gym manager regularly engaged in intimate communications that included a plethora of sexually explicit text messages, relationship started as friendship but progressed to more intimate level, attendee and manager knew each other for several months, and attendee acknowledged his expectation that parties intended to hook up.

***State v. E.J.H.*, 466 N.J. Super. 32, (App. Div. 2021)**

Defendant violated the temporary restraining order issued under Prevention of Domestic Violence Act, when he positioned himself toward the security camera installed in his home as condition precedent to supervised parenting time with daughter and then directed comments about estranged wife and made lewd gesture at estranged wife, whose virtual presence in his home was expressly authorized by TRO.

***D.M.R. v. M.K.G.*, 467 N.J. Super. 308, 324 (App. Div. 2021)**

The trial judge erred when he found an FRO was necessary to protect plaintiff from further harassment but made no findings and applied none of the Silver factors. Plaintiff did not express fear of defendant; indeed, the judge stated that he did not know whether plaintiff was afraid. Moreover, even plaintiff's mother testified defendant was not aggressive.

***State v. W.C.*, No. A-0800-20, 2021 WL 2583455 (N.J. Super. Ct. App. Div. June 24, 2021)**

Husband was no longer subject to final restraining order (FRO) under Prevention of Domestic Violence Act (PDVA) after trial court dismissed wife's PDVA complaint and vacated FRO following second trial after granting reconsideration of issuance of FRO at first trial, and thus husband was not under disability based on PDVA's two-year bar on possession of firearms after issuance of restraining order, precluding forfeiture of seized firearms by state. By vacating FRO, court determined it erred by entering FRO in first instance, and dismissal of complaint after retrial on the merits constituted determination that husband lacked any fault permitting forfeiture of weapons.

## **G. CHAPTER 25 DOMESTIC VIOLENCE**

### **2C:25-1 to 2C:25-16.**

Repealed by L.1991, c.261, 20, eff. Nov. 12, 1991.

### **2C:25-17. Prevention of Domestic Violence Act of 1991; short title**

This act shall be known and may be cited as the “Prevention of Domestic Violence Act of 1991.”

### **2C:25-18. Legislative findings and declaration**

The Legislature finds and declares that domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.

The Legislature further finds and declares that the health and welfare of some of its most vulnerable citizens, the elderly and disabled, are at risk because of incidents of reported and unreported domestic violence, abuse and neglect which are known to include acts which victimize the elderly and disabled emotionally, psychologically, physically and financially; because of age, disabilities or infirmities, this groups of citizens frequently must rely on the aid and support of others, while the institutionalized elderly are protected under P.L. 1977, c. 239 (C. 53:27G-1 et seq.), elderly and disabled adults in non-institutionalized or community settings may find themselves victimized by family members or others upon whom they feel compelled to depend.

The Legislature further finds and declares that violence against the elderly and disabled, including criminal neglect of the elderly and disabled under section 1 of P.L.1989, c. 23 (C.2C:24-8), must be recognized and addressed on an equal basis as violence against spouses and children in order to fulfill our responsibility as a society to protect those who are less able to protect themselves.

The Legislature further finds and declares that even though many of the existing criminal statutes are applicable to acts of domestic violence, previous societal attitudes concerning domestic violence have affected the response of our law enforcement and judicial systems, resulting in these acts receiving

different treatment from similar crimes when they occur in a domestic context. The legislature finds that battered adults presently experience substantial difficulty in gaining access to protection from the judicial system, particularly due to that system's inability to generate a prompt response in an emergency situation.

It is the intent of the Legislature to stress that the primary duty of a law enforcement office when responding to a domestic violence call is to enforce the laws allegedly violated and to protect the victim. Further, it is the responsibility of the courts to protect victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and actions that are available to assure the safety of the victims and the public. To that end, the legislature encourages the training of all police and judicial personnel in the procedure and enforcement of this act, and about the social and psychological context in which domestic violence occurs; and it further encourages the broad application of the remedies available under this act in the civil and criminal courts of this State. It is further intended that the official response to domestic violence shall communicate the attitude that violent behavior will not be excused or tolerated, and shall make clear the fact that the existing criminal laws and civil remedies created under this act will be enforced without regard to the fact that the violence grows out of a domestic situation.

### **2C:15-19. Definitions**

As used in this act: a. "Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor;

- (1) Homicide N.J.S. 2C:11-1 et seq.
- (2) Assault N.J.S. 2C:12-1
- (3) Terroristic threats N.J.S. 2C:12-3
- (4) Kidnapping N.J.S. 2C:13-1
- (5) Criminal restraint N.J.S. 2C:13-2
- (6) False imprisonment N.J.S. 2C:13-3
- (7) Sexual assault N.J.S. 2C:14-2
- (8) Criminal sexual contact N.J.S. 2C:14-3
- (9) Lewdness N.J.S. 2C:14-4
- (10) Criminal mischief N.J.S. 2C:17-3
- (11) Burglary N.J.S. 2C:18-2
- (12) Criminal trespass N.J.S. 2C:18-3
- (13) Harassment N.J.S. 2C:33-4

(14) Stalking P.L. 1992, c.209 (C 2C:12-10)

When one or more of these acts is inflicted by an unemancipated minor upon a person protected under this act, the occurrence shall not constitute “domestic violence,” but may be the basis for the filing of a petition or complaint pursuant to the provision of section 11 of P.L. 1982, c. 77 (C.2A:4A-30)

b. “Law enforcement agency” means a department, division, bureau commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

c. “Law enforcement agency” means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

d. “Victim of domestic violence” means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member. “Victim of domestic violence” also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common or with whom the victim anticipates having a child in common, if one of the parties is pregnant. “Victim of domestic violence” also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

e. “Emancipated minor” means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or have been previously declared by a court or an administrative agency to be emancipated.

**2C:25-20. Training course and curriculum; domestic crisis teams**

a. The Division of Criminal Justice shall develop and approve a training course and curriculum on the handling, investigation and response procedures concerning reports of domestic violence and abuse and neglect of the elderly and disabled. This training course and curriculum shall be reviewed at least every two years and modified by the Division of Criminal Justice from time to time as need may require. The Division of Criminal Justice shall distribute the curriculum to all local police agencies.

**2C:25-21. Arrest of alleged attacker; seizure of weapons, etc.**

a. When a person claims to be a victim of domestic violence, and where a law enforcement officer responding to the incident finds probable cause to believe that domestic violence has occurred, the law enforcement officer shall

arrest the person who is alleged to be the person who subjected the victim to domestic violence and shall sign a criminal complaint if:

- (1) The victim exhibits signs of injury caused by an act of domestic violence;
- (2) A warrant is in effect;
- (3) There is probable cause to believe that the person has violated N.J.S. 2C:29-9, and there is probable cause to believe that the person has been served with the order alleged to have been violated. If the victim does not have a copy of a purported order, the officer may verify the existence of an order with the appropriate law enforcement agency; or
- (4) There is probable cause to believe that a weapon as defined in N.J.S. 2C:39-1 has been involved in the commission of an act of domestic violence.

b. A law enforcement officer may arrest a person; or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed, but where none of the conditions in subsection a. of this section applies.

c. (1) As used in this section, the word “exhibits” is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.

(2) In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider the comparative extent of the injuries, the history of domestic violence between the parties, if any, and any other relevant factors.

(3) No victim shall be denied relief or arrested or charged under this act with an offense because the victim used reasonable force in self defense against domestic violence by an attacker.

d. (1) In addition to a law enforcement officer’s authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall:

(a) question persons present to determine whether there are weapons on the premises; and

(b) upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.

(2) A law enforcement officer shall deliver all weapons, firearms purchaser identification cards and permits to purchase a handgun seized pursuant to this section to the county prosecutor and shall append an inventory of all seized items to the domestic violence report.

(3) Weapons seized in accordance with the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et seq.) shall be returned to the owner except upon order of the Superior Court. The prosecutor who has possession of the seized weapons may, upon notice to the owner, petition a judge of the Family Part of the Superior Court, Chancery Division, within 45 days of seizure, to obtain title to the seized weapons, or to revoke any and all permits, licenses and other authorizations for the use, possession, or ownership of such weapons pursuant to the law governing such use, possession, or ownership, or may object to the return of the weapons on such grounds as are provided for the initial rejection or later revocation of the authorizations, or on the grounds that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular.

A hearing shall be held and a record made thereof within 45 days of the notice provided above. No formal pleading and no filing fee shall be required as a preliminary to such hearing. The hearing shall be summary in nature. Appeals from the results of the hearing shall be to the Superior Court, Appellate Division, in accordance with the law.

If the prosecutor does not institute an action within 45 days of seizure, the seized weapons shall be returned to the owner.

After the hearing the court shall order the return of the firearms, weapons and any authorization papers relating to the seized weapons to the owner if the court determines the owner is not subject to any of the disabilities set forth in N.J.S. 2C:58-3c. and finds that the complaint has been dismissed at the request of the complainant and the prosecutor determines that there is insufficient probable cause to indict; or if the defendant is found not guilty of the charges; or if the court determines that the domestic violence situation no longer exists. Nothing in this act shall impair the right of the State to retain evidence pending a criminal prosecution. Nor shall any provision of this act be construed to limit the authority of the State or a law enforcement officer to seize, retain or forfeit property pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

If, after the hearing, the court determines that the weapons are not to be returned to the owner, the court may:

- (a) With respect to weapons other than firearms, order the prosecutor to dispose of the weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate person within 60 days; or
- (b) Order the revocation of the owner’s firearms purchaser identification card



or any permit, license or authorization, in which case the court shall order the owner to surrender any firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered dealer of the firearms within 60 days; or

(c) Order such other relief as it may deem appropriate. When the court orders the weapons forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall dispose of the property as provided in N.J.S. 2C:64-6.

(4) A civil suit may be brought to enjoin a wrongful failure to return a seized firearm where the prosecutor refuses to return the weapon after receiving a written request to do so and notice of the owner's intent to bring a civil action pursuant to this section. Failure of the prosecutor to comply with the provisions of this act shall entitle the prevailing party in the civil suit to reasonable costs, including attorney's fees, provided that the court finds that the prosecutor failed to act in good faith in retaining the seized weapon.

(5) No law enforcement officer or agency shall be held liable in any civil action brought by any person for failing to learn of, locate or seize a weapon pursuant to this act, or for returning a seized weapon to its owner.

### **2C:25-22. Immunity from civil liability**

A law enforcement officer or a member of a domestic crisis team or any person who, in good faith, reports a possible incident of domestic violence to the police shall not be held liable in any civil action brought by any party for an arrest based on probable cause, enforcement in good faith of a court order, or any other act or omission in good faith under this act.

### **2C:25-23. Dissemination of notice to victim of domestic violence**

A law enforcement officer shall disseminate and explain to the victim the following notice, which shall be written in both English and Spanish:

“You have the right to go to court to get an order called a temporary restraining order, also called a TRO, which may protect you from more abuse by your attacker. The officer who handed you this card can tell you how to get a TRO.

The kinds of things a judge can order in a TRO may include:

- (1) That your attacker is temporarily forbidden from entering the home you live in;
- (2) That your attacker is temporarily forbidden from having contact with you or your relatives;
- (3) That your attacker is temporarily forbidden from bothering you at work;
- (4) That your attacker has to pay temporary child support or support for you;
- (5) That you be given temporary custody of your children;

(6) That your attacker pay you back any money you have to spend for medical treatment or repairs because of the violence. There are other things the court can order, and the court clerk will explain the procedure to you and will help you fill out the papers for a TRO. You also have the right to file a criminal complaint against your attacker. The police officer who gave you this paper will tell you how to file a criminal complaint. On weekends, holidays and other times when the courts are closed, you still have a right to get a TRO. The police officer who gave you this paper can help you get in touch with a judge who can give you a TRO.”

### **2C:25-24. Domestic violence offense reports**

a. It shall be the duty of a law enforcement officer who responds to a domestic violence call to complete a domestic violence offense report. All information contained in the domestic violence offense report shall be forwarded to the appropriate county bureau of identification and to the State bureau of records and identification in the Division of State Police in the Department of Law and Public Safety. A copy of the domestic violence offense report shall be forwarded to the municipal court where the offense was committed unless the case has been transferred to the Superior Court.

b. The domestic violence offense report shall be on a form prescribed by the supervisor of the State bureau of records and identification which shall include, but not be limited to, the following information:

- (1) The relationship of the parties;
- (2) The sex of the parties;
- (3) The time and date of the incident;
- (4) The number of domestic violence calls investigated;
- (5) Whether children were involved, or whether the alleged act of domestic violence had been committed in the presence of children;
- (6) The type and extent of abuse;
- (7) The number and type of weapons involved;
- (8) The action taken by the law enforcement officer;
- (9) The existence of any prior court orders issued pursuant to this act concerning the parties;
- (10) The number of domestic violence calls alleging a violation of a domestic violence restraining order;
- (11) The number of arrests for a violation of a domestic violence order; and
- (12) Any other data that may be necessary for a complete analysis of all circumstances leading to the alleged incident of domestic violence.

c. It shall be the duty of the Superintendent of the State Police with the assistance of the Division of Systems and Communications in the Department of Law and Public Safety to compile and report annually to the Governor, the Legislature and the Advisory Council on Domestic Violence on the tabulated data from the domestic violence offense reports, classified by county.

**2C:25-25. Criminal complaints; proceedings**

The court in a criminal complaint arising from a domestic violence incident:

- a. Shall not dismiss any charge or delay disposition of a case because of concurrent dissolution of a marriage, other civil proceedings, or because the victim has left the residence to avoid further incidents of domestic violence;
- b. Shall not require proof that either party is seeking a dissolution of a marriage prior to institution of criminal proceedings;
- c. Shall waive any requirement that the victim's location be disclosed to any person.

**2C:25-26. Release of defendant before trial; conditions**

a. When a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may as a condition of release issue an order prohibiting the defendant from having any contact with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or business, or school, and from harassing or stalking the victim or the victim's friends, co-workers, or relatives in any way. The court may also enter an order prohibiting the defendant from having any contact with any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. In addition, the court may enter an order directing the possession of the animal and providing that the animal shall not be disposed of prior to the disposition of the crime or offense. The court may enter an order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection R. of N.J.S. 2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

b. The written court order releasing the defendant shall contain the court's directives specifically restricting the defendant's ability to have contact with the victim, the victim's friends, co-workers, or relatives, or any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. The clerk of the court or other person designated by the court shall provide a copy of this order to the victim forthwith.

- c. The victim's location shall remain confidential and shall not appear on any documents or records to which the defendant has access.
- d. Before bail is set, the defendant's prior record shall be considered by the court. The court shall also conduct a search of the domestic violence central registry. Bail shall be set as soon as is feasible, but in all cases within 24 hours of arrest.
- e. Once bail is set it shall not be reduced without prior notice to the county prosecutor and the victim. Bail shall not be reduced by a judge other than the judge who originally ordered bail, unless the reasons for the amount of the original bail are available to the judge who reduces the bail and are set forth in the record.
- f. A victim shall not be prohibited from applying for, and a court shall not be prohibited from issuing, temporary restraints pursuant to this act because the victim has charged any person with commission of a criminal act.

### **2C:25-26.1. Notification of victim of release of defendant**

Notwithstanding any other provision of law to the contrary, whenever a defendant charged with a crime or an offense involving domestic violence is released from custody the prosecuting agency shall notify the victim.

### **2C:25-27. Conditions of sentence**

- a. When a defendant is found guilty of a crime or offense involving domestic violence and a condition of sentence restricts the defendant's ability to have contact with the victim, the victim's friends, co-workers, or relatives, or an animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household, that condition shall be recorded in an order of the court and a written copy of that order shall be provided to the victim by the clerk of the court or other person designated by the court. In addition to restricting a defendant's ability to have contact with the victim, the victim's friends, co-workers, or relatives, or an animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household, the court may require the defendant to receive professional counseling from either a private source or a source appointed by the court, and if the court so orders, the court shall require the defendant to provide documentation of attendance at the professional counseling. In any case where the court order contains a requirement that the defendant receive professional counseling, no application by the defendant to dissolve the restraining order shall be granted unless, in addition to any other provisions required by law or conditions ordered by the court, the defendant has completed all required attendance at such counseling.
- b. In addition the court may enter an order directing the possession of an animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. Where a person has abused or threatened to

abuse such animal, there shall be a presumption that possession of the animal shall be awarded to the non-abusive party.

c. (1) When a defendant is found guilty of a crime or offense involving domestic violence, the court shall inform the defendant that the defendant is prohibited from purchasing, owning, possessing, or controlling a firearm pursuant to section 6 of P.L.1979, c. 179 (C.2C:39-7) and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3. The court shall order the defendant to arrange for the immediate surrender to a law enforcement officer of any firearm that has not already been seized or surrendered and any firearms purchaser identification card or permit to purchase a handgun possessed by the defendant. No later than five business days after the order is entered, however, the defendant may arrange to sell any surrendered firearm to a licensed retail dealer of firearms who shall be authorized to take possession of that purchased firearm from the law enforcement agency to which it was surrendered no later than 10 business days after the order is entered. Any card or permit issued to the defendant shall be deemed immediately revoked. The court shall establish a process for notifying the appropriate authorities of the conviction requiring the revocation of the card or permit. A law enforcement officer accepting a surrendered firearm shall provide the defendant with a receipt listing the date of surrender, the name of the defendant, and any item that has been surrendered, including the serial number, manufacturer, and model of the surrendered firearm. The defendant shall provide a copy of this receipt to the prosecutor within 48 hours of service of the order, and shall attest under penalty that any firearms owned or possessed at the time of the order have been transferred in accordance with this section and that the defendant currently does not possess any firearms. The defendant alternatively may attest under penalty that he did not own or possess a firearm at the time of the order and currently does not possess a firearm. If the court, upon motion of the prosecutor, finds probable cause that the defendant has failed to surrender any firearm, card, or permit, the court may order a search for and removal of these items at any location where the judge has reasonable cause to believe these items are located. The judge shall state with specificity the reasons for and the scope of the search and seizure authorized by the order.

(2) A law enforcement officer who receives a firearm that is surrendered, but not purchased and taken possession of by a licensed retail dealer of firearms within 10 business days of when the order is entered pursuant to paragraph (1) of this subsection, may dispose of the surrendered firearm in accordance with the provisions of N.J.S.2C:64-6. A firearm purchased by a licensed retail dealer from a defendant shall become part of the inventory of the dealer.

**2C:25-28. Complaint by victim; emergency relief; temporary restraining orders; service of process**

a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the Rules of Court. The court shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.

On weekends, holidays and other times when the court is closed, a victim may file a complaint before a judge of the Family Part of the Chancery Division of the Superior Court or a municipal court judge who shall be assigned to accept complaints and issue emergency, ex parte relief in the form of temporary restraining orders pursuant to this act.

A plaintiff may apply for relief under this section in a court having jurisdiction over the place where the alleged act of domestic violence occurred, where the defendant resides, or where the plaintiff resides or is sheltered, and the court shall follow the same procedures applicable to other emergency applications. Criminal complaints filed pursuant to this act shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the county where the contempt is alleged to have been committed and a copy of the contempt complaint shall be forwarded to the court that issued the order alleged to have been violated.

b. The court shall waive any requirement that the petitioner's place of residence appear on the complaint.

c. (1) The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.

(2) The plaintiff may provide information concerning firearms to which the defendant has access, including the location of these firearms, if known, on a form to be prescribed by the Administrative Director of the Courts.

(3) Information provided by the plaintiff concerning firearms to which the defendant has access shall be kept confidential and shall not be disseminated or disclosed, provided that nothing in this subsection shall prohibit dissemination or disclosure of this information in a manner consistent with and in furtherance of the purpose for which the information was provided.

d. Summons and complaint forms shall be readily available at the clerk's office, at the municipal courts and at municipal and State police stations.

- e. As soon as the domestic violence complaint is filed, both the victim and the abuser shall be advised of any programs or services available for advice and counseling.
- f. A plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. A municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court may enter an ex parte order when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought.
- g. If it appears that the plaintiff is in danger of domestic violence, the judge shall, upon consideration of the plaintiff's domestic violence complaint, order emergency ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith.
- h. A judge may issue a temporary restraining order upon sworn testimony or complaint of an applicant who is not physically present, pursuant to court rules, or by a person who represents a person who is physically or mentally incapable of filing personally. A temporary restraining order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.
- i. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Family Part issues a further order. Any temporary order hereunder is immediately appealable for a plenary hearing de novo not on the record before any judge of the Family Part of the county in which the plaintiff resides or is sheltered if that judge issued the temporary order or has access to the reasons for the issuance of the temporary order and sets forth in the record the reasons for the modification or dissolution. The denial of a temporary restraining order by a municipal court judge and subsequent administrative dismissal of the complaint shall not bar the victim from refiling a complaint in the Family Part based on the same incident and receiving an emergency, ex parte hearing de novo not on the record before a Family Part judge, and every denial of relief by a municipal court judge shall so state.
- j. Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant and any other appropriate relief. If the order requires the surrender of any firearm or other weapon, a law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to the scene of the domestic violence or any other

location where the judge has reasonable cause to believe any firearm or other weapon belonging to the defendant is located, to ensure that the defendant does not gain access to any firearm or other weapon, and that the firearm or other weapon is appropriately surrendered in accordance with the order. If the order prohibits the defendant from returning to the scene of domestic violence or any other location where the judge has reasonable cause to believe any firearm or other weapon belonging to the defendant is located, any firearm or other weapon located there shall be seized by a law enforcement officer. The order shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S.2C:39-5. Other appropriate relief may include but is not limited to an order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household and providing that the animal shall not be disposed of prior to entry of a final order pursuant to section 13 of P.L.1991, c. 261 (C.2C:25-29).

The judge shall state with specificity the reasons for and scope of any search and seizure authorized by the order. The provisions of this subsection prohibiting a defendant from possessing a firearm or other weapon shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

k. The judge may permit the defendant to return to the scene of the domestic violence to pick up personal belongings and effects but shall, in the order granting relief, restrict the time and duration of such permission and provide for police supervision of such visit.

l. An order granting emergency relief, together with the complaint or complaints, shall immediately be forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in which the plaintiff resides or is sheltered, and shall immediately be served upon the defendant by the police, except that an order issued during regular court hours may be forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service. At no time shall the plaintiff be asked or required to serve any order on the defendant.

m. (Deleted by amendment, P.L.1994, c. 94.)

n. Notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.



o. (Deleted by amendment, P.L.1994, c. 94.)

p. Any temporary or final restraining order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

q. Prior to the issuance of any temporary or final restraining order issued pursuant to this section, the court shall order that a search be made of the domestic violence central registry with regard to the defendant's record.

### **2C:25-28.1. In-house restraining order prohibited**

Notwithstanding any provision of P.L.1991, c.261 (C.2C:25-17 et seq.) to the contrary, no order issued by the Family Part of the Chancery Division of the Superior Court pursuant to section 12 or section 13 of P.L.1991, c.261 (C.2C:25-28 or 2C:25-29) regarding emergency, temporary or final relief shall include an in-house restraining order which permits the victim and the defendant to occupy the same premises but limits the defendant's use of that premises.

### **2C:25-29. Hearing; factors considered; orders for relief**

a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of P.L.1991, c. 261 (C.2C:25-28) in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c. 426 (C.2C:25-1 et seq.) or P.L.1991, c. 261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

- (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
- (2) The existence of immediate danger to person or property;
- (3) The financial circumstances of the plaintiff and defendant;
- (4) The best interests of the victim and any child;
- (5) In determining custody and parenting time the protection of the victim's safety; and

(6) The existence of a verifiable order of protection from another jurisdiction.

An order issued under this act shall only restrain or provide damages payable from a person against whom a complaint has been filed under this act and only after a finding or an admission is made that an act of domestic violence was committed by that person. The issue of whether or not a violation of this act occurred, including an act of contempt under this act, shall not be subject to mediation or negotiation in any form. In addition, where a temporary or final order has been issued pursuant to this act, no party shall be ordered to participate in mediation on the issue of custody or parenting time.

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. In addition to any other provisions, any restraining order issued by the court shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3 during the period in which the restraining order is in effect or two years, whichever is greater. The order shall require the immediate surrender of any firearm or other weapon belonging to the defendant. The order shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S.2C:39-5.

A law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to any place where any firearm or other weapon belonging to the defendant is located to ensure that the defendant does not gain access to any firearm or other weapon, and a law enforcement officer shall take custody of any firearm or other weapon belonging to the defendant. If the order prohibits the defendant from returning to the scene of domestic violence or other place where firearms or other weapons belonging to the defendant are located, any firearm or other weapon located there shall be seized by a law enforcement officer. The provisions of this subsection requiring the surrender or removal of a firearm, card, or permit shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

(1) An order restraining the defendant from subjecting the victim to domestic violence, as defined in this act.

(2) An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or household is jointly or solely owned by the parties or jointly or solely leased by the parties. This

order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the victim to remain in the residence, the court may order the defendant to pay the victim's rent at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the victim and the victim requires alternative housing.

(3) An order providing for parenting time. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of parenting time. Parenting time arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for parenting time may include a designation of a place of parenting time away from the plaintiff, the participation of a third party, or supervised parenting time.

(a) The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with parenting time rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a parenting time order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious.

(b) The court shall consider suspension of the parenting time order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant's access to the child pursuant to the parenting time order has threatened the safety and well-being of the child.

(4) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Victims of Crime Compensation Office for any and all compensation paid by the Victims of Crime Compensation Office directly to or on behalf of the victim, and may require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages.

(5) An order requiring the defendant to receive professional domestic violence counseling from either a private source or a source appointed by the court and, in that event, requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling.

No application by the defendant to dissolve a final order which contains a requirement for attendance at professional counseling pursuant to this paragraph shall be granted by the court unless, in addition to any other provisions required by law or conditions ordered by the court, the defendant has completed all required attendance at such counseling.

(6) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim or of other family or household members of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim or other family or household members.

(7) An order restraining the defendant from making contact with the plaintiff or others, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(8) An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members; provided that this issue has not been resolved or is not being litigated between the parties in another action.

(9) An order granting either party temporary possession of specified personal property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

(10) An order awarding emergency monetary relief, including emergency support for minor children, to the victim and other dependents, if any. An ongoing obligation of support shall be determined at a later date pursuant to applicable law.

(11) An order awarding temporary custody of a minor child. The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent.

(12) An order requiring that a law enforcement officer accompany either party to the residence or any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order has been issued. This order shall be restricted in duration.

(13) (Deleted by amendment, P.L.1995, c. 242).

(14) An order granting any other appropriate relief for the plaintiff and

dependent children, provided that the plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, whether or not the plaintiff requested such relief at the time of the granting of the initial emergency order.

(15) An order that requires that the defendant report to the intake unit of the Family Part of the Chancery Division of the Superior Court for monitoring of any other provision of the order.

(16) In addition to the order required by this subsection prohibiting the defendant from possessing any firearm, the court may also issue an order prohibiting the defendant from possessing any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(17) An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to follow, the complainant or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the complainant in reasonable fear that the defendant would cause the death or injury of the complainant or any other person. Behavior prohibited under this act includes, but is not limited to, behavior prohibited under the provisions of P.L.1992, c. 209 (C.2C:12-10).

(18) An order requiring the defendant to undergo a psychiatric evaluation.

(19) An order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. Where a person has abused or threatened to abuse such animal, there shall be a presumption that possession of the animal shall be awarded to the non-abusive party.

c. Notice of orders issued pursuant to this section shall be sent by the clerk of the Family Part of the Chancery Division of the Superior Court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

d. Upon good cause shown, any final order may be dissolved or modified upon application to the Family Part of the Chancery Division of the Superior Court, but only if the judge who dissolves or modifies the order is the same judge who entered the order, or has available a complete record of the hearing or hearings on which the order was based.

e. Prior to the issuance of any order pursuant to this section, the court shall order that a search be made of the domestic violence central registry.

### **2C:25-29.1. Civil penalty for certain domestic violence offenders**

In addition to any other disposition, any person found by the court in a final hearing pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29) to have committed an act of domestic violence shall be ordered by the court to pay a civil penalty of at least \$50, but not to exceed \$500. In imposing this civil penalty, the court shall take into consideration the nature and degree of injury suffered by the victim. The court may waive the penalty in cases of extreme financial hardship.

### **2C:25-29.2. Collection, distribution of civil penalties collected**

All civil penalties imposed pursuant to section 1 of P.L.2001, c.195 (C.2C:25-29.1) shall be collected as provided by the Rules of Court. All moneys collected shall be forwarded to the Domestic Violence Victims' Fund established pursuant to section 3 of P.L.2001, c.195 (C.30:14-15).

### **2C:25-29.3. Rules of Court**

The Supreme Court may promulgate Rules of Court to effectuate the purposes of this act.

### **2C:25-29.4. Surcharge for domestic violence offender to fund grants**

In addition to any other penalty, fine or charge imposed pursuant to law, a person convicted of an act of domestic violence, as that term is defined by subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), shall be subject to a surcharge in the amount of \$100 payable to the Treasurer of the State of New Jersey for use by the Department of Human Services to fund grants for domestic violence prevention, training and assessment.

### **2C:25-30. Violations, penalties**

Except as provided below, a violation by the defendant of an order issued pursuant to this act shall constitute an offense under subsection b. of N.J.S. 2C:29-9 and each order shall so state. All contempt proceedings conducted pursuant to N.J.S. 2C:29-9 involving domestic violence orders, other than those constituting indictable offenses, shall be heard by the Family Part of the Chancery Division of the Superior Court. All contempt proceedings brought pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.) shall be subject to any rules or guidelines established by the Supreme Court to guarantee the prompt disposition of criminal matters. Additionally, and notwithstanding the term of imprisonment provided in N.J.S. 2C:43-8, any person convicted of a second or subsequent non indictable domestic violence contempt offense shall serve a minimum term of not less than 30 days. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of this act shall be excluded from enforcement under subsection b. of N.J.S. 2C:29-9; however, violations of these orders may be enforced in a civil or criminal

action initiated by the plaintiff or by the court, on its own motion, pursuant to applicable court rules.

### **2C:25-31. Contempt, law enforcement procedures**

Where a law enforcement officer finds that there is probable cause that a defendant has committed contempt of an order entered pursuant to the provisions of P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.), the defendant shall be arrested and taken into custody by a law enforcement officer. The law enforcement officer shall follow these procedures:

The law enforcement officer shall transport the defendant to the police station or such other place as the law enforcement officer shall determine is proper. The law enforcement officer shall:

- a. Conduct a search of the domestic violence central registry and sign a complaint concerning the incident which gave rise to the contempt charge;
- b. Telephone or communicate in person or by facsimile with the appropriate judge assigned pursuant to this act and request bail be set on the contempt charge;
- c. If the defendant is unable to meet the bail set, take the necessary steps to insure that the defendant shall be incarcerated at police headquarters or at the county jail; and
- d. During regular court hours, the defendant shall have bail set by a Superior Court judge that day. On weekends, holidays and other times when the court is closed, the officer shall arrange to have the clerk of the Family Part notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details. In addition, if a municipal court judge set the bail, the arresting officer shall notify the clerk of that municipal court of this information.

### **2C:25-32. Alleged contempt, complainant's procedure**

Where a person alleges that a defendant has committed contempt of an order entered pursuant to the provisions of P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261, but where a law enforcement officer has found that there is not probable cause sufficient to arrest the defendant, the law enforcement officer shall advise the complainant of the procedure for completing and signing a criminal complaint alleging a violation of N.J.S. 2C:29-9. During regular court hours, the assistance of the clerk of the Family Part of the Chancery Division of the Superior Court shall be made available to such complainants. Nothing in this section shall be construed to prevent the court from granting any other emergency relief it deems necessary.

### **2C:25-33. Records of applications for relief; reports; confidentiality; forms**

- a. The Administrative Office of the Courts shall, with the assistance of the Attorney General and the county prosecutors, maintain a uniform record of all applications for relief pursuant to sections 9, 10, 11, 12, and 13 of P.L.1991, c.261 (C.2C:25-25,

C.2C:25-26, C.2C:25-27, C.2C:25-28, and C.2C:25-29). The record shall include the following information:

- (1) The number of criminal and civil complaints filed in all municipal courts and the Superior Court;
- (2) The sex of the parties;
- (3) The relationship of the parties;
- (4) The relief sought or the offense charged, or both;
- (5) The nature of the relief granted or penalty imposed, or both, including, but not limited to, the following:
  - (a) custody;
  - (b) child support;
  - (c) the specific restraints ordered;
  - (d) any requirements or conditions imposed pursuant to paragraphs (1) through (18) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29), including but not limited to professional counseling or psychiatric evaluations;
- (6) The effective date of each order issued; and
- (7) In the case of a civil action in which no permanent restraints are entered, or in the case of a criminal matter that does not proceed to trial, the reason or reasons for the disposition. It shall be the duty of the Director of the Administrative Office of the Courts to compile and report annually to the Governor, the Legislature and the Advisory Council on Domestic Violence on the data tabulated from the records of these orders.

All records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.

b. In addition to the provisions of subsection a. of this section, the Administrative Office of the Courts shall, with the assistance of the Attorney General and the county prosecutors, create and maintain uniform forms to record sentencing, bail conditions and dismissals. The forms shall be used by the Superior Court and by every municipal court to record any order in a case brought pursuant to this act. Such recording shall include but not be limited to, the specific restraints ordered, any requirements or conditions imposed on the defendant, and any conditions of bail.

### **2C:25-34. Domestic violence restraining orders, central registry**

The Administrative Office of the Courts shall establish and maintain a central registry of all persons who have had domestic violence restraining orders entered against them, all persons who have been charged with a crime or offense involving domestic violence, and all persons who have been charged



with a violation of a court order involving domestic violence. All records made pursuant to this section shall be kept confidential and shall be released only to:

- a. A public agency authorized to investigate a report of domestic violence;
- b. A police or other law enforcement agency investigating a report of domestic violence, or conducting a background investigation involving a person's application for a firearm permit or employment as a police or law enforcement officer or for any other purpose authorized by law or the Supreme Court of the State of New Jersey;
- c. A court, upon its finding that access to such records may be necessary for determination of an issue before the court;
- d. A surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding; or
- e. The Division of Youth and Family Services in the Department of Children and Families when the division is conducting a background investigation involving:
  - (1) an allegation of child abuse or neglect, to include any adult member of the same household as the individual who is the subject of the abuse or neglect allegation; or
  - (2) an out-of-home placement for a child being placed by the Division of Youth and Family Services, to include any adult member of the prospective placement household.

Any individual, agency, surrogate or court which receives from the Administrative Office of the Courts the records referred to in this section shall keep such records and reports, or parts thereof, confidential and shall not disseminate or disclose such records and reports, or parts thereof; provided that nothing in this section shall prohibit a receiving individual, agency, surrogate or court from disclosing records and reports, or parts thereof, in a manner consistent with and in furtherance of the purpose for which the records and reports or parts thereof were received.

Any individual who disseminates or discloses a record or report, or parts thereof, of the central registry, for a purpose other than investigating a report of domestic violence, conducting a background investigation involving a person's application for a firearm permit or employment as a police or law enforcement officer, making a determination of an issue before the court, conducting a background investigation as specified in subsection e. of this section, or for any other purpose other than that which is authorized by law or the Supreme Court of the State of New Jersey, shall be guilty of a crime of the fourth degree.

## **2C:29-9. Contempt**

Contempt. a. A person is guilty of a crime of the fourth degree if the person purposely or knowingly disobeys a judicial order or protective order, pursuant to section 1 of P.L.1985, c. 250 (C.2C:28-5.1), or hinders, obstructs, or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing, or controversy by a court, administrative body, or investigative entity.

b. (1) Except as provided in paragraph (2) of this subsection, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c. 261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

Orders entered pursuant to paragraphs (3), (4), (5), (8), and (9) of subsection b. of section 13 of P.L.1991, c. 261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this paragraph.

(2) In all other cases a person is guilty of a disorderly persons offense if that person purposely or knowingly violates an order entered under the provisions of the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c. 261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States.

Orders entered pursuant to paragraphs (3), (4), (5), (8), and (9) of subsection b. of section 13 of P.L.1991, c. 261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this paragraph.

c. A person is guilty of a crime of the third degree if that person purposely or knowingly violates any provision in an order entered under the provisions of section 3 of P.L.1996, c. 39 (C.2C:12-10.1) or section 2 of P.L.1999, c. 47 (C.2C:12-10.2) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

d. (1) Except as provided in paragraph (2) of this subsection, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of P.L.2015, c. 147 (C.2C:14-13 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

(2) In all other cases a person is guilty of a disorderly persons offense if that person purposely or knowingly violates an order entered under the provisions of P.L.2015, c. 147 (C.2C:14-13 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States.

e. A person is guilty of a crime of the fourth degree if the person purposely or knowingly violates any provision of an order entered under the provisions of the “Extreme Risk Protective Order Act of 2018,” P.L.2018, c. 35 (C.2C:58-20 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States.

As used in this section, “state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by a federal law or formally acknowledged by a state.

**GLENN A. GRANT, J.A.D.**  
Acting Administrative Director of the Courts

Richard J. Hughes Justice Complex • P.O. Box 037 • Trenton, NJ 08625-0037 njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

**Directive #06-20**

(Questions or comments may be directed to (609) 815-2900, ext. 55350)

**TO:** Assignment Judges  
Family Presiding Judges  
Trial Court Administrators  
Family Division Managers

**FROM:** Glenn A. Grant, J.A.D., Acting Administrative Director

**SUBJ:** Family - Domestic Violence Economic Mediation Program – Operational Guidelines; Forms

**DATE:** January 15, 2020

This Directive promulgates statewide operational guidelines for the Domestic Violence Economic Mediation (DVEM) program as approved by the Supreme Court. The program is the result of the collaborative efforts of the DVEM Joint Committee comprised of members of the domestic violence community, the Supreme Court Complementary Dispute Resolution Committee, the Supreme Court State Domestic Violence Working Group, judges, resource persons and Judiciary staff. Before the Court approved the DVEM program for statewide implementation, it was piloted in six counties for three years.

Rule 1:40-5(b)(1) governs referral to post-Early Settlement Panel (ESP) programs for the mediation of the economic aspects of dissolution actions. That Rule also provides that no matter shall be referred to mediation if a temporary or final restraining order is in effect in the matter pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.). To make the DVEM program possible, the Supreme Court relaxed Rule 1:40-5(b)(1) and has requested the development of conforming amendments to the rule. Those proposed amendments will be presented to the Court in the near future.

The DVEM program enables litigants to mediate economic issues in dissolution matters where there is an active domestic violence final restraining order (FRO) between the parties. The mediation is to address economic issues only, not any custody or parenting time aspects of the case. The approved program guidelines are appended to this Directive as Attachment 1. In authorizing the DVEM program, the Supreme Court and the Judiciary remain committed to ensuring the protections of domestic violence final restraining orders in all instances.

The DVEM program is limited to those dissolution (FM) cases with a FRO between the parties where the protected party in the active FRO has consented to mediation. It includes litigants who have mutual



FROs. Litigants with temporary restraining orders are not eligible to participate in the program. Also excluded from the program are cases where there has been a charge of contempt or a conviction for a violation of the FRO. In-person DVEM sessions must be held at the courthouse and employ shuttle diplomacy. Shuttle diplomacy is a method of mediation in which the mediator travels between the parties who are located in different rooms. The Vicinage must coordinate with the county Sheriffs Office to ensure that the security measures detailed in the Operational Guidelines (Attachment 1) are in place for every in-person DVEM. Videoconferencing can be an option to conduct the mediation, if available in the county.

Forms to be used in the DVEM program are appended to this Directive as Attachments 2 through 10, as follows:

- FAQ's for Protected Party (Attachment 2)
- FAQ's for Non-Protected Party (Attachment 3)
- Certification of Plaintiff in Support of Request for Amendment of Final Restraining Order to Allow Economic Mediation (Attachment 4)
- Judge's Colloquy and Suggested Language to be Included in the Amended FROs (Attachment 5)
- Order of Referral to the DVEM Program (Attachment 6)
- Protective Order (Attachment 7)
- Protected Party post mediation Questionnaire (Attachment 8)
- Non-Protected Party post mediation Questionnaire (Attachment 9)
- DVEM Case Information Form (to be completed by mediator) (Attachment 10)

Before any mediator may participate in the DVEM program, that mediator must be trained in accordance with the training curriculum developed by the Judiciary in conjunction with the New Jersey Institute for Continuing Legal Education. Two training sessions have already taken place, with a third scheduled for January 29 and 30, 2020 in Mount Laurel. The training incorporates specific domestic violence components, including: the history of the program; power and control; progression of abuse; the cycle of violence; and issues relating to the victim and to the perpetrator. Each training session will also include a panel discussion with a judge and an attorney who participated in the pilot program, as well as mediation simulation exercises.

Family judges and Judiciary staff from each participating county will be required to take part in a mandatory training at a date(s) to be determined.

The target date for the program to be operational statewide is April 15, 2020. Accordingly, all vicinages that do not currently have DVEM in place must submit an implementation plan to Assistant Director Joanne M. Dietrich by February 26, 2020. Evaluative telephone conference calls will be held with

Administrative Office of the Courts Family Practice Division staff during the first three months of implementation. The effectiveness of this program depends on the commitment of necessary resources and a certain degree of uniformity in the counties. To that end, each implementation plan should include the following information:

- The name of the staff designated as the primary contact in your county;
- The name of the staff designated as the back-up contact in your county;
- The names of the judges who will be referring cases to mediation;
- Details of the physical location where the mediations will occur;
- How safe arrival and departure will be ensured;
- If a county will be using videoconferencing as an option, details regarding its implementation; and
- Potential barriers to implementation and possible solutions to those problems.

Questions regarding the DVEM program, the attached operational guidelines, and forms may be directed to the Family Practice Division at (609) 815-2900 ext. 55350.

#### Attachments

cc: Chief Justice Stuart Rabner  
Steven D. Bonville, Chief of Staff  
AOC Directors and Assistant Directors  
Clerks of Court  
Special Assistants to the Administrative Director  
Amelia Wachter-Smith, Chief, Family Practice  
Kathleen Gaskill, Manager, CDR/Volunteer Programs  
Assistant Family Division Managers  
Domestic Violence Team Leaders  
Dissolution Team Leaders  
Gina G. Bellucci, Family

## **Attachment List**

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2. FAQ's for Protected Party
  
3. FAQ's for Non-Protected Party
  
4. Certification of Plaintiff in Support of Request for Amendment of Final Restraining Order to Allow Economic Mediation
  
5. Judge's Colloquy and Suggested Language to Be Included in the Amended FROs
  
6. Order of Referral to the DVEM Program
  
7. Protective Order
  
8. Protected Party post mediation Questionnaire
  
9. Non-Protected Party post mediation Questionnaire
  
10. DVEM Case Information Form (to be filled out by mediator)

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020

# **Attachment 1**

## **Operational Guidelines for the Domestic Violence Economic Mediation Program**

Directive #06-20—Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020



## **Operational Guidelines for the Domestic Violence Economic Mediation Program**

The Domestic Violence Economic Mediation (DVEM) Program permits mediation of economic issues in certain dissolution matters where a domestic violence final restraining order (FRO) is in effect between the parties. While the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq. expressly prohibits mediation of custody and parenting time, it does not expressly prohibit economic mediation. Rule 1:40-5(b)(1) will be relaxed to enable litigants to mediate economic issues within the confines of these operational guidelines. The DVEM program is limited to those dissolution (FM) cases with an active FRO between the parties where the protected party has consented to mediation. Litigants with temporary restraining orders (TRO) are not eligible participants. Also excluded from the program are cases where there has been a charge of contempt or a conviction for a violation of the FRO. Parties who have mutual active FROs are eligible to participate in the program.

The following operational guidelines constitute minimum standards for implementation of the DVEM program:

1. Following the Early Settlement Panel (ESP), if there are outstanding economic issues, cases may be referred to the DVEM program. Court staff must screen cases to determine eligibility. The case is not eligible if the following exists:
  - A TRO exists between the parties.
  - There has been a contempt of a restraining order involving the same parties.
2. After screening cases, staff should advise the domestic violence advocate if there are any potential DVEM cases on the ESP calendar. The advocate should be available to meet with the party who is the protected party on the active FRO to review the Frequently Asked Questions (FAQs) and Protected Party Certification (Appended here as Attachment 2 and Attachment 4).
3. If court staff finds that a FRO exists between the parties in another county, staff should contact the staff or manager in that other county and request that venue of the FRO be transferred to the FM county.
4. Before the court can refer the financial issues to economic mediation, several steps must be taken. Both parties need to read a FAQs document in its entirety. There is a separate FAQ for the protected party and the non-protected party. These documents are appended here as Attachments 2 and 3. The protected party will then meet with a member of the local domestic violence organization or a trained court staff member who will speak to them about economic mediation and the DVEM program.
5. If after reading the FAQ document and speaking to a member of the local domestic violence organization or a trained court staff member, the protected party would still like to have the case considered for the DVEM program, they will be asked to

read and fill out a document titled "Certification of Protected Party in Support of Request for Amendment of Final Restraining Order to Allow Economic Mediation." This document is appended here as Attachment 4. This Certification is a formal request to the judge in the dissolution matter (FM) requesting that the case be referred to the DVEM program. The protected party in the FRO is the only party who may request that the court refer the financial issues to the DVEM program. Even after agreeing to participate in the DVEM program, the protected party has the right to cease participation and terminate the mediation at any time.

6. After reviewing the protected party's request, the court will give the other party the opportunity to give their position on whether they would like to proceed to economic mediation. The court may still refer the case to the DVEM program even over the other party's objection. Before being permitted to participate in the DVEM program, the judge presiding over the dissolution (FM) matter will question both parties about participation in the DVEM program. Appended to these guidelines as Attachment 5 is a form "Judge's Colloquy and Suggested Language to Be Included in the Amended FROs." The FM judge must be satisfied that the protected party is voluntarily consenting to participate in the DVEM program and understands the parameters of their participation. Consent of the defendant is not required for the court to order the parties into the DVEM program.
7. If the case is not referred by the court to the DVEM program, the case will proceed as it would normally, with the court setting a date for the next event. This next event may be either an intensive settlement conference or a trial.
8. If the court grants the protected party's request to allow economic mediation, the FRO will be amended to allow participation. All other provisions of the Final Restraining Order will remain in place. Suggested language to include in the FRO is contained in the form appended here as Attachment 5 titled "Judge's Colloquy and Suggested Language to be Included in the Amended FROs."
9. The "Order of Referral" to the DVEM program is appended here as Attachment 6 and will be sent to the mediator with the Protective Order appended here as Attachment 7. Court staff also will send the DVEM mediator copies of the TRO, the amended FRO and a protective order.
10. If the ESP is not successful, there is an active FRO between the parties, there is no contempt between the parties and the protected party has signed the Certification, then county staff should assist the litigants in selecting a mediator. County staff should also coordinate dates of mediation to occur in separate rooms and stagger litigant arrival/departure to the courthouse.
11. County staff should provide case files and tentative mediation dates to the FM judge. If the court refers the case to the DVEM program, the parties will be asked to agree upon a mediator. If the parties are unable to agree on a particular mediator, the court will assign one to the case. The court will then enter an order referring the case to the DVEM program. The Order of Referral is appended here as

Attachment 6. Only those mediators on the court approved roster for Family Economic Mediation cases who undergo additional DVEM training will be permitted to mediate DVEM cases.

12. County staff shall screen each case on the date of the scheduled DVEM program for a newly filed contempt (FO). If an FO is found, that case is no longer eligible for DVEM participation. This must be noted on the case file.
13. County staff should record the order in FACTS as 0205 (Economic Mediation Order). The signed Protected Party Certification should be added to the case file. Mediation must be scheduled in FACTS using the newly created Domestic Violence Economic Mediation Code 2811. Staff must ensure that locations have been entered in FACTS for the separate mediation rooms.
14. The calendar should be created using the county staff's court official identification.
15. If either party requests an adjournment of the scheduled mediation session, each county should handle such request pursuant to local adjournment policy. If an adjournment is granted, county staff should contact the mediator to obtain a new date and time in accordance with room availability. The new date should be scheduled in FACTS using the appropriate 2811 FACTS code. Notices should be sent to the parties and the FAQs should again be sent to each party.

The day before the rescheduled date, county staff must again screen the matter for any FOs or FRO dismissal. If the FRO was dismissed or a contempt (FO) was filed, county staff shall cancel the mediation session and notify both parties and the mediator. County staff should also schedule for the next event.

16. On the date of the mediation session, Family staff must advise the Sheriff of the DVEM calendar. Family staff shall also ensure that the staggered parties' arrival/departure is scheduled. County staff is to provide three (3) evaluation forms (appended hereto as Attachments 8, 9, and 10) to the mediator prior to the start of the mediation.
17. Each vicinage must have a method for staggering litigants' entrances and exits to/from the courthouse. The protected party and non-protected party will be escorted to separate mediation rooms if the mediation is being conducted in the courthouse (as opposed to by video). This prevents any direct communication from occurring. Sheriff officers will be readily available. The mediator assigned to the case will use "shuttle" diplomacy to facilitate the mediation. Shuttle diplomacy is a method of mediation conducted when the mediator travels between the parties who are located in separate rooms. If the county courthouse has the capabilities, mediation may take place with the assistance of video conferencing.
18. Economic mediation will only take place at the courthouse where Sheriff Officers are available. Economic mediation is prohibited from taking place at the mediator's office or at any other location. Mediation is confidential.

19. A protected party will be advised that they may attend the mediation session(s) accompanied by their attorney or by any other person of their choice pursuant to the Uniform Mediation Act, N.J.S.A. N.J. Stat. § 2A:23C-1, et. seq.
20. Pursuant to Rule 1:40-4(b) subject to the provisions of Guidelines 2 and 15 in Appendix XXVI, Guidelines for the Compensation of Mediators, if the parties select a mediator from the court's rosters of civil and family mediators, the parties may opt out of the mediation process after the mediator has expended two hours of service, which shall be allocated equally between preparation and the first mediation session, and which shall be at no cost to the parties. As provided in Guideline 7 in Appendix XXVI, fees for roster mediators after the first two free hours shall be at the mediator's market rate as set forth on the court's mediation roster. As provided in Guideline 4 in Appendix XXVI, if the parties select a non-roster mediator, that mediator may negotiate a fee and need not provide the first two hours of service free.
21. After each mediation session both parties are to submit questionnaires to court staff. See Attachments 8 and 9. The mediator is required to submit a DVEM Case Information Form to court staff as well. See Attachment 10. It is important that after each session, before anyone leaves the courthouse, three forms are submitted to court staff. Staff should review the forms and address any concerns raised in the parties questionnaires.
22. In cases with mutual FROs, the protected party FAQs, Attachment 2, must be sent to both parties with the ESP notice. Both parties must sign the Protected Party Certification, Attachment 4. The FM judge will question both parties to ensure knowing consent. After each mediation session, both parties are to complete the protected party evaluation form, Attachment 8.

# Attachment 2

## FAQ's for Protective Party

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**New Jersey Judiciary**  
**Domestic Violence Economic Mediation Program**  
**FAQ's for Protected Party**

**Q: What is “economic mediation”?**

A: Economic mediation is a means of resolving differences related to financial issues with the help of a trained, impartial third party. A mediator does not represent either side and does not offer legal advice. Parties are encouraged to retain an attorney to advise them of their rights during the mediation process, but if they do not have an attorney, they are allowed to have someone else accompany them to the mediation. The mediator helps the parties identify the issues, gather the information they need to make informed decisions, and communicate so that they can find a solution agreeable to both. Mediation is designed to facilitate settlements in an informal, non-adversarial manner. The court maintains a roster of approved mediators that have mediation training as well as specialized domestic violence training.

**Q: Because I have a Final Restraining Order against the other party, is there a special process for me to request that the financial issues be referred to economic mediation?**

A: Yes. Before the court can refer the financial issues to economic mediation, several steps must be taken. First, you need to read this document in its entirety. You will then meet with a member of the local domestic violence organization or a trained court staff member who will speak to you about economic mediation. If you have any questions about economic mediation or anything related to the process, you can ask them; however, they cannot give you any legal advice.

If after reading this document and speaking to a member of the local domestic violence organization or a trained court staff member you would still like to have your case considered for economic mediation, you will be asked to read and fill out a document entitled "Certification of Plaintiff in Support of Request for Amendment of Final Restraining Order to Allow Economic Mediation." This document is your formal request to the judge in your case asking that your case be referred to economic mediation. It is also the document indicating that you understand what it means to have your Final Restraining Order amended to allow economic mediation to take place.

**Q: Why do I need to file a request with the court to request economic mediation?**

A: The law prohibits mediation because you have an active Final Restraining Order against the other party. However, the Judiciary has established Domestic Violence Economic Mediation Program to permit referral of financial issues in a dissolution case to economic mediation where a final restraining order exists between the parties

However, under the terms of the Domestic Violence Economic Mediation Program the court can refer the unresolved financial issues to economic mediation only if you, as the Plaintiff in the Final Restraining Order, request it directly from the court.

**Q: If I file a request for economic mediation and to amend my Final Restraining Order to allow economic mediation, what can I expect to happen in court?**

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A: Your request that the court refer the financial issues in your dissolution matter to economic mediation and that your Final Restraining Order be amended to allow mediation does not guarantee that the court will refer your case to economic mediation.

After reviewing your request and making sure you understand what economic mediation is, the court will give the other party the opportunity to give her or his position on whether s/he would like to proceed to economic mediation. If the other party agrees to proceed with economic mediation, the court will enter an order amending your Final Restraining Order to allow economic mediation under the terms of the Domestic Violence Economic Mediation Program.

If the other party objects to economic mediation, s/he will be asked to state her or his objection.

The court will then decide whether the case is referred to economic mediation. The court can still refer the case to economic mediation even over the other party's objection.

If the court refers your case to economic mediation, you and the other party will be asked to agree upon a mediator. If you are unable to agree on a mediator, the court will assign one to your case. The court will then enter an order referring the case to economic mediation.

**Q: What happens if the case is not referred to economic mediation?**

A: If the case is not referred by the court to economic mediation, the case will proceed as it would normally, with the court setting a date for the next event, which may be either an intensive settlement conference or a trial. At the trial, both parties will have to present their testimony, witnesses and evidence so that the court can make decisions regarding the economic and other possible unresolved issues that are part of the dissolution matter.

**Q: What does it mean to amend the Final Restraining Order to allow economic mediation?**

A: If the court grants your request to allow economic mediation, the Final Restraining Order will be amended to allow economic mediation. All other provisions of the Final Restraining Order will remain in place. Any contact with you with the other party remains a violation of the Final Restraining Order.

**Q: What if, after reading this document and speaking to someone about economic mediation, I decide I do not want my case referred to economic mediation?**

A: Under the Domestic Violence Economic Mediation Program, the court can only refer the financial issues in the dissolution matter to economic mediation if you, as the protected party in the Final Restraining Order, file a request to participate in mediation. If you decide that you do not want your case referred to economic mediation, then you should not fill out the request. If you choose not to fill out the request, then your case will proceed to the next event to be scheduled.

Under the terms of this Domestic Violence Economic Mediation Program, the other party, the non-protected party in the Final Restraining Order, cannot request that the case proceed

to economic mediation. You, as the protected party in the Final Restraining Order are the only party who can request that the court refer the financial issues to economic mediation.

If you choose not to request that the court refer the unresolved financial issues to economic mediation, please be aware that this will **not** be held against you in any way.

**Q: If the financial issues are referred to economic mediation what safeguards are in place to protect me from the non-protected party during the mediation itself?**

A. Some of the safeguards available are as follows: Economic mediation will only take place at the courthouse where trained sheriffs officers are available. Economic mediation is prohibited from taking place at the mediator's office or at any other location.

The mediator assigned to your case will use "shuttle" diplomacy to facilitate the mediation. This means that you will be in one room and the other party will be in another room. This prevents any direct communication from occurring. Additionally, if the county courthouse you are in has the technology available, mediation can take place with the assistance of video conferencing.

Under this program, only those mediators who have completed specific domestic violence training will be eligible to be chosen as a mediator for your case.

**Q: What if during the economic mediation I feel like the other party is intimidating me or attempting to coerce me?**

A. If you have an attorney, you should tell them and you should also let the economic mediator know that this is how you feel. If you choose not to continue with the economic mediation, you can choose to terminate the mediation. The mediator will be required to let the judge know that the mediation was unsuccessful. This will not be held against you in any way.

**Q: What if the court enters an order referring my case to economic mediation, but I change my mind and don't want to attend?**

A: The judiciary understands that victims of domestic violence may not feel comfortable about proceeding with economic mediation, even though a number of safeguards are in place for your protection. If at any point you decide that you do not want to go forward with the economic mediation, you may choose to end it. It is suggested that before canceling the economic mediation that you speak to your attorney if you have one. If there are concerns about your safety, please let your attorney and the economic mediator know at the time they arise.



**Q: Is anyone responsible for paying the economic mediator?**

A. The first two hours of mediation are free. These two hours include the time it takes for a mediator to prepare for the actual mediation as well as a mediation session. Travel time is not included in the first two hours and mediators are not allowed to charge for their travel.

During the mediation, the mediator will let you know when the two free hours have been reached. Either party can then choose to end the mediation.

If the mediation goes beyond the free two hours, the court will decide how much each party will have in paying the mediator.

**Q: Can the mediator also address other issues like custody and parenting time?**

A: No, by law and the terms of this Domestic Violence Economic Mediation Program, the only issues that may be discussed at mediation are financial issues.

# Attachment 3

## FAQ's for Protective Party

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January 14, 2020



New Jersey Judiciary  
Domestic Violence Economic Mediation Program  
**FAQ's for Non-Protected Party**

**Q: What is “economic mediation”?**

**A:** Economic mediation is a means of resolving differences related to financial issues with the help of a trained, impartial third party. A mediator does not represent either side and does not offer legal advice. Parties are encouraged to retain an attorney to advise them of their rights during the mediation process, but if they do not have an attorney, they are allowed to have someone else accompany them to the mediation. The mediator helps the parties identify the issues, gather the information they need to make informed decisions, and communicate so that they can find a solution agreeable to both. Mediation is designed to facilitate settlements in an informal, non-adversarial manner. The court maintains a roster of approved mediators that have mediation training as well as specialized domestic violence training.

**Q: Is economic mediation available to parties in a divorce action where one party has an active Final Restraining Order against the other party?**

**A:** The law prohibits any kind of mediation when there is an active Final Restraining Order. The Judiciary established a Domestic Violence Economic Mediation Program to permit the referral of unresolved financial issues in a dissolution case.

The court can only refer a case to economic mediation if the protected party consents to participate in the program.

**Q: If the protected party files a request for to amend the Final Restraining order to permit what can I expect to happen in court?**

**A:** The protected party's request that the court refer the financial issues in your case to economic mediation and that the Final Restraining Order be amended to permit economic mediation does not guarantee that the court will refer your case to the program.

After reviewing the request and making sure the protected party understands what economic mediation is, the court will give you the opportunity to explain whether you would like to proceed to economic mediation. If you agree to proceed with economic mediation, the court will enter an order amending the Final Restraining Order to permit participation under the terms of the Domestic Violence Economic Mediation Program.

If you object to economic mediation, you will be asked to state your objection. The court will then decide whether the case is referred to economic mediation. **The court can still refer the case to economic mediation over your objection.**

If the court refers your case to economic mediation, you and the other party will be asked to agree upon a mediator. If you are unable to agree on a particular mediator, the court will assign one to your case. The court will then enter an order referring the case to economic mediation.

**Q: What happens if the case is not referred to economic mediation?**

A: If the case is not referred by the court to economic mediation, the case will proceed as it would normally, with the court setting a date for the next event, which can be either an intensive settlement conference or a trial. At the trial, both parties will have to present their testimony, witnesses and evidence so that the court can make decisions regarding the economic and other possible unresolved issues that are part of the divorce action.

**Q: What does it mean to amend the Final Restraining Order to allow economic mediation?**

A: If the court grants the protected party's request to allow economic mediation, the Final Restraining Order will be amended to allow economic mediation. All other provisions of the Final Restraining Order will remain in place. Any contact by you with the protected party remains a violation of the Final Restraining Order.

**Q: If the protected party does not request to participate in economic mediation but the non-protected party wants to participate, can economic mediation occur?**

A: No. Under the terms of this Domestic Violence Economic Mediation Program, the non-protected party in the Final Restraining Order cannot request that the case proceed to economic mediation. The protected party in the Final Restraining Order is the only party that can request that the court refer the financial issues to economic mediation.

**Q: If the unresolved financial issues proceed to economic mediation how and where does the mediation occur?**

A: Economic mediation will only take place at the courthouse where trained sheriffs officers are available. Economic mediation is prohibited from taking place at the mediator's office or at any other location.

The mediator assigned to your case will use "shuttle" diplomacy to facilitate the mediation. This means that you will be in one room and the other party will be in another room. This prevents any direct communication from occurring. Additionally, if the county courthouse you are in has the technology available, mediation can take place with the assistance of video conferencing.

Under this program, only those mediators who have completed specific domestic violence training will be eligible to be chosen as a mediator for your case.

**Q: What if court enters an order referring the dissolution matter to economic mediation, but the protected party changes their mind and does not want to attend?**

A: The Domestic Violence Economic Mediation Program permits the protected party to end the mediation at any time.

**Q: Is anyone responsible for paying the economic mediator?**

A: The first two hours of mediation are free. These two hours include the time it takes for a mediator to prepare for the actual mediation as well as a mediation session. Travel time is not included in the first two hours and mediators are not allowed to charge for their travel.

During the mediation, the mediator will let you know when the two free hours have been reached. Either party can then choose to terminate mediation.

If the mediation goes beyond the free two hours, the court will decide how much each party will have in paying the mediator.

**Q: Can the mediator also address other issues like custody and parenting time?**

A: No, by the law and the terms of this Domestic Violence Economic Mediation Program, the only issues that can be discussed at mediation are financial issues.

# Attachment 4

## Certification of Plaintiff in Support of Request of Amendment of Final Restraining Order to Allow Economic Mediation

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January 14, 2020

Superior Court of New Jersey  
Chancery Division - Family Part  
County of            - Select County -  
Docket Number: FV -

\_\_\_\_\_  
Plaintiff,  
v.  
\_\_\_\_\_  
Defendant,

**Certification of Plaintiff in Support of  
Request for Amendment of  
Final Restraining Order to  
Allow Economic Mediation**

The Plaintiff \_\_\_\_\_ hereby certifies and says:

1. I am the Plaintiff in the above captioned matter.
2. I am married to the Defendant, \_\_\_\_\_.
3. Divorce proceedings are presently ongoing between myself and the Defendant under docket number FM- \_\_\_\_\_.
4. I understand that the Final Restraining Order I have against the Defendant prohibits us from attending economic mediation in our pending divorce matter.
5. I am making this request to amend my Final Restraining Order to allow economic mediation in our pending divorce. I reviewed the materials provided to me regarding economic mediation and know what to expect. I have met with a member of a domestic violence advocate or a trained court staff member who answered all of my questions regarding the process.
6. I understand that as the Plaintiff in the Final Restraining Order I can choose to withdraw from the economic mediation process for any reason. I understand I can attend economic mediation with my attorney or, if I am unrepresented, anyone else of my choosing can attend with me.
7. I also understand that if the Court grants my request and amends the Final Restraining Order to allow economic mediation, all of its other provisions will remain in full force and effect. I understand that if the Defendant violates any of the Final Restraining provisions, I can call the police and/or file a criminal contempt complaint.
8. I am asking of my own free will and without coercion or interference from any person for the Final Restraining Order to be amended.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff Signature

# Attachment 5

## Judge's Colloguy and Suggested Language to be Included in the Amended FROs

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020



## Domestic Violence Economic Mediation Program

### Judge's Colloquy and Suggested Language to Be Included in the Amended FROs

If the protected party agrees to participate in economic mediation, the protected party will be returned to the courtroom and the parties and counsel will be seated at counsel table, at which time the judge will make the following inquiries of the protected party:

1. Have you met with a domestic violence legal advocate or trained court staff to discuss economic mediation?
2. Did that individual provide you with written materials about economic mediation?
3. Did you read and understand all of the written information provided to you?
4. Did you also discuss the process of economic mediation with the staff member or legal advocate?
5. Do you understand all of the information that was provided to you?
6. Do you understand that you are not required to participate in economic mediation and your participation is entirely voluntary?
7. Do you desire to participate in economic mediation?  
[Assuming the answer is "yes," continue below.]
8. Have you read and signed the form setting forth your desire to participate in economic mediation?
9. Do you understand that the mediation will take place here at the Courthouse and that if at any time you wish to terminate the mediation you will be free to do so?
10. Do you understand that even though you have expressed a willingness to participate in economic mediation, I will make the final decision as to whether the case should go to economic mediation?

After being satisfied that the protected party wants to participate in economic mediation, the non-protected party should be asked whether or not they wish to participate in mediation as well as the reason for his or her response.

After having heard from the protected party and the non-protected party (understanding that the non-protected party's consent is not required), the Court shall make a decision as to whether or not economic mediation is appropriate for the case. If mediation is appropriate, the judge asserts jurisdiction over the FV matter and directs that the final restraining order be amended to include the language that permits the parties to participate in economic mediation pursuant to the procedures set forth in the program.

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Suggested language to be included in the amended FROs is:

"[notwithstanding any other provision in this Order, the parties are permitted to participate in economic mediation at the \_\_\_\_\_ Courthouse.

# Attachment 6

## Order of Referral to the DVEM Program

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, FAMILY PART  
COUNTY OF \_\_\_\_\_  
DOCKET NO.: FV- \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_  
Plaintiff(s)

v.

\_\_\_\_\_  
Defendant(s)

**ORDER OF REFERRAL TO  
DOMESTIC VIOLENCE  
ECONOMIC MEDIATION PROGRAM**

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This matter having been opened to the court by Case Management Conference;

\_\_\_\_\_, appearing for plaintiff, and

\_\_\_\_\_, appearing for defendant; and good cause having been shown;

**IT IS on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, ORDERED AS FOLLOWS:**

1. This Order is entered pursuant to R.1:40-5(b).
2. The above-captioned matter is hereby referred to the Domestic Violence Economic Mediation Program.
3. Domestic Violence Economic Mediation Program next event shall occur at \_\_\_\_\_ County Courthouse on date \_\_\_\_\_ at time \_\_\_\_\_. Please report to \_\_\_\_\_.
4. \_\_\_\_\_ is designated as the mediator. The mediator was selected from the statewide approved list. The mediator shall serve on a *pro bono* basis for the initial two hours of service, which includes reasonable preparation time (one hour), and the first mediation session (one hour). After the first two hours, the mediator shall be compensated at the mediator's hourly rate, together with reasonable expenses. The mediator's fee shall be paid by the parties as follows: plaintiff \_\_\_\_\_ % and defendant \_\_\_\_\_ %. Payments shall be made

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020

as billed, unless other arrangements are made with the mediator. Any outstanding bills shall be paid within \_\_\_\_\_ days of receipt. Either party may opt out of the mediation process after the first two hours.

5. After the first session ordered herein, the date(s), time(s), and place(s) of subsequent mediation session(s) shall be set in coordination with judiciary staff.
6. The parties may be accompanied to the mediation sessions by their attorney or any other person of their choice as defined by the Uniform Mediation Act. The court expects and requires all litigants and their attorneys (if applicable) to participate in the mediation sessions in good faith. The parties shall cooperate in providing accurate and complete information to the mediator including, but not limited to, tax returns, Case Information Statements, and appraisal reports.
7. Termination of mediation generally shall be governed by R. 1:40-4 (h).
8. Upon termination of the mediation process, the mediator shall promptly report to the court in writing as to whether or not the case is settled. If the case is not fully settled, the mediator shall within fourteen days provide the court and the parties notice of which issues are settled and which issues remain open.
9. Unless otherwise agreed by the parties, and subject to R. 1:40-4(c), all mediation proceedings shall be confidential and non-evidential. No verbatim record shall be made thereof.

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Judge, Superior Court of New Jersey

**\* Please provide mediator with parties' Case Information Statements and ESP Statements prior to the first mediation session.**

MEDIATOR NAME, ADDRESS AND TELEPHONE NUMBER:

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Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020

# Attachment 7

## Protective Order

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020



# Attachment 8

## Protective Party Post Mediation Questionnaire

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020



## New Jersey Judiciary Domestic Violence Economic Mediation Litigant Questionnaire

(To be completed by the Protected Party)

Name of Mediator	County	The mediator for this case was selected by:					
		<input type="checkbox"/> parties/attorneys <input type="checkbox"/> court/judge					
<b>How are we doing? Please tell us.</b> (Please check one box on each line)		Strongly Agree <b>1</b>	Somewhat Agree <b>2</b>	Neither Agree nor Disagree <b>3</b>	Somewhat Disagree <b>4</b>	Strongly Disagree <b>5</b>	No Opinion <b>6</b>
1. The mediator explained the process to me.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. The mediation was conducted fairly and impartially.		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. The mediator gave me full opportunity to convey my positions and interests.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. The mediator was free from bias.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. The mediator understood the issues in my case.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. I was not pressured to reach an agreement.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The mediator explained his/her fee structure to me.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. I was satisfied with the mediation process.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. The mediation saved me time.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. The mediation saved me money.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11.1 felt safe during the process.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12.1 felt free from fear during the mediation process, including arriving at the courthouse.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13.1 felt comfortable throughout the mediation process.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.1 felt that the mediator respected my request for confidentiality.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15.1 knew that I was able to leave the mediation at any time.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. If you had the choice to do this again would you do it? <input checked="" type="radio"/> Yes <input type="radio"/> No							
17. Is there anything else that you would like to add to describe your experience with this program?							
18. Did your case settle? <input type="checkbox"/> Yes <input type="checkbox"/> No							
19. Any other suggestions for how we can improve?							

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020



# Attachment 9

## Non-Protected Party Post Mediation Questionnaire

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020



## New Jersey Judiciary Domestic Violence Economic Mediation Litigant Questionnaire

(To be completed by the Non-Protected Party)

Name of Mediator	County	The mediator for this case was selected by: <input type="checkbox"/> parties/attorneys <input type="checkbox"/> court/judge					
<b>How are we doing? Please tell us.</b> (Please check one box on each line)		Strongly Agree <b>1</b>	Somewhat Agree <b>2</b>	Neither Agree nor Disagree <b>3</b>	Somewhat Disagree <b>4</b>	Strongly Disagree <b>5</b>	No Opinion <b>6</b>
1. The mediator explained the process to me.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. The mediation was conducted fairly and impartially.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. The mediator gave me full opportunity to convey my positions and interests.		<input type="checkbox"/>	<input type="checkbox"/>	<b>D</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. The mediator was free from bias.		<input type="checkbox"/>	<input type="checkbox"/>	<b>n</b>	<b>n</b>	<input type="checkbox"/>	<b>n</b>
5. The mediator understood the issues in my case.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. I was not pressured to reach an agreement.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. The mediator explained his/her fee structure to me.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. I was satisfied with the mediation process.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. The mediation saved me time.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. The mediation saved me money.		<input type="checkbox"/>	<input type="checkbox"/>	<b>n</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Did your case settle? <input type="checkbox"/> Yes <input type="checkbox"/> No							
12. Any other suggestions for how we can improve?							

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020

# Attachment 10

## DVEM Case Information Form (To Be Filled Out By Mediator)

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020



New Jersey Judiciary  
**Domestic Violence Economic Mediation Case Information Form**

Date Received:
Date Entered:

Directions: This form is to be completed by the mediator when mediation is concluded or the case is returned to court.

FM Case Docket Number	FM Case Name	Name of Mediator
FV Case Docket Number	FV Case Name	

**Outcome**

- mediation held / full agreement on all issues
- mediation held / some issues still pending
- mediation held / no agreement
- no mediation held / parties settled case before mediation session
- no mediation held / party failed to attend

Date Case Assigned to Mediator	Date of Initial Mediation Session	Date of Final Mediation Session
Number of Mediation Sessions	Number of Hours for Preparation	Number of Mediation Hours

Did the attorneys/parties submit proper case summaries? <input type="checkbox"/> Yes <input type="checkbox"/> No	Were the attorneys/parties prepared for the mediation sessions? <input type="checkbox"/> Yes <input type="checkbox"/> No
---	---

Did the parties participate in the mediation sessions?  
 Yes  No If no, please provide explanation:

Without violating mediator confidentiality, is there anything else that you would like to add to describe your experience with this program?

Please return to: Family Division

Directive #06-20 – Family - Operational Guidelines for the Domestic Violence Economic Mediation Program  
January 14, 2020

# Guide To Services



# For Victims of Domestic Violence

**NEW JERSEY COALITION TO END DOMESTIC VIOLENCE**  
1670 Whitehorse-Hamilton Square Road • Trenton, New Jersey 08690-3541  
**Phone:** 609-584-8107\* • **Fax:** 609-584-9750 • **VP:** 609-528-7216  
[info@njcedv.org](mailto:info@njcedv.org) • [www.njcedv.org](http://www.njcedv.org)

\*TTY Users: please dial 711

2020

The NJ Coalition to End Domestic Violence provides this directory as a guide to Domestic Violence Programs in New Jersey. It has been prepared from information provided by the listed organizations. The NJ Coalition to End Domestic Violence is not responsible for evaluating or licensing these programs.

## ATLANTIC COUNTY

### AVANZAR (formerly The Women's Center)

#### Violence Intervention Program (VIP)

927 North Main St,

#### Emergency Shelter

**Toll free: 1-800-286-4184**

Deaf & Hard of Hearing Text Line: 609-569-5437

Office: 609-601-9925

Fax: 609-601-2975

Web: [www.avanzarnow.org](http://www.avanzarnow.org)

#### Displaced Homemakers Services

Home To Work

Ph: 609-601-9925

Fax: 609-601-2975

#### Fathers Ending Abuse

Ph: 609-601-9925 Ext. 1018

#### Unified Child Care Services

Child Care Network

Ph: 609-601-9925

Fax: 609-601-2975

#### Sexual Assault

**24 Hr. Hotline: 609-646-6767**

**Toll free: 1-800-286-4184**

#### Batterers Services

Alternatives to Violence (ATV)

24 Hr. Hotline: 1-800-286-4184

Phone: 609-646-6767

Fax: 609-645-8877

## BERGEN COUNTY

### CENTER FOR HOPE AND SAFETY (formerly Shelter Our Sisters)

Administrative Offices: 12 Overlook Ave

Rochelle Park, NJ 07662

#### Emergency Shelter

**24 Hr. Hotline: 201-944-9600**

Shelter: 201-836-1075

Fax/Shelter: 201-836-7029

Office: 201-498-9247

Fax/Office: 201-498-9256

Email: [info@hopeandsafetynj.org](mailto:info@hopeandsafetynj.org)

Web: [www.hopeandsafetynj.org](http://www.hopeandsafetynj.org)

#### PALS Project Child

Phone: 201-300-6666 Ext. 21

TRANSITIONAL HOUSING AVAILABLE

#### ALTERNATIVES TO DOMESTIC VIOLENCE

##### Bergen County Department of Human Services

One Bergen County Plaza, 2nd Floor, Hackensack, NJ 07601

#### Non-Residential Services/Outreach

**24 Hr. Hotline: 201-336-7575**

Fax: 201-336-7555

Web: [www.co.bergen.nj.us/ADV](http://www.co.bergen.nj.us/ADV)

Email: [adv@co.bergen.nj.us](mailto:adv@co.bergen.nj.us)

**Batterers Services:** Alternatives To Domestic Violence

**24 Hr. Hotline: 201-336-7575**

Fax: 201-336-7555

Hotline provides crisis intervention and intake assessment.

## BURLINGTON COUNTY

### PROVIDENCE HOUSE DOMESTIC VIOLENCE SERVICES

#### OF CATHOLIC CHARITIES

595 Rancocas Rd., Westampton, NJ 08060

#### Emergency Shelter

**24 Hr. Hotline: 609-871-7551**

Office: 856-824-0599

Fax/Office: 856-824-9340

Fax/Shelter: 609-871-0360

Web: [www.catholiccharitiestrenton.org/domestic-violence-services/](http://www.catholiccharitiestrenton.org/domestic-violence-services/)

#### Outreach

595 Rancocas Rd., Westampton, NJ 08060

Phone: 856-824-0599

Fax: 856-824-9340

#### PALS

Phone: 856-824-0599 EXT. 8617

## CAMDEN COUNTY

### CAMDEN COUNTY WOMEN'S CENTER

P.O. Box 1459, Blackwood, NJ 08012

Outreach Address: 311 Market St., Camden, NJ 08101

#### Emergency Shelter

**24 Hr. Hotline: 856-227-1234**

Office: 856-227-1800

Fax: 856-227-1261

Web: [www.njaconline.org/13.html](http://www.njaconline.org/13.html)

### VOLUNTEERS OF AMERICA DELAWARE VALLEY

235 White Horse Pike, Collingswood, NJ 08107

Office: 856-854-4660

Fax: 856-854-0651

Email: [lengstrom@voadv.org](mailto:lengstrom@voadv.org)

Web: [www.voadv.org](http://www.voadv.org)

## CAPE MAY COUNTY

### CARA, INC. (Coalition Against Rape & Abuse, Inc.)

P.O. Box 774, Cape May Court House, NJ 08210-0774

#### Emergency Shelter

**24 Hr. Hotline: 609-522-6489**

**Toll free: 1-877-294-2272 (CARA)**

Office: 609-522-6489

Fax: 609-463-0967

Email: [carasafe1@cara-inc.net](mailto:carasafe1@cara-inc.net)

Web: [www.cara-cmc.org](http://www.cara-cmc.org)

**Women's Support Group:** Buddy System

**Men's Non Violence Group Services**

MEND (Men Explore New Directions)

**24 Hr. Hotline: 609-522-6489**

**Toll free: 1-877-294-2272 (CARA)**

TRANSITIONAL HOUSING AVAILABLE

## CUMBERLAND COUNTY

### SERVICES EMPOWERING THE RIGHTS OF VICTIMS

#### CUMBERLAND COUNTY DOMESTIC VIOLENCE SERVICES

P.O. Box 1149, Vineland, NJ 08360

**24-hour toll-free hotline: 1-800-225-0196**

Office: 856-696-2032

Fax: 856-696-7336

Email: [serv@centerffs.org](mailto:serv@centerffs.org)  
Website: [www.centerffs.org](http://www.centerffs.org)

## ESSEX COUNTY

**ACCESS FAMILY SERVICES, INC.**  
One Gateway Center, Suite 2600  
Newark, NJ 07102  
**Emergency Shelter**  
**24 Hour Hotline: 862-444-3126**  
Email: [info@afsnj.org](mailto:info@afsnj.org)  
Website: [www.afsnj.org](http://www.afsnj.org)

**ESSEX COUNTY FAMILY JUSTICE CENTER**  
Leroy F. Smith Jr. Public Safety Building  
60 Nelson Place, 2nd Floor  
Newark, NJ 07102  
**973-230-7229 (T)**  
Fax: 973-732-3391  
Email: [info@essexcountyfjc.org](mailto:info@essexcountyfjc.org)  
Website: [www.essexcountyfjc.org](http://www.essexcountyfjc.org)  
**WALK-IN WELCOME – NO APPT NECESSARY:**

**THE SAFE HOUSE**  
P.O. Box 1887, Bloomfield, NJ 07003  
**Emergency Shelter**  
**24 Hr. Hotline: 973-759-2154**  
Office: 973-759-2378  
Fax: 973-844-4950  
Email: [safehouse@rwjbh.org](mailto:safehouse@rwjbh.org)

**PARTNERS FOR WOMEN AND JUSTICE**  
650 Bloomfield Avenue #209  
(GPS address is 44 Farrand St)  
Bloomfield, NJ 07003  
Office: 973-233-0111  
Fax: 973-233-0106  
Website: <http://pfwj.org/>

**THE RACHEL COALITION c/o JEWISH FAMILY SERVICE**  
570 West Mt. Pleasant Avenue, Suite 106, Livingston, NJ 07039  
**24 Hr. Emergency Paging Service: 973-740-1233**  
**Outreach**  
Office: 973-740-1233  
Fax: 973-740-1590  
Email: [rachel@rachelcoalition.org](mailto:rachel@rachelcoalition.org)  
Website: [www.rachelcoalition.org](http://www.rachelcoalition.org)  
TRANSITIONAL HOUSING (one unit)

**FAMILY CONNECTIONS**  
**PALS**  
FAMILYConnections (DREAMS)  
Counseling Services  
7 Glenwood Avenue, Suite 101, East Orange, NJ 07018  
Phone: 973-323-3560  
Fax: 973-676-1640

## GLOUCESTER COUNTY

**SERVICES EMPOWERING RIGHTS OF VICTIMS (SERV)**  
17 South Delsea Drive, Glassboro, NJ 08028  
**Toll free: 1-866-295-7378**  
Office: 856-881-4034



Fax: 856-881-4054  
Email: [serv@centerffs.org](mailto:serv@centerffs.org)  
Website: [www.centerffs.org](http://www.centerffs.org)

## HUDSON COUNTY

**WOMENRISING, INC.**  
270 Fairmount Avenue, Jersey City, NJ 07306  
**Emergency Shelter**  
**24 Hr. Hotline: 201-333-5700**  
Fax: 201-333-9305  
Email: [womenrising@aol.com](mailto:womenrising@aol.com)  
Website: [www.womenrising.org](http://www.womenrising.org)



**Outreach**  
270 Fairmount Avenue, Jersey City, NJ 07306  
Phone: 201-333-5700

## HUNTERDON COUNTY

## MERCER COUNTY

MONMOUTH COUNTY

**WOMANSPACE**  
1530 Brunswick Avenue, Lawrenceville, NJ 08648  
**Emergency Shelter**  
**Domestic Violence and Sexual Assault 24 Hr. Hotline: 609-394-9000**  
**Statewide Domestic Violence Hotline: 1-800-572-SAFE (7233)**  
Deaf & Hard of Hearing Text Line: 609-619-1888  
Office: 609-394-0136  
Fax: 609-396-1093  
Email: [info@womanspace.org](mailto:info@womanspace.org)  
Website: [www.womanspace.org](http://www.womanspace.org)  
**Counseling and Support Services**  
1530 Brunswick Avenue, Lawrenceville, NJ 08648  
Phone: 609-394-2532  
Fax: 609-394-5417  
TRANSITIONAL HOUSING AVAILABLE  
**Batterers Services in Mercer County:**  
Family Growth Program  
39 N. Clinton Avenue  
Trenton, NJ 08609  
Office: 609-394-5157

## MIDDLESEX COUNTY

**WOMEN AWARE, INC.**  
250 Livingston Avenue, New Brunswick, NJ 08901  
**Spanish Speaking Support Groups**  
**Emergency Shelter**  
**24 Hr. Hotline: 732-249-4504**  
Services include: emergency shelter, legal advocacy, support groups, children's trauma therapy (the PALS program, and permanent supportive housing).  
Deaf & Hard of Hearing Text Line: 1-876-658-7713  
Office: 732-249-4900  
Fax: 732-249-4901  
Shelter Fax: 732-249-0010

Website: [www.womenaware.net](http://www.womenaware.net)

**MANAVI, INC.**

**Serves South Asian Survivors**  
P.O. Box 3101  
New Brunswick, NJ 08903-3103  
Office: 732-435-1414  
Fax: 732-435-1411  
Email: [manavi@manavi.org](mailto:manavi@manavi.org)  
Website: [www.manavi.org](http://www.manavi.org)  
Office Hours: 9:30am — 5:30pm  
TRANSITIONAL HOUSING AVAILABLE

10 Court Street, 4th floor  
Morristown, NJ 07962  
**Phone:** (973) 829-4050  
**Assistance outside of office hours: Domestic Abuse:** 1-877-R-U-ABUSED  
**Sexual Assault:** (973) 829-0587  
**Fax:** (973) 206-1645  
Email: [info@morrisfjc.org](mailto:info@morrisfjc.org)  
Website: [www.morrisfjc.org](http://www.morrisfjc.org)  
Mon-Fri walk-in hours: 8:30am-4:30pm. Tuesday and Wednesday evenings by appointment only.  
Se Habla Español

**JERSEY CENTER FOR NON VIOLENCE**

PO Box 1437  
Morristown, NJ 07902  
Appointments and referrals: (973) 539-7801  
Fax: (973) 539-4068  
Email: [jcnv@jbws.org](mailto:jcnv@jbws.org)  
(Jersey Center for Non-Violence)

**Batterers Services:** Jersey Center for Non-Violence  
Services include: emergency shelter, victim counseling, batterer's services, children's services, transitional housing, and non-residential, legal advocacy and vocational.  
TRANSITIONAL HOUSING AVAILABLE

**MONMOUTH COUNTY**

**180 TURNING LIVES AROUND**  
One Bethany Road, Bldg. 3, Suite 42, Hazlet, NJ 07730  
**24 Hr. Hotline: 732-264-4111**  
**Toll free: 1-888-843-9262**  
Deaf & Hard of Hearing Text Line: 732-977-2832/977-2766  
Office: 732-264-4360  
Fax: 732-264-8655  
**THIS SHELTER TAKES ANIMALS**  
**PALS Program**  
Website: [www.180nj.org](http://www.180nj.org)  
**Asbury/Neptune Outreach: Shore Regional Outreach Program**  
Phone: 732-988-0390 or 732-988-3194  
**PALS (Amanda's Easel) Phone: 732-787-6503**  
**Sexual Violence Program**  
**24 Hr. Hotline: 732-264-7273, Toll free: 1-888-264-RAPE**  
Fax: 732-264-8655  
Fax: 732-671-8383

**MORRIS COUNTY**

P.O. Box 1437, Morristown, NJ 07962-1437  
**Emergency Shelter**  
**24 Hr. Hotline: 973-267-4763**  
**Administrative:** (973) 267-7520  
**24-Hour Help line:** 1-877-R-U-ABUSED/ (973) 267-4763  
**Deaf/Hard of Hearing Text Line** (973) 314-4192  
Office: 973-267-7520  
Fax: 973-605-5898  
Email: [info@jbws.org](mailto:info@jbws.org)  
Website: [www.jbws.org](http://www.jbws.org)

**MORRIS FAMILY JUSTICE CENTER (MFJC)**  
Administration and Records Building

**OCEAN COUNTY**

**OF CATHOLIC CHARITIES**  
88 Schoolhouse Road, Whiting, NJ 08759  
**Emergency Shelter**  
**24 Hr. Hotline: 732-244-8259**  
**Toll free: 1-800-246-8910**  
Office: 732-350-2120  
Fax: 732-350-2725  
Shelter Fax: 732-244-3064  
Website: [www.catholiccharitiestrenton.org/domestic-violence-services/](http://www.catholiccharitiestrenton.org/domestic-violence-services/)  
**Outreach -PALS Phone: 732-350-2120 x103**

**PASSAIC COUNTY**

**PASSAIC COUNTY WOMEN'S CENTER**  
**Domestic Violence Program**  
P.O. Box 244, Paterson, NJ 07513  
**Emergency Shelter**  
**24 Hr. Hotline: 973-881-1450**  
Office: 973-881-1450  
Fax: 973-881-0617  
Website: [www.passaiccountywomenscenter.org](http://www.passaiccountywomenscenter.org)  
**Outreach**  
1027 Madison Avenue, Paterson, NJ 07513  
Phone: 973-881-0725  
Fax: 973-881-0938  
**Rape Crisis Program**  
1027 Madison Avenue, Paterson, NJ 07513  
**24 Hr. Hotline: 973-881-1450**  
Phone: 973-881-0725  
Fax: 973-881-0938

**PROJECT S.A.R.A.H. – Jewish Family Services**



110 Main Avenue  
Passaic, NJ 07055  
**Helpline: 1-888-883-2323**  
Phone: 973-777-7638  
Fax: 973-777-9311  
Website: [www.projectsarah.org](http://www.projectsarah.org)

**PALS PCWC with Jewish Family Services**  
Phone: 973-777-7638

**WAFH HOUSE**  
PO Box 2102  
Clifton, NJ 07015-2102  
**Toll free: 1-800-930-9232**  
Email: [info@wafahouse.org](mailto:info@wafahouse.org)

## UNION COUNTY

## SALEM COUNTY

P.O. Box 125, Salem, NJ 08079-0125  
**Emergency Shelter**  
**24 Hr. Hotline: 856-935-6655**  
**Toll free: 1-888-632-9511**  
Office: 856-935-8012  
Fax: 856-935-6165  
Email: [scws125@comcast.net](mailto:scws125@comcast.net)  
Website: [www.salemcountywomensservices.org](http://www.salemcountywomensservices.org)  
**Sexual Assault/Rape Crisis**  
**24 Hr. Hotline: 856-935-6655**  
**Toll free: 1-888-632-9511**  
**Batterers Services: Alternatives To Violence**  
**24 Hr. Hotline: 856-935-6655**  
**Toll free: 1-888-632-9511**

## SOMERSET COUNTY

**SAFE & SOUND SOMERSET (formerly RESOURCE CENTER OF SOMERSET)**  
427 Homestead Road, Hillsborough, NJ 08844  
**Emergency Shelter**  
**24 Hr. Toll free and Text Hotline: 1-866-685-1122**  
Email: [info@safe-sound.org](mailto:info@safe-sound.org)  
Website: [www.safe-sound.org](http://www.safe-sound.org)  
**Outreach**  
Office: 908-359-0003  
Fax: 908-359-8881  
**Batterer's Referral Line**  
Call 24 Hr. Hotline or 908-359-0003 ext.438, for referrals  
TRANSITIONAL HOUSING AVAILABLE

## SUSSEX COUNTY

**DASI: DOMESTIC ABUSE & SEXUAL ASSAULT INTERVENTION SERVICES**  
P.O. Box 805, Newton, NJ 07860  
**Emergency Shelter**  
**24 Hr. Hotline:**  
**(Collect Calls Accepted) 973-875-1211**

Deaf & Hard of Hearing Text Line: 973-222-2593  
Office: 973-579-2386  
Fax: 973-579-3277  
Email: [info@dasi.org](mailto:info@dasi.org)  
Website: [www.dasi.org](http://www.dasi.org)

**Outreach**  
Phone: 973-579-2386  
Fax: 973-579-3277  
**Batterers Services: DECIDE Program**  
PO Box 805, Newton, NJ 07860  
Phone: 973-271-0288  
Fax: 973-579-3277  
**TRANSITIONAL HOUSING AVAILABLE**  
P.O. Box 242, Elizabeth, NJ 07201

**PROJECT: PROTECT** c/o YWCA of Union County  
P.O. Box 242, Elizabeth, NJ 07201

**Emergency Shelter**  
**24 Hr. Hotline: 908-355-4357 (HELP)**  
Office: 908-355-1995  
Fax: 908-355-2010  
Email: [info@ywcaunioncounty.org](mailto:info@ywcaunioncounty.org)  
Website: [www.ywcaunioncounty.org](http://www.ywcaunioncounty.org)

**Outreach**  
Phone: 908-355-1500  
**PALS A Child's View**  
Phone: 908-518-9911  
Fax: 908-518-9914

## WARREN COUNTY

**Emergency Shelter**  
**24 Hr. Hotline: 908-453-4181**  
**Toll free: 1-866-6BE-SAFE (1-866-623-7233)**  
Office: 908-453-4121  
Fax: 908-453-3706  
Website: [www.dasacc.org](http://www.dasacc.org)  
**Outreach**  
29C Broad Street, Washington, NJ 07882  
Phone: 908-453-4121  
**Batterers Services**  
Phone: 908-813-8820



**NJ Coalition to End Domestic Violence**  
1670 Whitehorse-Hamilton Square Road  
Trenton, NJ 08690-3541  
**PH: 609-584-8107**  
**Fax: 609-584-9750**  
Website: [www.njcedv.org](http://www.njcedv.org)  
Email: [info@njcedv.org](mailto:info@njcedv.org)

**New Jersey Domestic Violence Hotline**  
**1 (800) 572-SAFE (7233)**  
**24 hours a day/7 days a week**  
**TTY Line: 1-888-252-SAFE (7233)**

The New Jersey Domestic Violence Hotline provides confidential access to domestic violence information and services, including crisis intervention, referral, and advocacy. Bilingual and accessible to the deaf and hard of hearing.

**New Jersey Address Confidentiality Program (ACP) Hotline**  
**1 (877) 218-9133**  
**Toll Free-Non-Emergency**

The New Jersey Address Confidentiality Program Hotline provides access to domestic violence information and services, including application procedures referral and advocacy.



STATE OF NEW JERSEY  
DEPARTMENT OF CHILDREN AND FAMILIES

**NJ Division on Women  
Office on the Prevention of Violence  
Against Women**

P.O. Box 717  
Trenton, NJ 08625  
**PH: 609-292-8840**  
**Fax: 609-633-6821**

**National Domestic Violence Hotline**

**Phone: 1-800-799-7233**  
**VP: 1-855-812-1001**  
**TTY: 1-800-787-3224**

The National Domestic Violence Hotline provides confidential access to domestic violence information and services, including crisis intervention, referral, and advocacy. Bilingual and accessible to the deaf and hard of hearing.



# TAX AND ACCOUNTING ASPECTS OF FAMILY LAW

## UPDATED FOR THE TAX CUTS AND JOBS ACT

*By Paul M. Gazaleh, CPA/ABV*

While it is important to understand the law when working a case, it is also important to understand basic tax and accounting issues that may affect the case. Involving an accountant may be an option, but unless there is some basic knowledge it will be difficult to determine whether involving an accountant is necessary.

The tax law is an important consideration in the decisions made throughout the case. It affects both support payments and equitable distribution. Without proper consideration, the net payments made or received after adjusting for taxes could be very different than originally intended. This chapter is intended to provide a basic understanding of the tax and accounting issues affecting family law.

This information is designed to be accurate and authoritative. However, this information is distributed with the understanding that it does not render legal, accounting or other professional advice and no liability is assumed in connection with its use.

### **A. ALIMONY AND CHILD SUPPORT**

Several types of payments can be made from one spouse to another including alimony, child support and equitable distribution.

Historically, alimony and child support have had different tax consequences. Alimony is deductible by the payor and taxable to the payee. Child support is neither deductible by the payor nor taxable to the recipient. Beginning with property settlement agreements dated after December 31, 2018, alimony will no longer be deductible by the payor and, therefore, not includible by the payee.

## 1. Alimony

According to Section 71(b)(1)(A) of the Internal Revenue Code (sometimes referred to as “I.R.C.”), the definition of alimony is:

“...a payment received under a divorce or separation instrument.”

### Requirements of Alimony

Payments must meet the following conditions in order to qualify as alimony for Federal income tax purposes:

1. Required by a divorce decree or separation instrument dated prior to January 1, 2019;
2. Made in cash or equivalent;
3. The payment obligation terminates after the death of the payee;
4. The parties are not members of the same household when the payment is made;
5. The payment is not designated as something other than alimony, including child support;
6. The payor spouse and the payee spouse file separate income tax returns.

Treas. Reg. § 1.71-1T(a), Q&A 2

Payments that meet the above conditions are deductible by the payor spouse under Section 215 of the Internal Revenue Code and includible in the income of the payee spouse under Section 71 of the Internal Revenue Code if they are subject to an agreement dated prior to January 1, 2019.

A payment does not have to be determined to be alimony for both spouses. The determination for one spouse does not automatically designate the payment as alimony for the other spouse. The determination for each spouse is made independently. *RIA Federal Tax Handbook*, Form 1040—U.S. Individual Income Tax Return at ¶ 198,502 (2013). However beginning with agreements signed after December 31, 2018, there is no deduction to the payor or including of income by the payee.

For alimony required by agreements prior to January 1, 2019, the parties may also designate that the payments not be treated as taxable alimony. I.R.C. § 71(b)(1)(B). In this case the payments will be made by the payor spouse without deduction and received by the payee spouse without inclusion in income.

In *Berry v. Commissioner*, T.C. Memo. 2005-91 (2005), the court held that “family support” was deductible as alimony because it was a concept specifically described under California law. “Family support” is a concept that combined child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support. The court also held that a state law obligation to support his children after the death of his wife did not disqualify the deduction as alimony.

The requirements of alimony are described in further detail below.

***The alimony payment must be required by a divorce or separation instrument dated prior to January 1, 2019***

To qualify as deductible alimony the payment must be required by an instrument or decree such as a final judgment of divorce, property settlement agreement or pendente lite agreement (“Agreement”) dated prior to January 1, 2019. Payments made voluntarily or by oral agreement will not qualify as alimony. I.R.C. § 71(b)(2).

The language included in the Agreement must meet all of the requirements described above. If a pendente lite agreement does not meet all of the requirements of alimony, the payments will not be considered alimony. *Gonzales v. Commissioner*, T.C. Memo. 1999-332 (1999).

***The alimony payment must be made in cash, check or money order***

The alimony payment must be made in cash or an equivalent, such as check or money order. A transfer of property such as investments, the use of property of the payor spouse, or the assignment or execution of a debt instrument by the payor spouse would not qualify as alimony. I.R.C. § 71(b).

***The alimony payment must not be required after the death of the payee spouse***

A payment does not qualify as alimony if the payor is liable to continue to make the payment after the death of the payee or to the estate of the deceased spouse after the payee’s death. I.R.C. § 71(b)(1)(D).

This requirement was not met in *Gonzales*. Consequently, the tax court determined the payments did not meet the requirements to be considered alimony.

In contrast to *Gonzales*, the facts in *Kean v. Commissioner*, 407 F.3d. 186 (3rd Cir. 2005), were such that since the payments would have ceased upon the death of the payee spouse, the payments were considered alimony and taxable to the payee. Since there was no allocation of the payments between alimony and child support, and it was held that the payments were to cease upon the death of the payee, the I.R.S. assessed Mrs. Kean for tax on the entire amount of the unallocated payments.

***The payor spouse and the payee spouse are not members of the same household when the payment is made***

If a divorcing or divorced couple live together and payments are required to be made, these amounts do not qualify as alimony. This provision does not apply to payments made under a *pendente lite* agreement prior to the final judgment of divorce. I.R.C. § 71(b)(1)(C).

***The payor spouse and the payee spouse do not file a joint income tax return***

Alimony payments made prior to the finalization of the divorce are not considered alimony if the couple files a joint income tax return. Once the divorce is final, this issue does not apply because the parties cannot file a joint tax return if they were not married on the last day of the year. I.R.C. § 71(b).

**Treatment of alimony as taxable “compensation” for purposes of determining eligibility Individual Retirement Account contributions**

Alimony is treated as earned income for purposes of determining eligibility for an Individual Retirement Account deduction. This allows an alimony payee with no earned income, and who otherwise would not be eligible, to make a contribution to an IRA. Treas. Reg. § 1.408A-3 Q-4 A-4.

This provision only applies if the alimony is taxable. Nontaxable alimony cannot be used as earned income to qualify for an Individual Retirement Account contribution. *IRS Publication 590-A Contributions to Individual Retirement Arrangements (IRAs)* at 7 (2021).

**Payments made to third party on behalf of the payee spouse**

Payments made to a third party by the payor spouse on behalf of the payee spouse pursuant to a divorce or separation instrument may qualify as alimony. The direct payments are considered to be in lieu of payment from the payor to the payee who would then make payment to the third party. Some other common payments made on behalf of payee spouses include rent, mortgage interest, taxes or tuition liabilities. I.R.C. § 71(b)(1) and Treas. Reg. § 1.71-1T(b) Q&A 6.

Mortgage interest and real estate taxes are some of the most common expenses made on behalf of a party during and after a divorce. If the payments are made under a divorce or separation agreement, they may qualify as alimony. The ownership and use of the home and the liability on the mortgage will affect whether the payments can be deducted by the payor spouse as alimony, itemized deduction, or not at all.

If the husband and wife are tenants in common and jointly obligated on the mortgage loan, then half the payments are taxable/deductible as alimony, and the husband and wife are each entitled to deduct half the mortgage interest and real estate taxes as itemized deductions. If a home is solely owned by the payee spouse, and both parties are both liable on the mortgage loan, then half the mortgage interest and all the real estate taxes are taxable/deductible alimony, the payor and payee are each entitled to deduct half the mortgage interest, and the payee may deduct all the real estate taxes.



If the payee is the sole owner of the home and is solely obligated on the mortgage loan, then all payments are taxable/deductible alimony, and the payee may deduct all mortgage interest and real estate taxes. Internal Revenue Service, *Publication 504 – January 2019 Divorced or Separated Individuals* at 14 (2019).

### **Payments of Insurance Premiums**

The payment of either term insurance or whole-life insurance premiums made on behalf of the payee spouse can qualify as alimony if the payments meet all of the following conditions:

1. The payments are required to be made by the support agreement;
2. The payee spouse is the owner of the policy;
3. The policy insures the payor spouse's life;
4. The policy is not intended to secure or reasonably resemble securing future alimony payments.

If an existing policy is transferred from the payor spouse to the payee spouse, it is imperative that the owner of the policy be changed. The designation of the payee spouse as a contingent or irrevocable beneficiary is not sufficient to meet the requirements of deductible alimony payments. Treas. Reg. § 1.71-1T(b) Q&A 6.

### **Alimony Recapture (Applies to Alimony Required by Agreements dated Prior to January 1, 2019)**

The “front loading” of alimony payments may disqualify the deduction for the payor spouse and trigger recapture which prevents the parties from disguising equitable distribution as alimony. Front loading refers to the payment of large sums of alimony shortly after the divorce followed by a large drop in the succeeding payments. Recapture applies to the calendar year of the divorce and the two succeeding calendar years. I.R.C. § 71(f)(1)(A).

If the payments are considered to be front loaded, which is determined by the formula described below, a portion of the front-loaded payments will be considered excess alimony and the deduction disqualified. Consequently, the payee spouse does not include all or a portion of the payments as alimony. By attempting to deduct equitable distribution as alimony, high income earners shift the tax liability to lower tax rates, thereby reducing the overall tax burden of the parties.

Excess alimony is defined as the total of the excess payments made in the first post-separation year and the excess payments made in the second post-separation year. The first post-separation year is the first calendar year in which alimony or separate maintenance payments are made to the payee spouse. The second and third post-separation years are the next two calendar years, respectively.

In order to avoid recapture, the alimony must continue for a minimum of three calendar years if the payments exceed \$15,000 in any one of the first three years. Therefore, at a minimum, the payments must span fourteen months (i.e. December, 2010 to January, 2012). To avoid recapture, the payments in year two should not exceed the payments in year three by more than \$15,000.

Recapture equals the sum of the following two tests:

**Test Number One:**

- a. The alimony or separate maintenance payments in year two

LESS

- b. The alimony or separate maintenance payments in year three plus \$15,000

**Test Number Two:**

- a. The alimony or separate maintenance payments in year one minus \$15,000

LESS

- b. The average of

- i. the alimony or separate maintenance payments for year two, reduced by any recapture calculated in test number one, above

and

- ii. the alimony or separate maintenance payments in year three.

---

The aforementioned tests can also be expressed as follows:

**Test Number One:**

Year 2 Alimony - (Year 3 Alimony + \$15,000)

**Test Number Two:**

(Year 1 Alimony - \$15,000) -

(Year 2 Alimony - Recapture Test 1 + Year 3 Alimony

2

Recapture only occurs in year three when the payor will have to include the recaptured amount in income and the payee will be entitled to a deduction of an equal amount.

Recapture is not triggered if the alimony payments terminate due to:

- a. the death of the payor or payee OR
- b. the remarriage of the payee-spouse

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For example, in the first scenario, alimony payments totaling \$70,000 and paid \$30,000 in year one, \$30,000 in year two and \$10,000 in year three would result in \$5,000 of recapture. (See test number 1, below). However, in the second scenario, if the same \$70,000 was structured to be paid \$30,000 in year one, \$25,000 in year two and \$15,000 in year three, there would be no recapture.

The examples cited on the previous pages can be illustrated as follows:

### **First Scenario**

#### ***Alimony***

Year 1    \$30,000  
Year 2    30,000  
Year 3    10,000

$$\begin{aligned} \text{Test 1: } & 30,000 - (10,000 + 15,000) && = 5,000 \\ \text{Test 2: } & (30,000 - 15,000) - \frac{30,000 - 5,000 + 10,000}{2} \\ & = 15,000 - 17,500 && = (2,500) \end{aligned}$$

Since the negative amount in test number two is viewed as zero, the recapture in year three is \$5,000 per test one.

### **Second Scenario**

#### ***Alimony***

Year 1    \$30,000  
Year 2    25,000  
Year 3    15,000

$$\begin{aligned} \text{Test 1: } & 25,000 - (15,000 + 15,000) && = (5,000) \\ \text{Test 2: } & (30,000 - 15,000) - \frac{25,000 - 0 + 15,000}{2} \\ & = 15,000 - 20,000 && = (5,000) \end{aligned}$$

Since the negative amounts in tests number one and two are viewed as zero, there is no recapture in year three.

## ALIMONY RECAPTURE WORKSHEET

1. Alimony Received in 1st Post-Separation Year 20\_\_ \$ \_\_\_\_\_
2. Alimony Received in 2nd Post-Separation Year 20\_\_ \$ \_\_\_\_\_
3. Alimony Received in 3rd Post-Separation Year 20\_\_ \$ \_\_\_\_\_

### TEST ONE:

4. Amount from Line 2, above \$ \_\_\_\_\_
5. Amount from Line 3, above, plus \$15,000 \$ \_\_\_\_\_
6. Enter the Greater of \$0 or Line 4 minus Line 5 \$ \_\_\_\_\_

### TEST TWO:

7. Amount from Line 2, above \$ \_\_\_\_\_
8. Amount from Line 3, above \$ \_\_\_\_\_
9. Line 7 plus Line 8 \$ \_\_\_\_\_
10. Line 9 minus Line 6 \$ \_\_\_\_\_  
(If Line 10 is less than \$0, you can skip Lines 11 and 12)
11. Line 10 multiplied by 1/2 \$ \_\_\_\_\_
12. Enter the Greater of \$0 or Line 11 \$ \_\_\_\_\_
13. Amount from Line 1, above \$ \_\_\_\_\_
14. Line 13 minus \$15,000 \$ \_\_\_\_\_
15. Enter the Greater of \$0 or Line 14 minus Line 12 \$ \_\_\_\_\_

\*\*\*\*\*

Recapture Equals the sum of Line 6 plus Line 15 \$ \_\_\_\_\_

## **Alimony payments without tax consequences**

Under I.R.C. § 71(b)(1)(B), the parties may elect to have all, or a portion of alimony payments treated as nontaxable support. In this case, no deduction is allowed for the payor spouse and the payee spouse includes none of the payments as income. The treatment by the payor and the payee must be uniform.

Beginning with property settlement agreements entered after December 31, 2018, alimony payments are no longer deductible by the payor nor includible in income by the payee.

## **2. Child Support**

Payments specifically designated as support for the parties' children are considered child support and as a result are not deemed to be alimony. These payments are considered fixed child support. The payor spouse receives no deduction for the payments made during the year and the payee does not include the funds received as income. Child support payments carry no tax implications.

Other payments, which may otherwise qualify as alimony, but are linked to a contingency relating to a child are considered child support. Some examples of events relating to the contingency of a child are the attainment of specific ages and graduation from high school or college. I.R.C. § 71(c)(2)(A).

A change in payment is considered to relate to a contingency if:

1. the payment is to be reduced within six months before or after the date the child is to reach age 18, 21, the local age of majority or some other event deemed emancipation;
2. the payments are to be reduced on two or more occasions within one year before or after a different child of the payor attaining a specific age between eighteen and twenty-four, inclusive. The specific age does not need to be a whole number of years but must be the same for all children.

Treas. Reg. § 1.71-1T(c) Q&A 18.

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For example, Sal and Ann divorce on January 31, 2010. They have two children, Steven (born February 28, 1998) and Jill (born May 31, 2003), who were 11 and 6 on the date of divorce, respectively. The divorce decree required Sal to make payments of \$3,000 per month to Ann as alimony. The payments will be reduced by \$500 per month on June 30, 2019 and December 31, 2024. On June 30, 2019, the date of the first reduction, Steven will be 21 years and 122 days. On December 31, 2024, the date of the second reduction, Jill will be 21 years and 215 days. The reductions occur within one year before or after each of the children attain the age of 21 years and 6 months. Since the reductions are considered to be relating to a contingency relating to the children, the reduction in payments is considered to be child support. As a result the payor receives no deduction for the portion considered child support and the payee does not include the portion considered to be child support in income.

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If it can be shown that the reduction of payments was determined independently of any contingencies relating to the children of the payor, the payments may be determined to be alimony and not child support. Treas. Reg. § 1.71-1T(c) Q&A 18.

### **Payments of less than the amount designated in divorce or separation instrument**

In the event that a portion of the payments designated by a divorce or separation instrument are not made, the payments are allocated first to child support and then to alimony. The analysis is performed on all payments made during a specific calendar year. I.R.C. § 71(c)(3).

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For example, a divorce decree requires alimony payments of \$6,000 per year and child support payments of \$12,000 per year. The payor spouse makes payments totaling \$8,000 during the year. Since the child support payments are considered paid first, all of the payments are child support. As a result the payor spouse received no deduction for the payments made during the year.

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To further illustrate the point, if the payor spouse makes \$14,000 in payments during the year, the first \$12,000 is considered child support and the remaining \$2,000 is considered alimony. The payor spouse receives a deduction for the \$2,000 in alimony payments.

If arrears are paid in subsequent years, the payor spouse will receive a deduction for the portion of the payments made during the year that are deemed to be alimony. The payments are subject to the recapture rules described above.

### **Specific designation of the nature of support**

If a divorce or separation instrument intends for both alimony and child support to be paid, there must be a specific designation as to what portion of the payments represent alimony and what portion represents child support.

Based on two tax court cases: *Lawton v. Commissioner*, T.C. Memo. 1999-243 (1999) and *Simpson v. Commissioner*, T.C. Memo. 1999-251 (1999); and Private Letter Ruling 9625050, unallocated payments which otherwise meet the requirements of alimony are considered alimony. None of the payments are treated as child support. In order to avoid a misinterpretation of the divorce or *pendente lite* agreement, clearly specify the allocation of support payments between alimony and child support.

## **B. EQUITABLE DISTRIBUTION**

Pursuant to Section 1041 of the Internal Revenue Code, property transferred from one spouse to the other during the marriage or incident to a divorce, is not subject to gain for purposes of income taxes. Rather, this transfer is treated as a gift. The rule under Section 1041 applies whether or not the property is transferred in consideration for or in return for cash or property, the assumption of liabilities or the relinquishment of various marital rights. The donee obtains the donor's basis in the acquired asset.

In order for a transfer to be governed by Section 1041 of the Internal Revenue Code, it must occur either during the marriage or after the marriage but “incident to” the divorce. For a transfer to qualify as incident to a divorce, it must meet one of the following two requirements:

1. Occurs within one year after the date on which the marriage ceases, or
2. is related to the cessation of the marriage.

I.R.C. § 1041.

A transfer that occurs during the marriage or within one year after the date on which the marriage ceases will qualify for this special treatment even if it is completely unrelated to the cessation of the marriage (Temp. Treas. Reg. § 1.1041-1T Q-6 and A-6). This section applies regardless of whether the transfer is a gift or even if it is a sale or exchange between the parties at an arm's length price.

There is a safe harbor for a transfer made pursuant to a divorce or separation instrument and occurring not more than six years after the date on which the marriage ceases is considered “related to the cessation of the marriage”. (Temp. Treas. Reg. § 1.1041-1T Q-7 and A-7).

The requirements as to the timing of the transfer focus only on the transfer and not on the time that the property is acquired. Thus, a transfer can qualify for Section 1041 treatment even if the property was acquired after the marriage. (Temp. Treas. Reg. § 1.1041-1T Q-7 and A-7).

A transfer to a third party will be protected by Section 1041 of the Internal Revenue Code if it meets one of the following three requirements:

1. It is required by a divorce or separation instrument;
2. It is made in response to a written request of the other spouse;

The transferor will receive from the other spouse a written consent of the transfer to the third party (Temp. Treas. Reg. § 1.1041-1T Q-9 A-9).

From a practical viewpoint, the spouse who receives carry-over basis property should also obtain the financial records needed to establish the tax basis of the property. The Temporary Regulations require that the transferor-spouse provide this information, though it is unclear whether the failure of the transferor-spouse to provide this information would make Section 1041 of the Internal Revenue Code inapplicable and cause the transferor to recognize income and the transferee to realize a stepped-up basis. Thus, it is important to obtain this information at the time that the transfer or divorce occurs, as the property may be sold many years in the future when contact between the spouses is limited, at best. (Temp. Treas. Reg. § 1.1041-1T Q-14 and A-14).

## **1. Nature of Asset**

When distributing assets, it is important to identify the nature of the assets. For example, a retirement or pre-tax asset should be treated differently than an after-tax asset. Since the tax rules are different for pre-tax and after-tax assets, the net after-tax value of the asset may be different.

### **After-Tax Assets**

After-tax assets are generally not subject to income tax, as they were purchased with after-tax dollars; however, the asset may be subject to tax on any capital gain or loss, which will be discussed later in this chapter.

Some examples of common after-tax assets are:

1. Real estate
2. Stocks, bonds and mutual funds where the income earned is taxable
3. Bank accounts where the interest earned is taxable
4. Closely held business and professional entities

Some of the above assets may also be owned within a retirement account.

### **Pre-tax Assets**

A retirement asset or pre-tax asset is an asset held in a qualified retirement plan or individual retirement account. Withdrawals from IRAs are subject to income taxes plus an additional 10 percent penalty if a withdrawal is made from the plan prior to the account holder reaching age 59½.

In addition to the income tax consequences of a retirement asset, this type of asset also maintains restrictions on transferability.



## 2. Closely Held Businesses and Professional Entities

Closely held business and professional practices have a multitude of tax and accounting issues which affect a family law matter.

If one or both of the spouses own a closely held business, it may provide all or most of their earned income. While many businesses report the owners' income and cash flow accurately, this is an area in family law where abuse can occur.

Since the business owner usually has full or partial control of the bookkeeping of a closely held business, the integrity of the business' records is generally a reflection of the business owner. There are two main areas where abuse can occur. The first area is diversion of income, which not only can decrease the true income of a business but also decrease the business' tax liability. The second area lies in the payment of non-business or personal expenses on behalf of the owners with business funds.

The diversion of business revenues can occur in businesses that receive a large portion of their revenues in cash. Examples of these types of businesses include restaurants, gas stations, taverns, other retail businesses or businesses where customers/clients/patients pay for the goods and services in cash.

The payment of personal expenses such as automobile, insurance, travel and entertainment expenses can occur in all types of businesses.

These acts improperly reduce the tax burden of the business and may result in sanctions from the Internal Revenue Service or other State or Local Tax Agencies.

Under *Sheridan vs. Sheridan*, 247 N.J. Super. 552, (Ch.Div. 1990) a judge has an obligation to report tax fraud issues to the appropriate authorities including the U.S. Attorney's Office and Internal Revenue Service. This was addressed in Judge Herman's opinion as follows:

Accordingly, it is the holding of the court that where evidence establishes an intentional, underreporting of income — in this case large sums from illegal enterprise — it is a judge's duty to report such wrongdoing to the appropriate authorities.

Another case of note is *Steneken v. Steneken*, 183 N.J. 290 (2005). This case deals with the salary paid to a business owner in both the valuation of the business for equitable distribution and the calculation of alimony. The Appellate Division affirmed the trial court's decision and held that the same income could in effect be used twice for both equitable distribution and alimony. Some in the field feel this is a "double-dip" which is sure to encourage debate on the issue.

### 3. Retirement Plans

Many employees and self-employed people participate in employer-sponsored retirement and deferred compensation plans. Retirement and deferred compensation plans are typically pre-tax assets, meaning they are subject to income taxes upon withdrawal. These plans come in many different variations but can be generally separated into two broad categories: defined-benefit plans and defined-contribution plans.

A defined-benefit plan is a promise to pay a fixed benefit in the future that is usually calculated based on compensation and years of service. It generally maintains no cash balance equivalent for the benefits of the participant.

A defined-contribution plan on the other hand is the equivalent of an investment account which is funded by contributions from the employer and/or the plan participant. It generally has a readily ascertainable cash value based on the value of the underlying securities and holdings.

A hybrid of these plans is also possible.

Some common plans are as follows:

	<b>Name of Plan</b>	<b>Typical Classification</b>
1)	Defined Benefit Pension Plan	Defined Benefit Plan
2)	Cash Balance Plan	Hybrid Plan
3)	401(k) or Savings Plan	Defined Contribution Plan
4)	Individual Retirement Account	Defined Contribution Plan
5)	Simplified Employer Pension	Defined Contribution Plan
6)	Profit Sharing Plan	Defined Contribution Plan
7)	Money Purchase Pension Plan	Defined Contribution Plan

It is important to remember that there are restrictions to transferability of qualified and non-qualified retirement plans. In addition to the income tax restrictions described above, each plan is governed by its own plan document.

A qualified retirement plan is defined as one that meets the requirements of the Internal Revenue Code and Employee Retirement Income Security Act of 1974 (ERISA). In order to transfer an interest in a qualified retirement plan, a Qualified Domestic Relations Order (QDRO) must be prepared. A QDRO allows retirement assets to be transferred from the participant spouse to an alternate payee without tax consequences or penalties as long as the assignment is related to equitable distribution, alimony or child support provisions of a divorce agreement. The QDRO must be prepared based on I.R.C. § 414, state domestic relations laws, and the requirements of

the retirement plan. Every plan is drafted differently and may require different provisions in the order. For assistance with language to be contained in a QDRO, see I.R.S. Notice 97-11.

QDROs are very complex and a complete discussion is well beyond the scope of this chapter.

In addition to the assignment of retirement benefits, a QDRO typically assigns the tax consequences of the benefits. Once the retirement asset is transferred to the alternate payee, he or she is responsible for the payment of taxes on such benefits. The tax paid by the alternate payee is not related to the tax paid by the participant.

There are basically three options for the alternate payee to receive his or her benefits from a qualified retirement plan via a QDRO. These options are not available for every participant in every plan.

1. Create a new account within the plan for the benefit of the alternate payee,
2. Rollover to a qualified retirement plan or individual retirement account for the benefit of the alternate payee, and
3. Withdraw funds from the plan.

If the benefits are left in the plan and the QDRO merely creates an account in the plan for the alternate payee, the rights of the alternate payee may be identical to the rights of the participant spouse. This is true for selection of benefits, timing of benefits and withdrawals from the plan. The selections made by the alternate payee are independent of the selections made by the participant.

The plan cannot provide to the alternate payee any greater rights than it provides to the participant.

If the funds are rolled over to a qualified retirement plan or individual retirement account via a QDRO, there is no tax consequence upon transfer. The funds are taxed upon withdrawal at the alternate payee's marginal tax rate.

If the funds are withdrawn from the participant's account, the funds will be taxable to the participant at his or her marginal tax rate and depending on when the withdrawal is made there could be penalties.

A QDRO does not apply to plans that are not qualified under the provisions of ERISA. In certain cases, where the retirement plan is not a qualified plan, a qualified court order which contains the necessary language will be accepted by the plan administrator. This is true for many of the retirement plans offered to public or government sector employees.

## **Selection of Benefits**

The retirement plan will generally provide a choice of benefit payout. The differences between the choices relate to the term of payments and actuarial assumptions utilized; however, the total projected benefit is the same regardless of the choice of payout.

Some common examples of benefits are as follows:

1. **Life Annuity.** This type of benefit is payable over the life expectancy of the participant. The benefit payments cease upon the death of the participant.
2. **Period Certain.** This type of benefit is a life annuity where the payments are guaranteed for a period of years regardless of the date of death of the participant.
3. **Joint and Survivor Annuity.** This type of benefit is a life annuity that is actuarially adjusted to reflect the life expectancy of both the participant and the survivor. Upon the death of the participant, the benefit will continue for the remainder of the named survivor's life. The survivor benefit may be a percentage of the participant's benefit and may also diminish the participant's share depending on the plan. These monetary fluctuations in benefits may be negotiable between the parties.

Some plans allow for pre-retirement and/or post-retirement survivor benefits to be paid to the alternate payee. The provisions and language of the individual plan should be reviewed in order to determine if these issues apply to your case and if they could be used to secure your client's interest in his or her spouse's retirement plan.

## **Withdrawal of Benefits**

The withdrawal of benefits from a retirement plan triggers a tax liability based on the taxpayer's marginal tax rate and the amount withdrawn. If the taxpayer is under age 59 1/2, an additional penalty of 10% is assessed based on an early withdrawal from a qualified plan. This penalty applies to both defined benefit plans and defined contribution plans. According to Section 72(t) of the Internal Revenue Code, there are certain exceptions in which the additional penalty does not apply.

A. In general, Distributions which are—

1. made on or after the date on which the employee attains age 59 ½,
2. made to a beneficiary (or to the estate of the employee) on or after the death of the employee,
3. attributable to the employee's being disabled within the meaning of subsection (m)(7),
4. part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his designated beneficiary,

5. made to an employee after separation from service after attainment of age 55
  6. dividends paid with respect to stock of a corporation which are described in Section 404(k),
  7. made on account of a levy under Section 6331 on the qualified retirement plan.
- B. Medical expenses.
- C. Payments to alternate payees pursuant to qualified domestic relations orders. Any distribution to an alternate payee pursuant to a qualified domestic relations order (within the meaning of Section 414(p)(1)).
- D. Distributions to unemployed individuals for health insurance premiums in certain circumstances.
- E. Distributions from individual retirement plans for higher education expenses.
- F. Distributions from certain plans for first home purchases.
- G. Distributions from retirement plans to individuals called to active duty.

#### **4. Stock Options**

Stock options are frequently classified into two broad categories: (1) incentive stock options (commonly referred to as ISO's) which are qualified or statutory options (I.R.C. § 422) and (2) non-qualified stock options (which are commonly referred to as NQSO's) (I.R.C. § 83). The difference between these two types of options lies in their compliance with specific Internal Revenue Code requirements at the time of grant.

Incentive stock options are granted to individuals for reasons connected to their employment. As a result, they may only be granted to employees. They must also be approved by the shareholders of the corporation and granted at fair market value.

NQSO's, on the other hand, may be granted to both employees and independent contractors, as well as their beneficiaries.

The two types of options are taxed differently and, depending on the time period held after exercise, may net the option holder different after-tax sums.

Action	Non-Qualified Options	Incentive Options
Date of Grant	No tax	No tax
Date of Exercise	Ordinary income tax based on the difference between the fair market value and option price	No income tax but the difference between the fair market value and option price is an alternative minimum tax preference item if holding period is met*
Date of Sale	Capital gain or loss on the difference between the fair market value at the time of sale and the fair market value at the time of exercise	Capital gain or loss on the difference between the fair market value at the time of sale and the fair market value at the time of grant if the holding period is met*

\* If the holding period is not met, which is described below, the exercise and sale become a disqualifying disposition and the option is taxed in the same way as non-qualified options. The holder will pay ordinary income tax on the difference between the option price and the fair market value at the time of exercise and/or sale.

The benefits of incentive stock options only apply if the options are held for the requisite holding period. The holding period requires the options to be held for at least one year after the date of grant and the stock is held for at least one year after exercise.

From a distribution standpoint, stock options can be similar to retirement plans. They can both be valued and offset against other assets, or the distribution can be deferred via a QDRO (for qualified retirement plans) or equitable trust (for non-qualified deferred compensation).

From a valuation standpoint, there are several generally accepted methods of valuation: the intrinsic method, the Black-Scholes Model, and the Binomial Model.

The intrinsic value is calculated by subtracting the exercise price of the option from the fair market value of the stock. The Black-Scholes model, on the other hand, takes into account the future movement of the stock (in the form of appreciation and depreciation) and calculates the present value of the projected future benefit from the exercise of the stock option. This formula considers the stock price, exercise price, years remaining until maturity, interest rates, the volatility of the company's stock and the dividend yield paid by the company when calculating the value of the option.

In some cases, the values calculated by the different methods can be divergent or substantially equivalent.

Revenue Ruling 2002-22 created the ability for stock option plans to retitle the options under the name of a spouse or former spouse under a divorce or separation instrument. If the plan restricts the transfer of shares to non-employees a “Callahan Trust”, (*Callahan v. Callahan*, 142 N.J. Super. 325, 328 (Ch.Div. 1976)) can be set up to provide for the non-employee’s share of equitable distribution. A “Callahan Trust” is a constructive trust for the options where the non-employee spouse is the beneficiary of the trust and the employee spouse is the trustee. The participant only exercises the options on behalf of the non-employee spouse after receiving direction from the non-employee.

Revenue Ruling 2004-60 provides that the transfer of interest in nonstatutory stock options and in nonqualified deferred compensation from an employee spouse to a nonemployee spouse incident to divorce isn’t payment of wages for purposes of FICA and FUTA. At the time of exercise, FICA taxes will be withheld and reported on employee spouse’s W-2 form. The income from exercise of options and distributions from nonqualified deferred compensation plans are reported to the nonemployee spouse on a 1099-MISC form.

Stock options can present a unique tax issue. For example, if a trust is set up for the benefit of the non-employee spouse, upon exercise, the trustee is taxed since the title of the options is in his or her name. In this case the participant must report the taxable income on his or her income tax return and is responsible for the tax liability resulting from the exercise of the options on behalf of the alternate payee. The generally accepted practice provides for the non-employee spouse to reimburse the participant for the resulting tax liability.

## **C. TAX FILING ISSUES**

### **1. Filing Status**

When filing an individual income tax return, the taxpayer must select a filing status which determines the appropriate tax rates and standard deduction.

The choices are as follows:

1. Single
2. Married Filing Jointly
3. Married Filing Separately
4. Head of Household
5. Surviving Spouse

The determination of marital status is based on the taxpayer's status on the last day of the tax year. If a taxpayer is single on the last day of the tax year their options include filing single, head of household or surviving spouse (in the year of your spouse's death). If a taxpayer is married on the last day of the tax year, their options include married filing jointly, married filing separately or head of household. The taxpayer has the option of selecting among all of the choices of status for which they qualify that would result in the most beneficial tax consequences.

In order to qualify as head of household, one must meet all of the following requirements:

1. The taxpayer is unmarried on last day of tax year or a married individual whose spouse was not a member of the household for the last six months of the year and who files a separate return;
2. The taxpayer maintains, as his or her home, a household as the principal place of residence of a qualifying individual for more than one-half of the tax year;
3. The taxpayer provides more than one half of the support of the qualifying individual.

I.R.C. § 2(b)(1) and Treas. Reg. § 1.2-2(b)(6).

A qualifying individual is a) an unmarried child (even if the child does not qualify as your dependent), b) a married child who qualifies to be claimed as your dependent (or would qualify except for the special rules for children of divorced or separated parents or c) any other relative for whom would qualify to be claimed as a dependent. I.R.C. § 2(b)(1)(A).

If all of the requirements to file as head of household are met, one does not need to claim the dependent on his or her tax return to be eligible to use head of household tax rates. The taxpayer must only be eligible to claim the dependent.

If divorced or separated parents both qualify for head of household status independently, they may both utilize head of household tax rates. In this case, each parent must reside in a separate home with a qualifying child.

## **2. Tax Rates**

In 2021, individual income tax rates will range from 10 percent up to 37 percent. The amount of tax one pays is dependent upon the amount of taxable income and their filing status since the tax brackets vary depending on filing status.

Beginning in 2013, higher income taxpayers are subject to an Additional Medicare Tax on both earned and unearned income. The tax on earned income is 0.9% of the taxpayer's Medicare wages, Railroad Retirement Tax Act (RRTA) compensation, and self-employment income above a threshold amount (\$250,000 for joint returns, \$125,000 for married persons filing separately, and \$200,000 for all others).



The tax rate on unearned income is 3.8% and applies to the lesser of: (1) net investment income, or (2) the excess of modified adjusted gross income (MAGI) over an unindexed threshold amount (\$250,000 for joint filers or surviving spouses, \$125,000 for a married individual filing a separate return, and \$200,000 in any other case). Net investment income may include rental and royalty income, income from partnerships, S corporations and trusts, and income from other passive activities reported on a taxpayer's Schedule E. Publication 505 Tax Withholding and Estimated Tax at 3 (2021).

### 3. Deduction and Exemption Tables

The following table lists the standard deduction and personal exemption amounts for 2021:

Standard Deduction for Single Individuals	\$12,550
Standard Deduction for Married Individuals filing Jointly	\$25,100
Standard Deduction for Married Individuals filing Separately	\$12,550
Standard Deduction for Individuals filing as Head of Household	\$18,800
Standard Deduction for Surviving Spouses	\$25,100
Personal/Dependent Exemption	\$0

An additional standard deduction per person \$1,300 for a married individual or a surviving spouse and \$1,650 for an unmarried individual is available for taxpayers who are age 65 and/or blind in 2021.

The standard deduction amounts are adjusted annually for inflation.

The Tax Cuts and Jobs Act eliminated personal and dependent exemptions.

The child tax credit was expanded by the American Rescue Plan Act from \$2,000 per qualifying child to \$3,000 per qualifying child under age 17 and \$3,600 per qualifying child under age 5. As of publication, the enhanced child tax credit is scheduled to expire on December 31, 2021. This provision may be extended in future legislation.

For qualifying individuals over 16, there is a credit of \$500.

A taxpayer is entitled to a credit for each individual who qualifies as a dependent. In order to qualify as a dependent, an individual must meet all five of the following tests: I.R.C. § 152.

1. **Member of household or relationship test** – In relation to the taxpayer, the individual must be a son, daughter, descendant of son or daughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, father, mother, ancestor of father or mother, stepfather, stepmother, nephew, niece, uncle, aunt, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-

in-law or sister-in-law. If the individual meets the relationship test and the remaining four tests, he or she does not have to be a member of the taxpayer's household.

2. **Gross income test** – With the exception of a child under 19 or a full-time student under 24, a person is disqualified as a dependent if that person has gross income equal to or greater than the exemption amount.
3. **Joint return test** – A married individual will qualify as a dependent only if he or she does not file a joint return with his or her spouse.
4. **Support test** – The taxpayer, either alone or together with others, must provide over half of the support of the person claimed as a dependent for the calendar year. If no one person provides more than half of the support for the calendar year, any person who actually provides more than 10% of the support can meet the support test under a multiple support agreement.
5. **Citizenship/residency test** – The individual must be a) a citizen or national of the U.S., b) a resident of the U.S., or c) a resident of a country contiguous to the U.S. at some time during the calendar year. A non-resident alien child who meets all of the other tests will qualify for the dependent deduction.

In the case of divorced or separated parents, the parent having custody of the child is entitled to the credit unless this parent releases his or her claim to the credit. *The “release”, (form 8332), can be executed (a) on an annual basis, (b) for one or more future years (e.g., for alternate years), or (c) for all future years.*

## 4. Child And Dependent Care Expenses

A taxpayer may claim a tax credit for dependent care expenses paid on behalf of a qualifying child under age 13 or who is handicapped under Internal Revenue Code Section 21. To qualify, the taxpayer must:

1. furnish more than half the cost of maintaining a household that includes as a member one or more qualifying individuals and
2. incur employment-related expenses that enable the taxpayer to be gainfully employed.

I.R.C. § 21(a)(1) and Treas. Reg. § 1.21-1(a)(1).

Individuals of any filing status are eligible for the tax credit, but married individuals must file a joint return to claim the credit. An individual filing a separate return may only claim the credit if he or she maintains a household which is the principal residence of a qualifying individual for more than half of the year. The taxpayer must also furnish over one-half the cost of the household for the year and the other spouse must be absent for the last six months of the year.

For 2020, the credit is 35% of qualifying dependent care expenses incurred by taxpayers with adjusted gross income (AGI) of \$15,000 or less. The percentage decreases by 1% for each \$2,000 (or fraction of that amount) of adjusted gross income over \$15,000 but not below 20%. As a result, for taxpayers with AGI over \$43,000, the applicable percentage is 20%.

For 2021, the credit was expanded to 50% of \$8,000 per child. The percentage decreases once adjusted gross income reaches \$125,000 and is eliminated for taxpayers with an adjusted gross income over \$438,000. This provision is also set to expire as of December 31, 2021 when it reverts to the old law.

## 5. Education Credits

Pursuant to I.R.C. § 25A, individual taxpayers are eligible to claim an income tax credit for qualified educational expenses paid during the tax year.

The American Opportunity Credit may be claimed in the first four years of undergraduate education at an eligible educational institution. The maximum credit that may be claimed is \$2,500 per year per student. The maximum credit will be adjusted for inflation. I.R.C. § 25(a)(1).

The Lifetime Learning Credit may be claimed for any post-high school education at an eligible educational institutional including graduate courses and other courses to acquire or improve job skills. The maximum credit is \$2,000 per year per taxpayer. I.R.C. § 25(a)(2).

For purposes of the education credits, an eligible educational institution is any accredited school offering credit towards a bachelor's degree, associate's degree, or other recognized post-high school, credential and certain vocational schools.

The education credits are based on the payment of qualified tuition and related expenses which include expenses for tuition, books and academic fees that are required for enrollment. Qualified tuition and related expenses do *not include student activity fees, athletic fees, insurance expenses, room and board, transportation costs and other personal living expenses. They also do not include the cost of any course or education involving sports, games, or hobbies unless it is part of the student's degree program.* I.R.C. § 25A(f)(1)(B) and Treas. Reg. § 1.25A-2(d)(5).

The American Opportunity credit and Lifetime Learning credit may not be claimed in the same tax year for a student. A taxpayer may claim a American Opportunity credit or a Lifetime Learning credit for a tax year and exclude from gross income amounts distributed from an education IRA or qualified tuition program (section 529 plan) for the same student, as long as the distribution is not used for the same educational expenses for which a credit was claimed. Internal Revenue Service, *Publication 970 – 2018 Tax Benefits for Education* at 47 (2019).

The credits are phased out for higher income taxpayers.

For the American Opportunity credit, the phase-out for married taxpayers filing jointly begins once adjusted gross income reaches \$160,000. It is completely phased out once adjusted gross income reaches \$180,000 or more. For taxpayers who are not married filing jointly, the phase-out begins at \$80,000 and ends at \$90,000. The phase-out amounts will be adjusted for inflation. . Internal Revenue Service, *Publication 970 – 2020 Tax Benefits for Education* at 21 (2021).

For the Lifetime Learning credit, the phase-out for married taxpayers filing jointly begins once adjusted gross income reaches \$118,000. It is completely phased out once adjusted gross income reaches \$138,000 or more. For taxpayers who are not married filing jointly, the phase-out begins at \$59,000 and ends at \$69,000. The phase-out amounts will be adjusted for inflation. Internal Revenue Service, *Publication 970 – 2020 Tax Benefits for Education* at 30 (2021).

Neither credit is available for taxpayers who are married but file separately. Treas. Reg. § 1.25A-1(g).

Both credits are unavailable to an individual who can be claimed as a dependent on another taxpayer's return. In this case, the taxpayer claiming the individual as a dependent claims the credit. Internal Revenue Service, *Publication 970 – 2020 Tax Benefits for Education* at 12 and 23 (2020)

## **6. Student Loan Interest**

Under Section 221 of the Internal Revenue Code, interest paid on a qualified educational loan is deductible up to a maximum of \$2,500 per year. A qualified educational loan is incurred for the payment of tuition, room and board, and related expenses to attend a post-high school educational institution, including graduate programs and certain vocational schools. The loan must be taken for the benefit of the taxpayer, his or her spouse or their dependents while they are attending school at least half of a full course load. I.R.C. § 222(a) and Treas. Reg. § 1.221-1(a)(1).

The deduction for student loan interest is phased out for higher income taxpayers. In 2020 the phase out for married taxpayers filing jointly begins once adjusted gross income reaches \$140,000. The deduction is eliminated once adjusted gross income reaches \$170,000. The phase out for single taxpayers begins once adjusted gross income reaches \$70,000. The deduction is eliminated once adjusted gross income reaches \$85,000. The limits for subsequent years will be adjusted for inflation. No deduction is allowed for married taxpayers filing separately. I.R.C. § 221(b)(2)(b) and Treas. Reg. § 1.221-1(d)(1).

The deduction can be claimed by the person making the payments during the year; however, no deduction can be claimed by an individual who can be claimed as a dependent on another person's return.

## 7. Capital Gains and Losses

The Internal Revenue Service taxes the appreciation of capital assets when they are sold. A tax deduction is received in the case of depreciation in value of a capital asset. A capital asset is defined as any property held by a taxpayer (regardless of whether used in the taxpayer's trade or business) other than:

1. inventory;
2. property held primarily for sale to customers in the ordinary course of trade or business;
3. real and other depreciable property used in the taxpayer's trade or business;
4. certain copyrights, literary, musical or artistic compositions, or similar property created through personal effort;
5. accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from sale of property held in inventory or primarily for sale to customers in the ordinary course of trade or business;
6. selected publications of the U.S. government.

I.R.C. § 1221.

The gain or loss on a capital asset is determined based on the difference between the fair market value at the time of sale and the cost basis. The cost basis is defined as the original purchase price of the asset including transaction fees. The cost basis is also adjusted for improvements and other items added to the capital account (with certain exceptions), losses, receipts and other items subtracted from the capital account, and for depreciation, obsolescence, amortization and depletion. Treas. Reg. § 1.165-1(c)(1).

There are special rules regarding the taxation of capital gain and losses which vary depending on the holding period. They are detailed in the table below.

A short-term capital gain or loss is the result of the sale of an asset held for one year or less. A long-term capital gain or loss is the result of the sale of an asset held for more than one year. If a gain or loss is considered "long-term", the capital gain is taxed at a maximum of 15 percent. Beginning in 2013, taxpayers in the highest marginal tax bracket will be subject to a capital gains tax of 20%. The maximum capital gains rate is 15% if it would be taxed at a rate above 25% but below 39.6% if it were ordinary income. Taxpayers in the 10 or 15 percent tax bracket pay a no capital gains tax. *Topic No. 409 Capital Gains and Losses.*

The following chart summarizes the taxability of capital gains and losses:

<b>Capital Gains exceed Capital Losses and</b>		
-the result is a short-term gain	A	The gain is taxed at ordinary income rates
-the result is a long-term gain	B	The gain is taxed at a maximum of 0, 15, or 20 percent depending on the marginal tax bracket.
-the result is a combination of short-term gain and long-term gain		The portion of the gain that is short-term is taxed as described in A above. The portion of the gain that is long-term is taxed as described in B above.
<b>Capital losses exceed capital gains and</b>		
-the result is a short-term loss		Offset the loss against other income up to \$3,000. Carry the remaining forward to future years.
-the result is a long-term loss		Offset the loss against other income up to \$3,000. Carry the remaining forward to future years.
-the result is a combination of short-term loss and long-term loss		Offset the loss against other income up to \$3,000. Carry the remaining forward to future years.

It is important to factor the imbedded tax liability or tax credit into the value of the asset during distribution. Two different assets that have similar fair market value may not net the clients the same amounts.

### **Sale of Principal Residence**

Although real estate is considered a capital asset, under I.R.C. § 121 (effective for sales and exchanges after May 6, 1997), special rules apply regarding the handling of the gain or loss on sale when the real estate is also the principal residence of the owner.

A taxpayer may exclude up to \$250,000 (\$500,000 for qualifying joint return filers) of gain from the sale of their principal residence. A principal residence is defined as property used as the taxpayer's home for at least two of the last five years ending on the date of the sale. This exclusion can be used once every two years. I.R.C. § 121(a) and Treas. Reg. § 1.121-1(a).

The ownership and use test need not occur during the same two-year period. In the case of married taxpayers where the home is owned by only one spouse and all of the other conditions are met, both spouses qualify for the exclusion. I.R.C. § 121(d)(3)(a) and Treas. Reg. § 1.121-4(b)(c).

The full exclusion does not apply if the taxpayer has applied the exclusion to another sale or exchange during the two years before the sale or exchange. A reduced exclusion can be utilized for taxpayers who have elected to use the exclusion within the prior two years and the sale is the result of a change in place of employment, health issues, or unforeseen circumstances. In the case of a divorce or separation, a reduced exclusion also applies and is specifically designated as an unforeseen circumstance in the tax code. I.R.C. § 121(c)(2).

In the case of a reduced exclusion, the maximum exclusion amount of \$250,000 for single filers and \$500,000 for joint filers is reduced by the following fraction:

The shorter of (a) aggregate periods of ownership and use of the property by the taxpayer as a principal residence during the 8 years ending on the sale date, or (b) the period of time after the last sale to which the exclusion applied, and before the date of the current sale.

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The denominator of the fraction is 5 years

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For example, if Sal and Ann sell their principal residence on February 28, 2010 and elect to exclude from income the gain on the sale. They purchased a new home on March 1, 2010 which is used as their principal residence. Due to a change in employment, they sell their principal residence on June 30, 2011 for a gain of \$30,000. Since the exclusion was utilized within the last five years and the sale was the result of a change in employment, Sal and Ann qualify for a reduced exclusion. The period of time they owned their home was 487 days (March 1, 2010 through June 30, 2011). As a result, the maximum exclusion that Sal and Ann are eligible for is \$133,425 ( $\$500,000 \times 487 \text{ days} / 1,825 \text{ days}$ ). Since the gain of \$30,000 was less than the maximum exclusion, the entire gain is excluded from income.

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The exclusion applies to sales to related parties as long as the transaction occurred at fair market value.

The sale of a family residence due to divorce or separation creates several variations as follows:

1. **Spouses use the home jointly** – If each spouse independently meets the required test, each spouse may claim the exclusion whether or not they file joint or separate returns.
2. **One spouse owns the home but transfers ownership to the other spouse** – In the case of an individual who acquires the home from a spouse or former spouse under I.R.C. § 1041, the period that the transferee owned the home includes the period that the transferor owned the home. I.R.C. § 121(d)(3)(a) and Treas. Reg. § 1.121-4(b)(1).
3. **One spouse is awarded use of the home, but both still own it** – A person is treated as using a home as his or her principal residence during the period of ownership while the person's spouse or former spouse is granted use of the property under a divorce or separation instrument. I.R.C. § 121(d)(3)(a) and Treas. Reg. § 1.121-4(b)(1).

If a portion of the residence is used for business purposes, it is considered a mixed-use home. In this case, the full exclusion applies as long as the business use occurred in the same dwelling unit. If it occurred in a detached dwelling, a prorated gain applies.

The calculation for each spouse is performed separately if the period of residence is different or if one spouse previously utilized the exclusion during the last two years.

## **8. Deductibility of Professional Fees**

A taxpayer formerly was allowed to claim a deduction for tax-related expenses incurred in connection with income, estate, gift, property or other taxes imposed by federal, state or municipal authorities. Pursuant to Treas. Reg. §1.262-1(b)(7), the deduction applied to legal, accounting or other professional fees relating to income and tax advice.

Section 11045 of the Tax Cuts and Jobs Act of 2017 eliminated all miscellaneous itemized deductions which disallows professional fees for income and tax advice to be deducted.

## **9. Innocent Spouse Relief**

Couples who file a joint income tax return are joint and severally liable for the tax liability, including interest and penalties. A civil fraud penalty, however, is only imposed on the spouse committing fraud. This is a complex area where expert advice, beyond the scope of this chapter, should be consulted.

Relief can be granted to a spouse under I.R.C. § 6015, even if they are still married, if he or she meets the following requirements:

1. the parties filed a joint return;
2. there is an understatement of tax on the return that is attributable to erroneous items of the other spouse;



3. it can be established that the “innocent spouse” did not know and had no reason to know about the understatement when signing the return,
4. it would be inequitable to hold the “innocent spouse liable for the underpayment of tax, and
5. The “innocent spouse” claim is elected within two years of the Internal Revenue Service beginning collection efforts.

In cases where the parties are no longer married, a spouse can elect to limit his or her liability on a joint return to that spouse’s allocable portion of the deficiency. This election allocates the tax liability as if the spouses filed separate tax returns. In this case each spouse is responsible for the tax liability of their earned income. Relief will not be provided for items that the “innocent spouse” knew about at the time of signing of the return unless the return was signed under duress.

In order to obtain relief, Form 8857 must be filed.

## **D. CONCLUSION**

There are many tax and accounting issues to consider throughout a family law matter. The information has been presented to provide an understanding of the most common issues that an attorney may face while representing their clients. It has been designed as a source of reference for issues that may be presented throughout the case.

Since the tax laws and rules can change over time, please use this chapter as a guide but check the source material for any changes.

This information is designed to be accurate and authoritative. However, this information is distributed with the understanding that it does not render legal, accounting or other professional advice and no liability is assumed in connection with its use.

Paul M. Gazaleh, CPA/ABV  
Gazaleh Consulting LLC  
PO Box 1378  
Hightstown, New Jersey 08520  
(609) 443-1910  
(609) 435-1491 facsimile  
paul@gazalehconsulting.com  
www.gazalehconsulting.com

*Paul M. Gazaleh is a Certified Public Accountant Accredited in Business Valuation. Mr. Gazaleh earned a Bachelor of Science Degree in Accountancy from Trenton State College. He also holds a Master of Business Administration degree with a specialization in finance at LaSalle University.*



# EARLY SETTLEMENT PROGRAM AND ECONOMIC MEDIATION

## A. EARLY SETTLEMENT PANEL

The family court has created what can best be described as non-binding arbitration for all family matters. It is called the ‘early settlement program’ or ‘early settlement panel.’ The panels are usually comprised of two experienced divorce attorneys who regularly practice in the county of venue. The presiding judge or designee refers appropriate cases, including post-judgment applications, to the program. All contested divorces are referred to the panels. R. 5:5-5 makes it mandatory for the parties and attorneys to participate once the case has been referred to the early settlement program. The rule requires the litigants to provide case information statements and such other information as may be required. Failure to comply with the panel’s requirements may result in the assessment of counsel fees and/or dismissal of a non-cooperating party’s pleadings.

### **5:5-5. Participation in Early Settlement Programs**

All vicinages shall establish an Early Settlement Program (ESP), in conjunction with the County Bar Associations, and the Presiding Judges, or designee, shall refer appropriate cases including post-judgment applications to the program based upon review of the pleadings and case information statements submitted by the parties. Parties to cases that have been so referred shall participate in the program as scheduled. The failure of a party to participate in the program or to provide a case information statement or such other required information may result in the assessment of counsel fees and/or dismissal of the non-cooperating party’s pleadings. Not later than five days prior to the scheduled panel session, each party shall be required to provide a submission to the ESP coordinator in the county of venue, with a copy to the designated panelists, if known.

Many of the counties have forms that must be completed and submitted in advance. Other

counties ask that the completed forms be brought to the panel on the scheduled day. The panels have been highly successful because they provide the parties with neutral panelists' opinions as to how they think the local judge would decide their case. Once a party hears the recommendation of the panelists they are able to compare the recommendation against their own counsel's opinion and can evaluate the other party's position.

Preparation and presentation at the early settlement panel is an instrumental part in the divorce litigation process and should be taken seriously. Recommendations gained at the early settlement panel, if not leading to a settlement, will have a profound effect upon future negotiating positions and efforts for potential settlement.

Some counties have what are known as 'blue ribbon panels,' which consist of the more experienced divorce attorneys. In some counties, accountants, tax lawyers, business appraisers, real estate appraisers or other experts sometimes volunteer their time to sit on the blue ribbon panel. If the case is complex, one should request a blue ribbon panel prior to the scheduled panel date.

**EARLY SETTLEMENT PANEL PROPOSAL**

**By: Mark Gruber, Esq.  
Attorney for Plaintiff, John Smith  
Docket No. FM-21-  
Panel Date: September 9, 2019**

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**PLAINTIFF:**

**JOHN SMITH**

Residence: Main Street  
Hopatcong, NJ 07843  
Date of Birth: January 1, 1979  
Age: 40  
Employer: Prudential  
Occupation: V.P. of Finance  
Educational Background: CPA  
2018 Income: \$154,000 + \$55,333 (See CIS **Exhibit 1**) (3 year average bonus – see attached **Exhibit 2**) (2018 Tax Return – **Exhibit 2**) (Recent pay statement **Exhibit 2**)

**DEFENDANT:**

**MARY SMITH**

Residence: Main Street  
Stanhope, NJ 07874  
Date of Birth: January 1, 1968  
Age: 51  
Employer: Self-underemployed  
Occupation: Peer-to-Peer Lending, Day Trader, Portfolio Manager  
Educational Background:  
Imputed Income: \$ 70,000 (See Dr. David Stein Report attached as **Exhibit 3** – Imputed Income)  
Total Income: \$ 41,800 – Investment Income 2018  
\$111,800 – Total Income

**MARITAL INFORMATION:**

Date of Marriage: January 1, 2009  
Separation: January 1, 2015  
Complaint for Divorce: November 1 2017  
Children: Matthew Smith, d.o.b. April 11, 2011

**ISSUES:**

1. **Custody.**

Joint Legal Custody. Wife will be primary and Husband PAR. Husband to have alternating weekends from after school or 8:00 a.m. if no school to Sunday evening

7:30 p.m. and each Wednesday after school until return to school on Thursday or to Wife at 8:00 a.m. if no school. Parties to share the weekend transportation. Husband to provide midweek transportation.

2. **Medical Insurance.**

Wife to provide medical insurance for Matthew. Cost of \$2,268 to be factored in to Child Support Guidelines. Wife to pay first \$250 per year unreimbursed and 55% Wife and 45% Husband thereafter. (See **Exhibit 4**)

3. **Parties' Medical Insurance.**

Each party to pay their own insurance.

4. **Life Insurance.**

Each party to provide \$500,000 on their lives designating Matthew as the beneficiary during his unemancipation and designating the other parent as Trustee. Wife shall provide \$50,000 life insurance designating the Husband as beneficiary for so long as Wife has an alimony obligation.

5. **Alimony.**

Wife to pay Husband \$600 per week LDA for two years from date of separation.

6. **Child Support.**

Husband to pay Wife \$132 per week child support from date of separation.

7. **Additional Contribution to Child's Expenses.**

The parties will share the expense of the child or children's extraordinary and extracurricular and sporting activities, 45 % Husband and 55 % Wife. This ratio will change when there is a change in alimony or child support. Such expenses may include, without limitation, the following:

(a) **Athletic Teams.** Athletic team and extracurricular activity registration fees, and related activity equipment and apparel;

(b) **School Expenses.** School expenses such as, and without limitation, tutor(s), school trips, yearbooks, school ring, and prom bid(s);

(c) **Organized School, Club, and Athletic Team Photographs.** The parties shall keep each other timely informed of such photo events for purposes of most efficiently and least expensively ordering the desired number of photos for themselves, family, and friends; any photos specifically ordered by a party shall be such party's sole payment obligation;

(d) Special Event Formalwear. Special event formalwear, including, without limitation, garments for religious events, weddings, proms, and graduations. Such formalwear may include all attire one generally associates with wearing at such events, including, without limitation, dresses, shoes, and accessories, including, without limitation, jewelry, purses, etc.;

(e) Driver Education Programs. Which shall include, without limitation, any driving class(es) necessary for the child(ren) to obtain their permit and/or permanent driver's license;

(f) Vehicle Purchase and Maintenance. The parties agree to discuss the possible purchase/lease and maintenance of a vehicle, new or used, for each/the child as the child reaches legal driving age and obtains his/her/their driver's license. The parties agree that each/the child shall have a responsibility to contribute toward the purchase/lease, maintenance, insurance and gas of any vehicle acquired for his/her/their use. The parties shall discuss and mutually agree as to the child's contribution toward all auto expenses prior to incursion of same. The non-custodial parent shall equally pay the additional automobile insurance costs incurred by the custodial parent if the automobile insurance increases due to the driving age of the unemancipated child.

8. **College Expense.**

(a) Both parties agree that they shall contribute to the extent that each is financially able for the cost and expense of an undergraduate college education for the unemancipated child or children after taking into account all scholarships, grants, loans and aid. The parent's contribution will be contingent upon the child attending college on a full-time matriculated basis, which will be defined as no less than 12 credits per semester, and attending college on a continuous basis for a 4-year period. The parties will first utilize the college accounts, which may have existed at the time of execution of this Agreement, for the initial cost of college education to the extent the funds are available. The children will be expected to obtain student loans, so that with the loans, scholarships, grants and aid, his/her/their share of contribution is one-third (1/3). The remaining two-thirds (2/3) of college expense shall be paid in accordance with each parties ability to pay at the time the children attends college. If the parties are unable to agree on college contribution, the issue will be submitted to the court.

(b) College expenses are defined as tuition, room-and-board as charged by the Institution, books, laboratory fees, school fees, computer, computer accessories, school uniforms (if applicable), transportation to and from school at least five (5) times per year, SAT/ACT courses, SAT and ACT fees, college application fees and trips to visit five (5) colleges with one parent, including the cost of that parent's travel.

(c) Both parties shall be permitted to participate in the selection of any

school that the child(ren) attend, and will be required to consent, which consent cannot be unreasonably withheld. If consent is not obtained prior to committing to a college, the parent committing the child to the college shall solely be responsible for all the expenses. If that parent later seeks an Order from the Court compelling the other parent to contribute to college, the parent being requested to contribute shall only pay the expenses from the date the application is made with the Court.

9. **Equitable Distribution.**

(a) **Marital Home.**

1. The marital residence is worth approximately \$450,000. See attached CMA (**Exhibit 5**). The realtor indicated that the list price would be between \$451,000 and \$479,000, but would probably sell in the range of \$440,000 to \$460,000 which would be an average of \$450,000. There is an outstanding mortgage balance in the amount of \$330,000 leaving an equity of \$120,000. The parties should list and sell the house immediately and equally share the net proceeds subject to the other provisions of this proposal.

2. **Promised Reimbursement of Down Payment to Wife.**

The Husband agreed to pay \$50,000 of the \$100,000 down payment and closing costs advanced by the Wife from her premarital funds. Because of the UK – US exchange rate, it was not advantageous for him to liquidate his assets in the UK at the time. In lieu thereof, the parties agreed that the Wife would utilize \$70,000 of her premarital funds. The Husband would utilize \$25,000 of his premarital funds and the Husband agreed to repay to the Wife \$25,000 which would have equalized the deposit and closing costs. Thus from the net proceeds of sale, the Husband shall pay to the Wife \$25,000 from his 1/2 share.

3. **Wife's Reimbursement for Living Expenses.**

The parties entered into a premarital agreement (**Exhibit 6**) in which the Husband agreed to “contribute financially to the relationship, albeit at a less than equal level.” When the parties married they opened a joint checking account in which the Wife’s income was deposited. The parties opened a joint account in an offshore bank at Lloyds Bank in the Isle of Man. The parties never discussed an exact percentage. It is suggested that the Husband contribute 25% of the marital expenses which he could well afford from his overseas investments and income. According to the Wife’s Case Information Statement the joint marital expenses were \$10,160 per month or \$121,920 per year. Utilizing 25% would amount to \$30,480 per year of the Husband’s contribution. The Husband had promised to



deposit into the offshore account the amount of his contribution. The Husband admitted his promise to pay \$30,000 per year to the Wife's father, William B. Jones, **Exhibit 7**. Thus, for the 6 1/2 years from the date of marriage until the date of separation, the Husband owes to the Wife marital expense contribution of \$198,120. In January of 2018 the Husband withdrew whatever funds were in the offshore account and has not disclosed the same to the Wife.

(b) **Bank Accounts.**

1. Joint Wells Fargo account – Wife to retain. This is used as an operating account and the balance is minimal after all marital expenses are paid each month.
2. Wife's Valley National checking account – exempt. The Wife established this two months prior to the Complaint for Divorce.
3. Wells Fargo checking and savings – exempt as Wife opened these after the Complaint for Divorce.
4. Husband's Capital One account – May be exempt because opened after the Complaint for Divorce.
5. Husband's 4 UK accounts: If Husband does not provide requested discovery, his pleadings will be stricken and adverse inference imposed.
  - a. CMC Markets UK PLC – Cash earned during the marriage may have been deposited in this account and the Husband has not accounted for the same.
  - b. Santander – One of two of the Husband's primary accounts believed to be used for real estate investments, peer-to-peer lending, or investment holdings including dividends and interest.
  - c. Sander (2) – Same as above.
  - d. Bank of Scotland (believed to be Halifax) – Unknown use.
  - e. Nationwide – Same as above.
  - f. Lloyds TSB Offshore – Originally opened for Husband to deposit his share of the down payment and his financial contribution to the joint marital expenses – Husband has not accounted for the funds. Believed closed by Husband – in January of 2014 the Husband made several withdrawals totaling \$65,177 and has not accounted to their whereabouts. It is not known whether he put current earnings, interest or

dividends from exempt assets, contributions to joint marital expenses, or contribution reimbursement for the down payment on the marital residence.

- g. Assetz Capital (UK) peer-to-peer lending account – Husband has refused to provide complete disclosure.
- h. Funding Circle Ltd. (UK) peer-to-peer lending account – Husband has refused to provide complete disclosure.
- i. Ratesetter (UK) peer-to-peer lending account – Husband has refused to provide complete disclosure.
- j. SavingStream Lendy Ltd. (UK) peer-to-peer lending account – Husband has refused to provide complete disclosure.
- k. Selftrade/Talos Sec. Ltd. (similar to an E\*TRADE account) – Husband provided limited discovery which would indicate that in August 2014 the UK value was £139,445 at today's exchange rate of 1.56 the US value would be \$217,534.

The Wife claims 50% of all of the above accounts which are not exempted by the Premarital Agreement. It will be the Husband's burden to prove otherwise. If he does not provide proof that these are exempt by the Premarital Agreement, the total amount of all Husband's accounts will be equally shared.

- 6. Wife's E\*TRADE account – The parties to equally share any post-Complaint contributions by the Wife which were not made from her premarital assets, plus or minus market gains or losses.
- 7. Wife's Treasury Bonds – To be equally shared.
- 8. Wife's UBS Roth IRA - \$52,635 – all premarital.
- 9. Prudential Roth IRA - \$92,000 – all marital, to be equally shared as of date of Complaint.
- 10. Prudential Employee Stock – all marital. \$11,161 to be equally shared. (Stock granted after November 7, 2014 exempt as post Complaint and not vested.)
- 11. Defendant's UK pension – Husband to pay to Wife 50% of the marital coverture fraction or \$\_\_\_\_\_ thousand dollars, payable from Husband's share of house proceeds or as an offset against other equitable distribution.

(c) **Automobiles.**

- (1) Wife's 2012 Mazda – exempt as premarital
- (2) Husband's 2019 Mazda lease – The Husband shall turn over the automobile to the Wife upon separation and shall have the option to transfer the lease into his name so long as the Wife has no further obligation.

(d) **Personal Property.**

Parties to mutually agree. Each to return premarital or exempt property.

(e) **Debts.**

Each party to pay any debts incurred by them or in their name alone (excluding the mortgage).

(f) **Credit Card Debts.**

Each party to pay their own credit card debts.

10. **Tax Considerations.**

- (a) The Wife shall claim the unemancipated child as a dependency exemption in all years.
- (b) The Husband will indemnify and save the Wife harmless for any tax liability on past returns concerning his business activity and income from the UK.

11. **Counsel Fees.**

The Husband shall pay to the Wife 50% of all counsel fees and expert fees as a result of his bad faith in failing to disclose income, assets, and business activity. Fees are approximately \$25,000 at present.

## **B. MANDATORY POST-MESP ECONOMIC MEDIATION**

Cases that remain unresolved after the early settlement program are now referred to mandatory post-MESP economic mediation, except if there exists a restraining order prohibiting contact between the parties. At present, mediators volunteer the first two hours at no charge. The first hour is for the mediator's preparation. The litigants are only obligated to attend the first hour of the actual mediation, but have the option to continue and pay the mediator an hourly rate set by the mediator. Attorneys are encouraged to attend the mediation sessions with their clients.

### **5:5-6. Participation in Mandatory Post-ESP Mediation or in a Mandatory Post-ESP Complementary Dispute Resolution Event**

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

(b)

(b) Mandatory Two Hour Minimum Participation. Unless good cause is shown why a particular matter should not be referred to this post-ESP program, litigants shall be required to participate in the program for no more than two hours, consisting of one hour of preparation time by the mediator or other individual conducting the alternate CDR event and one hour of time for the mediation or other CDR event. As provided in R. 1:40-4(b), litigants selecting a mediator from the statewide approved list of mediators will not be charged a fee for the mandatory first two hours of mediation. This provision does not apply when the litigants select an individual not on the statewide approved list of mediators. Participation after the first two hours shall be voluntary.

(c) Allocation of Fees After Two Hour Minimum. If litigants consent to continue the mediation process, the Economic Mediation Referral Order will determine the distribution of costs for each party for the additional hours. If the litigants choose to participate in an alternate post-ESP CDR event, the fee shall be set by the individual conducting the session. The litigants shall share the cost equally unless otherwise determined by the court. The litigants are required to participate in at least one session of such alternate post-ESP CDR event.

# PREPARATION AND TRIAL

## CHAPTER 10

### A. PREPARATION

After receiving the trial date, the practitioner should schedule an appointment with the client in order to prepare for trial. If corroboration is needed, meeting or speaking with corroborating witnesses is also important, so they will be adequately prepared. R. 5:7-3 provides that all elements of a claim for divorce or nullity may be proven without corroboration. However, some judges still require corroboration in certain actions.

Many attorneys find it useful to prepare a trial notebook, which includes an outline of testimony and copies of all documents that will be offered into evidence. It is good practice to review the trial outline with the client in advance, so the client will understand what information the practitioner is seeking to adduce from the witness at the time of the trial. While gathering information and preparing for trial, be sure to provide the material to the adversary in advance of trial if the information has been sought by way of interrogatory, notice to produce, or at deposition. Supplement any discovery requests immediately.

### B. UPDATE THE CASE INFORMATION STATEMENT WITH CURRENT INCOME, DEBT AND ASSET INFORMATION AS REQUIRED BY THE RULE

File an updated case information statement with the court and serve it upon the adversary no later than 20 days before the final hearing. R 5:5-2(c).

## C. SUBPOENAS

R. 1:9-1 permits an attorney to issue a subpoena in the name of the clerk of the court for the attendance of a witness at the time of trial. The subpoena must be served in accordance with R. 1:5-2 at least five days before trial. If the person being subpoenaed is a party, a notice in lieu of subpoena may be served upon the party's attorney.

### **1:9-1. For Attendance of Witnesses; Forms; Issuance; Notice in Lieu of Subpoena**

A subpoena may be issued by the clerk of the court or by an attorney or party in the name of the clerk or as provided by R. 7:7-8(subpoenas in certain cases in the municipal court). It shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. If the witness is to testify in a criminal action for the State or an indigent defendant, or has been subpoenaed by a Law Guardian in an action brought by the Division of Child Protection and Permanency pursuant to Title 9 or Title 30 of the New Jersey Statutes, the subpoena shall so note, and shall contain an order to appear without the prepayment of any witness fee. The testimony of a party who could be subpoenaed may be compelled by a notice in lieu of subpoena served upon the party's attorney demanding that the attorney produce the client at trial. If the party is a corporation or other organization, the testimony of any person deposable on its behalf, under R. 4:14-2, may be compelled by like notice. The notice shall be served in accordance with R. 1:5-2 at least 5 days before trial. The sanctions of R. 1:2-4 shall apply to a failure to respond to a notice in lieu of a subpoena.

A subpoena *duces tecum* requires 10 days' notice to all parties. See R. 4:14-7(c).

## D. ORDERS GOVERNING PROOFS AT TRIAL

While preparing for trial and at the commencement of trial, most judges request that counsel stipulate to as many facts and exhibits as possible. For example, the date of marriage, date of birth of children, tax returns, record of debts, statements of account and other obviously admissible evidence should be stipulated in advance. Many judges issue an order governing proofs at trial. These orders require counsel to exchange witness lists, exhibit lists, and stipulations. Often, the orders require trial memorandum or briefs. A sample order is set forth on the next page.

## ORDER PREPARED BY THE COURT

_____	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO.
vs.	:	
	:	<u>CIVIL ACTION</u>
	:	
	:	
<i>Defendant.</i>	:	ORDER GOVERNING PROOFS AT TRIAL
_____	:	

**THIS MATTER** having been listed for a Trial by the Court, and for good and sufficient cause shown in order to expedite the trial in this matter;

IT IS on this \_\_\_ day of \_\_\_\_\_, 2020,

### **ORDERED:**

1. This matter is listed for a trial on \_\_\_\_\_, 2020. If the matter is not reached by the Court that day, the matter will be carried day-to-day until the Court concludes prior-listed matters. If counsel, parties, or witnesses are no longer available when the matter is reached by the Court, a new trial date will be established.
2. At least ten (10) days prior to the trial, the parties are to serve on each other and file with the chambers of \_\_\_\_\_, J.S.C., a list of the names and addresses of all prospective witnesses which list must include a brief designation of the issue(s) as to which each witness is expected to testify, e.g., “custody,” “parenting time,” “marital assets,” “asset valuation,” etc.

3. At least ten (10) days prior to the trial, the parties are to serve on each other and file with the chambers of \_\_\_\_\_, J.S.C., a list of exhibits and a list of stipulations, which conform to the following requirements:
- a) The parties are to attempt to agree on all *joint exhibits* in advance of the hearing. Please mark all joint exhibits with numbers (“J-1,” etc.) for identification. In addition, the parties are to mark all of their *individual exhibits* with similar references (“P-1,” etc.; “D-1,” etc.). The completed exhibit sheets shall be filed with the chambers of \_\_\_\_\_, J.S.C., at least ten (10) days before the trial. Duplicate copies of all exhibits shall be made available for review by the Court while the exhibit is being used to examine witnesses.
  - b) The parties are to confer in advance of the hearing to formulate joint stipulations of fact. All facts as to which there is no genuine dispute are to be stipulated in order to reduce the time of the trial.
4. At least ten (10) days before the trial, in the event the parties intend to refer to depositions during their respective direct examinations of any witnesses at the trial, the parties are to serve and file with the chambers of \_\_\_\_\_, J.S.C., a list of all proposed references to the depositions.
5. At least ten (10) days prior to the trial, the parties are to serve on each other and file with the chambers of \_\_\_\_\_, J.S.C., a list of all disputed issues.
6. At least ten (10) days prior to the trial, the parties are to submit trial briefs on any relevant law that the parties wish to bring to the attention of the Court.
7. If the parties fail to comply with the terms of this order the Court in its discretion may either adjourn the trial or order the parties to appear forthwith before the Court and proceed to comply with this Order.

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J.S.C.



# THE UNCONTESTED DIVORCE

## CHAPTER 11

### A. UNCONTESTED HEARING

If at any time during the divorce litigation process the parties reach a settlement, the courts will entertain and expeditiously schedule the matter for an uncontested hearing. The plaintiff must appear at all uncontested hearings. New Jersey does not permit the registration of divorce. At the uncontested hearing the judge will want the plaintiff and the defendant, if there is a counterclaim that will be pursued, to testify as to all of the elements contained in the complaint. Thus, counsel should establish the following regarding the cause of action:

1. Are you agreeable to withdrawing your answer to the pleading in this matter?
2. Do you understand that by withdrawing your answer your spouse's pleading will proceed on an uncontested basis?
3. On what date were you married?
4. Where do you live?
5. How long have you lived there? Have you resided in New Jersey for at least a year prior to filing your pleading?
6. Your complaint for divorce alleges that certain irreconcilable differences exist between you and your spouse. Did those differences exist for at least 6 months prior to filing your complaint? Do they continue to exist today? Is there any chance of a reconciliation?
7. Please state the names and ages of your children born of this marriage.
8. Have there been any other proceedings in any other court between you and your spouse for support or divorce?
9. Do you wish to resume your prior name? If so, are you resuming your prior name to avoid criminal prosecution or to avoid creditors?

If the parties have a written property settlement agreement, the agreement should be pre-marked as “J-1,” which designates a joint exhibit. If the property settlement agreement is not in written form, one attorney will usually recite the terms of the agreement on the record in the presence of the two parties. The appropriate questions each attorney should ask their clients are as follows:

1. While showing the client the property settlement agreement marked as “J-1,” ask: Is this your signature? (Alternatively, ask the witness whether they heard the attorney recite the terms of the property settlement agreement on the record.)
2. Did you read the agreement before you signed it?
3. Was the agreement the result of negotiations between counsel and you and your spouse?
4. Have you had sufficient time to consider entering into this agreement?
5. Under all of the circumstances of your case do you think the agreement represents a fair and an equitable resolution of all issues between you and your spouse?
6. Did anyone coerce, force, or threaten you into signing this agreement?
7. Do you fully understand all of the terms of this agreement?
8. Are you under the influence of any drugs or medication that would impair your ability to understand the terms of the agreement or the nature of the proceedings today?
9. Do you have any questions of the judge or of me with regard to the agreement?
10. Do you understand that by entering into this agreement you are waiving your right to a trial where the court would have heard testimony and ruled on all of the issues that are the subject of this agreement?
11. Are you asking the court to make this agreement part of any judgment that it may enter today?
12. Have I been available to answer all of your questions, and are you satisfied with the representation provided to you?
13. How much alimony and/or child support is provided for in your agreement? Is the child support consistent with the child support guidelines? If not, you must explain exceptional circumstances and get the judge’s approval. Are the guidelines attached to the agreement?
14. Describe your standard of living during the marriage. (You can offer the filed case information statement if the budget reflects the marital standard of living.) Some judges require the submission of a marital lifestyle statement required by *Crews v. Crews*. But the case of *Weishaus v. Weishaus* (below) makes the former requirement optional. However, courts are instructed to preserve lifestyle information, and lifestyle statements and case information statements should be filed with the court or included in agreements. Both parties should agree on a marital lifestyle statement and attach it to the settlement agreement.

15. Under the terms of the agreement, will you be able to maintain the same standard of living? If not, describe the difference.

R. 5:5-2(e) requires that in any matter in which an agreement or settlement contains an award of alimony, the parties shall include a declaration that the standard of living is satisfied by the agreement or settlement; or the parties by stipulation shall define the marital standard of living; or the parties shall preserve copies of their respective filed family case information statements until such time as alimony is terminated. For a party who has not filed a case information statement, that party shall prepare Part D (“Monthly Expenses”), serving a copy on the other party and preserving the completed Part D until such time as alimony is terminated (see below).

After the hearing, the attorney for the plaintiff usually submits a form of judgment with the property settlement agreement attached, or will prepare a property settlement agreement and incorporate the agreement that was stated on the record at the time of the uncontested hearing.

**R. 5:5-2(e).**

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

**R. 5:5-2(d).**

Following the entry of a final judgment, the Court shall order the return to the parties of any income tax returns filed with a case information statement under this rule.

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## SIGNIFICANT CASES

*Carter v. Carter*, 318 N.J. Super. 34 (App. Div. 1999)

The trial court must make specific findings relative to the statutory criteria of rehabilitative alimony in every case—uncontested or cases that are tried to conclusion.

*Weishaus v. Weishaus*, 180 N.J. 131 (2004)

Parties may settle their case without establishing marital lifestyle. The court should advise parties of future pitfalls in light of *Crews v. Crews*, 164 N.J. 11 (2000), and should take steps to capture and preserve the information that is available.

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## MARITAL SETTLEMENT AGREEMENT CHECKLIST

PLTF	DEF	
_____	_____	Recognizes Document
_____	_____	Recognizes Own Signature
_____	_____	Recognizes Other Signature
_____	_____	Highest Level of Education
_____	_____	English Primary Language
_____	_____	Read Agreement
_____	_____	Understands Everything in Agreement
_____	_____	Agreement Product of Extensive Negotiation
_____	_____	Aware of Right to Trial and Judicial Determination
_____	_____	Aware Could Do Better or Worse in Some or All Areas
_____	_____	Waives Right to Trial
_____	_____	Agreement Resolves All Issues
_____	_____	No Side Agreements Exist
_____	_____	Understands Right to Seek Alimony From Court
_____	_____	Waives Right to Seek Alimony (If Applicable)
_____	_____	Agreement Controls Division of Property
_____	_____	Voluntarily Entered Into Agreement
_____	_____	There Was No Coercion
_____	_____	The Agreement is Fair
_____	_____	Not Under Influence of Alcohol or Drugs When Agreed
_____	_____	Not Now Under Influence of Alcohol or Drugs
_____	_____	Child Support Consistent with Guidelines
_____	_____	Marital Lifestyle Maintained After Divorce
_____	_____	Represented by Counsel or Chose Not to Have Same
_____	_____	Incorporated Agreement into Judgment of Divorce

**Mark Gruber, Esq./ID # \_\_\_\_\_**  
**Filing Attorney, Esq./ID # \_\_\_\_\_**  
**GRUBER, COLABELLA, LIUZZA,**  
**THOMPSON & HIBEN**  
 41 Lakeside Boulevard  
 Hopatcong, New Jersey 07843  
 Tel. No. (973) 398-7500  
 Fax No. (973) 398-2592  
 Attorneys for Plaintiff

	:	SUPERIOR COURT OF NEW JERSEY
<b>SARA SETTLED,</b>	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u><b>CIVIL ACTION</b></u>
<b>SAMUEL SETTLED,</b>	:	
	:	<b>DUAL JUDGMENT OF DIVORCE WITH</b>
<i>Defendant.</i>	:	<b>MARITAL SETTLEMENT</b>
	:	<b>AGREEMENT ATTACHED</b>

**THIS MATTER** coming on to be heard on **February 2, 2022** before the Honorable Claudia Jones, J.S.C. in the presence of Mark Gruber, Esq. of the law office of Gruber, Colabella, Liuzza, Thompson & Hiben, Attorneys for the Plaintiff, **SARA SETTLED**, and Larry Lawyer, Esq. of the Law Offices of Lawyer, LLC., Attorneys for the Defendant, **SAMUEL SETTLED**; and the Court having read and considered the Complaint for Divorce filed August 27, 2021 and Counterclaim filed September 9, 2021; and it appearing that Plaintiff and Defendant were married on June 23, 2018 in a religious ceremony in Maplewood, New Jersey; and the parties having pleaded and proved a cause of action for divorce under the statute in such case made and provided; and the parties having been bona fide residents of the State of New Jersey for more than one year next preceding the commencement of this action and jurisdiction having been acquired over the Defendant pursuant to the Rules governing the Courts;

**THEREUPON, IT IS** on this **2nd** day of **February 2022**, by the Superior Court of New Jersey, Chancery Division, **ORDERED AND ADJUDGED**; and the said Court by virtue of the power and authority of this Court and of the acts of the legislature in such

case made and provided does hereby **ORDER AND ADJUDGE** that the said Plaintiff, **SARA SETTLED**, and the said Defendant, **SAMUEL SETTLED**, be divorced from the bonds of matrimony for the causes stated in the Complaint and Counterclaim, and the said Plaintiff and Defendant be freed and discharged from the obligations thereof; and

**IT IS FURTHER ORDERED** the attorneys for the Plaintiff and Defendant are hereby relieved as counsel 45 days after the entry of the Final Judgment of Divorce.

**IT IS FURTHER ORDERED** that the Marital Settlement Agreement fully executed on December 22, 2021 and annexed hereto as Exhibit “J-1” in evidence is hereby made a part of this Dual Judgment of Divorce and shall not merge with, but shall survive this Dual Judgment of Divorce, and the parties are hereby directed to comply with the terms of said Agreement. The Court has not taken testimony as to the merits of the Agreement but finds that it was entered into freely and voluntarily by the parties; and

**IT IS FURTHER ORDERED** that Plaintiff shall be permitted to resumed her maiden name of Sara Singlelady. Her date of birth is September 13, 1975. Her Social Security No. is XXX-XX-0009.

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**Honorable Claudia Jones, J.S.C.**

We hereby consent to the form and entry of the within Judgment of Divorce.

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**

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**Mark Gruber, Esq.**  
Attorney for Plaintiff

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**Sara Settled**  
Plaintiff

**LAW OFFICES OF LARRY LAWYER**

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**Larry Lawyer, Esq.**  
Attorney for Defendant

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**Samuel settled**  
Defendant

## MARITAL SETTLEMENT AGREEMENT

**THIS AGREEMENT** is made by and between **SARA SETTLED**, whose address is 18 Main Street, Newton, Sussex County, New Jersey 07860, hereinafter referred to as “Wife”, and **SAMUEL SETTLED**, whose address is 18 Main Street, Newton, Sussex County, New Jersey 07860, hereinafter referred to as “Husband” (the “Agreement”).

### WITNESSETH:

**WHEREAS**, the parties were lawfully married to each other on June 23, 2018 in a civil ceremony in Lala Land, New Jersey;

**WHEREAS**, one child is born of the marriage, to wit: Stephen Settled, d.o.b. June 12, 2019;

**WHEREAS**, the parties by this Agreement are desirous of settling all questions relating to the disposition of their respective interests and assets accumulated by them or either of them during their marriage, the payment of obligations and the disposition and determination of all claims of the parties against each other and other related matters;

**WHEREAS**, the parties are independently represented by counsel of their own choice or have had the opportunity to obtain counsel of their own choice; and have deliberated upon and considered their respective interests and demands and have concluded that it is desirous and for the best interest of the parties that the property and financial questions, issues, and problems arising out of the marital relationship should be set and determined; and

**WHEREAS**, each party has represented to the other and has made full disclosure of assets and income as is contained on their Case Information Statements and other discovery and waives any further discovery.



**NOW, THEREFORE**, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, the parties mutually agree as follows:

### **SEPARATION**

1. The parties shall continue to live separate and apart, and each shall be free from interference, authority, and control, direct or indirect, by the other as fully as if unmarried. Each may reside at such place or places as he or she may select. Each may, for his or her own separate use and benefit, engage in any employment, business or profession which he or she may deem advisable.

2. The parties shall not molest or interfere with each other, nor shall either of them compel the other to cohabit or dwell with him or her by any means whatsoever.

3. The parties agree not to disparage one another including, but not limited to, the following:

(a) If there are children, no public sharing of children's photos and/or details of children's lives without mutual consent;

(b) No negative mention of each other;

(c) No tagging of the other spouse and negative social media posts;

(d) No posts that disclose marital financial details or business dealings and finances; and

(e) No posting about legal matters, past or current.

### **JOINT CUSTODY**

4. The parties shall have joint legal and shared physical custody of the unemancipated child, Stephen. The Wife shall be the Parent of Primary Residence and the Husband the Parent of Alternate Residence. The Parenting Schedule will be as

follows:

(a) The Husband shall have alternating weekends from Friday after school or 3:00 p.m. until Sunday evening 7:00 p.m., and each Wednesday from 6:00 p.m. to 8:00 p.m.

(b) The Husband shall have one overnight midweek parenting time each Thursday from after school until return to school Friday, or if no school, to Wife's home at 7:00 a.m.;

(c) Each party can observe and attend all activities of the child;

(d) Upon thirty (30) days' notice, each party shall have two consecutive or non-consecutive weeks in the summer extended vacation. In odd years, the Wife shall have preference for the first week and the Husband will have preference for the second week. In even years, the Husband will have preference for the first week and the Wife will have preference for the second week;

(e) The following holiday schedule shall be utilized unless otherwise agreed:

(1) Thanksgiving Day - 9:00 a.m. to 8:00 p.m. – Husband even years, Wife odd years;

(2) Christmas Eve - 8:00 p.m. each year until noon Christmas Day – Wife even years, Husband odd years;

(3) Christmas Day - noon until 6:00 p.m. December 26th – Husband even years, Wife odd years;

(4) Easter Sunday - 9:00 a.m. to 8:00 p.m. – Wife odd years, Husband even years;

(5) If a holiday extends to Monday, that parent having the weekend shall have their weekend parenting time extended through Monday evening 6:00 p.m.;

(6) The mother shall have parenting time on Mother's Day each year, and the father shall have Father's Day each year 9:00 a.m. to 8:00 p.m.;

(7) The parties will equally share winter and spring breaks;

(8) New Year's Eve - 8:00 p.m. to New Year's Day 8:00 p.m. – Husband even years, Wife odd years;

(9) Stephen's Birthday - Each parent shall have a minimum of two hours with Stephen on his birthday; and

(10) Each parent shall spend two hours with Stephen on the parent's birthday.

(f) Each parent shall have the right of first refusal to supervise the Stephen, if the parent having parenting time is unavailable to supervise him;

(g) The parties agree that they will not discuss any of the divorce or related issues with the children; and

(h) The parties agree that they will provide the other with the address and contact information where Stephen can be reached, if the Stephen is not at the other parent's home for the evening.

5. Both parties shall be entitled to and shall receive from the other complete and full information from any physician, dentist, or consultant attending the child, and full information from any teacher giving instruction to the child, and reports given to them or

by them to a parent.

6. It is expressly understood by both parties that neither shall do anything directly or indirectly to alienate the child's affection for the other or color the child's attitudes toward the other. The parents agree to consult and cooperate, and shall consult and cooperate with respect to the child, so as, in a maximum degree, to advance his, emotional and physical well-being, and to give and afford him the affection of both parents and a sense of security. Both parties shall conduct themselves in such a manner that shall be best for the child's interests, welfare, and happiness.

### **MEDICAL INSURANCE**

7. The Wife shall maintain medical, hospital, dental, and prescription insurance (if available) for the benefit of the unemancipated child. The parties will share the cost of the unemancipated child's medical insurance and the unreimbursed medical expenses 53% Husband and 47% Wife, which is the present allocation. This will change with the change in support pursuant to the Child Support Guidelines. In the event the insurances are unavailable through the Wife's employment, the parties will seek to obtain the insurance through the Husband's employment or privately. The parties will switch insurances to obtain the best coverage at the most economical cost and agree to split the cost as contained herein. The Wife shall pay the first \$250.00 per year, per child, unreimbursed medical expenses. The deductible amount of the policy shall be equally apportioned between the primary insured and the child for purposes of determining reimbursement.

8. Each party shall be responsible for their own medical expenses.

### **LIFE INSURANCE**

9. The Husband shall maintain life insurance on his life in an amount of \$350,000 designating the Wife as beneficiary for \$100,000 for so long as he has an alimony obligation and the balance he shall designate Stephen as beneficiary during his unemancipation. The Husband shall designate the Wife as trustee for child's portion. The Wife shall maintain \$250,000 designating the Stephen as beneficiary during his unemancipation and designating the Husband as trustee. The parties will provide each other with authorizations permitting them to verify the insurance coverage and beneficiary designation on the forms attached as **Schedule A**. In the event the either party fails to provide the above at the time of their death, their estates shall be liable for the obligation in the amounts stated.

### **ALIMONY**

10. (a) Effective January 1, 2022, the Husband shall pay to the Wife the sum of \$385 per week alimony for a period of six (6) years from the commencement date of this Agreement. Alimony shall terminate at the expiration of six (6) years from the commencement of alimony, death of the Husband, death of the Wife, remarriage of the Wife, or cohabitation of the Wife in accordance with case law, whichever event shall first occur.

(a) The parties declare that their lifestyles will be below that enjoyed during the marriage.

(d) The parties agree to preserve their filed Case Information Statements until alimony terminates.

### **CHILD SUPPORT**

11. Commencing January 1, 2022, the Husband shall pay to the Wife the sum

of \$162 per week child support in accordance with the Child Support Guidelines attached as **Schedule B**. The attached Statutory Support Notices are incorporated herein where applicable. Child support will be payable through the probation department as a wage execution. Child support shall be renegotiated on the anniversary date of this Agreement every three (3) years.

### **CHILDREN'S EXPENSES**

12. The parties will share the expense of Stephen's extraordinary and extracurricular and sporting activities 53% Husband and 47% Wife. This ratio will change when there is a change in alimony or child support.

### **WORK-RELATED DAYCARE EXPENSES**

13. If the work-related daycare expenses are not contained in the Child Support Guideline support, the parties will share the cost in the ratio of their incomes, which is presently 53 % Husband and 47 % Wife. This ratio will change when there is a change in alimony or child support.

### **AUTOMOBILE**

14. The parties will share the cost of Stephen's automobile insurance in the ratio of their incomes as determined by the Child Support Guidelines.

### **COLLEGE EXPENSE**

15. Both parties agree that they shall contribute to the extent that each is financially able for the cost and expense of an undergraduate college education for the unemancipated child after taking into account all scholarships, grants, loans and aid. The parent's contribution will be contingent upon the child attending college on a full-time matriculated basis, which will be defined as no less than 12 credits per semester, and

attending college on a continuous basis for a four-year period. The parties will first utilize the college accounts, which may have existed at the time of execution of this Agreement, for the initial cost of college education to the extent the funds are available. Stephen will be expected to obtain student loans, so that with the loans, scholarships, grants and aid, his share of contribution is one-third (1/3). The remaining two-thirds (2/3) of college expense shall be paid in accordance with each party's ability to pay at the time he attends college. If the parties are unable to agree on college contribution, the issue will be submitted to the court.

### **EMANCIPATION**

16. The Husband's obligation to support the minor child of the marriage shall terminate when he is emancipated. Emancipation shall be defined as occurring at the happening of any one of the following events:

- (a) Reaching the age of eighteen (18) years or graduation from college as defined above under the college expense provision herein, whichever last occurs; if the child remains at home while attending college, the child support shall remain unchanged. If the child does not reside at home and attend college, the child support shall be renegotiated;
- (b) Marriage of the child;
- (c) Permanent residence away from the residence of the Wife, except for college;
- (d) Death of the child;
- (e) Entry into the Armed Forces of the United States; and
- (f) A child attaining the age of twenty-three (23) years old.

## EQUITABLE DISTRIBUTION

17. The Husband and Wife are presently vested with title to the real property located at 18 Main Street, Newton, Sussex County, New Jersey 07860, which premises were used by the Husband and Wife as the marital home. The parties shall continue their shared occupancy until sold. Until sold, the parties will continue to pay the expenses pursuant to the status quo, which is as follows:

### TO BE FILLED IN

The parties agree to list and sell the marital residence. Upon the sale and after payment of customary closing expenses and mortgages or equity lines, the parties agree to equally share the net proceeds or loss or tax consequence, if a short sale. The Wife shall have the option to purchase the Husband's interest at the same formula. The parties agree to list the Wife as an exclusion on any Listing Agreement.

18. The parties agree to be equally responsible for all extraordinary maintenance and repairs in excess of \$250.00 per repair providing they mutually agree upon the same. In the event either party cannot afford his or her share of extraordinary maintenance and repairs, the parties agree to cooperate in obtaining loans for the payment of the same. The party paying for the extraordinary maintenance and repairs whether directly or by repayment of loans shall receive the appropriate credit at the time the house is sold.

19. The parties agree to and do relinquish to the other all right, title, and interest in and into the real and personal property listed in **Schedule C**. This Agreement shall operate as a bill of sale with reference to the transfer of said real and personal property. In the event any documents are necessary to be executed to effectuate the transfer of



any real and personal property set forth therein, the parties shall execute and deliver to the other any and all such documents to effectuate such transfer. The parties accept all obligations and responsibilities with reference to the property set forth therein.

20. Each party will be responsible for his or her debts and obligations outlined in **Schedule D**. The parties agree to indemnify and save the other party harmless, including the payment of legal fees, in the event the other party is called upon to pay for the debt of the other.

### **TAX CONSIDERATIONS**

21. The parties have filed joint tax returns for the year 2021 and agree to equally share any refund or tax due. The parties will file separate tax returns for the year 2022 and thereafter. The parties will equally share the real estate taxes and home loan interest for the period of time that they reside together in the marital home. If one party vacates the marital home prior to the sale, the party remaining in the home shall claim the mortgage interest and real estate taxes. When the parties file separate returns, the Wife shall claim Stephen as a dependency exemption.

### **BANKRUPTCY**

22. In the event of the declaration of bankruptcy by either Husband or Wife, each party shall continue to remain liable to the other party for any and all expenses incurred in connection with the defense of any suit instituted by a creditor or in connection with the payment of any funds to such creditor. It is the intention of the parties that any bankruptcy filed should be effective as against the creditor but shall not be intended to act to the financial detriment of the other spouse. The parties further agree that, in the event either party suffers a financial detriment as a result of the bankruptcy of the other,

any provision of this Agreement regarding equitable distribution may be modified, so as to compensate the aggrieved party for any financial loss. The bankruptcy of either party, prior to full payment of the indebtedness assumed by him or her in this Agreement, shall be a basis for the non-bankrupt spouse to seek alimony sufficient to pay any debt, which he or she may be required to pay by reason of the other party's bankruptcy. The bankruptcy of either party, prior to transfer of all assets required to be transferred to the non-bankrupt spouse by the terms of this Agreement, shall be a basis for the non-bankrupt spouse to seek alimony which is fit, reasonable and just.

### **MISCELLANEOUS**

23. Except as otherwise herein expressly provided, the parties shall and do hereby mutually remise, release and forever discharge each other from any and all suits, actions, debts, claims, demands, and obligations whatsoever both in law and in equity, which either of them ever had, now has or may hereafter have against the other by reason of any matter, cause, or thing up to the date of the execution of this Agreement.

24. Except as to the matters set forth in this Agreement, the Husband and Wife hereby mutually waive and release to the other:

(a) Any right to inherit from the other as distributee of or devisee of any real or personal property owned by the other;

(b) Any rights to inherit under any community property laws of any State or any Country;

(c) Any right to dower or courtesy or right to administer the Estate of the other in case of death;

(d) Any right to elect to take against the Last Will and Testament of the

other under any decedent's Estate law in any jurisdiction where it may apply; and

(e) All right to equitable distribution under N.J.S.A. 2A: 34-23.

25. Both parties agree to respect the privacy of the other and to lead their lives as though they were not married.

26. This Agreement constitutes the entire understanding of the parties and the parties have carefully read and understand this Agreement and both warrant and represent that it is fair and equitable to each.

27. This Agreement is a New Jersey Agreement that shall be construed and interpreted in accordance with the laws of the State of New Jersey. In case any provision of this Agreement shall be invalid under the laws of any Country, State, or other jurisdiction, such invalidity shall not affect any other provision of this Agreement.

28. The parties acknowledge that they have received no tax advice by their attorneys and understand that only a qualified accountant or tax attorney can render such advice.

29. Other than as set forth above, the Wife represents and warrants to the Husband that she has not incurred any debts or obligations for which he or his estate may be liable. Other than as set forth above, the Husband represents and warrants to the Wife that he has not incurred any debts or obligations for which she or her estate may be liable. If either party has incurred such debts or obligations, he or she shall be solely responsible for them and if the other party is called upon to make any payment or contribution toward the same, the responsible party shall indemnify and hold the other party harmless from any obligation thereto.

30. Nothing herein contained shall prevent either the Husband or the Wife from

maintaining an action for absolute divorce in any jurisdiction in which either may have the legal right and desire to do so, and this Agreement may be introduced into evidence and incorporated into any judgment that may be entered in any such action. In any event, this Agreement shall not merge in such judgment, but shall survive any such judgment.

31. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same of similar nature.

32. (a) The parties warrant and represent that they have made a full disclosure of all assets prior to the execution of this Agreement. The parties acknowledge that prior to the execution of this Agreement they were advised of their right to pursue discovery, including, but not limited to, Interrogatories, depositions, hiring of experts including accountants and appraisers, as well as the right to pursue all other discovery techniques as might be available to them pursuant to the Rules of Court. By entering into this Agreement, both parties hereby waive any right they might otherwise have to pursue discovery with regard to the income and assets of the other party.

(b) As to any assets of the parties to which full disclosure has not been made by either of the parties, then this Agreement shall become null and void and the Court shall, upon such subsequent discovery of assets of either party retain full jurisdiction to approximately divide such additional assets appropriately. Specifically, this Agreement shall have no binding effect whatsoever upon any property not disclosed by either party hereto one to the other and described herein. In the event that such non-

disclosure necessitates further legal action, then the party who did not fully disclose his or her assets shall be responsible for payment of the legal expenses and costs of the other party.

33. By signing this Agreement, each party represents that they understand the agreement and have had sufficient time to consider the provisions. Further, the parties represent that they have entered into this Agreement freely and voluntarily, that they are not under any duress or coercion, and that the agreement is fair and reasonable under all of the circumstances. The parties further represent that they read and write the English language and are not under the influence of any drugs or medications which would affect their ability to understand the terms of the agreement. The Parties also understand that they are waiving their right to a trial where the court would have decided all the issues. Lastly, the parties represent that they had the right to retain an attorney and if they did, the attorney was available and did answer their questions.

34. The content and language of this Agreement has been supplied by both counsel and both parties. Accordingly, the Agreement shall be construed for all purposes to have been jointly drafted by both parties, and no adverse inference shall therefore be drawn against either party in construing any ambiguity that may arise hereunder.

35. This Agreement and all obligations and covenants hereunder shall bind the parties hereto, their heirs, executors, administrators, legal representatives and assigns, and shall insure to the benefit of their respective heirs, executors, administrators, legal representatives and assigns.

36. Any party breaching any provision of this Agreement shall be liable to the other party for reasonable attorney's fees necessitated by that party's efforts to enforce

the Agreement.

37. The parties agree that in the event of further disputes between them, they shall seek to resolve such disputes through mediation prior to seeking court intervention.

### **RECONCILIATION**

38. This Agreement shall not be invalidated or otherwise affected by a reconciliation between the parties hereto, or a resumption of marital relations between them unless said reconciliation or said resumption is documented by a written statement executed and acknowledged by the parties with the same formality as the execution and acknowledgment of this Agreement and, in addition, setting forth that they are cancelling this Agreement. This Agreement shall not be invalidated or otherwise affected by any decree or judgment of separation or divorce made by any Court in any action which may presently exist or may hereafter be instituted by either party against the other for a separation or divorce and the obligations and covenants of this Agreement shall not merge therein and this Agreement may be enforced independently of such decree or judgment.

## NOTICES

1. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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.

### **ADDITIONAL NOTICES**

#### **NOTICE IS HEREBY GIVEN OF THE FOLLOWING:**

1. You must continue to make all child support and/or alimony payments until the court order is changed;

2. If your income goes down for some reason not under your control, the burden is on YOU to make a motion before this court, on notice to the other party, in accordance with the Rules of Court, to seek modification or change of this order. You will be responsible to pay the amount ordered until the court changes that amount. You may contact The Probation Department or the Court Clerk to find out how to file a motion;

3. If your child's status changes (e.g. turns 18, moves in with a different relative, marries, gets a full-time job, leaves school, or other changes), you must make a motion to change the support amount and you must continue to make the same payments until the court changes the amount you must pay;



4. Payments must be made through the Probation Department unless the court order says to pay someone else. Gifts, other purchases or in-kind payments made directly to the obligee or to the child(ren) will not fulfill your child support obligation;

5. Payments are due even while your child is visiting with you unless the court orders a credit. Further, failure to have visitation is not an excuse for not paying your child support obligation;

6. **THIS ORDER** takes priority over payment of debts and other obligations you may have. Payments may not be excused because a party marries or accepts other obligations;

7. Child support amounts are established based upon annualized income. It is therefore the responsibility of a person with seasonal employment to budget income so the payments are made regularly throughout the year. Regular temporary or seasonal lay-offs do not excuse nonpayment of the child support obligation;

8. **JUDGMENTS** that result from failure to comply with the orders of this court are subject to an interest charge at the rate prescribed by Court Rule N.J.S.A. 4:42-11(a);

9. Child Support arrearage may be reported to consumer credit reporting agencies as a debt owed by the obligor in accordance with N.J.S.A. 2A: 17-56.21;

10. Any person who willfully and with the intent to deceive, uses a Social Security number obtained on the basis of false information provided to the Social Security Administration or provides a false or inaccurate Social Security number is subject to a fine or imprisonment (42 U.S.C. 408).

**SCHEDULE A**  
**AUTHORIZATION  
FOR  
PROOF OF LIFE INSURANCE**

**SCHEDULE B**

**CHILD SUPPORT GUIDELINES**

## **SCHEDULE C**

### **HUSBAND'S PROPERTY**

1. Husband's TD Bank Checking Account - 8175
2. Husband's TD Bank Savings Account - 7135
3. 50% of TD Bank Savings Account - 7268
4. 50% of TD Bank Savings Account - 2654
5. 50% of Chase Savings - 7668
6. 50% of Chase Savings - 9437
7. 50% of Chase Savings - 7506
8. 50% of Ally CD
9. 2012 Jeep Wrangler
10. 2008 Toyota 4-Runner
11. 2004 Yamaha Star Motorcycle
12. 2003 Yamaha Kodiak Quad
13. CSB 401(k)
14. TD 401(k)
15. State Farm Roth IRA - 8821
16. State Farm Life Insurance Policy No. 3932 Cash Value
17. State Farm Life Insurance Policy No. 5227 Cash Value
18. Balance of Husband's ABC Pension

### **WIFE'S PROPERTY**

1. Wife's Chase Checking Account - 1505
2. 50% of TD Bank Savings Account - 7268
3. 50% of TD Bank Savings Account - 2654
4. 50% of Chase Savings - 7668
5. 50% of Chase Savings - 9437
6. 50% of Chase Savings - 7506
7. 50% of Ally CD
8. 2012 Nissan Altima
9. Wife's Fidelity Profit Sharing
10. Wife's Fidelity 401(k)
11. Wife's State Farm Roth IRA
12. State Farm Life Insurance Policy No. 5000 Cash Value
13. The Wife shall receive 50% of the Husband's interest in his ABC Pension from the date of marriage to the date of the Complaint for Divorce on March 10, 2017 (the coverture portion). A QDRO shall be prepared by a jointly approved expert, with the cost to be shared equally by the parties. The Wife shall be designated as the Surviving Spouse, and she shall receive any Qualified Pre-Retirement Survivor benefit pertaining to her share of the marital portion of the Pension, and the Qualified and Joint and Survivor Post-Retirement Benefit pertaining to her share. The Wife shall receive a pro rata share of any Cost of Living adjustments and early retirement benefits. The Wife shall be entitled to a proportionate share of the Husband's disability payments if those payments are in lieu of regular retirement benefits.

## **SCHEDULE D**

### **HUSBAND'S DEBTS**

1. Husband's car loan
2. All other credit cards or indebtedness incurred by Husband
3. Husband's counsel fees

### **WIFE'S DEBTS**

1. Wife's car loan
2. Wife's Capital One
3. Wife's Chase credit card
4. Wife's counsel fees

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals the day and year set forth and they hereby acknowledge that the provisions of this Agreement shall be binding upon their respective heirs, next of kin, executors, and administrators.

**WITNESS:**

\_\_\_\_\_  
**As to Wife**

\_\_\_\_\_  
**SARA SETTLED**

\_\_\_\_\_  
**As to Husband**

\_\_\_\_\_  
**SAMUEL SETTLED**

**STATE OF NEW JERSEY**        }

**COUNTY OF SUSSEX**         }

**SS:**

**BE IT REMEMBERED** that on this 22nd day of December 2021, before me, the subscriber, an Attorney-at-Law of the State of New Jersey, personally appeared **SARA SETTLED**, who I am satisfied is the person named in and who executed the foregoing Agreement, and to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**

\_\_\_\_\_  
**Mark Gruber, Esq.  
Attorney for Plaintiff**

**STATE OF NEW JERSEY**        }  
**COUNTY OF SUSSEX**        }

**SS:**

**BE IT REMEMBERED** that on this 15th day of December 2021, before me, the subscriber, an Attorney-at-Law of the State of New Jersey, personally appeared **SAMUEL SETTLED**, who I am satisfied is the person named in and who executed the foregoing Agreement, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

**LAW OFFICES OF LAWYER, LLC**

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**Larry Lawyer, Esq.**  
**Attorney for Defendant**

## **B. SETTLEMENTS ORALLY PLACED ON THE RECORD**

R. 5:5-9 provides the procedure to be utilized when the parties do not have a written marital settlement agreement and they put through an uncontested case and orally recite the settlement agreement on the record and then consent to the same. If the parties agree on the form to be utilized at the time of the uncontested hearing, they may submit the same. If they do not have form, this rule provides the form to be utilized, which is contained in Appendix XXV. The rule is set forth below, and the form of the order follows.

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

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



**Mark Gruber, Esq./ID # \_\_\_\_\_**  
**Filing Attorney, Esq./ID # \_\_\_\_\_**  
**GRUBER, COLABELLA, LIUZZA,**  
**THOMPSON & HIBEN**  
 41 Lakeside Boulevard  
 Hopatcong, New Jersey 07843  
 Tel. No. (973) 398-7500  
 Fax No. (973) 398-2592  
 Attorneys for Plaintiff

	:	SUPERIOR COURT OF NEW JERSEY
<b>SARA SETTLED,</b>	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<b><u>CIVIL ACTION</u></b>
<b>SAMUEL SETTLED,</b>	:	
	:	<b>DUAL JUDGMENT OF DIVORCE WITH</b>
<i>Defendant.</i>	:	<b>MARITAL SETTLEMENT</b>
	:	<b>AGREEMENT ATTACHED</b>

**THIS MATTER** coming on to be heard on **February 2, 2022** before the Honorable Claudia Jones, J.S.C. in the presence of Mark Gruber, Esq. of the law office of Gruber, Colabella, Liuzza, Thompson & Hiben, Attorneys for the Plaintiff, **SARA SETTLED**, and Larry Lawyer, Esq. of the Law Offices of Lawyer, LLC., Attorneys for the Defendant, **SAMUEL SETTLED**; and the Court having read and considered the Complaint for Divorce filed August 27, 2021 and Counterclaim filed September 9, 2021; and it appearing that Plaintiff and Defendant were married on June 23, 2018 in a religious ceremony in Maplewood, New Jersey; and the parties having pleaded and proved a cause of action for divorce under the statute in such case made and provided; and the parties having been bona fide residents of the State of New Jersey for more than one year next preceding the commencement of this action and jurisdiction having been acquired over the Defendant pursuant to the Rules governing the Courts;

**THEREUPON, IT IS** on this **2nd** day of **February 2022**, by the Superior Court of New Jersey, Chancery Division, **ORDERED AND ADJUDGED**; and the said Court by virtue of the power and authority of this Court and of the acts of the legislature in such

case made and provided does hereby **ORDER AND ADJUDGE** that the said Plaintiff, **SARA SETTLED**, and the said Defendant, **SAMUEL SETTLED**, be divorced from the bonds of matrimony for the causes stated in the Complaint and Counterclaim, and the said Plaintiff and Defendant be freed and discharged from the obligations thereof; and

**IT IS FURTHER ORDERED** the attorneys for the Plaintiff and Defendant are hereby relieved as counsel 45 days after the entry of the Final Judgment of Divorce.

**IT IS FURTHER ORDERED** that the Separation and Property Settlement Agreement stated on the record on December and set forth below is hereby made a part of this Judgment of Divorce and shall not merge with but shall survive this Judgement of Divorce and the parties are hereby directed to comply with the terms of said Agreement. The Court has not taken testimony as to the merits of the Agreement but finds that it was entered into freely and voluntarily by the parties. The terms of the Agreement are as follows: [omitted]

**IT IS FURTHER ORDERED** that Plaintiff shall be permitted to resumed her maiden name of Sara Singlelady. Her date of birth is September 13, 1975. Her Social Security No. is XXX-XX-0009.

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**Honorable Claudia Jones, J.S.C.**

We hereby consent to the form and entry of the within Judgment of Divorce.

**GRUBER, COLABELLA, LIUZZA,  
THOMPSON & HIBEN**

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**Mark Gruber, Esq.**  
Attorney for Plaintiff

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**Sara Settled**  
Plaintiff

**LAW OFFICES OF LARRY LAWYER**

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**Larry Lawyer, Esq.**  
Attorney for Defendant

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**Samuel settled**  
Defendant

# NON-DISSOLUTION CASES

## CHAPTER 12

Non-dissolution cases bear the docket initials FD. They primarily involve persons who are not seeking divorce, but are rather seeking custody, parenting time, paternity, child support, medical coverage or reimbursement, or spousal support, as well as non-parent relatives seeking custody of minor children. FD cases are summary proceedings. FD complaints are now standardized and mandatory. Following are copies of the standardized forms for verified complaint or counterclaim, application for modification of court order, summons to appear, emergent application (order to show cause), and court-promulgated forms for screening criteria for initial FD-verified complaints/counterclaims and screening criteria for FD (non-dissolutions) modifications. Case information statements must be filed in accordance with R. 5:5-3. *See also* Directive #08-11, below.

### **5:4-4. Service of Process in Family Part Summary Actions: Initial Complaints and Applications for Post-Dispositional Relief**

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

(b) Service by Mail Program. Service of process for Family Part summary actions may be effected as follows:

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

(2) **Effective Service.** Consistent with due process of law, service by mail pursuant to this rule shall have the same effect as personal service, and the simultaneous mailing shall constitute effective service unless there is no proof that the certified mail was received, or either the certified or the regular mail is returned by the postal service marked “moved, unable to forward,” “addressee not known,” “no such number/street,” “insufficient address,” “forwarding order expired,” or the court has other reason to believe that service was not effected. Process served by mail may be addressed to a post office box. Where process is addressed to the adverse party at that person’s place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the adverse party to whom process was mailed.

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

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

(5) **Vacating Defaults.** If process is returned to the court by the postal service subsequent to entry of default and the certified mail receipt displays any of the notations listed in the paragraph (b)(2) of this Rule, or another reason exists to believe that service was not effected, the court shall vacate the order entered by default, immediately notify the filing party or the attorney of the action taken, and reinstitute efforts to serve the adverse party either by mail or personally. The adverse party may, at any time after an order has been entered by default based on mailed service, file a motion or an application for post-dispositional relief, requesting that an order be vacated or modified based on the fact that the adverse party was not served with process prior to entry of the order. A party alleging that process was not received must show that the address to which process was directed was not that person’s address at the time that the order was entered. Upon such a showing, the court may conduct a hearing to determine whether the order should be modified or vacated.

(c) **Diligent Inquiry in Family Part Summary Actions.**

(1) For purposes of initial complaints or upon the filing of any application for post-dispositional relief in a Family Part summary action, where the adverse party cannot be located, the filing party must provide the last known home

address and demonstrate, through diligent inquiry, that no current address is known for the adverse party. Where it appears to the court by affidavit or certification of diligent inquiry filed by the filing party that the adverse party cannot be located, the court may proceed to hear the matter. For initial complaints, nothing in this rule shall prohibit the court from ordering substituted service by publication in accordance with R. 4:4-5(a)(3).

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

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

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

(e) General Appearance; Acknowledgment of Service. For initial complaints, a general appearance or an acceptance of the service of a summons, signed or acknowledged on the record by defendant's attorney, or signed and acknowledged by defendant or by a competent adult in defend

### **5:5-3. Financial Statement in Summary Support Actions**

In any summary action in which support of a child is in issue, each party shall, prior to the commencement of any hearing, serve upon the other party

and furnish the court with an affidavit or certification in a form prescribed by the Administrative Director of the Courts. The court shall use the information provided on the affidavit or certification and any other relevant facts to set an adequate level of child support in accordance with R. 5:6A. Except for applications for temporary and final domestic violence restraining orders, in summary actions involving the support of a spouse, civil union partner or domestic partner, or requests for college or post-secondary school contribution, a Family Case Information Statement must be filed pursuant to R. 5:5-2(a). In applications involving college or post-secondary school contribution, applicants must produce all relevant information including but not limited to: documentation of all costs for which contribution is sought, including but not limited to, tuition, board and books; proof of enrollment; and proof of all financial aid, scholarships, grants and student loans obtained. Pursuant to R. 5:4-2(g), all pleadings filed in the Family Part must include a completed Confidential Litigant Information Sheet in a form prescribed by the Administrative Director of the Courts.

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## **SIGNIFICANT CASES**

### ***J.G. v. J.H.*, 457 N.J. Super. 365 (App. Div. 2019)**

Parties should have been sent to an alternate dispute resolution process and directed to furnish a proposed parenting plan if they could not resolve custody. Discovery should be permitted absent cogent reasons for denial.

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**GLENN A. GRANT, J.A.D.**  
Acting Administrative Director of the Courts

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www.njcourts.gov • Phone: 609-376-3000 • Fax: 609-376-3002

**Directive #20-19**

**[Supersedes Directive #08-11 and  
Supplement to #8-11]**

[Questions or comments may be directed to  
(609) 815-2900, ext. 55350]

**TO: Assignment Judges  
Family Presiding Judges  
Trial Court Administrators  
Family Division Managers**

**FROM: Glenn A. Grant, J.A.D.** 

**SUBJ: Family – Non-Dissolution Matters (FD Docket): Procedures and Forms**

**DATE: September 3, 2019**

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This Directive revises Non-Dissolution procedures as necessitated by the amendments to Court Rules 5:4-2(i), 5:4-2(j), and 5:5-7(c), which were based on the Appellate Division's findings in R.K. v. D.L., 434 N.J. Super. 463 (App. Div. 2014). As such, this Directive supersedes both Directive #08-11 and the November 18, 2011 Supplement to Directive #08-11. This Directive also promulgates the attached documents: (1) Non-Dissolution Verified Complaint (revised), (2) Application for Modification of Court Order (revised), (3) Supplement to Non-Dissolution Action attorney form (previously issued, and now formally promulgated by this Directive), and (4) the Non-Dissolution Complex Case Management Order (previously issued, and now formally promulgated by this Directive). A new application for emergent hearing (Order to Show Cause (OTSC)) for Non-Dissolution matters will be promulgated separately in a subsequent directive.

The Non-Dissolution docket (FD) provides relief to parents who were never married and who are seeking custody, parenting time, paternity, child support or medical support. It also handles certain relief for litigants who are married or have a domestic partnership or civil union, such as financial support without the dissolution of their legal relationship. Additionally, the Non-Dissolution docket also includes matters where non-parent relatives are seeking custody, child support, or visitation regarding minor children.

Efficient methods for processing Non-Dissolution cases are crucial to the operation of the court and to court customers seeking relief under this docket type. Having standardized statewide practices enables all court customers to have a clear and

means are available, such as video or telephone testimony, in lieu of physical appearance.

In 2015, the Supreme Court amended Rules 5:4-2(i), 5:4-2(j) and 5:5-7(c) based on the Appellate Division's decision in R.K. v. D.L., 434 N.J. Super. 463 (App. Div. 2014), which addressed the filing and management of non-dissolution cases. Although non-dissolution matters often are summary in nature, they may require additional case management.

Those rule amendments, effective September 1, 2015, established certain procedures related to non-dissolution matters as follows:

- Rule 5:4-2(i), entitled "Complaint in Non-Dissolution Matters," permits attorneys to file a non-conforming complaint, rather than the non-dissolution complaint. If an attorney elects to file a non-conforming non-dissolution complaint, that pleading must be accompanied by the attached supplemental form. Staff is to send a deficiency notice to the attorney if the supplemental form is not appended to the complaint. The supplemental form, Attorney Supplement to Complaint/Modification – Non-Dissolution Action (CN11917), is available electronically on the forms page of the Judiciary's website ([www.njcourts.gov](http://www.njcourts.gov)).
- Rule 5:4-2(j), entitled "Designation of Complex Non-Dissolution Matters," established a complex track for non-dissolution matters. Any party or attorney may in writing request assignment to this complex track either at the time of the filing of the complaint or prior to the first hearing. The supplemental form for attorneys (CN 11917) includes a checkbox for this request.
- Rule 5:5-7(c), entitled "Non-Dissolution Actions," addressed the case management procedures for complex non-dissolution matters. The complex track is reserved only for exceptional cases that cannot be heard summarily. In addition to R. 5:4-2(j), which states that a party or attorney may request a case to be designated as complex early in the litigation, the court also may make such a determination, sua sponte, that is, without application from the parties. If a party or attorney requests a complex track designation at the time of the filing of the complaint, court staff must schedule a case management conference as the first court event. Applications for a complex track assignment made after the initial hearing may be considered upon presentation of exceptional circumstances. Once the judge determines a case to be complex, the attached non-dissolution Complex Case Management Order (CN 12092) shall be issued to the parties. The order shall detail the reasons the case is complex, and include discovery schedules, pendente lite reliefs, scheduling mediation (if appropriate) and a fixed trial date.

The attached revised non-dissolution Verified Complaint (CN 11492) and Application for Modification (CN 11487) forms were approved by the Judicial Council. These forms were modified based on the Appellate Division's decision in R.K. v. D.L., 434



N.J. Super. 463 (App. Div. 2014) as well as on the new child support termination law, N.J.S.A. 2A:17-56.67 et seq., which became effective February 1, 2017.

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**Editor's Note**

11/18/11 – Supplement to Directive #08-11 – originally issued by Glenn A. Grant, Acting Administrative Director.

09/02/11 – Directive #08-11 – originally issued by Glenn A. Grant, Acting Administrative Director.

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Attachments:

Verified Complaint (CN 11492)

Application for Modification of Court Order (CN 11487)

Supplement to Non-Dissolution Action attorney form (CN 11917)

Non-Dissolution Complex Case Management Order (CN 12092)

cc: Chief Justice Stuart Rabner  
Patricia Risch, Assistant Director, Division of Family Development  
Steven D. Bonville, Chief of Staff  
Jennifer M. Perez, Director  
Joanne M. Dietrich, Assistant Director  
Special Assistants to the Administrator Director  
Amelia Wachter-Smith, Chief, Family Practice  
Assistant Family Division Managers

Superior Court of New Jersey  
Chancery Division - Family Part  
County \_\_\_\_\_

Docket Number: FD - \_\_\_\_\_

CS Number: \_\_\_\_\_

\_\_\_\_\_  
**Plaintiff**

vs.

\_\_\_\_\_  
**Defendant**

**CIVIL ACTION**

**Verified Complaint**

**Counterclaim**

I, \_\_\_\_\_ by way of verified complaint/counterclaim, certify the following:

1. I am the  Plaintiff  Defendant  Attorney for \_\_\_\_\_ in the above-captioned matter.

Birth Name (if applicable) \_\_\_\_\_

2. Plaintiff resides OR is incarcerated at:

Address \_\_\_\_\_ City/Town \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Relationship to the child \_\_\_\_\_

Plaintiff resides OR is incarcerated at:

Address \_\_\_\_\_ City/Town \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Relationship to the child \_\_\_\_\_

3. Defendant resides OR is incarcerated at:

Address \_\_\_\_\_ City/Town \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Relationship to the child \_\_\_\_\_

Defendant resides OR is incarcerated at:

Address \_\_\_\_\_ City/Town \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Relationship to the child \_\_\_\_\_

4. Attorney Name \_\_\_\_\_

Firm Name \_\_\_\_\_

ID Number \_\_\_\_\_

Address \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

5. The child(ren) involved in this complaint are:

Name	Date of Birth	M/F	Residing with (relationship)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Other interested parties' name(s) and address(es):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. I have previously been involved in the following New Jersey family court actions or other State/Country litigation involving at least one of the parties or children listed above. (If yes, give the title of case and docket number.)  Yes **DNo**

	Title of Case	Docket Number	State/Country
a.	_____ vs. _____	_____	_____
b.	_____ vs. _____	_____	_____
c.	_____ vs. _____	_____	_____

8. A Child Protection Agency (i.c. the Division of Child Protection and Permanency or a similar agency in another State) has been involved or is currently involved with the with the child(ren) or listed parties.  Yes  No

Is any party in this case currently receiving public assistance? (Governed by 41 U.S.C.A. 602 (A)(26), N.J.S.A. 44:10-1.1, et seq.)  Yes  No

9. I request the following:

- Establish Paternity (Certification in Support of Establishing Paternity is required when seeking Paternity)  
Were parents of the child married at the time of birth?  Yes  No
- Disestablish Paternity  
Were parents of the child married at the time of birth?  Yes **QNo**
- Establish Maternity
- Child Support (A Certificate of Parentage is required if available)  
(Pursuant to Court Rule 5:5-3, you are required to complete a Financial Statement for Summary Support Actions to serve on the other party. At the hearing you must have your most recent federal income tax return or your three most recent pay stubs.)
- Spousal Support  
(Pursuant to Court Rule 5:5-2, you are required to complete a Case Information Statement to serve on the other party. At the hearing you must have your most recent federal income tax return or your three most recent pay stubs)
- College Expenses
- Custody



**Required Attachments (Check all appropriate boxes)**

- Confidential Litigant Information Statement.
- Certificate of Parentage (if available). (Please note that this is **not** the Birth Certificate.)
- Certification in Support of Establish Paternity (when requesting establishment of paternity).
- Financial Statement for Summary Support Actions (when requesting child support only).
- Case Information Statement (when requesting spousal support only).

**Additional Attachments**

- Check this box if you are attaching any additional information (a certification, exhibits)

**At the hearing:**

Will you require an interpreter?  Yes  No

If yes, indicate language: \_\_\_\_\_

Will you require an accommodation for a disability?  Yes  No

If yes, indicate requested accommodation: \_\_\_\_\_

I/we certify that the foregoing statements made by me/us are true. I am/We are aware that if any of the foregoing statements made by me/us are willfully false, I am/We are subject to punishment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  Plaintiff  Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  Plaintiff  Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  Attorney

**Note that the signature of the party filing the complaint is required along with the signature of the attorney that is filing the complaint on behalf of the party.**

**COURT APPEARANCE INFORMATION FOR THE PERSON FILING THIS APPLICATION:**

Your appearance is mandatory. You should bring to court any other documentation or proof that supports your case. If you are filing for child or spousal support, bring any information about your finances with you to your court appearance such as your last three pay stubs and your most recent W-2 statement. You may bring an attorney, although an attorney is not required. If you require assistance in selecting an attorney, you may contact your County Bar Association. If you cannot afford an attorney, you may contact Legal Services of New Jersey at [www.lsnj.org](http://www.lsnj.org).

**COURT APPEARANCE INFORMATION FOR THE PERSON RECEIVING THIS APPLICATION:**

Your appearance is mandatory. If you fail to appear at the hearing an order granting the relief requested by the filing party may be granted. If the filing party's request is for child or spousal support, bring any information about your finances with you to your court appearance such as your last three pay stubs and your most recent W-2 statement. You may bring an attorney, although an attorney is not required. If you require assistance in selecting an attorney, you may contact your County Bar Association. If you cannot afford an attorney, you may contact Legal Services of New Jersey at [www.lsnj.org](http://www.lsnj.org).



County: \_\_\_\_\_

Docket Number: FD - \_\_\_\_\_

CS Number: CS- \_\_\_\_\_

\_\_\_\_\_

**Plaintiff**

vs.

\_\_\_\_\_

**Defendant**

**CIVIL ACTION**

**Application for  
Modification of Court Order**

**Cross-Application for  
Modification of Court Order**

I, \_\_\_\_\_ of full age, hereby certify the following in support of this Application/Cross-application to modify the court order of (date if known) \_\_\_\_\_.

1. I am the  Plaintiff  Defendant  Attorney for \_\_\_\_\_.

Maiden Name (if applicable) \_\_\_\_\_.

2. Plaintiff resides OR is incarcerated at:

Address \_\_\_\_\_ City/Town \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Relationship to the child(ren) \_\_\_\_\_

Plaintiff resides OR is incarcerated at:

Address \_\_\_\_\_ City/Town \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Relationship to the child(ren) \_\_\_\_\_

3. Defendant resides OR is incarcerated at:

Address \_\_\_\_\_ City/Town \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Relationship to the child(ren) \_\_\_\_\_

Defendant resides OR is incarcerated at:

Address \_\_\_\_\_ City/Town \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Relationship to the child(ren) \_\_\_\_\_

4. Attorney Name \_\_\_\_\_

Firm Name \_\_\_\_\_

ID Number \_\_\_\_\_

Address \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

5. The child(ren) involved in this order are:

Name	Date of Birth	M/F	Residing with (relationship)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Other interested parties' name(s) and address(es):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. I have been previously been involved in the following New Jersey family court actions or other State/Country litigation with regard to any of the parties or children listed above. (If yes, give the title of case and docket number.)  Yes  No

	Title of Case	Docket Number	State/Country
a.	_____ vs. _____	_____	_____
b.	_____ vs. _____	_____	_____
c.	_____ vs. _____	_____	_____

A Child Protection Agency (i.e. the Division of Child Protection and Permanency or a similar agency in another State) has been involved or is currently involved with the with the child(ren) or listed parties.  Yes  No

Is any party in this case currently receiving public assistance? (Governed by 41 U.S.C.A. 602 (A)(26), N.J.S.A. 44:10-1.1, *et seq.*)  Yes  No

8. I request the following:

- Paternity (**Certification in Support of Establishing Paternity required** when requesting Paternity)  
Were parents of the child married at the time of birth?  Yes  No
- Disestablishment of Paternity  
Were parents of the child married at the time of birth?  Yes  No
- Maternity
- Establish/Modify Child Support (A Certificate of Parentage is required** if available when filing for Child Support)

I am requesting (check one) an  **increase**  **decrease** in **child support** payments.

(Pursuant to Court Rule 5:5-3, you are **required** to complete a **Financial Statement for Summary Support Actions** to serve upon the other party. At the hearing you must have your most recent federal income tax return **or** your three most recent pay stubs.)

- Establish/Modify Spousal Support**

I am requesting (check one) an  **increase**  **decrease** in **spousal support** payments.

(Pursuant to Court Rule 5:5-2, you are **required** to complete a **Case Information Statement** to serve upon the other party. At the hearing you must have your most recent federal income tax return **or** your three most recent pay stubs)

- Establish/Modify Financial Maintenance order**



- Medical Support Requested
  - Health benefits for myself
  - Health benefits for the child (ren) named in this complaint

Reasons for your request: (explain in detail)

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9. I am requesting the Court to **terminate** the child support for the following child(ren)

Name	Date of Birth
_____	_____
_____	_____
_____	_____

**Please check all the following that apply:**

- D I have physical custody of the child(ren) specified above.
- D My child turned 18 years of age on \_\_\_\_\_.
- To the best of my knowledge my child is not physically or mentally disabled.
- My child is not attending high school or any other special education programs.
- My child is married. Date of the marriage: \_\_\_\_\_.
- My child is not attending college or a post-secondary education program.
- My child is in the military. Date enrolled: \_\_\_\_\_. Branch: \_\_\_\_\_.
- I am requesting that child/spousal support be paid directly to me without court involvement.

10. I am requesting the Court **NOT terminate** the child support for the following child(ren)

Name	Date of Birth
_____	_____
_____	_____
_____	_____

**Please check all the following that apply:**

- EH I have physical custody of the child(ren) specified above.
- My child is disabled. Describe disability:
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_
- D My child is attending high school or special education program. Provide the name of the school and most recent date(s) attended:
   
\_\_\_\_\_
   
\_\_\_\_\_
   
\_\_\_\_\_
- My child is not married.

- My child is attending college or a post-secondary education program. Provide the name of the school and the most recent date(s) attended.

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- My child is not in the military.
- I am requesting that child/spousal support be made payable through the Probation Division.

**11. Enforcement of the Current Support Order**

- I am requesting enforcement of the current support order of (date if known) \_\_\_\_\_. Attach a copy of the order you want enforced.
- I have already requested enforcement through Probation.

**12. Establish or Change of Existing Custody/Parenting Time Court Order** (check all that apply)

- Establish custody
- Establish visitation/parenting time arrangements
- Parenting Time                       Grandparent Visitation                       Sibling Visitation
- I am requesting to **change** the custody/parenting time terms of the current order.

Reasons for your request: (explain in detail)

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**13. Request to Relocate the Child(rcn)/Opposition to Relocation**

- I am applying to relocate the child(rcn) listed above to another state or country. I want to relocate the child(ren) by (date) \_\_\_\_\_.

New location:

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Reason for relocation:

- Attached is the additional information form.

- D** I am opposed to the relocation of the children listed above. I believe this move is not in the best interest of the child(ren). Explain:

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- Attached is the additional information form.



**Required Attachments (Check all applicable boxes)**

- Confidential Litigant Information Statement.
- Certificate of Parentage (if available). (Please note that this is not the Birth Certificate.)
- Certification to Establish Paternity (when requesting establishment of paternity).
- Financial Statement for Summary Support Actions (when requesting child support).
- Case Information Statement (when requesting spousal support).
  
- Check this box if you are attaching any additional information (a certification, exhibits)
- I am presently incarcerated and would like to appear; however, I understand that unless a judge orders my appearance through a court order to the facility of my incarceration, my request will be decided on the papers that I filed.

**At the hearing:**

Will you require an interpreter?  Yes  No  
If yes, indicate language: \_\_\_\_\_

Will you require an accommodation for a disability?  Yes  No  
If yes, indicate requested accommodation: \_\_\_\_\_

I/we certify that the foregoing statements made by me/us are true. I am/We are aware that if any of the foregoing statements made by me/us are willfully false, I am/We are subject to punishment.

\_\_\_\_\_  
Date Signature  Plaintiff  Defendant

\_\_\_\_\_  
Date Signature  Plaintiff  Defendant

\_\_\_\_\_  
Date Signature  Plaintiff Attorney  Defendant Attorney

**Note: Both the person filing this modification and the attorney (if any) must sign above.**

**COURT APPEARANCE INFORMATION FOR THE PERSON FILING THIS APPLICATION:**

Your appearance is mandatory. You should bring to court any other documentation or proof that supports your case. If you are filing for child or spousal support, bring any information about your finances with you such as your last three pay stubs and your most recent W-2 statement. You may bring an attorney, although an attorney is not required. If you require assistance in selecting an attorney, you may contact your County Bar Association. If you cannot afford an attorney, you may contact Legal Services of New Jersey at [www.lsnj.org](http://www.lsnj.org).

**COURT APPEARANCE INFORMATION FOR THE PERSON RECEIVING THIS APPLICATION:**

Your appearance is mandatory. If you fail to appear at the hearing an order granting the relief requested by the filing party may be granted. If the filing party's request is for child or spousal support, bring any information about your finances with you such as your last three pay stubs and your most recent W-2 statement. You may bring an attorney, although an attorney is not required. If you require assistance in selecting an attorney, you may contact your County Bar Association. If you cannot afford an attorney, you may contact Legal Services of New Jersey at [www.lsnj.org](http://www.lsnj.org).



Attorney Name: \_\_\_\_\_  
 Attorney for: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Attorney ID: \_\_\_\_\_

Superior Court of New Jersey  
 Chancery Division – Family Part  
 \_\_\_\_\_ County

\_\_\_\_\_  
 Plaintiff  
 v.  
 \_\_\_\_\_  
 Defendant

Docket Number: FD - \_\_\_\_\_  
 CS Number: \_\_\_\_\_

**Supplement to**

- Complaints  
 Modification

**Non-Dissolution Action**

I am the Attorney for the  Plaintiff /  Defendant  
 Relationship to the Child(ren): \_\_\_\_\_

I am requesting this case be designated as complex (R. 5:4-2(j)).

1. The child(ren) pertaining to this matter are:

Name	Date of Birth	M/F	Residing with (Relationship)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. Have these parties previously been involved in any NJ Family Court actions or other state/country family litigation?  Yes  No

If yes, give the title of the case and docket number.

Title of case ( _____ vs _____ )	Docket Number	State/Country
a. _____	_____	_____
b. _____	_____	_____

3. The Division of Child Protection and Permanency (or a similar agency in another state) has been involved or is currently involved with the child(rcn) or listed parties.  Yes  No

Is any party in this case currently receiving public assistance? (Governed by 41 U.S.C.A. 602 (A)(26), N.J.S.A. 44:10-1.1 et seq.)  Yes  No

Request for Interpreting Services at the Hearing

Language: \_\_\_\_\_

Request for ADA Accommodation

Specify: \_\_\_\_\_

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney Signature

Request for Interpreting Services at the Hearing

Language: \_\_\_\_\_

Request for ADA Accommodation

Specify: \_\_\_\_\_

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney Signature



\_\_\_\_\_  
Plaintiff,  
  
vs.  
  
\_\_\_\_\_  
Defendant.

Superior Court of New Jersey  
Chancery Division - Family Part  
\_\_\_\_\_  
County  
Docket Number - FD \_\_\_\_\_

**Civil Action**  
**Non-Dissolution (FD)**  
**Complex Case Management Order**

This matter being opened to the Court on \_\_\_\_\_, 20\_\_,

- a. during a case management conference before \_\_\_\_\_.
- b. during a telephonic conference with \_\_\_\_\_.
- c. by consent of both attorneys.

Plaintiff being represented by \_\_\_\_\_, of the firm of \_\_\_\_\_,  
and the Defendant being represented by \_\_\_\_\_, of the firm of \_\_\_\_\_,  
and good cause existing for entry of this Order,

IT IS hereby ORDERED that the above title matter is assigned to the complex track.

**IT FURTHER APPEARING** that the following issues are in dispute:

- Child Support
- Medical Insurance
- Financial Maintenance
- Parenting Time/Visitation
- Grandparent visitation
- Custody (The Custody/Parenting Time Plan, required pursuant to R. 5:8-5 is attached hereto/or will be submitted by \_\_\_\_\_.
- Other Issues \_\_\_\_\_.
- Spousal Support
- Remove child from state
- Life Insurance
- Counsel Fees
- Partition

**IT IS FURTHER ORDERED** that the following be furnished no later than the dates indicated:

- 1. Case Information Statement filed? Plaintiff  Yes  No Defendant  Yes  No
- 2. CIS to be filed by:  Plaintiff  Defendant  Both by \_\_\_\_\_, 20\_\_.
- 3. Plaintiff/Defendant/Both-shall propound Interrogatories/Notice to Produce by \_\_\_\_\_, 20\_\_.
- 4. Plaintiff/Defendant/Both-shall answer Interrogatories and comply with Notice to Produce by \_\_\_\_\_, 20\_\_.
- 5. Plaintiff/Defendant/Both-shall complete Depositions by \_\_\_\_\_, 20\_\_.
- 6. Plaintiff/Defendant/Both-shall produce proof of bank account balances, pension, or other records, such as: \_\_\_\_\_ by \_\_\_\_\_, 20\_\_.

7. Parties shall attend a consent conference scheduled on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.

**D** 8. Parties shall attend a mediation on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.

9. Plaintiff/Defendant/Both shall also:  
\_\_\_\_\_  
\_\_\_\_\_

10. Other (Expert Reports or related issues):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IT IS FURTHER ORDERED** that a second Case Management Conference has been scheduled on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, before \_\_\_\_\_.

**IT IS FURTHER ORDERED**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Next hearing date: \_\_\_\_\_ Judge's Signature \_\_\_\_\_

### IMPORTANT

**DO NOT provide an undisclosed address and telephone number of a party if a Domestic Violence Restraining Order is in effect.**

Plaintiff \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_

Defendant \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_

We hereby consent to the form and entry of this Order.

\_\_\_\_\_  
Attorney for Plaintiff  
Attorney Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_

\_\_\_\_\_  
Attorney for Defendant  
Attorney Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_

# POST-JUDGMENT RELIEF

## A. PROCEDURAL RELIEF

### 1. Motion for a New Trial

R. 4:49-1 permits a party to motion the court for a new trial if served not later than 20 days after the court's conclusion is announced. The other party may cross-move for a new trial 10 days after service of a motion for a new trial by the first party. The trial judge may open the judgment, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment.

#### **4:49-1. Motion for New Trial**

(a) Grounds of Motion. A new trial may be granted to all or any of the parties and as to all or part of the issues on motion made to the trial judge. On a motion for a new trial in an action tried without a jury, the trial judge may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. The trial judge shall grant the motion if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law.

(b) Time for Motion, Cross-Motion; Affidavits. A motion for a new trial shall be served not later than 20 days after the court's conclusions are announced in nonjury actions or after the return of the verdict of the jury. The motion shall be noticed for hearing and argued no later than the second regular motion day following the service thereof, unless the court for good cause shown orders the hearing fixed for either an earlier or a later date. The opposing party may, within 10 days after service of the motion, serve a cross-motion for a new trial returnable at the same time and place as the motion. If a motion for a new trial is based upon affidavits they shall be served with the motion; opposing affidavits shall be served within 10 days thereafter which period may be

extended for an additional period not exceeding 20 days either by written stipulation of the parties or court order. The court may permit reply affidavits. Except in special circumstances the motion shall be decided by the judge on trial notes without awaiting a transcript of the testimony.

(c) On Initiative of Court. Not later than 20 days after entry of judgment the court on its own motion may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter the court may grant a motion for a new trial timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(d) Motion for New Trial as Not Barring Appeal. A motion for a new trial or any action or adverse determination on the motion shall not bar an appeal or the review of any matter on appeal.

## **2. Motion to Alter or Amend Judgment or Order**

R. 4:49-2 permits a party to seek a motion for rehearing or reconsideration 20 days after service of the judgment or order. The motion must state which factual matters or legal principles were overlooked or erred.

### **4:49-2. Motion to Alter or Amend a Judgment or Order**

Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

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## **SIGNIFICANT CASES**

*Michel v. Michel*, 210 N.J. Super. 218 (Ch. Div. 1985)

A litigant's dissatisfaction with the substantive result reached is not a reason for a reconsideration motion. The proper procedural step in such a case is the filing of an appeal.

*Johnson v. Cyklop Strapping Corp.*, 220 N.J. Super. 250 (App. Div. 1987), *cert denied*, 110 N.J. 96 (1998)

It is only upon good cause shown and in the service of the ultimate goal of substantial justice that the court's discretion should be exercised in granting a motion for reconsideration.

*D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990)

Reconsideration should be granted only upon palpably incorrect or irrational basis or the court fails to consider significant evidence.

*Palombi v. Palombi*, 414 N.J. Super. 274 (App. Div. 2010)

The appeals court affirmed the trial court's decision to deny oral argument on a series of post-divorce motions filed by the parties involving substantive issues such as custody, child support, college expenses and alimony. The trial court is permitted to exercise its discretion to deny requests for oral argument where no evidence beyond the motion papers and prior record is necessary to render a decision.

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### **3. Relief from Judgment or Order**

A party may move for relief from judgment or order by motion within one year after the judgment. Relief will be granted only on limited grounds, such as mistake; inadvertence; surprise; excusable neglect; newly discovered evidence that could not have been previously discovered; fraud; misrepresentation; misconduct of an adverse party; the judgment or order is void; the judgment has been satisfied, released or discharged; or for any other justified relief.

#### **4:50-1. Grounds of Motion**

On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

#### **4:50-2. Time of Motion**

The motion shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken.

The movant must show that the enforcement of the order or judgment would be unjust, oppressive or inequitable. *Harrington v. Harrington*, 281 N.J. Super. 39 (App. Div. 1995).

## **4. Appeals**

Final judgments or orders of the Superior Court, Trial Division are appealable as a matter of right to the Appellate Division. R. 2:2-3(a). The appeal must be taken within 45 days of their entry. Appeals from final judgments terminating parental rights must be taken within 21 days of entry. R. 2:4-1(a). Cross-appeals may be filed within 15 days after service of a notice of appeal. R. 2:4-2. All clients should be advised of their right to take an appeal and the time limits prescribed.

## **B. CHANGED CIRCUMSTANCES**

Finality of judgment and settlement agreements is desired. However, people's lives are constantly changing, the needs of children are changing with the maturation process, and the economic climate is always changing. As a result, there becomes a need to modify court orders or written agreements, as well as final judgments. The party seeking a modification must first establish a substantial change in circumstances that renders the enforceability of the original settlement, order or judgment unconscionable. It is difficult to generalize on the quantum of proof necessary for a modification, because each family and each set of facts is unique. However, in the right circumstances, factors such as inflation, cost of living, job status, and illness or disability may trigger a modification.

The New Jersey Supreme Court's decision in *Lepis v. Lepis*, 83 N.J. 139 (1980), is the benchmark decision that governs modifications of alimony and support orders or agreements. The Court held that agreements are subject to modification. If a *prima facie* showing of changed circumstances is made, a court will order discovery of the payor's financial status. If the modification is of an alimony award, that party must demonstrate an inability or impairment to support him or herself. This will require discovery of the dependent spouse's financial status, including tax returns. After discovery, the court will then decide whether to hold a plenary hearing. Many motions for modification are heard without additional discovery or a hearing when there are no conflicting certifications. Pure principles of contract law do not apply in domestic relations cases.

## 1. Post-Judgment Motions for Modifications

Post-judgment motions for modifications must be filed 24 days before the time specified for the return date. Opposing affidavits, cross-motions or objections must be filed 15 days before the return date, and answers or responses to any opposing affidavits and cross-motions must be filed not later than eight days before the return date. (See R. 5:5-4(c)).

Motions for modification must contain a notice to the obligor that any future support orders shall be enforced by income withholding upon the current or future income due from the obligor's employer or successor employers and upon the unemployment compensation benefits due to the obligor.

### **2A:17-56.8. Order of court for alimony, maintenance, or child support payments; enforcement by income withholding; notice; compliance with order, amount, and applicability**

Every complaint, notice or pleading for the entry or modification of a support order and every court order which includes child support shall include a written notice to the obligor stating that the child support provision of the order shall, and the health care coverage provision may, as appropriate, be enforced by an income withholding upon the current or future income due from the obligor's employer or successor employers and upon the unemployment compensation benefits due the obligor and against debts, income, trust funds, profits or income from any other source due the obligor except as provided in section 3 of P.L.1981, c. 417 (C.2A:17-56.9). The written notice shall also state that the driver's license and professional or occupational licenses, or recreational or sporting license in accordance with P.L.1996, c. 7 (C.2A:17-56.41 et seq.) held or applied for by the obligor may be denied, suspended or revoked if the child support arrearage is equal to or exceeds the amount of child support payable for six months; the obligor fails to provide health care coverage for the children as ordered by the court for six months; or the obligor fails to respond to a subpoena relating to a paternity or child support proceeding; or a warrant for the obligor's arrest has been issued by the court due to 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 hearing to enforce a child support order and said warrant remains outstanding. The written notice shall also state that the amount of a child support order and the provisions for health care coverage may be reviewed and updated when there has been a change in circumstances or in accordance with section 5 of P.L.1990, c. 92 (C.2A:17-56.9a).

The court shall ensure that in the case of each obligor against whom a support order is or has been issued or modified, the obligor's income shall be withheld to comply with the order. An amount shall be withheld to pay the support

obligation and it shall include an amount to be applied toward liquidation of arrearages reduced to judgments, payments for paternity testing procedures and provisions for health care coverage when applicable. These provisions shall also be applicable to all orders issued on or before the effective date of P.L.1985, c. 278 (C.2A:17-56.16 et seq.).

A support provision contained in an order or judgment issued by the court shall be paid by income withholding unless the order or judgment specifically provides for an alternative payment arrangement to which the parties agree in writing or the obligor or obligee demonstrates and the court finds good cause for establishing an alternative arrangement.

Child support orders may not be retroactively modified pursuant to N.J.S.A. 2A:17-56.23(a). The statute permits written notice to the obligor that modification is sought. If negotiations are unsuccessful and a motion is filed seeking modification within 45 days of the notice, the modification will be retroactive to the date the notice was sent or to the date the motion was filed if the notice to the obligor was not previously sent.

**2A:17-56.23a. Order or portion of order for child support; enforcement and entitlement to full faith and credit; prohibition or retroactive modification; exception**

Any payment or installment of an order for child support, or those portions of an order which are allocated for child support, whether ordered in this State or in another state, shall be fully enforceable and entitled as a judgment to full faith and credit and shall be a judgment by operation of law on and after the date it is due. For obligors who reside or own property in this State, such judgments, once docketed with the Clerk of the Superior Court, shall have the same force and effect, be enforced in the same manner and be subject to the same priorities as a civil money judgment entered by the court. The State shall accord full faith and credit to child support judgments or liens of other states, whether arising by operation of law or having been entered by a court or administrative agency, when a Title IV-D agency, a party, or other entity seeking to enforce such a judgment or lien in this State files a Notice of Interstate Lien, in the form prescribed by the federal Office of Child Support Enforcement, and supporting documents with the Clerk of the Superior Court. An action to domesticate a foreign child support judgment or lien shall be consistent with the “Uniform Enforcement of Foreign Judgments Act,” P.L. 1997, c. 204 (C.2A:49A-25 et seq.). Liens against real and personal property shall be subject to the same enforcement procedures as other civil money judgments except that no judicial notice or hearing shall be required to enforce the lien. No payment or installment of an order for child support, or those



portions of an order which are allocated for child support established prior to or subsequent to the effective date of P.L. 1993, c. 45 (C.2A:17-56.23a), shall be retroactively modified by the court except with respect to the period during which there is a pending application for modification, but only from the date the notice of motion was mailed either directly or through the appropriate agent. The written notice will state that a change of circumstances has occurred and a motion for modification of the order will be filed within 45 days. In the event a motion is not filed within the 45-day period, modification shall be permitted only from the date the motion is filed with the court.

The non-modification provision of this section is intended to be curative and shall apply to all orders entered before, on and after the effective date of P.L.1993, c. 45 (C.2A:17-56.23a).

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## SIGNIFICANT CASES

### ***Ryan v. Ryan*, 246 N.J. Super. 376 (Ch. Div. 1990)**

Principles of equitable estoppel may not be abrogated by statute. The court would not retroactively apply the statute precluding modification. A verbal agreement terminating child support in exchange for no contact is not binding in court.

### ***Ohlhoff V. Ohlhoff*, 246 N.J. Super. 1 (App. Div. 1991) (superseded by statute on other grounds)**

The change in the residence of a child does not automatically abrogate a support obligation. N.J.S.A. 2A:17-56.23a applies prospectively.

### ***Mahoney v. Pennell*, 285 N.J. Super. 638 (App. Div. 1995)**

The statute barring retroactive modification of child support arrears does not bar the retroactive termination of a support obligation based on emancipation.

### ***Welch v. Welch*, 401 N.J. Super. 438 (Ch. Div. 2008), *rev'd in part on the other grounds***

Discovery in post-judgment family motions is at the discretion of the court and requires a preliminary threshold showing; if parties had the right to engage in unfettered discovery every time a post-judgment motion was brought, it would convert motion practice into unwieldy mini-trials resulting in lengthy delays that the rule governing motions in family actions was specifically designed to avoid. R. 5:5-4.

Mark Gruber, Esq./ID# \_\_\_\_\_  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

SARA SETTLED,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
SAMUEL SETTLED,	:	
	:	POST-JUDGMENT NOTICE OF MOTION
<i>Defendant.</i>	:	FOR MODIFICATION AND ENFORCEMENT
	:	OF LITIGANTS RIGHTS
	:	(Returnable November 8, 2019)

TO: SAMUEL SETTLED  
 1 Main Street  
 Newton, New Jersey 07860  
 Certified Mail Return Receipt Requested & First Class Mail

**PLEASE TAKE NOTICE** that on Friday, **November 8, 2019**, at **9:00** in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorney for the plaintiff, **SARA SINGLELADY**, shall move before the Court located at 43-47 High Street, Newton, New Jersey, for an Order as follows:

1. Modifying the Marital Settlement Agreement and Final Judgment of Divorce filed on May 3, 2015, as follows:
  - (a) Increasing the child support effective as of the filing of this Motion and requiring the defendant to pay to the plaintiff the sum of \$312.49 per week payable through the probation department as a wage execution in the county where the plaintiff resides; and
  - (b) Directing the parties to the Sussex County Child Custody/Visitation Mediation Services to establish a visitation schedule.

2. Adjudicating the defendant in violation of litigant's rights and further directing the defendant provide within ten (10) days of the date of this Order, a Blue Cross/Blue Shield Rider J or equivalent insurance policy, including major medical insurance coverage for the benefit of the children.
3. Adjudicating the defendant in violation of litigant's rights and directing that within ten (10) days of the date of this Order he obtain and provide proof to the plaintiff that he has complied with Paragraph 7 of the Marital Settlement Agreement and obtained a \$500,000 life insurance policy on his life designating the Wife as beneficiary for \$250,000 for so long as he has an alimony obligation, and designating the children as equal beneficiaries and the wife as trustee for their benefit for the remaining \$250,000.00 for so long as the children remain unemancipated.
4. Directing that the defendant pay counsel fees to the plaintiff incurred in bringing the within motion.

**PLEASE TAKE FURTHER NOTICE** that, the undersigned shall rely upon the Certification and Exhibits of the Plaintiff.

**PLEASE TAKE FURTHER NOTICE** that, the undersigned hereby requests oral argument.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
Attorney for Plaintiff

Dated: October 10, 2019

BY: \_\_\_\_\_  
Mark Gruber, Esq.

**ADVANCE NOTICE (R. 5:7-5 b3).**

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.

**CERTIFICATION OF FILING AND SERVICE**

I hereby certify that the originals and one copy of the attached Post-Judgment Notice of Motion, supporting Certification of Plaintiff, Certification of Attorney Services, and proposed form of Order are being filed with the Clerk of the Superior Court of New Jersey, Chancery Division, Family Part, Sussex County Judicial Center, 43-47 High Street, Newton, New Jersey, via first class mail. Copies thereof are being forwarded to Defendant Pro Se, via Certified Mail Return Receipt Requested and first class mail, to Samuel Settled, 1 Main Street, Newton, New Jersey 07860, in the manner and within the time required by the Rules of Court.

**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
**Attorney for Plaintiff**

Dated: October 10, 2019

BY: \_\_\_\_\_  
Mark Gruber, Esq.

**NOTICE TO LITIGANTS: IF YOU WANT TO RESPOND TO THIS MOTION,  
YOU MUST DO SO IN WRITING.**

---

This written response shall be by Affidavit or Certification. (Affidavits and Certifications are documents filed with the court. In either document the person signing it swears to its truth and acknowledges that they are aware that they can be punished for not filing a true statement with the court. Affidavits are notarized and Certifications are not.) If you would also like to submit your own separate requests in a motion to the judge, you can do so by filing a cross-motion. Your response and/or cross-motion may ask for oral argument. That means you can ask to appear before the court to explain your position. However, you must submit a written response even if you request oral argument. Any papers you send to the court must be sent to the opposing side, either to the attorney, if the opposing party is represented by one, or to the other party if they represent themselves. **Two copies of all motions, cross-motions, certifications, and briefs shall be sent to the opposing side.**

The response and/or cross-motion must be submitted to the court by a certain date. **All motions must be filed on the Tuesday 24 days before the return date. A response and/or cross motion must be filed 15 days (Thursday) before the return date. Answers or responses to any opposing Affidavits and cross-motions shall be served and filed not later than 8 days (Thursday) before the return date.** No other response is permitted without permission of the court. If you mail in your papers, you must add three days to the above time periods.

Response to motion papers sent to the Court are to be sent to the following address:

Motions Filing Clerk  
Superior Court of New Jersey  
Chancery Division, Family Part  
Sussex County Judicial Center  
43-47 High Street  
Newton, NJ 07860

**Call the Family Division Manager's Office 862-397-5700**, if you have any questions on how to file a motion, cross-motion or any response papers. Please note that the Family Division Manager's Office cannot give you legal advice.

This Notice to Litigants is found in Rule 5:5-4(d) of the New Jersey Court Rules.

Mark Gruber, Esq./ID# \_\_\_\_\_  
 Filing Attorney, Esq./ID# \_\_\_\_\_  
**GRUBER, COLABELLA, LIUZZA, THOMPSON & HIBEN**  
 41 Lakeside Boulevard  
 Hopatcong, NJ 07843  
 973-398-7500/fax 973-398-5579  
 Attorneys for Plaintiff

SARA SETTLED,	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION: FAMILY PART
	:	SUSSEX COUNTY
<i>Plaintiff,</i>	:	
	:	DOCKET NO. FM-19-
vs.	:	
	:	<u>CIVIL ACTION</u>
SAMUEL SETTLED,	:	
	:	
<i>Defendant.</i>	:	CERTIFICATION OF PLAINTIFF
	:	

I, **Sara Singlelady**, formerly known as **Sara Settled**, of full age, hereby certify as follows:

1. I am the plaintiff and make this Certification in support of this Motion for Post-Judgment Modification. I attach as **Exhibit A**, the Final Judgment of Divorce filed May 3, 2015, along with the Marital Settlement Agreement dated May 3, 2015.
2. I attach as **Exhibit B** my previously filed Case Information Statement. My ex-husband and I were married on October 11, 2008, had two children, Susan (now age 12) and Stephen (now age 10). We separated on January 4, 2014, and were divorced on May 3, 2015. I am making this application because the Property Settlement Agreement is insufficient concerning the cost of raising two children, as well as the other relief, which I will outline below. There has been a substantial change in circumstances since the divorce in 2015. There has also been non-compliance by the defendant, which is the reason I am making this application.

**CHILD SUPPORT**

3. I have attached as **Exhibit C** a new Case Information Statement in which I estimate that the child support should be in the amount of \$312.49 per week. This is based upon my assumption that my ex-husband is earning approximately \$90,000 as a Vice President at AT&T. He also has a business called Active Services, which is a handyman type of business that he has operated since 2014. I can only estimate that he earns \$30,000 per year from

that job. Therefore, I have estimated that he has a gross income of \$120,000 per year. This, of course, will be adjusted after he submits proof of his earnings. At the time of our divorce my ex-husband was earning \$70,000 per year.

4. I am asking that the child support increase be established retroactive to the date that my attorney mailed a letter to my ex-husband pursuant to N.J.S.A. 2A:17-56.23(a).

### **CHANGE OF CIRCUMSTANCES**

5. There has been a substantial change of circumstances since we entered into our Marital Settlement Agreement. Expenses for the children were much less than they are now. Susan is now twelve and in middle school. Stephen is about to enter middle school and will soon be eleven years old. All of the following expenses have increased: school supplies (books, references, consumable supplies), school lunches (there is a cafeteria on premise at the new school), household food, housing, including mortgage, taxes, electric, homeowner's insurance, telephone and furniture (more furniture, desks, bigger dressers, larger rooms). Expenses have also increased for medical, including braces and dermatologist, as well as dentist and short-term therapy for depression. The children's activities have increased in frequency and expense. They are more involved in school activities. They are more involved in sports and hobbies and need much more expensive equipment. I now have to drive further distances and more frequently to keep up with their increasing activities. There are other substantial increases in clothing. The children are now more clothes conscious, and due to their larger sizes the cost has increased substantially. I have also had to incur more expense for their entertainment, gifts, and their personal items such as hygiene.

For purposes of comparison, I attach as Exhibit B an analysis of my income and budget in 2015, including my 2014 tax return.

### **LIFE INSURANCE**

6. Paragraph 7 of our Marital Settlement Agreement requires my ex-husband to maintain a \$500,000 life insurance policy on his life designating me as beneficiary for \$250,000 for so long as he has an alimony obligation, and designating the children as equal beneficiaries and the me as trustee for their benefit for the remaining \$250,000 for so long as the children remain unemancipated. At first, my ex-husband obtained a policy and made me primary beneficiary and the children contingent beneficiaries. However, this year I checked with the insurance company and learned that he changed the beneficiary to his sister, Kathy Settled. When I inquired of my ex-husband, he told me that she was executrix of his estate and that he was going to leave the money to me and the children in his estate. This is unacceptable because he can always change his Will and I ask that the Court require him to comply with Paragraph 7 of the Agreement.

### **HEALTH INSURANCE**

7. Paragraph 5 of the Marital Settlement Agreement requires my ex-husband to obtain health insurance. I attach as Exhibit D a letter from his health insurer that he cancelled the children from the health policy on May 1, 2019.

### **VISITATION MEDIATION**

8. Our Marital Settlement Agreement does not set forth a workable schedule for visitation. In the past, my ex-husband had been taking the children from Friday evening through Sunday evening. However, in the last six months he has taken the children on an irregular and unpredictable schedule with very short or no notice. I would like to resume alternating weekends at a regular time schedule. He keeps changing the schedule. I request that we attend the Sussex County Mediation Program in an effort to resolve the issues of visitation.

### **COUNSEL FEES**

9. I have virtually no savings and spend all of my income for housing expenses and the care of our children. I cannot afford legal fees. I request that my ex-husband pay all of the counsel fees that I have incurred in this matter. This Motion was filed, at least in part because my ex-husband did not comply with the insurance provisions of our Agreement. My attorney Certification of Services is attached hereto as **Exhibit E**.

*I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.*

Dated: October 10, 2019

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Sara Singlelady



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## SIGNIFICANT CASES

***Arribi v. Arribi*, 186 N.J. Super. 116 (Ch. Div. 1982)**

Where the defendant remained unemployed for a considerable period of time and did not look for re-employment outside his chosen field of work, the court held that his diminished earning capacity did not warrant a modification.

***Chabot v. Chabot*, 224 N.J. Super. 648 (App. Div. 1988)**

Maturation of children is a change of circumstances.

***Adler v. Adler*, 229 N.J. Super. 496 (App. Div. 1988)**

Disability or illness is a change of circumstances.

***Innes v. Innes*, 117 N.J. 496 (1990)**

Temporary circumstances are an insufficient basis for modification.

***Zazzo v. Zazzo*, 245 N.J. Super. 124 (App. Div. 1990), cert. denied, 126 N.J. 321 (1991)**

Children are entitled to their father's post-judgment good fortunes and support may be ordered, on modification, which would establish a standard of living greater than the standard of living the children enjoyed during the marriage.

***Guglielmo v. Guglielmo*, 253 N.J. Super. 531 (App. Div. 1992)**

An increase in the cost of living is a basis for modification.

***Deegan v. Deegan*, 254 N.J. Super. 350 (App. Div. 1992)**

Voluntary retirement may constitute a change of circumstances warranting modification of spousal support if retirement is in good faith and outweighs the disadvantage to the payee spouse. Superseded by statute as stated in *Landers v. Landers*, 444 N.J. Super. 315 (2016).

***Borzillo v. Borzillo*, 259 N.J. Super. 286 (Ch. Div. 1992)**

Increase of alimony was granted to dependent spouse who incurred substantial legal fees in defeating the payor spouse's attempt to discharge marital obligations in bankruptcy.

***Narvae v. Freestone*, 281 N.J. Super. 484 (Ch. Div. 1995)**

An obligor's increased expenses due to remarriage presents a change of circumstances.

***Crews v. Crews*, 164 N.J. 11 (2000)**

Post-judgment increase in payor spouse's income may warrant modification of support order if payee spouse did not maintain married standard of living at time of settlement of final judgment.

*Storey v. Storey*, 373 N.J. Super. 464 (App. Div. 2004)

For the purpose of a motion to modify alimony based on a career change, the factors relevant to the reasonableness and relative advantages of a career change include: the reasons for the career change (both the reasons for leaving prior employment and the reasons for selecting the new job); disparity between prior and present earnings; efforts to find work at comparable pay; the extent to which the new career draws or builds upon education, skills and experience; the availability of work; the extent to which the new career offers opportunities for enhanced earnings in the future; age and health; and the former spouse's need for support. N.J.S.A. 2A:34-23, subd. b(1).

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## **2. Three-Year Probation Modification**

The Probation Department is required to review child support orders at least every three years if the orders arise from Title IV-D.

### **2A:17-56.9a. Review of IV-D orders for child support payments**

At least once every three years, unless the State has developed an automated cost-of-living adjustment program for child support payments, the parties subject to a Title IV-D support order shall be provided notice of their right to request a review, which shall be conducted in accordance with the rules promulgated by the State IV-D agency in consultation with the Supreme Court. Such review shall take into account any changes in the financial situation or related circumstances of both parties and whether the order of child support is in full compliance with the child support guidelines. Upon completing the review and if a change in the amount of child support is recommended, the State IV-D agency or designee shall so notify the obligor and obligee in writing of the child support amount that is recommended. The obligor and obligee shall be afforded not less than 30 days after such notification to file with the State IV-D agency and the court a challenge to such proposed adjustment or determination. If proof exists that the obligor and obligee have been provided with at least 30-days' notice of the proposed adjustment, the court shall adjust the child support amount as proposed by the department if either party does not challenge the recommended award within the prescribed time or fails to show good cause why the adjustment should not occur.

In accordance with section 351 of Pub.L.104-193,<sup>1</sup> a proof or showing of a change in circumstances shall not be required prior to initiation of a review or for the adjustment of an order under the three-year review process; however, a proof or showing of a substantial change in circumstances shall be required prior to the initiation of a review or for the adjustment of an order outside the three-year review process.

### **5:6-6. Probation-Initiated Status Review of Support Orders**

The Probation Division may present to the court for status review any appropriate case being enforced by Probation, subject to appropriate procedural due process requirements. The court shall consider such cases and may modify, suspend or terminate a support order, close a Probation-supervised case, or take such action as the court may deem appropriate and just. Status review hearings shall not substitute for motions or applications for post-dispositional relief initiated by parties to the case and may only be used by Probation as a vehicle to manage cases being enforced by Probation. The forms and procedures to implement the provisions of this Rule shall be prescribed by the Administrative Director of the Courts.

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## **SIGNIFICANT CASES**

### ***Martin v. Martin*, 410 N.J. Super. 1 (Ch. Div. 2009)**

A party is not entitled to an automatic judicial modification of a child support order based merely on the passage of three years since the time of the entry of the existing support order. Parties remain eligible for automatic cost of living adjustments every two years under R. 5:6B. Otherwise, a party must establish that there has been a substantial change of circumstances since the last order before a modification of support can be considered.

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## **3. Two-Year Child Support Modification Based upon Cost of Living**

R. 5:6B, set forth below, requires all orders and judgments, including child support, contain a provision that the child support amount will be adjusted every two years to reflect the cost of living. The parties have a right to contest the adjustment.

### **5:6B. Cost-of-Living Adjustments for Child Support Orders**

- (a) All orders and judgments that include child support entered, modified, or enforced on or after September 1, 1998 shall provide that the child support amount will be adjusted every two years to reflect the cost of living.
- (b) Orders and judgments that include child support entered, modified, or enforced on or before August 31, 1998 shall be prospectively subject to adjustment every two years to reflect the cost of living.
- (c) The cost-of-living adjustment shall be based on the average change in the Consumer Price Index for the metropolitan statistical areas that encompass New Jersey and shall be compounded.

(d) Before a cost-of-living adjustment is applied, the parties shall be provided with notice of the proposed adjustment and an opportunity to contest the adjustment within 30 days of the mailing of the notice. An obligor may contest the adjustment if the obligor's income has not increased at a rate at least equal to the rate of inflation as measured by the Consumer Price Index or if the order or judgment provides for an alternative periodic cost-of-living adjustment. A cost-of-living adjustment shall not impair the right of either parent to apply (1) to the court for a modification of support provisions of the order or judgment based on changed circumstances, or (2) to the State IV-D agency or its designee for a three-year review of a Title IV-D child support order, without the need to show changed circumstances.

(e) The forms and procedures to implement cost-of-living adjustments shall be prescribed by the Administrative Director of the Courts.

## **C. ENFORCEMENT AND COLLECTION OF CHILD SUPPORT AND ALIMONY**

Most support orders will contain a provision for income withholding and will be monitored by the probation department. The probation department is responsible for monitoring child support payments. R. 5:7-5(a) requires the probation department to file a motion for enforcement within 14 days of arrearages or by failure to provide health insurance coverage that may be ordered. The court, on its own, may initiate summary contempt proceedings pursuant to R. 1:10-2, or an aggrieved party, the probation department or the court may initiate contempt proceedings pursuant to R. 1:10-3.

The Administrative Office of the Courts has established a Customer Service Bureau and a hotline to assist in the collection of child support. NJKIDS is a statewide computer system to gain support. The toll-free hotline number is 1-800-621-KIDS.

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### **SIGNIFICANT CASES**

#### ***Pasqua v. Council*, 186 N.J. 127 (2006)**

The New Jersey Supreme Court held that the due process clause mandated the appointment of counsel to assist parents found to be indigent and facing incarceration at child support enforcement hearings. Further, parents were not entitled to statutory "prevailing party" attorneys fees from judges who presided over enforcement proceedings. This case has been abrogated by the United States Supreme Court case below.

**Turner v. Rogers, 131 S. Ct. 2507 (2011)**

The Supreme Court held that a civil contempt does not grant the procedural protections of assignment of counsel as in criminal cases. No counsel will be appointed when the opposing parent or custodian is not represented by counsel and the state provides alternate procedural safeguards equivalent to adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings.

In a series of unreported cases, the courts have followed the holding in *Pasqua v. Council*, and have appointed counsel for indigent persons who are facing incarceration for nonsupport. That person must establish indigency to the satisfaction of the court.

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**1:10-3. Relief to Litigant**

Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. A judge shall not be disqualified because he or she signed the order sought to be enforced. If an order entered on such an application provides for commitment, it shall specify the terms of release provided, however, that no order for commitment shall be entered to enforce a judgment or order exclusively for the payment of money, except for orders and judgments based on a claim for equitable relief including orders and judgments of the Family Part and except if a judgment creditor demonstrates to the court that the judgment debtor has assets that have been secreted or otherwise placed beyond the reach of execution. The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule. In family actions, the court may also grant additional remedies as provided by R. 5:3-7. An application by a litigant may be tried with a proceeding under R. 1:10-2(a) only with the consent of all parties and subject to the provisions of R. 1:10-2(c).

**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**

(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 and R. 5:3-7(b). 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(b). 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 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 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.

(3) *Transmittal of Order Suspending or Revoking License.* The Probation Division shall immediately forward a copy of the order denying, suspending, or revoking an obligor's license to the obligor and the appropriate licensing authorities. If the order notifies the Supreme Court to suspend the obligor's license to practice law in New Jersey, the Probation Division shall also forward a copy of the order to the Clerk of the Supreme Court and Office of Attorney Ethics, and the suspension shall be governed by R. 1:20- 11A.

(4) *Term of Suspension/Restoration of License.* A court order denying, suspending, or revoking an obligor's license shall remain 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.

**(c) Execution on Assets to Collect Alimony and Child Support.** If an order is issued pursuant to R. 4:59-1(c) authorizing the Probation Division to execute on cash or cash- equivalent assets as defined therein to collect alimony and child support judgments payable through the Probation Division, the Probation Division may assist judgment creditors by preparing the writ of execution, serving the writ on the holder of the debtor's asset by registered or certified mail, and scheduling the matter before the court to obtain an order to turn over funds. Service of the writ shall freeze the asset for the amount

of the judgment, but no turnover of funds shall be made or required to be made until ordered by the court. The writ of execution shall be signed by the judgment creditor or the attorney for the judgment creditor and may, subject to the limitations of this rule, be issued by the Vicinage Chief Probation Officer acting as deputy clerk of the Superior Court pursuant to R. 4:59-1(c) . The Probation Division shall mail a notice to the debtor as required by R. 4:59-1(h) immediately after the writ has been served on the holder of the asset. The Probation Division shall send a copy of all writs of execution issued pursuant to R. 4:59-1(c) to the Family Division Case Management Office. No costs or fees shall be assessed by the Probation Division for aiding in the execution of a judgment for alimony or child support. With respect to assets other than cash or cash- equivalents as defined in R. 4:59-1(c) , the Probation Division may assist the judgment creditor in preparing the writ of execution and such other forms relating to the execution as may be required, and in referring the judgment creditor to the sheriff of the county where the asset is located.

**(d) Child Support Judgments and Post-judgment Interest.** In accordance with N.J.S.A. 2A:17-56.23a, past-due child support payments are a judgment by operation of law on or after the date due and are subject to post-judgment interest at the rates prescribed in Rule 4:42-11 at the time of satisfaction or execution. Past-due child support payable through the Probation Division shall be automatically docketed as civil judgments with the Clerk of the Superior Court on the first day of the month following the date the payment was due. The Probation Division may, with the authorization of a child support judgment creditor, assist that party in calculating post-judgment interest in accordance with Rule 4:42-11 at the time an offer of satisfaction is tendered or an execution of assets is initiated. For child support that is not payable through the Probation Division, the obligee shall file a motion with the court asking that the amount of past-due child support be fixed and that a judgment be entered for that amount. The obligee shall be responsible for filing the judgment with the Clerk of the Superior Court. Alternatively, the obligee may procure a judgment by filing an application with the Probation Division requesting that past-due and future child support payments be made through that office in accordance with Rule 5:7-4(b).

Attorneys are often retained to enforce orders, rather than permitting the probation department to do so. Subject to the motion practice rules, the application is made by way of a “motion to enforce litigant’s rights.”



### **2A:17-56.9b. Rules and regulations**

- a. The Commissioner of Human Services shall, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1et seq.), adopt and promulgate such rules and regulations as may be necessary for the implementation of this act.
- b. The Supreme Court shall promulgate rules and procedures as may be necessary for the implementation of this act by the courts and probation departments.

### **2A:17-56.10. Income withholding; notice; contest; hearing; notice of hearing determinations; notice preparation; withholding requirements; modifications; priority; duration; multiple support orders**

a. If an income withholding initiated by the Probation Division is required pursuant to section 3 of P.L.1981, c. 417 (C.2A:17-56.9), the Probation Division shall notify the obligor of the income withholding by regular mail to the obligor's last known address. The notice to the obligor shall be mailed at the same time as the notice to the payor, and shall inform the obligor that the withholding has commenced in accordance with section 314 of Pub.L.104-193.1 The notice to the obligor shall also include all of the information regarding the withholding that is included in the notice to the payor. An obligor may contest a withholding only on the basis of mistake of fact. The notice to the obligor shall include but need not be limited to: the amount to be withheld, including an amount to be applied toward liquidation of arrearages; a statement that the withholding applies to current and subsequent sources of income; the methods available for contesting the withholding on the grounds that the withholding is not proper because of mistake of fact; the period within which the Probation Division may be contacted in order to contest the withholding; and the procedures to follow if the obligor desires to contest the withholding on the grounds that the withholding or the amount thereof is improper due to a mistake of fact.

If an obligor contests the proposed withholding, the Probation Division shall schedule a hearing or review within 20 days after receiving notice of contest of the withholding. If it is determined that the withholding is to continue, the Probation Division shall provide notice to the obligor. Notice to the obligor shall include all of the information that is included in the notice to the payor in section 5 of P.L.1981, c. 417 (C.2A:17-56.11). The Probation Division shall notify the obligor of the results of the hearing or review within five days of the date of the hearing or review.

b. If the court enters an order modifying alimony, maintenance or child support, the Probation Division shall amend the income withholding amount

accordingly. This income withholding shall have priority over any other withholdings and garnishments without regard to the dates that the other income withholdings or garnishments were issued.

c. An income withholding made under P.L.1981, c. 417 (C.2A:17-56.8 et seq.) shall continue until terminated by a court.

d. Where there is more than one support order for withholding against a single obligor, the payor shall withhold the payments to fully comply with the court orders on a pro rata basis to the extent that the total amount withheld from the obligor's income does not exceed the limits allowed under section 303(b) of the federal Consumer Credit Protection Act (15 U.S.C. s. 1673(b)). Payors may combine withheld amounts in a single payment for each appropriate probation department requesting withholding and separately identify the portion of the payment which is attributable to each obligor unless submitted pursuant to section 7 of P.L.1981, c. 417 (C.2A:17-56.13) or through the use of electronic funds transfer.

#### **2A:17-56.11. Notice to payor; binding effect**

a. An income withholding made under P.L. 1981, c. 417 (C. 2A:17-56.8 et seq.) and provisions for health care coverage shall be binding upon the payor and successor payors immediately after service upon the payor by the Probation Division of a copy of the income withholding and an order for the provision of health care coverage, by regular mail. The payor is to pay the withheld amount to the Probation Division at the same time the obligor is paid. The payor shall implement withholding and the provisions for health care coverage no later than the first pay period that ends immediately after the date the notice was postmarked, except that the payor is not required to alter regular pay cycles to comply with the withholding. For each payment, other than payment received from the unemployment compensation fund, the payor may receive \$1.00, which shall be deducted from the obligor's income in addition to the amount of the support order to compensate the payor for the administrative expense of processing the withholding.

Notice to the payor shall include, but not be limited to, instructions for the provisions for health care coverage, the amount to be withheld from the obligor's income and a statement that the total amount withheld for support and other purposes may not be in excess of the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)); that the payor shall send the amount to the Probation Division at the same time the obligor is paid, unless the Probation Division directs that payment be made to another individual or entity; that the payor may deduct and retain a fee of \$1.00 in addition to the amount of the support order except when the payment is received from the unemployment

compensation fund; that withholding is binding on the payor until further notice by the Probation Division; that, in accordance with section 6 of P.L. 1981, c. 417 (C. 2A:17-56.12), the payor is subject to a fine and civil damages as determined by the court for discharging an obligor from employment, refusing to employ, or taking disciplinary action against an obligor subject to an income withholding because of the withholding or any obligation which it imposes upon the payor; that the payor is subject to a fine as determined by the court for failure to withhold support from the obligor's income or pay the withheld amount to the Probation Division; that if the payor fails to take appropriate action with regard to the provisions for health care coverage or withhold wages in accordance with the provisions of the notice, the payor is liable for any medical expenses incurred by the children subject to the provisions for health care coverage and any amount up to the accumulated amount the payor should have withheld from the obligor's income; that the withholding shall have priority over any other legal process under State law against the same income; that the payor may combine withheld amounts from the obligor's income in a single payment to the Probation Division and separately identify the portion of the single payment which is attributable to each obligor unless submitted pursuant to section 7 of P.L. 1981, c. 417 (C. 2A:17-56.13) or through electronic funds transfer; that if there is more than one support order for withholding against a single obligor, the payor shall withhold the payments on a pro rata basis to fully comply with the support orders, to the extent that the total amount withheld does not exceed the limits imposed under section 303(b) of the federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)); that the payor shall implement withholding no later than the first pay period that ends immediately after the date the notice was postmarked, except that the payor is not required to alter regular pay cycles to comply with the withholding; and that the payor shall notify the Probation Division promptly upon the termination of the obligor's employment benefits and provide the obligor's last known address and the name and address of the obligor's new payor, if known.

A payor served with an income withholding notice shall be liable to the obligee for failure to deduct the amounts specified. The obligee or the Probation Division may commence a proceeding against the payor for accrued deductions, together with interest and reasonable attorney's fees.

In accordance with section 314 of Pub.L.104-193, a payor who complies with an income withholding notice that is regular on its face shall be immune from civil liability for conduct in compliance with the notice.

b. When a payor receives an income withholding notice issued by another state, the payor shall apply the income withholding law of the state in which the obligor's principal place of employment is located in determining:

- (1) the payor's fee for processing the income withholding;
- (2) the maximum amount permitted to be withheld from the obligor's income;
- (3) the time periods within which the payor must implement the income withholding order and forward the child support payment;
- (4) the priorities for withholding and allocating income withheld for multiple obligees; and
- (5) any withholding terms or conditions not specified in the support order or notice.

c. If an obligor is injured and eligible for workers' compensation under chapter 15 of Title 34 of the Revised Statutes or other disability benefits, the payor shall forward a copy of the income withholding to the insurance carrier at the same time an obligor's claim for workers' compensation is submitted to the Division of Workers' Compensation in the Department of Labor. The income withholding shall be binding upon the insurance carrier and the insurance carrier shall implement the income withholding pursuant to the provisions of this section.

d. The Probation Division shall use the National Medical Support Notice for medical support orders upon its adoption by federal regulation pursuant to the "Child Support Performance and Incentive Act of 1998," Pub.L.105-200.

#### **2A:17-56.11a. Responsibilities of employers in assisting the enforcement of child support orders concerning medical support of a child**

When an obligor is eligible for health benefits plan coverage which includes dependents and is available through an employer in this State, and the obligor is required by a court or administrative order to provide medical support coverage for his child, the employer who is the payor shall:

- a. Permit the obligor to enroll his child under the health benefits plan as a dependent, without regard to any enrollment season restrictions;
- b. Permit the child's other parent, or the Division of Medical Assistance and Health Services as the State Medicaid agency or the Division of Family Development as the State IV-D agency, in the Department of Human Services, to enroll the child under the health benefits plan if the obligor, who is the covered person, fails to enroll the child;
- c. Not terminate coverage of the child unless:
  - (1) the obligor provides the payor with satisfactory written evidence that the court or administrative order is no longer in effect, or the child is or will be enrolled in a comparable health benefits plan whose coverage will be effective on the date of the termination of coverage, or
  - (2) the payor is no longer providing or making available to its employees' health benefits plan coverage which includes dependents; and

d. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health benefits plan coverage for the obligor and the obligor's dependent and pay the withheld amount to the health benefits plan carrier or administrator, as appropriate, subject to federal regulations. The amount withheld shall not exceed the maximum amount permitted to be withheld under section 303(b) of the federal "Consumer Credit Protection Act," 15 U.S.C. §1673(b).

**2A:17-56.11b. Income withholding from party responsible for medical support coverage of a child eligible for medical assistance under Medicaid program**

The income withholding provisions of P.L.1981, c. 417 (C. 2A:17-56.7 et seq.) shall be extended to include a withholding of income from the party responsible for maintaining medical support coverage for a child under a child support order issued pursuant to the provisions of N.J.S. 2A:34-23 when the child is eligible for medical assistance pursuant to P.L.1968, c. 413 (C. 30:4D-1 et seq.) and the party responsible for maintaining medical support coverage has received payment from a third party for the cost of health care services provided to the child but has not reimbursed the obligee or the health care provider who provided the services for the amount of the payment. A payment received on or after April 1, 1995 shall be subject to the provisions of this section.

The income withholding shall be subject to the following conditions: a. the amount of income withheld shall be to the extent necessary to reimburse the Division of Medical Assistance and Health Services in the Department of Human Services for the costs it incurred in covering the health care services for which the party responsible for maintaining medical support coverage received the payment; and b. the income withholding to reimburse the division shall be subordinate in priority to any other withholding under a child support order.

The Division of Medical Assistance and Health Services in the Department of Human Services, in consultation with the Administrative Office of the Courts, may initiate procedures for the withholding of income pursuant to this section.

As used in this section, "third party" means a third party as defined in section 3 of P.L.1968, c. 413 (C. 30:4D-3).

**2A:17-56.12. Basis for discharge or discipline, prohibition; action for unlawful discharge, attorney's fees, damages; payor's liability for failure to withhold; notice of obligor's termination of employment, etc.**

The payor may not use an income withholding as a basis for the discharge of any obligor or for any disciplinary action against the obligor. A payor who discharges or disciplines an obligor in violation of this act or who discriminates in hiring because of an income withholding or a potential withholding is a disorderly person. Any obligor claiming to be aggrieved

by an unlawful discharge may initiate suit in Superior Court for damages and reinstatement of employment. In any action, the prevailing party may be awarded reasonable attorney's fees; provided, however, that no attorney's fees shall be awarded to the respondent unless there is a determination that the action was brought in bad faith. In addition to any other relief or affirmative action provided by law, the payor may be liable for twofold compensatory damages. Compensatory damages shall include the costs of proving the discharge, out-of-pocket expenses, and lost income. If the payor fails to withhold the amount of the order, the payor is liable for amounts up to the accumulated amount the payor should have withheld. Payors shall notify the probation department promptly of the termination of the obligor's employment and provide the obligor's last known address and the name and address of the obligor's new payor, if known.

**2A:17-56.13. Judgment or order for alimony, maintenance or child support; payments through probation office of county of residence; notice of change of payor or address; service at address of record; procedures for location of current payor**

Until such time as a State disbursement unit is established pursuant to section 15 of P.L.1998, c.1(C.2A:17-56.64) every award for alimony, maintenance or child support payments the judgment or order shall provide that payments be made through the Probation Division of the county in which the obligor resides, unless the court, for good cause shown, otherwise orders. Upon entry of the judgment or order, the parties shall provide the court and the Probation Division with their Social Security numbers, residential and mailing addresses, telephone numbers, driver's license numbers, and the name, address and telephone number of their employers. Each judgment or order shall require that the obligor and obligee notify the Probation Division of any change of payor or change of address within 10 days of the change. Failure to provide this information shall be considered a violation of this order.

The order shall also inform the obligor that the address provided to the Probation Division shall be the address of record for subsequent support enforcement actions and that service of legal documents at that address shall be effective for the purpose of meeting due process requirements.

For the purposes of enforcing a support provision, 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 Division of

Motor Vehicles in the Department of Transportation, the Division of Taxation in the Department of the Treasury and the Departments of Labor and Corrections. 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, before any adverse action is taken based upon the party's failure to respond to the notice. When an obligor changes employment within the State while income withholding is in effect, the Probation Division shall notify the new payor that the withholding is binding on the new payor. When the Probation Division is unable to locate the obligor's current payor in order to effectuate an income withholding under P.L.1981, c. 417 (C.2A:17-56.8 et seq.), the Probation Division is authorized to utilize any other procedure authorized by law to obtain this information.

**2A:17-56.13a. Payment of alimony, maintenance or child support by electronic transfer or credit card**

- a. Every probation department may establish a system to accept alimony, maintenance or child support payments through electronic funds transfer, credit card, or any other method deemed feasible by the department.
- b. The Supreme Court of the State of New Jersey shall adopt Rules of Court appropriate or necessary to effectuate the purpose of this act.

**2A:17-56.14. Payments not made through probation department; application for income withholding; department administration of withholding; monitoring fee**

An obligee who has not established an IV-D case through the probation department shall file an affidavit when applying for the income withholding, stating that the payments not made for support have accrued arrearages in an amount equal to the amount of support payable for 14 days. The probation department shall administer the withholding in accordance with procedures specified for keeping adequate records to document, track, and monitor support payments or establish or permit the establishment of alternative procedures for the collection and distribution of amounts withheld by an entity other than a designated public agency. Alimony, maintenance or child support payments not presently made through the probation department shall be so made upon application of either party unless the other party upon application to the court shows good cause to the contrary.

A monitoring fee of \$25.00 annually shall be applied upon the request of either the obligor or obligee for the payment of support through the probation department, regardless of whether or not arrearages exist or withholding procedures have been instituted. The probation department shall monitor all amounts paid and the dates of payments and record them separately. The court and the probation department shall follow the procedures established in this act.

### **2A:17-56.16. Tax setoff; rules and regulations**

The Administrative Office of the Courts shall promulgate rules and regulations concerning procedures for determining which support cases, and which cases of indebtedness in accordance with section 1 of P.L.1995, c. 290 (C. 2A:17- 56.11b), are appropriate for application of tax setoff, for verifying the accuracy of the amounts referred for setoff, notifying the State Department of the Treasury of any child support and other indebtedness subject to section 1 of P.L.1981, c. 239 (C. 54A:9-8.1) and changes thereto, and any other procedures necessary to comply with Pub.L. 98-378.1 L.

### **2A:17-56.20. Late fee interest**

- a. In enforcing all existing and future orders for support, and notwithstanding other provisions to the contrary, the State IV-D agency, without a new order, shall have the authority to assess interest or late payment fees on any support order not paid within 30 days of the due date.
- b. The late payment fee or interest shall be determined by the State IV-D agency within amounts specified by the federal Department of Health and Human Services.
- c. The fee or interest shall accrue as arrearages accumulate and shall not be reduced upon partial payment of arrears. The fee or interest may be collected only after the full amount of overdue support is paid and all State requirements for notice to the obligor have been met.
- d. The collection of the fee or interest shall not directly or indirectly reduce the amount of current or overdue support paid to the obligee to which it is owed.
- e. The late payment fee or interest shall be uniformly applied in all cases administered under the State IV-D program, including public assistance, non-public assistance, and resource family cases.

### **2A:17-56.21. Overdue support; release of information to consumer or credit reporting agency by state IV-D agency**

- a. The State IV-D agency shall have the authority to make available the name of any delinquent obligor and the amount of overdue support owed by the obligor to credit reporting agencies, subject to the conditions set forth in this section and privacy safeguards established by the commissioner. This information shall be provided only to an entity that has demonstrated to the satisfaction of the State IV-D agency that the entity is a credit reporting agency.
- b. In all Title IV-D cases where the obligor is in arrears, the information shall be made available to credit reporting agencies.
- c. The State IV-D agency may establish a fee for all requests which will be uniformly applied in all Title IV-D cases. Any fee charged shall be limited to the actual cost of providing the information.



d. Information with respect to a delinquent obligor shall be reported to credit reporting agencies only after the obligor has been afforded all procedural due process required under State law including notice and a reasonable opportunity to contest the accuracy of the information.

e. The State IV-D agency shall comply with all applicable procedural due process requirements before releasing information and may request information on an obligor from a credit reporting agency only after noticing the obligor of the State IV-D agency's intent to request the information.

**2A:17-56.22. Fees for application, collection of child support**

a. The State IV-D agency shall have the authority to charge an application fee to individuals not receiving Temporary Assistance for Needy Families who apply for IV-D services.

(1) The application fee shall be uniformly applied on a Statewide basis and shall be a flat dollar amount not to exceed \$25 or other amount as may be appropriate for any fiscal year to reflect administrative costs.

(2) The fee shall be collected directly from the individual who applied for IV-D services.

(3) The State IV-D agency shall determine by regulation the distribution of the fees collected.

b. In addition to the application fee, the State IV-D agency shall charge a \$25 annual fee for the collection of child support for IV-D services in those cases in which the State has collected at least \$500 on behalf of an individual receiving support for a child who has never received Temporary Assistance for Needy Families. The State IV-D agency shall have the authority to pay the fee using federal incentive dollars as available, and when not available, the State IV-D agency shall exercise its option under the federal "Deficit Reduction Act of 2005," Pub.L.109-171 and its implementing regulations to collect the fee from the non-custodial parent.

**2A:17-56.23. System for expediting child support cases; Supreme Court rule**

The Supreme Court shall adopt by court rule a system for expediting child support cases as required by Pub.L. 98-378 (42 U.S.C. § 601et seq.).

**2A:17-56.23a. Order or portion of order for child support; enforcement and entitlement to full faith and credit; prohibition of retroactive modification; exception**

Any payment or installment of an order for child support, or those portions of an order which are allocated for child support, whether ordered in this State or in another state, shall be fully enforceable and entitled as a judgment to

full faith and credit and shall be a judgment by operation of law on and after the date it is due. For obligors who reside or own property in this State, such judgments, once docketed with the Clerk of the Superior Court, shall have the same force and effect, be enforced in the same manner and be subject to the same priorities as a civil money judgment entered by the court. The State shall accord full faith and credit to child support judgments or liens of other states, whether arising by operation of law or having been entered by a court or administrative agency, when a Title IV-D agency, a party, or other entity seeking to enforce such a judgment or lien in this State files a Notice of Interstate Lien, in the form prescribed by the federal Office of Child Support Enforcement, and supporting documents with the Clerk of the Superior Court. An action to domesticate a foreign child support judgment or lien shall be consistent with the “Uniform Enforcement of Foreign Judgments Act,” P.L. 1997, c. 204 (C.2A:49A-25 et seq.). Liens against real and personal property shall be subject to the same enforcement procedures as other civil money judgments except that no judicial notice or hearing shall be required to enforce the lien. No payment or installment of an order for child support, or those portions of an order which are allocated for child support established prior to or subsequent to the effective date of P.L.1993, c. 45 (C.2A:17-56.23a), shall be retroactively modified by the court except with respect to the period during which there is a pending application for modification, but only from the date the notice of motion was mailed either directly or through the appropriate agent. The written notice will state that a change of circumstances has occurred and a motion for modification of the order will be filed within 45 days. In the event a motion is not filed within the 45-day period, modification shall be permitted only from the date the motion is filed with the court.

The non-modification provision of this section is intended to be curative and shall apply to all orders entered before, on and after the effective date of P.L.1993, c. 45 (C.2A:17-56.23a).

**2A:17-56.23b. Judgment for child support lien against net proceeds of settlement; priority**

a. A judgment for child support entered pursuant to P.L. 1988, c. 111 (C. 2A:17-56.23a) and docketed with the Clerk of the Superior Court shall be a lien against the net proceeds of any settlement negotiated prior or subsequent to the filing of a lawsuit, civil judgment, civil arbitration award, inheritance or workers’ compensation award. The lien shall have priority over all other levies and garnishments against the net proceeds of any settlement negotiated prior or subsequent to the filing of a lawsuit, civil judgment, civil arbitration award, inheritance or workers’ compensation award unless otherwise provided by the Superior Court, Chancery Division, Family Part. The lien shall not have priority over levies to recover unpaid income taxes owed to the State. The

lien shall stay the distribution of the net proceeds to the prevailing party or beneficiary until the child support judgment is satisfied.

As used in this act “net proceeds” means any amount of money, in excess of \$2,000, payable to the prevailing party or beneficiary after attorney fees, witness fees, court costs, fees for health care providers, payments to the Medicaid program under section 6 of P.L. 1979, c. 365 (C. 30:4D-7.1), reimbursement to the Division of Employment Security in the Department of Labor, the employer or employer’s insurance carrier for temporary disability benefits that may have been paid pending the outcome of a workers’ compensation claim as provided by section 1 of P.L. 1950, c. 174 (C. 34:15-57.1), reimbursement to an employer or the employer’s workers’ compensation insurance carrier as provided in R.S. 34:15-40, and other costs related to the lawsuit, inheritance or settlement are deducted from the award, proceeds or estate; “prevailing party” or “beneficiary” shall not include a partnership, corporation, limited liability partnership, financial institution, government entity or minor child; and “agent” means an authorized representative of the prevailing party or beneficiary, a union representative, an executor or administrator of a decedent’s estate, an arbitrator or any other person or entity if such person or entity is responsible for the distribution of net proceeds to a prevailing party or beneficiary.

b. Before distributing any net proceeds of a settlement, judgment, inheritance or award to the prevailing party or beneficiary:

- (1) the prevailing party or beneficiary shall provide the attorney, insurance company or agent responsible for the final distribution of such funds with a certification that includes the prevailing party’s or beneficiary’s full name, mailing address, date of birth and Social Security number; and
- (2) the attorney representing the prevailing party or beneficiary shall initiate a search of child support judgments, through a private judgment search company that maintains information on child support judgments, to determine if the prevailing party or beneficiary is a child support judgment debtor.

If the prevailing party or beneficiary is not represented by an attorney, the judgment search shall be initiated by the opposing attorney, insurance company or agent before the proceeds are distributed to the prevailing party or beneficiary. In the case of a workers’ compensation action, the Administrative Office of the Courts shall, at least once every 60 days, transmit information on child support judgment debtors to the Division of Workers’ Compensation in the Department of Labor. The information shall include the debtor’s name, Social Security number, the amount of the child support judgment, the Probation Division case number and the Probation Division office to which the judgment is payable. The Division of Workers’ Compensation shall match the data received on child support judgment debtors against the information it maintains for individuals who have filed workers’ compensation claims

with the division. When a match is identified, the Division of Workers' Compensation shall notify the appropriate judge of compensation of the child support judgment before the decision, award, determination, judgment or order approving the settlement is rendered. The judge of compensation shall incorporate in the decision, award, determination, judgment or order approving the settlement, an order requiring the employer or the employer's insurance carrier to contact the Probation Division to satisfy the child support judgment out of the net proceeds of the workers' compensation award, order or settlement before any such monies are paid to the employee. The Division of Workers' Compensation shall be immune from any civil liability that may arise from any information provided by the division or any order issued by a judge of compensation relating to a child support judgment, in accordance with this section. In the case of judgments or settlements resulting from a labor arbitration involving employees of a school board or school district, a judgment search shall be initiated by the school board or district prior to the release of any net proceeds to the employees and only if there is an income withholding for child support active against the employee in the records of the school board or district. In the case of an inheritance, the executor or administrator of the decedent's estate shall initiate the judgment search. The judgment search company shall provide a certification to the attorney, insurance company, agent or party initiating the lawsuit identifying whether or not the prevailing party or beneficiary is a child support judgment debtor.

In the case of net proceeds that are to be paid through a structured settlement or other payment plan, the attorney, insurance company or agent shall be required to conduct the child support judgment search only at the time of settlement or prior to the distribution of the first payment under the plan. If a child support judgment is identified, the attorney, insurance company or agent shall provide the Probation Division with a copy of the structured settlement or payment plan within 30 days of identifying the child support judgment. If there are no attorneys representing either party in a civil lawsuit, the party bringing the lawsuit shall initiate the judgment search and shall be required to file the certification with the court at least 10 working days prior to the trial or with the stipulation that the certification shall be filed at the time of the settlement or dismissal of the lawsuit.

For monies deposited with the court, no distribution of funds shall be made until the attorney, prevailing party or beneficiary provides the Clerk of the Superior Court with a copy of the certification showing that the prevailing party or beneficiary is not a child support judgment debtor. The fee for a judgment search which is required by this section shall not exceed \$10 for each name of a child support judgment debtor that is searched. The fee for a judgment search is chargeable against the net proceeds as a cost of the settlement, judgment, inheritance or award.

c. If the certification shows that the prevailing party or beneficiary is not a child support judgment debtor, the net proceeds may be paid to the prevailing party or beneficiary immediately. If the certification shows that the prevailing party or beneficiary is a child support judgment debtor, the attorney, insurance company or agent that initiated the search shall contact the Probation Division of the Superior Court to arrange for the satisfaction of the child support judgment. The attorney, insurance company or agent shall notify the prevailing party or beneficiary of the intent to satisfy the child support judgment prior to the disbursement of any funds to the prevailing party or beneficiary. Upon receipt of a warrant of satisfaction for the child support judgment, the attorney, insurance company or agent shall pay the balance of the settlement, judgment, award or inheritance to the prevailing party or beneficiary. If the net proceeds are less than the amount of the child support judgment, the entire amount of the net proceeds shall be paid to the Probation Division as partial satisfaction of the judgment.

If there are no attorneys representing either party in a civil lawsuit and the certification filed with the court shows that the prevailing party or beneficiary is a child support judgment debtor, the court shall order that the opposing party pay the amount of the child support judgment to the Probation Division before any funds are paid to the prevailing party or beneficiary. The court shall also insure that any judgment related to the lawsuit docketed with the Clerk of the Superior Court reflect the Probation Division's superior claim to such funds.

d. An attorney, insurance company or agent shall not be liable for distributing net proceeds to the prevailing party or beneficiary based on the results of a judgment certification showing the prevailing party or beneficiary is not the debtor of a child support judgment, if it is later shown that the prevailing party or beneficiary provided inaccurate personal information on the initial certification to the attorney, the insurer or agent.

e. An attorney, insurance company or agent who, in accordance with this act, satisfies a child support judgment from the net proceeds of a settlement, judgment, inheritance or award, shall not be liable for payments which otherwise would have been made pursuant to subsection a. of this section which were not so identified to the attorney, insurance company or agent at the time of satisfaction.

f. An attorney, insurance company or agent who, in accordance with this act, satisfies a child support judgment from the net proceeds of a settlement, judgment, inheritance or award, shall not be liable to the prevailing party or beneficiary or to that party's creditors.

g. An attorney shall not be required to challenge a child support judgment unless retained by the prevailing party or beneficiary to do so.

h. A private judgment search company is prohibited from using any information provided by an attorney, insurance company or agent in accordance with this act for any purpose other than: (1) determining if the prevailing party or beneficiary is the debtor of a child support judgment; and (2) preparing a certification as required pursuant to subsection b. of this section.

i. To the extent feasible and permitted by the Rules of Court, the Administrative Office of the Courts may share information on a child support judgment debtor with an insurance carrier for the sole purpose of complying with the provisions of P.L. 2000, c. 81 (C. 2A:17-56.23b et al.).

#### **2A:17-56.24. County probation departments; duty to monitor support enforcement program; reports**

a. The probation department in each county shall monitor the overall implementation of the State's child support enforcement program pursuant to Part D of subchapter IV of the Social Security Act (42 U.S.C. § 651et seq.), to ensure compliance with the provisions of this amendatory and supplementary act by collecting and maintaining individual and aggregate case statistics as required by the Administrative Office of the Courts.

b. The probation department in each county shall provide aggregate statistical reports of case statistics monthly to the State IV-D agency and the Administrative Office of the Courts.

c. The State IV-D agency shall compile the monthly statistical reports submitted by the probation departments and report to the Legislature on the agency's assessment of the effectiveness of this amendatory and supplementary act in enforcing support orders, 18 months after the effective date of this amendatory and supplementary act.

#### **2A:17-56.25. Rules and regulations**

The Department of Human Services shall promulgate rules and regulations pursuant to its rule-making authority under the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:148-1et seq.) in order to effectuate the purposes of this act.

#### **2A:17-56.27. Short title; Child Support Collection Reform Act**

This act shall be known and may be cited as the "Child Support Collection Reform Act."

#### **2A:17-56.28. Legislative findings and declaration**

The Legislature finds and declares that:

a. There is a direct correlation between children receiving AFDC benefits and non-payment of child support obligations.

b. Based on the 1992 Kids Count Report for New Jersey evidencing the

increased number of children on welfare and living in poverty, it is necessary to make child support collections a major priority and expedite these collections through more efficient means.

c. The number of AFDC cases and the number of those cases that can benefit from expedited and more efficient child support collection is about 31,500.

d. It is the intent of this legislation that the State establish a pilot project whereby private collection agencies would be responsible for collecting outstanding child support in order to study the possibility that this method of collection may be the more effective way for the State to deal with the problem of delinquent child support.

**2A:17-56.29. Pilot project for collection of child support arrearages by private collection agency**

a. The Commissioner of Human Services shall establish a pilot project in three counties whereby the county probation department shall enter into a contract with a private collection agency for the purpose of collecting from an obligor, any arrearage of child support owed to a custodial parent that has not been paid for the past six months. Cases forwarded to the private collection agency shall include those whose arrearages have been outstanding for at least 18 months, but not more than 10% of the cases shall be delinquent for more than 18 months.

b. The obligor parent shall be responsible for payment of the private collection agency fee, which fee shall be a percentage of the amount collected in the contract.

c. Once an obligor parent becomes current on his child support payment and has established a regular payment schedule for at least four months, the case shall be referred back to the county probation department.

d. The county probation department shall be required to provide a listing of all outstanding cases of child support to the private collection agency under contract to collect the arrearage. Any arrearage collected by the private collection agency shall be forwarded to the county probation department for disbursement to the custodial parent. The disbursement shall not exceed 10 calendar days from the date of receipt by the probation department. The contract shall be made and awarded pursuant to the provisions of the “Local Public Contracts Law,” P.L.1971, c. 198 (C. 40A:11-1 et seq.).

**2A:17-56.30. Establishment of pilot project; monitoring; evaluation**

The pilot project shall be established in Camden, Essex and Hudson counties. The commissioner shall monitor and evaluate the pilot project during the first year after its establishment and determine whether the use of private collection agencies should be used throughout the State. The commissioner

shall also evaluate the feasibility of establishing a centralized data base which would coordinate the activities of the Department of Human Services and the Administrative Office of the Courts.

**2A:17-56.31. Adoption of standards**

The Administrative Office of the Courts, in consultation with the Department of Human Services, shall adopt standards concerning the qualifications and responsibilities of private collection agencies that may enter into contracts with the probation departments and the contract provisions, including maximum fees that can be charged. The contracts shall comply with all applicable federal program requirements.

**2A:17-56.32. Application for waivers**

The Department of Human Services shall apply for any waivers from the federal government which are necessary for approval and implementation of this act.

**2A:17-56.33. Annual report; contents**

The Department of Human Services, in conjunction with the Administrative Office of the Courts, shall submit an annual report to the Governor and the Legislature by December 31 of each year about the pilot project. This report shall contain, but not be limited to:

- a. The number of cases referred by the probation departments to the collection agency;
- b. The dollar amount of each outstanding case;
- c. Cited number of cases in which an arrearage was collected and the dollar amount collected;
- d. The number of uncollected cases and the dollar amount represented by those cases; and
- e. An assessment of the success of the pilot project and the feasibility of establishing the use of private collection agencies Statewide.

**2A:17-56.34. County probation departments and state IV-D agency authorized to have access to information about putative fathers and child support from electronic sources**

The Probation Division, the State IV-D agency and its designees, subject to privacy safeguards, shall be authorized to receive information concerning putative fathers and child support obligors from the following sources through electronic or other appropriate means:

- a. To the extent permitted by RS.54:50-9, records of the Division of Taxation in the Department of the Treasury containing information concerning an obligor's income or assets;



- b. Direct, on-line access to the Division of Motor Vehicles' records, including, where possible, interface between automated systems;
- c. Any record, paper, document or entity deemed by the Probation Division, the State IV-D agency or its designee to be a potential source of information concerning an obligor's income or assets. In order to obtain information pursuant to this subsection, the Probation Division and the State IV-D agency shall have the authority, as designated by the Commissioner of the Department of Human Services, to compel the production of books, papers, accounts, records and documents by subpoena. The subpoena shall be served by certified and regular mail on the person or entity in possession of the information or record that is sought and such service shall be considered consistent with procedural due process requirements. In all other respects, a subpoena issued under this section shall be subject to the same procedures as a subpoena issued by other agencies of this State. Actions relating to a subpoena issued under this section shall be heard in the court;
- d. State lottery prize payments in excess of \$600 made by the Department of the Treasury;
- e. Record of a judgment or settlement of any civil action where a party is entitled to receive a monetary award made by the court or an inheritance; and
- f. Record of an out-of-court settlement.

**2A:17-56.35. Public utility records available if information not obtained from sources in § 2A:17-56.34; limitations; exemption**

- a. If the State IV-D agency and its designees are unable to obtain information pursuant to section 1of P.L.1995, c. 322 (C.2A:17-56.34), then the agency and its designees may seek verifying information from public utility and cable television companies as required by Pub.L.104-193. Such information shall be limited to identifying information necessary to establish the name and address, or residency, if different from the address, of putative fathers and child support obligors.
- b. A public utility or cable television company shall not be liable for damages for any civil action which may result from complying with the provisions of P.L.1995, c. 322 (C.2A:17-56.34 et seq.).
- c. A long distance carrier shall be exempt from the provisions of P.L.1995, c. 322 (C.2A:17-56.34 et seq.).

**2A:17-56.36. Rules and regulations**

The Commissioner of Human Services shall, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:148-1 et seq.), and in conjunction with the Supreme Court, the Division of Motor Vehicles, the

Administrative Office of the Courts and the Department of the Treasury, adopt and promulgate such rules and regulations as may be necessary for the implementation of this act, including, but not limited to: The protection of the confidential use of the information concerning putative fathers and child support obligors to safeguard against the unauthorized use, disclosure or publication of the information; and, the establishment of penalties for those cases in which the information is improperly used, disclosed or published beyond the purposes of this act.

**2A:17-56.41. Revocation or suspension of license for nonpayment of child support; notice; hearing**

a. If the child support arrearage equals or exceeds the amount of child support payable for six months or court-ordered health care coverage for the child is not provided for six months, or the obligor fails to respond to a subpoena relating to a paternity or child support action, or a child support-related warrant exists, and the obligor is found to possess a license in the State and all appropriate enforcement methods to collect the child support arrearage 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, advising the obligor that the obligor's license may be revoked or suspended unless, within 30 days of the postmark date of the notice, 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 a subpoena, or makes a written request for a court hearing to the Probation Division. If a child support-related warrant for the obligor exists, the professional, occupational, recreational or sporting license revocation or suspension shall 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 as required by the court order, or surrenders to the county sheriff or the Probation Division.

b. If the obligor fails to take one of the actions in subsection a. of this section within 30 days of the postmark date of the notice and there is proof that service on the obligor was effective, the Probation Division shall file a certification with the court setting forth the obligor's non-compliance with the support order and the obligor's failure to respond to the written notice of the potential license suspension or revocation. If, based on the papers filed by the Probation Division, the court is satisfied that service on the obligor was effective as set forth in this section, it shall without need for further due process or hearing, enter a court order suspending or revoking all licenses held by the obligor. Upon the entry of the order, the Probation Division shall forward a copy to the obligor and all appropriate licensing authorities.

For the purposes of this section, 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 Division of Motor Vehicles in the Department of Transportation, the Division of Taxation in the Department of the Treasury and the Departments of Labor and Corrections. 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, before any adverse action is taken based upon the party's failure to respond to the notice.

c. If the obligor requests a hearing, the Probation Division shall file a petition for a judicial hearing in accordance with section 5 of P.L.1996, c. 7 (C.2A:17-56.43). The hearing 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 health care coverage as ordered, or responds to the subpoena or surrenders to the county sheriff or the Probation Division, the license revocation process shall be terminated. 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. The court shall consider the Probation Division's petition to revoke or suspend a license in accordance with section 5 of P.L.1996, c. 7 (C.2A:17-56.43).

**2A:17-56.42. Application for payment of child support through the probation division**

Child support payments not presently made through the Probation Division shall be so made, upon the application of the obligee to the Probation Division and prior to the application of the provisions of this act.

**2A:17-56.43. Conditions for revocation or suspension of license; court ordered payment schedule**

The court shall suspend or revoke a license 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, health care coverage has not been provided as ordered pursuant to section 3 of P.L.1996, c.7 (C.2A:17-56.41), or there has been no response to a subpoena, 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 a driver's license prior to a professional 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. 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 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 obligee or Probation Division, and without further hearing, order the immediate revocation or suspension of all licenses held by the obligor. 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.

**2A:17-56.44. Notification of licensing authority; surrender of license; reinstatement upon satisfaction of child support arrearages**

a. The Probation Division shall provide the licensing authority with a copy of the order requiring the suspension or revocation of a license. Upon receipt of an order requiring the suspension or revocation of a license, the licensing authority shall immediately notify the licensee of the effective date of the suspension or revocation, which shall be 20 days after the postmark of the notice, direct the licensee to refrain from engaging in the activity associated with the license, surrender any license as required by law, and inform the licensee that the

license shall not be reinstated until the court or Probation Division certifies that the conditions which resulted in the suspension or revocation are satisfied. The Probation Division and the State IV-D agency in association with the affected licensing authorities may develop electronic or magnetic tape data transfers to notify licensing authorities of restrictions, suspensions, revocations and reinstatements. No liability shall be imposed on a licensing authority for suspending or revoking a license if the action is in response to a court order issued in accordance with P.L.1996, c. 7(C.2A:17- 56.41 et seq.). Licensing authorities shall not have jurisdiction to modify, remand, reverse, vacate or stay a court order to restrict, suspend or revoke a license for non-payment of child support.

b. If a licensee, upon receipt of the notice of suspension or revocation from the licensing authority, disputes that he is an obligor, the licensee shall notify the licensing authority and the Probation Division by registered mail within 20 days of the postmark 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 an obligor. If the Probation Division determines that the licensee is an obligor; the Probation Division shall file a petition for a judicial hearing on the issue of whether the licensee is an obligor. The hearing shall occur within 30 days. If the Probation Division determines that the licensee is not an obligor; the Probation Division shall so notify the licensee and the licensing authority. The licensing authority shall not suspend or revoke a person's license, if the licensing authority received proper notice of the licensee's request for a hearing pursuant to this subsection, until the court finds that the licensee is an obligor. The Probation Division shall notify the licensing authority of the court's finding. Upon receipt of the court's finding that the licensee is an obligor, the licensing authority shall immediately suspend or revoke the obligor's license without additional review or hearing.

c. The revocation or suspension of a license ordered by the court in accordance with P.L.1996, c. 7 (C.2A:17-56.41 et seq.) shall continue until the Probation Division or the obligor files with the licensing authority a certified court order restoring the license.

d. Each licensing authority shall require license applicants to certify on the license application form, under penalty of perjury, that the applicant does not have a child support obligation, the applicant does have such an obligation but the arrearage amount does not equal or exceed the amount of child support payable for six months and any court-ordered health care coverage has been provided for the past six months, the applicant has not failed to respond to a subpoena relating to a paternity or child support proceeding, or the applicant is not the subject of a child-support related warrant. A license shall not be granted to an obligor who applies for a license if there is an arrearage equal to or exceeding the amount of child support payable for six months, the

applicant has not provided court-ordered health care coverage during the past six months or the applicant has failed to respond to a subpoena relating to a paternity or child support proceeding or is the subject of a child support-related warrant. The application form shall state that making a false statement may subject the applicant to contempt of court. It shall also state that if the applicant's certification is found to be false, the licensing authority shall take disciplinary action including, but not limited to, immediate revocation or suspension of the license.

e. For all licenses issued or renewed in the State after the effective date of P.L.1996, c. 7(C.2A:17-56.41 et seq.), the licensing authority shall record the full name, mailing address, Social Security number and date of birth of the applicant or licensee. All affected licensing authorities shall cooperate and enter into agreements with the Probation Division and the State IV-D agency to exchange information to effectuate the purposes of P.L.1996, c. 7 (C.2A:17- 56.41 et seq.). The Division of Motor Vehicles in the Department of Transportation and other appropriate licensing agencies shall amend their regulations and public notices to permit Social Security numbers collected by those agencies to be used for child support enforcement purposes. License information obtained through data matches with licensing authorities shall be maintained on the State case registry in the Department of Human Services for future use.

**2A:17-56.45. Revocation, suspension or reinstatement fees to be paid by obligor**

The obligor shall pay all fees associated with the revocation, suspension or reinstatement of a license. Any fees paid by the obligor to the licensing authority to issue, renew or maintain a license shall not be refunded if the license is suspended or revoked in accordance with P.L.1996, c. 7 (C. 2A:17-56.40 et al.).

**2A:17-56.46. Information to be available to insurance companies; certain rates increases prohibited**

Information regarding driver's licenses suspended or revoked in accordance with P.L.1996, c. 7 (C.2A:17-56.40 et al.) shall be made available by the Division of Motor Vehicles to insurance companies that issue motor vehicle policies. Insurance companies are prohibited from increasing a policyholder's rates solely because a license was suspended or revoked in accordance with P.L.1996, c. 7 (C. 2A:17-56.40 et al.).

**2A:17-56.61. Employers and labor organizations; new hire reporting requirements**

a. All employers and labor organizations doing business in the State shall report to the department, or its designee:

(1) the hiring of, or contracting with, any person who works in this State and to whom the employer anticipates paying earnings; and

(2) the re-hiring or return to work of any employee who is laid off, furloughed, separated, granted a leave without pay, or terminated from employment in this State.

b. An employer shall submit the information required in this subsection within 20 days of the hiring, re-hiring, or return to work of the employee, except that an employer who transmits reports magnetically or electronically shall report every 15 days in accordance with rules adopted by the commissioner. The report shall contain:

(1) the employee's name, address, date of birth and Social Security number; and

(2) the employer's name, address, and federal tax identification number.

c. An employer who fails to report, as required in this section, shall be given a written warning by the department for the first violation and shall be subject to a civil penalty which shall not exceed: \$25 per violation, or, if the failure to report is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, \$500.

Payment of the penalty may not be required; however, if in response to the imposition of the penalty, the person or entity complies immediately with the new hire reporting requirements. All penalties assessed under this section shall be payable to the State Treasurer and may be recovered in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1et seq.

d. The information provided pursuant to this section may be shared with any federal or State agency as deemed appropriate by the commissioner.

**2A:17-56.62. Fraudulent transfers by child support judgment debtors**

In any case in which the department knows of a transfer by a child support judgment debtor pursuant to the "Uniform Voidable Transactions Act," R.S.25:2-20 et seq., with respect to which a prima facie case is established, the department shall seek to void the transfer or obtain a settlement in the best interest of the child support creditor.

### **2A:17-56.63. State disbursement unit**

- a. The department shall be responsible for the establishment of a State disbursement unit 1, on or before October 1, 1999, for the collection and disbursement of payments under support orders in all Title IV-D cases, and in all non-Title IV-D cases in which the support order was initially issued in the State on or after January 1, 1994, and in which the income of the non-custodial parent is subject to income withholding.
- b. The department shall provide employers with one location to which income withholding shall be sent.
- c. The department shall use automated procedures, electronic processes and computer driven technology to the maximum extent feasible, for efficient and economical collection and disbursement of support payments. All payments shall be disbursed in accordance with federal requirements.
- d. On or before October 1, 1999, the department shall establish the capability to disburse child support payments by direct deposit, upon request of the payee.

### **2A:17-56.64. Enforcement of support orders of other states**

- a. The department shall use administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce a support order, and shall promptly report the results of the enforcement procedure to the requesting state. The department shall respond to a request made by another state to enforce a support order through electronic means, when feasible.
- b. The department may, by electronic or other means, transmit to another state a request for assistance in enforcing support orders through administrative enforcement.
- c. The requesting state's request shall:
  - (1) include such information as will enable the state to which the request is transmitted to compare the information about the case to the information in the databases of the state; and
  - (2) constitute a certification by the requesting state:
    - (a) of the amount of support under an order that the payment of which is in arrears; and
    - (b) that the requesting state has complied with all procedural due process requirements applicable to each case.
- d. If the department provides assistance to another state pursuant to this section with respect to a case; neither state shall consider the case to be transferred to the caseload of the other state.



e. The department shall maintain records of: the number of requests for assistance received by the State; the number of cases for which the State collected support in response to the request; and the amount of support collected.

**2A:17-56.65. Transfer of cases; retention of jurisdiction**

The State IV-D agency and the court may transfer a case between local county welfare agency and Probation Division offices, respectively, without the need for additional filing by the petitioner or service of process upon the respondent to retain jurisdiction over the parties. Notice shall be provided to the parties advising of the transfer.

**2A:17-56.66. Adoption of administrative rules and regulations**

a. The commissioner, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), shall adopt regulations to effectuate the purposes of this act and to comply with the requirements of Pub.L.104-193; except that, notwithstanding any provision of P.L.1968, c. 410 (C.52:14B-1 et seq.) to the contrary, the commissioner may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this act, which regulations shall be effective for a period not to exceed six months and may, thereafter, be amended, adopted or readopted by the commissioner in accordance with the requirements of P.L.1968, c. 410 (C.52:14B-1 et seq.).

b. The Attorney General and the Commissioners of Environmental Protection, Labor, Banking and Insurance, Health and Senior Services, Corrections, Transportation and Community Affairs may, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), adopt regulations, as appropriate, to effectuate the purposes of this act and to comply with the requirements of Pub.L.104-193; except that, notwithstanding any provision of P.L.1968, c. 410 (C.52:14B-1 et seq.) to the contrary, the Attorney General and the respective commissioners may adopt, immediately upon filing with the Office of Administrative Law such regulations as the Attorney General or the respective commissioners deem necessary to implement the provisions of this act, which regulations shall be effective for a period not to exceed six months and may thereafter, be amended, adopted or readopted by the Attorney General or respective commissioners in accordance with the requirements of P.L.1968, c. 410 (C.52:14B-1 et seq.).

## **2A:17-57. Definition; construction of article**

As used in this article, “rights and credits” include all rights and credits which may be taken by writ of attachment against non-resident debtors, and also rights and credits of an equitable nature, except such income and property as is reserved or exempt by law, but wages, debts, earnings, salaries, income from trust funds and profits due and owing to a defendant in execution to the amount of less than \$48.00 a week shall not be liable to be seized or taken by virtue of any execution, civil process or order directing payments to be made in installments. If they amount to \$48.00 or more a week, not more than 10% thereof may be so seized or taken, unless they exceed the sum of \$7,500.00 per annum, in which case the court may order a larger percentage.

Nothing contained in this article or article 71 shall be construed as impairing the rights of an execution creditor under other provisions of this chapter or any law of this State relating to executions, or as against any trust which was created by or the fund held in trust has proceeded from the defendant in execution.

Garnishment is limited by federal statute 15 U.S.C. §1673.

### **§1673. Restriction on garnishment**

#### (a) Maximum allowable garnishment

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

#### (b) Exceptions

- (1) The restrictions of subsection (a) of this section do not apply in the case of
  - (A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of Title 11.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week; except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of garnishment order or process prohibited.

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

## D. CRIMINAL NON-SUPPORT

New Jersey's Code of Criminal Justice classifies as a fourth-degree offense the willful non-support of a spouse, child or other dependent. 2C:24-5 provides:

### **2C:24-5. Willful non-support**

A person commits a crime of the fourth degree if he willfully fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent. In addition to the sentence authorized by the code, the court may proceed under section 2C:62-1.

See also the provisions of 2C:62-1, which provides an alternative sentence for violations or alleged violations of 2C:24-5.

### **2C:62-1. Support orders for willful non-support**

- a. Order for support pendente lite. At any time after a sworn complaint is made charging an offense under section 2C:24-5 and before trial, the court may enter such temporary order as may seem just, providing for the support of the spouse or children, or both, pendente lite, and may punish a violation of such order as for contempt.
- b. Order for future support; release on recognizance conditioned on obeying order; periodic service of sentence. Before trial, with the consent of the defendant, or after conviction, instead of imposing the penalty provided for violation of section 2C:24-5, or in addition thereto, the court, having regard to the circumstances and the financial ability or earning capacity of the defendant, may make an order, which shall be subject to change by the court from time to time as circumstances may require, directing the defendant to pay a sum certain periodically to the spouse, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court as trustee. The court may release the defendant from custody on probation, upon his or her entering into a recognizance, with or without surety, in such sum as the court may order and approve. The condition of the recognizance shall be such that if the defendant shall personally appear in court whenever ordered to do so, and shall comply with the terms of the order, or of any modification thereof, the recognizance shall be void, otherwise it will remain in full force and effect. The court may, in addition to or in place of any order under this section, order and direct that any sentence of imprisonment be served periodically, instead of consecutively, during periods of time between Friday at 6 p.m. and Monday at 8 a.m. or at other

times or on other days, whenever the court determines the existence of proper circumstances and that the ends of justice will be served thereby. Any person so imprisoned shall be given credit for each day or fraction of a day to the nearest hour actually served.

c. Violation of order. If the court be satisfied by information and due proof under oath that the defendant has violated the terms of the order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence the defendant under the original conviction or plea of guilty, or enforce the suspended sentence or punish for contempt, as the case may be. In case of forfeiture of a recognizance, and the enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or part to the spouse, or to the guardian, custodian or trustee of such minor child or children.

d. Proof of marriage; husband and wife as witness. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is required in a civil action. In no prosecution under this chapter shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable witnesses to testify against each other as to any and all relevant matters, including the fact of the marriage and the parentage of the child or children.

e. Place of residence confers jurisdiction of offense. The place of residence at the time of the desertion of the spouse, child or children, under the provisions of this chapter, shall confer jurisdiction of the offense set forth therein, upon the county, county district, or juvenile and domestic relations court having territorial jurisdiction of the place of such residence, until the deserted party shall establish a legal residence in some other county or State.

The court can order community service in lieu of incarceration for non-support violations. N.J.S.A. 2A:34-23e provides:

**2A:34-23e. Delinquent child support obligors, community service in addition to incarceration for contempt**

In addition to incarceration of a person found by the court to be in contempt of a support order issued by the Superior Court, Chancery Division, Family Part, the court may order such person to perform community service for part, or all, of the person's period of incarceration.

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## SIGNIFICANT CASES

*Saltzman v. Saltzman*, 290 N.J. Super. 117 (App. Div. 1996)

Payor has the right to a hearing on the issue of his ability to pay support prior to incarceration.

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### E. ADDITIONAL REMEDIES FOR VIOLATION OF PARENTING TIME, ALIMONY OR SUPPORT

When a parent has been found to have violated an order respecting custody or parenting time, the court may also order makeup time, economic sanctions, modification or transportation arrangements, counseling, custody modification, community service, or incarceration in the event of future violation.

#### **5:3-7. Additional Remedies on Violation of Orders Relating to Parenting Time, Alimony, Financial Maintenance, Support, or Domestic Violence Restraining Orders**

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

(b) Alimony, Financial Maintenance, or Child Support Orders. On finding that a party has violated an alimony, financial maintenance, or child support order the court may, in addition to remedies provided by R. 1:10-3, grant any of the following remedies, either singly or in combination: (1) fixing the amount of

arrearages and entering a judgment upon which interest accrues; (2) requiring payment of arrearages on a periodic basis; (3) suspension of an occupational license or driver's license consistent with law; (4) economic sanctions; (5) participation by the party in violation of the order in an approved community service program; (6) incarceration, with or without work release; (7) issuance of a warrant to be executed upon the further violation of the judgment or order; and (8) any other appropriate equitable remedy.

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

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## SIGNIFICANT CASES

### ***Holtham v. Lucas*, 460 N.J. Super. 308, 214 A.3d 1226 (App. Div. 2019)**

Provision within marital settlement agreement establishing per diem charge of \$150 for any breach within agreement was a penalty under traditional contract principles; however, the family court is not bound by the contract principles underlying the penalty rule governing enforceability of stipulated damages.

### ***A.J. v. R.J.*, 461 N.J. Super. 173, 219 A.3d 579 (App. Div. 2019)**

In context of entry of order transferring child custody as a sanction for violation of an order relating to parenting time, affording both parents the ability to address whether a transfer of custody is in the best interests of the children and requiring the court to make the necessary statutory findings provides the necessary process and a reviewable record.

## GUIDE TO FILING DATES

Summons	serve 15 days from date of filing
Answer and/or counterclaim	35 days
Answer to counterclaim	20 days
Custody/visitation plan	75 days after last responsive pleading
Notice to correspondent	30 days after initial pleading
Notice of equitable distribution, alimony, child support and other relief (notice of proposed judgment)	20 days prior to default hearing
Case information statement	within 20 days of answer or appearance
Amended case information statement	20 days prior to trial
Notice of motion	24 days prior to date*
Opposing certification	15 days prior to date (25-page certification limit)
Responding certification	eight days prior to date*
Interrogatories	40 days after last pleading
Answers to interrogatories	60 days after service of interrogatories
Completion of discovery	90 days if expedited track, 120 days if standard track
Notice to produce	filed any time but must be answered within 30 days
Notice of deposition	10 days prior to deposition
Request for admission	may be served any time, but must be answered within 30 days
Motion for summary judgment	28 days prior to return date
Opposing certification and cross-motion	10 days prior to return date
Responding certification	four days prior to return date
Motion for new trial	20 days after conclusion



Motion for reconsideration	20 days after final order or judgment
Relief from judgment	one year
Notice of appeal	45 days
Post-judgment motion for modification	24 days prior to date
Opposing certification	15 days prior to date
Responding certification	eight days prior to date

\* Certification and responding certification cannot be more than a total of 25 pages combined





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