

## PREPARATION OF PENDENTE LITE APPLICATIONS - Part Two

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### **PERTINENT RULES OF COURT**

#### R. 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).

#### R. 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 for bail pursuant to R. 3:26-2(d) or 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 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.

(b) Civil Motions in Chancery Division and Specially Assigned Cases. When a civil action, by reason of its complexity or other good cause, has been specially assigned prior to trial to an individual judge for disposition of all pretrial and trial proceedings and in all cases pending in the Superior Court, Chancery Division, all motions therein shall be made directly to the judge assigned to the cause, who shall determine the mode and scheduling of their disposition. 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.

(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. 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.

If too much support is being paid voluntarily, payor spouses should know that this should be modified, in order to avoid the risk of an adverse inference being drawn that there was an ability to pay that particular sum. The ultimate risk is that the payment might likely continue to be ordered in the future. If insufficient support is being received, on the other hand, the recipient spouse should be made aware that the continuation of that practice will likely create the inference that the money paid is sufficient to satisfy the needs of the payee spouse.

(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 so note indicating whether the findings and conclusions were written or oral and the date on which they were rendered. 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.

#### R. 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. 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.

#### R. 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 filed with the judge.

#### R. 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. A reply brief, if any, shall be served and

submitted at least 4 days before the return date. 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.

R. 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.

R. 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).

R. 4:42-9 Counsel 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...

(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.

R. 5:3-1 Applicability

R. 5:3-2 Closed Hearings

R. 5:3-3 Appointment of Experts

(a) Medical, Psychological and Social Experts. Whenever the court, in its discretion, concludes that disposition of an issue will be assisted by expert opinion, and whether or not the parties propose to offer or have offered their own experts' opinions, the court may order any person under its jurisdiction to be examined by a physician, psychiatrist, psychologist or other health or mental health professional designated by it. No such appointment, however, shall be made of an expert who is providing or has provided therapy to any member of that person's family. The court may also direct who shall pay the cost of such examination. The court may also require a social investigation by a probation officer or other person at any time during the proceeding before it.

(b) Economic Experts. Whenever the court concludes that disposition of an economic issue will be assisted by expert opinion, it may in the same manner as provided in Paragraph (a) of this rule appoint an expert to appraise the value of any property or to report and recommend as to any other issue, and may further order any person or entity to produce documents or to make available for inspection any information or property, which is not privileged, that the court determines is necessary to aid the expert in rendering an opinion. The court may also direct who shall pay the cost of such expert appraisal or report.

(c) Selection of Experts. Experts appointed hereunder may be selected by the mutual agreement of the parties or independently by the court. The court shall establish the scope of the expert's assignment in the order of appointment. Neither party shall be bound by the report of the expert so appointed.

(d) Investigation by Experts. Any expert appointed by the court shall be permitted to conduct an investigation independently to obtain information reasonable and necessary to complete his or her report from any source, and may make contact directly with any party from whom information is sought within the scope of the order of appointment. The parties shall be entitled to have their attorneys and/or experts present during any examination by a court appointed expert. The expert shall not communicate with the court except upon prior notice to the parties and their attorneys who shall be afforded an opportunity to be present and to be heard during any such communication between the expert and the court. A request for communication with the court may be informally conveyed by the expert by letter or telephonic means, whereafter further communications with the court, which may be conducted informally by conference or conference call, shall be done only with the participation of the parties and their counsel.

(e) Submission of Report. Any finding or report by an expert appointed by the court shall be submitted upon completion to both the court and the parties. The parties shall thereafter be permitted a reasonable opportunity to conduct discovery in regard thereto, including, but not limited to, the right to take the deposition of the expert.

(f) Use of Evidence. An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed expert's findings. Any finding or report by an expert appointed by the court may be entered into evidence upon the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.

(g) Use of Private Experts. Nothing in this rule shall be construed to preclude the parties from retaining their own experts, either before or after the appointment of an expert by the court, upon the same or similar issues.

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

(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, nullity, support, alimony, custody, parenting time, equitable distribution, separate maintenance, enforcement of interspousal agreements relating to family type matters and claims relating to family type matters in actions between unmarried persons. A pendente lite allowance may include a fee based on an evaluation of prospective services likely to be performed and the respective financial circumstances of the parties. The court may also, on good cause shown, direct the parties to sell, mortgage, or otherwise encumber or pledge marital 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; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

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

(2) After the fixing of the trial date or the Matrimonial Early Settlement Panel hearing, whichever is earlier, an attorney may withdraw from the action only by leave of court on motion on notice to all parties. The motion shall be supported by the attorney's affidavit or certification setting forth the reasons for the application and shall have annexed the written retainer agreement. In deciding the motion, the court shall consider, among other relevant factors, the terms of the written retainer agreement and whether either the attorney or the client has breached the terms of that agreement; the age of the action; the imminence of the Matrimonial Early Settlement Panel hearing date or the trial date, as appropriate; the complexity of the issues; the ability of the client timely to 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.

#### R. 5:3-7 Additional Remedies on Violation of Orders relating to Parenting Time, Alimony, or Support

(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 or Child Support Orders. On finding that a party has violated an alimony 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.

#### R. 5:5-1 Discovery

##### R. 5:5-2 Case Information Statements

(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. In all other family actions, a case information statement may be required by order on motion of the court or a party.

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nbsp; (b) Time and Filing. Except as otherwise provided in R. 5:7-2, a 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. The 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 to inform the court of any 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...

#### R. 5:5-4 Motions in Family Actions

(a) Motions. Motions in family actions shall be governed by R. 1:6-2(b) except that, in exercising its discretion as to the mode and scheduling of disposition of motions, the court shall ordinarily grant requests for oral argument on substantive and non-routine discovery motions and ordinarily deny requests for oral argument on calendar and routine discovery motions. When a motion is brought for enforcement or modification of a prior order or judgment, a copy of the order or judgment sought to be enforced or modified shall be appended to the pleading filed in support of the motion. When a motion is brought for the modification of an order or judgment for alimony or child support, the pleading filed in support of the motion shall have appended to it a copy of the prior Case Information Statement or Statements filed before entry of the order or judgment sought to be modified and a copy of a current Case Information Statement.

(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), a certification in support of a motion shall not exceed fifteen pages. A certification in opposition to a motion or in support of a cross-motion or both shall not exceed twenty-five pages. A reply certification to opposing pleadings shall not exceed ten pages.

(c) Time for Service and Filing. A notice of motion, except for motions brought pursuant to R. 1:10-3 and motions involving the status of a child, filed more than 45 days after the entry of the written judgment of divorce or annulment, other than an ex parte motion, shall be served and filed, together with supporting affidavits and briefs, when necessary, not later than 29 days before the time specified for the return date. For example, a motion must be served and filed on the Thursday for a motion date falling on a Friday 29 days later. Any opposing affidavits, cross-motions or objections shall be served and filed not later than 15 days before the return date. For example, a response must be served and filed on a Thursday for a motion date falling on a Friday 15 days later. Answers or responses to any opposing affidavits and cross-motions shall be served and filed not later than 8 days before the return date. For example, such papers would have to be served and filed on a Thursday for a motion date falling on the Friday of the following week. If service is made by mail, 3 days shall be added to the above time periods.

(d) Advance Notice. Every motion shall include the following language: 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. The response and/or cross-motion must be submitted to the court by a certain date. All pre-divorce motions, all enforcement motions (also known as motions for enforcement of litigants' rights, R. 1:10-3), or motions that deal with the status of children must be filed 16 days before the return date. (Since most motion days are on a Friday, motion papers must be filed on the Wednesday 16 days before.) Therefore, a response and/or cross motion must be filed eight days (Thursday) before the return date. All post-judgment motions, including all motions for modification of alimony, child support, custody, or parenting time/visitation must be filed 29 days (Thursday) before the (Friday) return date. Therefore, a response and/or cross-

motion must be filed 15 days (Thursday) before the return date. 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: \_\_\_\_\_ . Call the Family Division Manager's office (\_\_\_\_\_) 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.

(e) Tentative Decisions. In any Family Part motion scheduled for oral argument pursuant to this rule, the motion judge prior to the motion date may tentatively decide the matter on the basis of the motion papers, posting the tentative decision and making it available to the parties. After such tentative decision has been made, unless either party renews the request for oral argument, that request shall be deemed withdrawn and the tentative decision shall become final and shall be set forth in an appropriate order. If, however, either party renews the request for oral argument, the motion shall be argued as scheduled. This tentative motion decision process shall be subject to the general supervision of the Family Presiding Judge of the vicinage.

(f) Orders on Family Part Motions. Absent good cause to the contrary, a written order shall be entered at the conclusion of each motion hearing.

#### R. 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 an 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.

#### R. 5:6B Cost-of-Living Adjustments for Child Support Orders

#### R. 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.

(b) Restraints; Contempt. If pendente lite relief is sought, by way of preliminary restraint or to hold a party in contempt, the application shall be on petition and order to show cause.

#### R. 5:7-4 Alimony and Child Support

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

#### R. 5:7-6 Consolidated Enforcement and Modification Proceedings

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

In family actions in which the court finds that the custody of children is 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. 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 and the financial ability of the party to pay alimony or support or both. 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 of the county of venue, notwithstanding that one of the parties may live in another county, and the Family Division 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. Such investigation of the parties shall be conducted by the probation office of the county of the home state of the child, notwithstanding that one of the parties may live in another country or state.

R. 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 following 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.

R. 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 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.

R. 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 circumstances 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 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.

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