

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
PART V. RULES GOVERNING PRACTICE IN THE CHANCERY DIVISION, FAMILY
PART
CHAPTER II. SPECIFIC CIVIL ACTIONS
RULE 5:8. CUSTODY OF CHILDREN

Rule 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.

Note: Source-R. (1969) 4:79-8(a). Adopted December 20, 1983, to be effective December 31, 1983; amended November 7, 1988 to be effective January 2, 1989; amended July 14, 1992, to be effective September 1, 1992; amended September 17, 2001 to be effective immediately; amended July 12, 2002 to be effective September 3, 2002; amended July 28, 2004 to be effective September 1, 2004.

Rule 5:8-2. Direction for Periodic Reports

If an award of custody of minor children has been made, the court may in its discretion file a certified copy of its order or judgment with the Family Division of the county or counties in which the child or children reside with a direction therein to such Family Division to make periodic reports to the court as to the status of the custody. It shall be the duty of counsel to file 2 copies of the order or judgment with the Family Division within

2 days, together with information concerning the exact place of residence of the child or children. Upon the filing of such report, the court may on its own motion, and where it deems it necessary, reopen the case and schedule a formal hearing on proper notice to all parties.

A certified copy of a custody decree of another state shall be filed pursuant to procedures promulgated by the Administrative Office of the Courts.

Note: Source-R. (1969) 4:79-8(b). Adopted December 20, 1983, to be effective December 31, 1983; amended November 7, 1988 to be effective January 2, 1989; amended July 21, 2011 to be effective September 1, 2011.

Rule 5:8-3. Investigation After Award

The court may on its own motion when it deems it necessary or where an application is made by either party to modify the award or terms thereof, in its discretion require the investigation provided for in R. 5:8-1. The court may continue such application for the purpose of such investigation and report.

Note: Source-R. (1969) 4:79-8(c). Adopted December 20, 1983, to be effective December 31, 1983.

Rule 5:8-4. Filing of Report

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.

Note: Source-R. (1969) 4:79-8(d). Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994; amended July 21, 2011 to be effective September 1, 2011.

Rule 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 file a Custody and Parenting Time/Visitation Plan, which the court shall consider in awarding custody and fixing a parenting time or visitation schedule. The Custody and Parenting Time/Visitation Plan shall be filed no later than seventy-five (75) days after the last responsive pleading is filed. If, however, mediation as permitted by R. 1:40-5(a) is conducted, the Custody and Parenting Time/Visitation Plan shall be filed no later than 14 days following an unsuccessful mediation.

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.

Note: Source-R. (1969) 4:79-8(e). Adopted December 20, 1983, to be effective December 31, 1983; amended July 14, 1992 to be effective September 1, 1992; new paragraph (c) adopted January 21, 1999 to be effective April 5, 1999; caption and paragraphs (a) and (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 28, 2017 to be effective September 1, 2017.

Rule 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.

Note: Source-R. (1969) 4:79-8(f). Adopted December 20, 1983, to be effective December 31, 1983; amended July 14, 1992 to be effective September 1, 1992; amended July 12, 2002 to be effective September 3, 2002.