



NEW JERSEY STATE BAR ASSOCIATION

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February 10, 2023

Honorable Stuart Rabner, Chief Justice
Supreme Court of New Jersey
Hughes Justice Complex
25 W. Market Street
P.O. Box 970
Trenton, NJ 08611

Re: Proposal for Amendments to Family Part Rules

Dear Chief Justice Rabner:

I am pleased to enclose for your consideration proposed Court Rule amendments from the New Jersey State Bar Association (NJSBA). The amendments primarily address the rules governing practice in the Family Part. They have been widely studied and debated within the NJSBA and reflect the collective experience and expertise of our members who practice in the Family Part every day. They are proposed in the spirit of cooperation to further improve the handling of matrimonial matters for the benefit of all parties, including litigants, attorneys and judges. For that reason, we ask that the proposals be considered in an expedited fashion and not wait until the conclusion of the next Rules cycle.

The proposed amendments are fully outlined in the attached, but here is a summary of each:

- (1) Amend Rules 1:4-1 and 5:4-2 to eliminate reference to parties as Plaintiff and Defendant in Family Part matters, and use "In the Matter of," "In re Dissolution of," or "Petitioner v. Respondent" instead. This will ease the acrimonious tone the traditional references set in Family Part matters and will reflect an expectation that the parties will work together toward a common goal.
- (2) Amend Rules 1:38-1, 1:38-1A and 1:38-3 to eliminate the use of initials in case names and use full fictitious names instead. We understand that initials are used in the caption of opinions to protect the parties and prevent public access to personal information; however, the use of initials is confusing, resulting in several cases with the same initials and difficulty referencing opinions in future cases. Using fictitious names, such as *John Doe v. Jane Doe*, will alleviate that confusion and make it easier for litigants, attorneys and judges to remember case names that bear on the current case before the court.

- (3) Amend Rules 1:40-2 and -4 to incorporate the collaborative law privilege into the Court Rules, as recommended by the Supreme Court Committee on the Rules of Evidence in its 2019-2021 Report to the Court. The NJSBA previously advocated for inclusion of a collaborative law privilege in the Rules of Evidence, but the Court's Committee recommended the alternative that is proposed. The NJSBA believes it is important to recognize the collaborative law privilege afforded by statute in the court rules, just as the mediation privilege is recognized both in the statutes and rules.
- (4) Amend Rules 4:3-1 and 5:1-2 to move fee disputes between family law attorneys and clients where the client has waived the fee arbitration process to the Family Part. These amendments are intended to avoid the scenario created by *Kopec v. Moers*, 470 N.J. Super. 133 (App. Div. 2022), where the court held that fee disputes between family lawyers and their clients must be brought in the Chancery Division, Civil Part or Special Civil Part. The NJSBA believes that allowing these disputes to be heard in the Family Part will bring both fairness and efficiency to their resolution, as Family Part judges are in a much better position to make determinations about the reasonableness of the fees asserted, given their familiarity with the work that is conducted in family law matters. We note that all of the requirements under R. 1:20A-6, governing fee arbitration, should remain in place, and these changes would only apply to those actions that are pursued once fee arbitration is waived or concluded.
- (5) Amend Rule 5:5-4 to permit electronic service of all motions, cross-motions and reply service in the Family Part. Given the expansive role of e-filing through JEDS and the lack of eCourts availability for Family Part matters, coupled with the use of virtual proceedings, allowing electronic service of documents in the Family Part seems to be a reasonable step. This will provide cost savings to litigants, time savings for attorneys, and convenience for all.
- (6) Make changes to the Family Part Case Information Statement, as delineated in the attached report, to more particularly describe the information that is being sought.
- (7) Add a track to the already existing tracks on which cases are administratively placed entitled "Settled" or "Settled Case" to expedite the entry of final judgment in those matters. Many of our members have reported delays of several weeks to, at times, months, to obtain a final judgment of divorce, even where the parties have executed a Marital Settlement Agreement and advised the court of such. Adding a "settled" track will help to identify these cases for the court and streamline their final resolution.
- (8) Offer all of the Family Part forms on the Court's website in as many languages as possible to ensure all litigants can understand and use them.

Thank you for the Judiciary's consideration of these proposals. Again, the NJSBA requests that they be considered in an expedited fashion, as we believe the proposed changes will enhance the fair and efficient operation of the courts. We stand ready to work with the Judiciary to implement the proposals in the coming months for the benefit of all involved in the justice system and, in particular, the Family Part.

Respectfully,



Jeralyn L. Lawrence
President

cc: Hon. Glenn A. Grant, Administrative Director of the Courts
Timothy McGoughran, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director

**New Jersey State Bar Association
Recommendations for Court Rule Amendments
And Other Procedural Changes in the
Family Part
(Proposed Feb. 9, 2023)**

Recommendation 1

Amend Rules 1:4-1 and 5:4-2 to eliminate reference to parties as Plaintiff and Defendant in Family Part matters, and use "In the Matter of," "In re Dissolution of," or "Petitioner v. Respondent" instead. This will ease the acrimonious tone the traditional references set in Family Part matters and will reflect an expectation that the parties will work together toward a common goal.

RULE 1:4-1

(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. **In a complaint filed in the Chancery Division, Family Part, as set forth in R. 5:4-2, the filing party shall be designated as the Petitioner in lieu of Plaintiff, while the responding party shall be designated as the Respondent in lieu of the Defendant.**

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RULE 5:4-2

(a) Complaint Generally.

(1) Caption. All family actions shall be captioned in the Chancery Division Family Part. **The filing party shall be designated as the Petitioner in lieu of Plaintiff, while the responding party shall be designated as the Respondent in lieu of the Defendant.**

(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 **petitioner** 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.

...

(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 **petitioner** plaintiff or **respondent** 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.

...

Recommendation 2

Amend Rules 1:38-1, 1:38-1A and 1:38-3 to eliminate the use of initials in case names and use full fictitious names instead. We understand that initials are used in the caption of opinions to protect the parties and prevent public access to personal information; however, the use of initials is confusing, resulting in several cases with the same initials and difficulty referencing opinions in future cases. Using fictitious names, such as *John Doe v. Jane Doe*, will alleviate that confusion and make it easier for litigants, attorneys and judges to remember case names that bear on the current case before the court.

RULE 1:38-1

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. **In all cases where public access is permitted, the case headings and captions should utilize a full, fictitious name for each party rather than initials. In all cases where public access is not permitted, the case headings and captions should utilize the full, actual names for each party.**

RULE 1:38-1A

Trial court or appellate court decisions, whether rendered orally or in writing, and whether published or unpublished, may quote from or make reference to information in court records even when those records are excluded from public access. Court decisions include orders, judgments, opinions, dispositions, and decrees relating to judicial or administrative proceedings. **In all cases where public access is permitted, the case headings and captions should utilize a full, fictitious name for each party rather than initials. In all cases where public access is not permitted, the case headings and captions should utilize the full, actual name for each party.**

RULE 1:38-3

The following court records are excluded from public access, and therefore the full, actual names of the parties shall be utilized in lieu of initials for all case headings and captions:

...

Recommendation 3

Amend Rules 1:40-2 and -4 to incorporate the collaborative law privilege into the Court Rules, as recommended by the Supreme Court Committee on the Rules of Evidence in its 2019-2021 Report to the Court. The NJSBA previously advocated for inclusion of a collaborative law privilege in the Rules of Evidence, but the Court's Committee recommended the alternative that is proposed. The NJSBA believes it is important to recognize the collaborative law privilege afforded by statute in the court rules, just as the mediation privilege is recognized both in the statutes and rules.

RULE 1:40-2

Complementary Dispute Resolution (CDR) Programs 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 neutral panel, or attorneys and/or non-party participants pursuant to the family collaborative law process (N.J.S.A. 2A:23D-1, et. seq.), 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.

...

(c) "Facilitative Process," which includes mediation and family collaborative law process (N.J.S.A. 2A:23D-1 et. seq.), is a process by which a neutral third party facilitates communication between parties in an effort to promote settlement without imposition of the facilitator's own judgment regarding the issues in dispute.

...

RULE 1:40-4

...

(c) Evidentiary Privilege. A mediation or collaborative law 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 or the New Jersey Collaborative Law Act, N.J.S.A. 2A:23D-1 et. seq. A party may, however, establish the substance of the mediation or collaborative law communication in any such proceeding by independent evidence.

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Recommendation 4

Amend Rules 4:3-1 and 5:1-2 to move fee disputes between family law attorneys and clients where the client has waived the fee arbitration process to the Family Part. These amendments are intended to avoid the scenario created by *Kopec v. Moers*, 470 N.J. Super. 133 (App. Div. 2022), where the court held that fee disputes between family lawyers and their clients must be brought in the Chancery Division, Civil Part or Special Civil Part. The NJSBA believes that allowing these disputes to be heard in the Family Part will bring both fairness and efficiency to their resolution, as Family Part judges are in a much better position to make determinations about the reasonableness of the fees asserted, given their familiarity with the work that is conducted in family law matters. We note that all of the requirements under R. 1:20A-6, governing fee arbitration, should remain in place, and these changes would only apply to those actions that are pursued once fee arbitration is waived or concluded.

RULE 4:3-1

(a) Where Instituted.

(1) Chancery Division-General Equity. Actions in which the plaintiff's primary right or the principal relief sought is equitable in nature, except as otherwise provided by subparagraphs (2) and (3), shall be filed and heard in the Chancery Division, General Equity, even though legal relief is demanded in addition or alternative to equitable relief.

(2) Chancery Division-Probate Part. All actions pursuant to R. 4:83 et seq. shall be filed and heard in the Chancery Division, Probate Part.

(3) Chancery Division-Family Part. All actions in which the principal claim is unique to and arises out of a family or family-type relationship, including palimony actions, shall be filed and heard in the Chancery Division, Family Part. Actions cognizable in the Family Part shall include all actions and proceedings referenced in Part V of these rules, unless otherwise provided in subparagraph (a)(4) of this rule; all actions and proceedings formerly cognizable in the juvenile and domestic relations court; and all other actions and proceedings unique to and arising out of a family or family-type relationship, and all actions and proceedings relative to a fee dispute between attorney and client arising from an action or proceeding that was filed in the Chancery

Division, Family Part as described in this paragraph. Notwithstanding the foregoing, nothing shall abrogate the rights and obligations provided under R. 1:20A-6 pertaining to fee arbitration prior to a lawsuit being filed to recover a fee.

...

RULE 5:1-2

The following actions shall be cognizable in the Family Part:

(a) Family Actions Generally. All actions in which the principal claim is unique to and arises out of a family or family-type relationship, including palimony actions, shall be filed and heard in the Chancery Division, Family Part. Such actions shall include all actions and proceedings referenced in Chapters II and III of Part V, unless otherwise provided in Rule 4:3-1(a)(3) and (4); all actions and proceedings formerly designated as matrimonial actions; actions that arise under the Domestic Partnership Act, N.J.S.A. 26:8A-1 et seq.; actions arising under N.J.S.A. 37:1-28 et seq. relating to civil unions; and all actions and proceedings formerly cognizable in the Juvenile and Domestic Relations Court.

(b) Juvenile Delinquency Actions.

(c) Criminal and Quasi-Criminal Actions.

(1) Criminal actions brought pursuant to N.J.S. 2C:24-5 (willful nonsupport) shall be prosecuted in the Family Part subject to transfer to the Law Division pursuant to R. 3:1-5(b) in the event the defendant is entitled to and demands trial by jury.

(2) All other indictable offenses pending in the Law Division may be transferred to the Family Part for trial and disposition pursuant to R.3:1-5 provided that (A) the gravamen of the offense charged arises out of a family or a family-type relationship between the defendant and a victim, (B) the defendant has waived trial by jury pursuant to R. 1:8-1, (C) the defendant and the prosecutor have both consented to such transfer.

(3) Any non-indictable offense or violation pending in the municipal court and any indictable offense within the trial jurisdiction of the municipal court may be transferred for trial and disposition to the Family Part pursuant to R. 5:1-3(b) provided that the gravamen of the offense or violation arises out of a family or family-type relationship between the defendant and a victim.

(d) Fee disputes between Attorney and Client/Former Client. All fee disputes between an attorney and client or former client shall be filed in and heard by the Chancery Division, Family Part, if the fee dispute arose from representation in a matter that was properly filed in the Chancery Division, Family Part, as set forth in paragraphs (a) through (c) above. Notwithstanding the foregoing, nothing shall abrogate the rights and obligations provided under R. 1:20A-6 pertaining to fee arbitration prior to a lawsuit being filed to recover a fee.

Recommendation 5

Amend Rule 5:5-4 to permit electronic service of all motions, cross-motions and reply service in the Family Part. Given the expansive role of e-filing through JEDS and the lack of eCourts availability for Family Part matters, coupled with the use of virtual proceedings, allowing electronic service of documents in the Family Part seems to be a reasonable step. This will provide cost savings to litigants, time savings for attorneys, and convenience for all.

RULE 5:5-4

(a) Motions.

...

(c) Time for Service and Filing. A notice of motion shall be served and filed, together with supporting affidavits and briefs, when necessary, not later than 24 days before the time specified for the return date. For example, a motion must be served and filed on the Tuesday for a motion date falling on a Friday 24 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. Service of these papers on an opposing party and/or their counsel, may be effectuated by electronic service by way of e-mail under the time frames referenced above. If service is made by mail, 3 days shall be added to the above time periods. If service is made by mail, ¶two copies of all motions, cross-motions, certifications, and briefs shall be served.

(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. If service is made by mail, ¶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 fifteen days (Thursday) before the return date. Answers or responses to any

opposing affidavits and cross-motions shall be served and filed not later than eight 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.

"Responses 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."

...

Recommendation 6

Make changes to the Family Part Case Information Statement, as delineated below, to more particularly describe the information that is being sought.

1. Page 3, Part B, #4 – Additional Information

Add the following:

Affidavit of Insurance Coverage: Filed Yes No

2. Page 5, Additional Information, #5.11

Add the following underlined language:

Have you received income from unemployment, disability, social security, SSI or other government program during either the current or immediate past calendar year?

3. Page 5, Additional Information #5.13

Add the following underlined language:

Are you paying or receiving alimony?

If yes, how much and from or to whom?

If yes, is it taxable/deductible or non-taxable/non-deductible?

4. Page 6, Part D – Monthly Expenses

Space should be provided to allow litigants to provide an explanation or state with specificity what is included in some of the general expense items. For example, Schedule C seeks entertainment expenses. Space should be provided to explain that includes tickets, online services, etc.

Schedule A: Shelter

References to non-monthly expenses should be deleted and include additional expenses as noted below:

If Homeowner:

Delete reference to snow removal, lawn care and maintenance/repairs

If Tenant or Homeowner:

Delete reference to plumber/electrician and equipment & furnishings

Add the following items:

Combined cable & internet option

Schedule B: Transportation

Delete Registration, License and Maintenance

5. Page 7, Part D – Monthly Expenses

Schedule C: Personal

Add the following:

Streaming services, itemize

Technology fees, such as Google Drive, Microsoft OneDrive, iCloud and any other fees associated with computers, mobile devices or similar items

Add a Schedule D that seeks the following information:

List all specific non-recurring expenses, based on an average over the last 24 months, such as snow removal, lawn care, maintenance, renovations, repairs, plumbers, electrician, registration, license, pool service

6. Page 8, Part E – Balance Sheet of all Family Assets and Liabilities

Add the following items:

12. Cryptocurrency, i.e., bitcoin, Ethereum, tether, any other digital/virtual currency
13. Peer to peer money, i.e., vcamp, paypal, zelle, CashApp
14. Children's accounts: 529 plans, trusts, trust accounts, accounts in children's names
15. Income tax carryover losses, prepaid taxes, refunds, credits
16. Any other assets not listed above or otherwise disclosed

7. Page 9, Statement of Liabilities

Add the following items:

6. Tax liabilities
7. Any other liabilities not otherwise listed or disclosed

8. Page 10, Certifications

Add the following language:

I certify that I have disclosed all assets, liabilities and income herein.

Recommendation 7

Add a track to the already existing tracks on which cases are administratively placed entitled "Settled" or "Settled Case" to expedite the entry of final judgment in those matters. Many of our members have reported delays of several weeks to, at times, months, to obtain a final judgment of divorce, even where the parties have executed a Marital Settlement Agreement and advised the court of such. Adding a "settled" track will help to identify these cases for the court and streamline their final resolution.

Recommendation 8

Offer all of the Family Part forms on the Court's website in as many languages as possible to ensure all litigants can understand and use them.