

## 4.1 **MUNICIPAL COURT PROCEDURE**

4.1.1 A Municipal Court judge hearing applications for a temporary restraining orders shall:

- A. Be available by telephone when the Superior **Court** is not in session and when directed by the Vicinage Presiding Judge of the Municipal Court.
- B. Speak directly with the applicant in person, or by telephone, radio or other means of electronic communication per **Rule 5:7A**. Speaking only to the police officer does not satisfy this rule.
- C. Ensure that the police or staff fully sets forth the victim's allegations of domestic violence in the body of the domestic violence complaint, including past history of domestic violence between the parties, whether reported or unreported.
- D. Comply with all of the provisions set forth below.
- E. Confirm with the police officer assisting with the TRO whether or not they are on a taped line. If not on a taped line, the judge must make detailed notes of the victim's testimony and the reasons for issuing the TRO and any weapons seizure.

4.1.2 The judge upon *ex parte* application shall administer an oath to the applicant and take testimony regarding:

- A. the alleged domestic violence;
- B. the past history of domestic violence between the parties, whether reported or unreported;
- C. the reason the applicant's life, health, or well-being is endangered; and,
- D. whether defendant possesses or has access to weapons, firearms or a firearms identification card.

The judge shall state with specificity the reasons for and scope of any search and seizure to be authorized by the Order (see weapons section).

4.1.3 The judge shall review all available information involving the parties; confirm that the plaintiff has been informed about legal rights and options and available protective services, including shelter services, safety plans, etc (see sample safety plan, Appendix 26; explain to the plaintiff the domestic violence legal procedures; establish a record, including findings of fact; amend the complaint to conform to the testimony, where appropriate; inquire as to all relief requested by the applicant to determine the appropriateness of same; and prepare a case specific TRO, where one

is to be entered. The court should ensure that the victim has been offered the services of the Domestic Violence Response Team.

- 4.1.4 The judge or law enforcement officer shall ensure that a tape recording or stenographic record is made of the testimony; if neither is available, the judge shall prepare adequate long-hand notes summarizing what has been said by the applicant, police officer and any witnesses.
- 4.1.5 After hearing testimony from the victim, the judge shall issue or deny the TRO. If the TRO is denied, the judge shall state the reasons. When a **TRO** is entered, a return date for the Final Hearing is to be set within ten (**10**) days. Whether granted or denied, the judge should check the appropriate box and sign the TRO or direct the law enforcement officer to check the box and print the judge's name on the order as authorized by **Rule 5:7A**, or as authorized by e-TRO procedures (Appendix **6**).
- 4.1.6 Contemporaneously, the judge shall issue a written Confirmatory Order (See Appendix 7) and shall enter the exact time of issuance, as required by **Rule 5:7A(b)**.
- 4.1.7 When a TRO is granted, copies of the Complaint/TRO shall be provided to:
  - A. the victim;
  - B. the law enforcement agency of the municipality in which the victim resides or is sheltered;
  - C. the law enforcement agency that will serve the defendant with the Complaint/TRO;
  - D. the Domestic Violence Unit of Superior Court. This copy should be faxed immediately, or sent via electronic mail, where e-TRO procedures are in place; **and**,
  - E. the Municipal Court judge.
- 4.1.8 When a TRO is denied, the plaintiff shall receive a copy of the Complaint/TRO but the defendant shall not. It shall be forwarded to the Domestic Violence Unit **of** the Family **Part**.
- 4.1.9 Where the Municipal Court judge determines that defendant possesses or has access to weapons, firearms, a firearms identification card or purchaser permit, the judge shall also comply with the weapons procedure, Section V.
- 4.1.10 When the defendant is arrested for a crime or offense arising out of a domestic violence situation, the Municipal Court judge or court administrator shall fix bail

when requested to do *so* pursuant to **Rule 5:7A-1** and *N.J.S.A. 2B:12-21a*, except when a Superior **Court** Judge must set bail pursuant to **Rule 3:26-2(a)**.

- 4.1.11 When the Superior Court is closed, the Municipal Courts must be accessible to victims in need of emergent relief. Each Municipal Court shall ensure that there is adequate backup coverage for domestic violence cases and other emergent matters **for** each Municipal Court in that vicinage. The **Court** Administrator of each Municipal Court in each vicinage should provide the police or other law enforcement officers covering that municipality with a list of names and phone numbers (in order of priority) to be contacted in domestic violence cases, starting with the sitting Municipal Court judge, the back up judge, the Presiding Judge of the Municipal **Court** (where applicable) and the emergent duty Superior Court judge.

#### **4.1.12 Municipal Court Costs**

**Municipal Court costs shall not be imposed against a plaintiff/complainant who seeks the dismissal of a disorderly or petty disorderly complaint arising out of a domestic violence matter except if imposed pursuant to *N.J.S.A. 2B:12-24*.**

### **4.2 SUPERIOR COURT, FAMILY PART PROCESSING**

During court hours for Domestic Violence matters (Monday through Friday, 8:30 a.m. to at least 3:30 p.m.), a victim of domestic violence will be referred to the Superior **Court**, Family **Part** to sign a domestic violence complaint. When a criminal complaint is also signed, it is to be processed separately for investigation and prosecution through the Criminal/Municipal courts.

### **4.3 TAKING A COMPLAINT IN SUPERIOR COURT, FAMILY PART**

- 4.3.1 When a victim arrives, the victim should be directed to the Domestic Violence Unit. A victim shall be given a Victim Information Sheet (**VIS**) to complete (See Appendix 1). **At** this time, the victim should be fully informed about her/his right to file a criminal complaint, a domestic violence complaint, or both types **of** complaints. The victim should be told about the differences between the two proceedings and about the relief available under each. The victim can then make an informed decision based on her/his **own** needs and a clear understanding **of** the options available.
- 4.3.2 The victim should be assisted **and** accompanied by a victim advocate whenever possible. A victim advocate should be available to speak with all victims or potential victims at all stages of the court process. The victim advocate should be given as much support as possible (e.g. space for interviewing, immediate referrals) **as well as** access (with the victim) to the courtroom. The victim advocate should be advised when every initial intake or application for dismissal is presented to offer assistance to the victim at this early stage in the process. When a victim advocate is not

available, courts, police, prosecutors and law enforcement should have contact names and numbers readily available to give to all victims, preferably in the form of a card or pamphlet.

- 4.3.3** A domestic violence staff person shall interview the victim in a private area and advise and inform the victim of rights, options and appropriate referrals.
- 4.3.4** Based upon the information provided by the victim on the VIS, the staff person will search **FACTS** for both parties' history and case history. The case is established and docketed on **FACTS**, where appropriate, which results in the production of the Complaint/TRO. The party case history should be made part of the court's file. **If** it is determined while searching **FACTS** that plaintiff **has** an active restraining order against defendant or that taking a complaint is inappropriate for any other reason, the complaint should not be docketed.
- 4.3.5** Staff should be certain that the victim's allegations are fully set forth in the body of the domestic violence complaint, as well as any prior history or acts of domestic violence, whether or not reported.
- 4.3.6** The determination of whether the incident constitutes domestic violence is a legal issue to be determined by a judge or Domestic Violence Hearing Officer (DVHO). A victim should rarely be turned away. Legal sufficiency or jurisdiction, applicability of definitions such as "household member" or "dating relationship," or the appropriateness of using the domestic violence process to address a particular problem are all decisions for a judge or DVHO. Screening by staff should be concentrated on information gathering, and only those cases that clearly fall outside the scope of the law should be rejected at the staff level. In these situations, the rejection of a complaint by staff should be reviewed by a supervisor who should ensure that appropriate alternate remedies are explained to the victim.
- 4.3.7** When available and in appropriate cases, a victim can choose to have their complaint heard by a DVHO. Proceedings before a DVHO shall be in accordance with the approved DVHO Standards (See Appendix 3). Those cases that are not heard by a DVHO shall be brought to a judge.
- 4.3.8** When a TRO is not recommended by the DVHO, the DVHO must advise the plaintiff of his/her option to see a judge for a hearing *de novo*, in accordance with the DVHO Standards.
- 4.3.9** The judge or DVHO must follow Section 5.10 regarding weapons if there is any allegation that the defendant owns or has access to a weapon(s), a firearms identification card or permit to purchase a handgun.

#### **4.4 ACCESS IN SPECIAL CIRCUMSTANCES**

- 4.4.1 Victims shall personally appear during regular court hours. A procedure shall be implemented by the Family ~~Part~~ Manager to allow victims to obtain emergent relief through telephonic contact with a judge pursuant to *Rule 5:7A* where a victim is unable to personally appear.
- 4.4.2 If a victim is physically or mentally incapable of filing personally, a judge may issue a temporary restraining order requested by a person who represents the applicant provided the judge is satisfied that (1) exigent circumstances exist to excuse the failure of the applicant to appear personally and (2) that sufficient grounds for granting the application have been shown.
- 4.4.3 The Family ~~Part~~ shall be prepared to accept domestic violence complaints until at least 3:30 p.m. during days when the Superior ~~Court~~ is in session. The regular business hours of the Domestic Violence Unit or other office accepting domestic violence complaints shall be clearly posted and disseminated to all Municipal Courts and law enforcement personnel in the vicinage.
- 4.4.4 There are occasions when a person seeking to file a domestic violence Complaint/TRO arrives too late in the day for it to be processed and heard during regular court hours. During the interim period between the Domestic Violence Unit's close ~~of~~ business and when the courthouse actually closes, victims shall not be turned away. Each county shall develop a procedure in such instances for either in-person or telephonic communication under *Rule 5:7A* between the victim and ~~an~~ on-site or emergent duty judge, *so* that the request for emergent relief can be handled without the necessity of the victim having to go to the local police station or the Municipal Court.
- 4.4.5 On weekends, holidays or during those hours when the Superior Court is not in session, a victim should be referred to local law enforcement officials, *so* that her/his Complaint/TRO can be processed by a law enforcement officer and heard by a Municipal Court judge.

#### **4.5 INITIAL/EMERGENT HEARING**

- 4.5.1 Once a domestic violence victim has been interviewed and the necessary paperwork has been processed and is ready for court, every effort should be made for the case to be heard within one hour.
- 4.5.2 In those cases where both parties appear at the courthouse ~~and~~ each seeks a temporary restraining order against the other, a judge should hear each Complaint/TRO separately and grant relief where appropriate. The same judge should consider these complaints to ensure that the orders do not contain conflicting

provisions for such matters as possession of the residence and custody of the children.

- 4.5.3 At the initial hearing, the court upon *ex parte* application shall administer an oath to the applicant and take testimony regarding (a) the alleged domestic violence; (b) the past history of domestic violence between the parties, if any; (c) the reason the applicant's life, health, or well-being is endangered; (d) whether firearms or weapons are present or available to the defendant; and shall (e) state with specificity the reasons for and scope of any search and seizure authorized by the Order (See Section on Weapons); and (f) make general inquiry as to all relief requested by the applicant to determine the appropriateness of same.
- 4.5.4 The judge or DVHO shall review all related case files involving the parties; ensure that plaintiff is informed about legal rights and options and available protective services, including shelter services, safety planning, etc.; explain to the plaintiff the domestic violence legal process and procedures; establish a record, including findings of fact and conclusions of law forming the basis of any determination; rule on the admissibility of evidence; amend the complaint to conform to the testimony, where appropriate; and prepare a comprehensive case specific TRO, where one is to be entered. When a TRO is granted, the order must be completed and signed in accordance with *Rule 5:7A*.
- 4.5.5 After hearing testimony from the victim, the judge will issue or deny the TRO, setting forth the reasons therefore. Unless the judge denies the TRO and dismisses the Complaint/TRO, a return date for the Final Hearing is to be set within ten (10) days.
- 4.5.6 When a TRO is granted, the Order must be completed and signed by the judge. Copies shall be provided to:
  - A. the victim;
  - B. the law enforcement agency of the municipality in which the victim resides or is sheltered; and
  - C. the law enforcement agency which will serve the defendant with the Complaint/TRO.
- 4.5.7 When a TRO is not granted, the court must check the box stating that the TRO was denied and sign the order. This automatically dismisses the Complaint/TRO. (NOTE: if the TRO is denied, no copy of the Complaint/TRO is to be provided to the defendant.)

#### **4.6 PROCEDURES FOR SERVICE OF COMPLAINT/TRO/FRO**

- 4.6.1 The Complaint/TRO shall be served on the defendant by **personal service**, immediately following the entering of such order. This service is effectuated by the procedures outlined in each county, through the Municipal or State police, Sheriff's Department or both. Substituted service is permitted only by specific court order.
- 4.6.2 The Sheriff's Officer or court staff member will provide the plaintiff **two** copies of the Complaint/TRO. The plaintiff may, but is under no circumstances required, to provide a copy to the police department or residence or where sheltered. The plaintiff shall be advised to keep a copy of the TRO on with them at all times.
- 4.6.3 If the parties reside together and the defendant is being removed from the home, the plaintiff will be instructed to report to the appropriate law enforcement agency for accompaniment to the residence if appropriate.
- 4.6.4 The Family ~~Part~~, Domestic Violence Unit must immediately fax a copy of the Complaint/TRO to the municipality where the defendant resides or may be served, and to all law enforcement agencies that can or may assist in the service and enforcement of the Order. This can be specified in the Comments section of the **TRO**.

At no time shall the plaintiff be asked or required to serve any order on the defendant. N.J.S.A. 2C:25-28.

- 4.6.5 Once service on the defendant is attempted (successfully or unsuccessfully), the return of service portion of the TRO must be completed by the appropriate law enforcement agency and immediately faxed to Family Court (Domestic Violence Unit) **and** if issued by a Municipal Court, the court which issued the TRO. The original shall be returned to the Domestic Violence Unit.

#### **4.7 SERVICE OUT OF COUNTY**

- 4.7.1 When a temporary or final restraining order is issued that requires service outside the issuing county, the restraining order must immediately be brought or faxed to the Sheriff's Department or other designated law enforcement agency in the issuing county.
- A. The Sheriff's Department or other designated law enforcement agency in the issuing county must bring or fax the order and related documents to the sheriff's department or other designated law enforcement agency in the county of the defendant's residence or business.
- B. The Sheriff's Department or other designated law enforcement agency in the receiving county, pursuant to local policy, will either:

- (1) execute service on the defendant, or
- (2) immediately bring or fax the order and related documents to the sheriff or other designated law enforcement agency in the municipality in which the defendant resides or works so that it can execute service accordingly.

C. The return of service should then be faxed back to the sheriffs department or other designated law enforcement agency in the issuing county, which in turn must immediately deliver or fax the return of service to the Family ~~Part~~ in the issuing county.

4.7.2 Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO must be filled out by the sheriffs department or other designated law enforcement agency and immediately faxed or returned to the Family ~~Part~~ prior to the scheduled final hearing date.

4.7.3 When an order must be served on a defendant who is out-of-state, the law enforcement officer or agency or court staff should contact the State Police or Family Court in the other state to determine the procedures for service in that state (Appendix 29 and 30).

#### **4.8 APPEALS OF EX PARTE ORDERS**

4.8.1 *N.J.S.A. 2C:25-28(i)* provides that any TRO is immediately appealable by plaintiff or defendant for a plenary hearing *de novo*, not on the record below, before any Superior Court, Family ~~Part~~ Judge in the county where the TRO was entered if that judge issued the temporary order or ~~has~~ access to the reasons for the issuance of the TRO and sets forth on the record the reason for the modification or dissolution.

4.8.2 Upon receipt of a request for an emergent appeal, staff shall obtain the reasons for the request of appeal and assist the appealing party in completing the “Appeal of *Ex Parte* Order” (See Appendix 8), and present the request with the file to the judge for consideration.

4.8.3 If the application is granted, an emergent hearing will be scheduled with adequate notice to both parties as to the purpose of the hearing and the issues to be addressed. The judge must place the reasons for continuing, modifying or dissolving the TRO on the record.

4.8.4 If the application is denied, the reasons shall be set forth by the judge on the “Appeal of *Ex Parte* Order” form and the FRO hearing will proceed as initially scheduled.



## 4.9 PROCEDURES FOR FINAL HEARINGS

- 4.9.1 A final hearing must be scheduled within ten days of the filing of the Complaint/TRO in the county where the Complaint/TRO was issued unless good cause is shown for the hearing to be held elsewhere. Each county shall provide the police and Municipal Courts with the designated days and times for final hearings,
- 4.9.2 If the return of service on the defendant has not been received by the day before a final hearing, a designated domestic violence team member shall check with the appropriate law enforcement agency responsible for service (such as sheriff or local police) to ascertain whether the defendant was successfully served. The return of service portion of the TRO must be immediately faxed to the domestic violence team by law enforcement.
- 4.9.3 The Continuance Order may be used when a new date must be scheduled and there are no substantive changes to the TRO. When substantive changes, including amendments to the complaint, are needed, an Amended TRO shall be used, which shall set forth the changes. The TRO must be attached to the Continuance Order for service. If the defendant has been served with the TRO, notice of the new date may be made by mail, if an address is known.
- 4.9.4 Any defendant who qualifies under the Servicemembers Civil Relief Act, 50 *U.S.C.* 501, *et. seq.*, is entitled to have the proceedings stayed while the member is either in military service or within 90 days after termination or release from such service for a servicemember who has received notice of such proceedings, if the court receives a letter or other communication: (1) stating that current duty requirements materially affect the servicemember's ability to appear; or (2) from the servicemembers commanding officer stating that current duties prevent the servicemember's appearance and that military leave is not authorized. This also permits a servicemember granted a stay from such proceedings to apply for an additional stay based on continuing material effect of military duty on the ability to appear. This shall be entered into FACTS as an extended TRO.

The restraining order shall stay in effect until such stay is lifted.

- 4.9.5 **Nonappearance By Either Party:** If no one appears for the final hearing, a domestic violence team member shall attempt to contact the plaintiff and defendant and collect as much information as practicable about the reasons for nonappearance and present same to the court for consideration prior to the dismissal of any Order.

The matter shall be rescheduled where there is no appearance by either party unless the court is fully satisfied that a dismissal meets the standards as set forth on the Order of Dismissal (See Appendix 14).

**4.9.6 Nonappearance by the plaintiff:** The domestic violence team member shall attempt to contact the plaintiff to collect as much information as practicable about the plaintiff's nonappearance and present the information to the court. Communications about the plaintiff shall be made outside the presence of the defendant. The file and notes reflecting the findings shall then be brought to the judge. If only the defendant appears, [s]he should be questioned under oath concerning knowledge of the plaintiff's whereabouts. The court shall inquire if the defendant caused or is responsible for the nonappearance of the plaintiff.

If (1) the plaintiff can be contacted, and (2) the judge is satisfied (after hearing both parties' explanations) that the plaintiff's failure to appear was not the result of coercion and duress, and (3) the findings required as per the Order of Dismissal were made, the court may issue an Order of Dismissal. If not, or if the plaintiff cannot be contacted, the matter shall be rescheduled.

Any dismissal order shall be without prejudice, and any Order of Dismissal or order modifying the TRO shall be faxed or otherwise transmitted to the applicable law enforcement agency.

**4.9.7 WARRANTS SHALL NOT BE USED TO SECURE THE PRESENCE OF THE PLAINTIFF** in court under any circumstances when the plaintiff has failed to appear or has allowed the defendant back into the residence.

When a plaintiff is unable to appear at the final hearing for good cause shown, arrangements shall be made for a telephonic appearance on the record.

**4.9.8 Nonappearance by the Defendant:** If only the plaintiff appears, the plaintiff's request for relief should be identified in accordance with the domestic violence procedures.

- A. Where the defendant does not appear at the final hearing, and proof of service has been provided, the court should proceed with the final hearing and may enter a final order in default.
- B. If the court file does not contain proof of service, the court should conduct a hearing in the presence of the plaintiff to determine the following:
  - Whether the plaintiff has seen the defendant in the court house or knows of the defendant's whereabouts;
  - Whether the plaintiff is aware of whether the defendant was served and the basis for such knowledge;
  - Whether the defendant has had any contact with the plaintiff since execution of the temporary restraining order; and

- Whether the same or different conditions exist in comparison to those at the time of the initial hearing.
- C. If the court determines that the defendant had actual knowledge of the restraining order and hearing date, after making such finding on the record, the court may proceed with the final hearing and may enter a final order by default.

4.9.9 **Defendant Not Served:** If the court determines that the defendant has not been served but finds there is reasonable likelihood of service on the defendant within a reasonable amount of time (e.g. the defendant’s whereabouts are known, but the defendant is on vacation), a short postponement shall be granted and a date certain scheduled, which shall be memorialized in a Continuance Order (See Appendix 9) or Amended TRO. The Continuance Order shall be served on the defendant with the Complaint/TRO.

In the event that it is unlikely the defendant can be served within a reasonable period of time, then the court can issue an indefinite TRO. This TRO shall continue the reliefs requested by the plaintiff until further order of the court and contain a provision that a final hearing shall be rescheduled upon service on the defendant. The case will be recorded as disposed of in FACTS with the case status reason code of “extended TRO.”

#### 4.10 APPEARANCE BY BOTH PARTIES

4.10.1 When both parties appear for a Final Hearing, the victim and defendant should be kept in different locations and directed to the appropriate intake or waiting area for case processing by the domestic violence unit. Separate waiting areas must be available for victims to avoid potential contact, intimidation, or additional violence or victimization.

##### 4.10.2 Information Gathering

- A. A domestic violence staff person should meet with each party, separately, prior to court to review identifying information and to determine if the case is likely to be a contested trial or a dismissal. The domestic violence staff person should review with the plaintiff what relief is being sought and explain the procedure to be followed in a trial, including the right to call witnesses and present evidence. In addition, a victim advocate should be available to confer with the plaintiff before the court session.
- B. Court staff shall not meet with the parties together or conduct mediation of any sort on **any** issue, such as custody or parenting time, per *N.J.S.A. 2C:25-29a(6)* and *Rule 1:40-5(a)*.

- C. If support is being sought as a relief, staff should ensure that both parties have completed the required forms with complete identifying and financial information. Staff support should be provided to the judge to calculate Child Support Guidelines.
- D. Counsel for the parties may participate in the staffheld meetings. No party shall be required to meet with opposing counsel without his/her clear, express consent.

#### 4.10.3 No Mediation

There shall be no mediation of any kind in domestic violence cases.

#### 4.10.4 Request for Continuance

The court may grant **an** adjournment or continuance if either party requests an adjournment for the purpose of obtaining or consulting with **an** attorney, securing witnesses, or other good cause, unless the delay would create an extreme hardship on the other **party**, or there has been an inordinate delay in seeking counsel.

#### 4.10.5 Court Files

At the time of the Final Hearing, the court's file should contain the Complaint/TRO; the Victim Information Sheet; FACTS history of the parties and children; and prior domestic violence history, if any; and relevant financial, social and criminal record history.

#### 4.10.6 Confidentiality

All records maintained pursuant to the PDVA are confidential **as** specified by *N.J.S.A. 2C:25-33*. However, all court proceedings under the Act are open unless closed by the court in accordance with the Rules.

### 4.11 **TRANSFER OF MATTERS BETWEEN COUNTIES**

Pursuant to *N.J.S.A. 2C:25-29*, a final hearing is to be held "in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere." *Rule 5:7A(f)* states, "if the action is not brought in a county of residence, venue shall be transferred to a county of residence for the final hearing unless the court orders the matter retained in the county where the Complaint/TRO is filed for good cause shown." A Domestic Violence matter may be transferred between vicinages by order of the presiding judge or his or her designee in the following situations:

- A. Plaintiff or defendant works in family court in the original county of venue, consistent with the judiciary "Policy and Procedures for Reporting Involvement in Criminal/Quasi- Criminal Matters";

- B. there is an FM or FD matter pending in the other county;
- C. the filing of the TRO and FRO are where the act(s) occurred but plaintiff or both parties reside in another county, upon application by either party.
- D. Such other matters for good cause shown.

4.12 **FINAL HEARING**

A final hearing is described in *N.J.S.A. 2C:25-29a* as follows:

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 this act 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 that is the subject matter of a complaint brought under N.J.S.A. 2C:25-28a 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 unavailable parties. 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 visitation, the protection of the victim's safety; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

When the allegations in the plaintiff's complaint are incomplete and/or it becomes evident at the final hearing that the plaintiff is seeking a restraining order based upon acts outside the complaint, the court, either on its own motion or on a party's motion, shall

amend the complaint to include those acts, which motion shall be freely granted. Due process requires that the judge make an inquiry as to whether the defendant needs additional time to prepare in light of the amended complaint. A brief adjournment may be required if the judge determines that the defendant did not have adequate notice and needs time to prepare. If an adjournment is granted, a continuance order or an amended TRO shall be entered.

If there is a verifiable order for protection from another state and the court has jurisdiction over the defendant then the acts of violence that lead to that Order may be viewed as providing adequate basis for the issuance of like restraints in New Jersey, without a need for alleging additional acts of violence (See Section VII on Full Faith and Credit.)

#### **4.13 DISPOSITIONS**

- 4.13.1 Following a final hearing, the court should either enter **an** FRO with appropriate relief upon a finding of domestic violence, or an admission of an act of domestic violence by the defendant; **or**, dismiss the Complaint/TRO and dissolve all restraints if domestic violence has not been established; or, if appropriate, adjourn the final hearing and continue the restraints on an interim basis until a **final** determination can be made.
- 4.13.2 The court only has jurisdiction to enter restraints against a defendant after a finding by the court or an admission by the defendant that the defendant has committed an act(s) of domestic violence. A defendant's admission or stipulation to committing an act of domestic violence must comply with the following:
- A. the parties must be sworn before any action is taken on the complaint, particularly when one or both of the parties appears *pro se*;
  - B. the defendant must provide a factual basis for the admission that an act of domestic violence has occurred; and
  - C. where it becomes clear that defendant does not agree that the conduct constituted an act of domestic violence, the hearing must proceed.
- 4.13.3 If prior to or during the final hearing, a defendant alleges that the plaintiff committed an act(s) of domestic violence, defendant should be instructed to file a separate domestic violence Complaint/TRO. The complaint should receive a separate docket number and, if practicable, both cases should be heard that day unless continued for good cause.
- 4.13.4 Where each party has a separate Complaint/TRO: If both parties admit to or are found to have committed an act or acts of domestic violence, a final order must be entered on each separate docket number where each party is the defendant. “Mutual Restraints” cannot be issued on a single restraining order.

#### 4.14 REMEDIES AVAILABLE UNDER THE ACT

Following a hearing and a finding of domestic violence, the court **may** issue an order granting any or all of the following relief, including any relief “necessary to prevent further abuse,” pursuant to *N.J.S.A. 2C:25-29b*.

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.A. 2C:58-3* during the period in which the restraining order is in effect, or two years whichever is greater, except that this provision 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. [*N.J.S.A. 2C:25-29b*, effective January 14, 2004.]

An order restraining the defendant from subjecting the victim to domestic violence, as defined in this act. [*N.J.S.A. 2C:25-29b(1)*.]

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. [*N.J.S.A. 2C:25-29b(2)*.]

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. [*N.J.S.A. 2C:25-29b(3)*.]

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. [N.J.S.A.2C:25-29b(3)(a).]**

The custodial parent can request **an** assessment of **risk** of harm to the child or children posed by unsupervised parenting time with defendant prior to the entry of an order for parenting time. When this request is noted as a desired form of relief on the Complaint/TRO, or when the request is made either at the emergent or final hearing, a risk assessment must be ordered unless, on the record, the judge finds the request to be arbitrary or capricious and **thus** denies the request.

Risk Assessment reports must be completed on the “Visitation Risk Assessment Sheet” (See Appendix 15) and may be completed by in-court professional staff person or by an outside professional. The assessment shall serve **as** a minimum standard for assessing the potential risk of harm to children posed by establishing a parenting time schedule with the defendant. The order for a Risk Assessment should also prompt the setting of a return date before the court in about three weeks. The Risk Assessment report should be completed prior to the scheduled date and provided to the parties and counsel along with a “Protective Order” pursuant to standards adopted by the Judiciary (See Appendix 16).

If interim parenting time is ordered during the initial three week period, and the vicinage has a court-sponsored program or approved supervised visitation site, the parenting time should be supervised by an individual designated by the court or through the auspices of the supervised parenting time program and should have clear instructions regarding the arrival and departure of the victim, children and defendant so as not to compromise the safety of the victim in any way. Security must be available at the parenting-time site, and the individual(s) who is (are) supervising the parenting time must be advised as to the emergency procedures that must be employed if a particular parenting time session appears dangerous. If the Risk Assessment has not been completed before the return date, the court may enter **an** interim order to continue supervised visitation or hold the hearing to consider any additional applications or evidence that relates to the issue of parenting time.

**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. [N.J.S.A.2C:25-29b(3)(b).]**

Pursuant to *N.J.S.A. 2C:25-29b(3)(b)*, a plaintiff in a domestic violence matter may, as a form of pre- or post-dispositional relief, request that **an** order for parenting time issued pursuant to *N.J.S.A. 2C:25-29b(3)* be suspended. A hearing must then be held upon the plaintiff’s application that the defendant’s continued access to the child or children pursuant to the parenting time order **has** threatened the safety and well-being of the child or children.



This request may be made immediately upon the entry of an order for parenting time or at any point subsequent to the entry of such an order.

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 Victim of Crime Compensation Board for any and all compensation paid by the Victim of Crime Compensation Board directly to or on behalf of the victim, and require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but are not 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. [N.J.S.A.2C:25-29b(4).]

Each county shall establish a procedure for the collection and distribution of emergent monetary relief, whether ordered by the Superior Court or Municipal Court. Special care should be taken to avoid the entry of an order that requires the victim to have contact with the defendant in order to receive money under this section. Courts should give consideration to all forms of monetary relief listed in the statute, above.

Support may be ordered in an FRO pursuant to *N.J.S.A. 2C:25-29b* (4) and (10), which provides for both emergent monetary relief that includes emergency support for minor children and compensatory losses in the form of child or spousal support. **An** order for emergency monetary relief or child support or spousal support may be entered without prejudice to a pending dissolution case, particularly when done on an *ex parte* basis. Monetary compensation in the form of ongoing support utilizing the child support guidelines, where applicable, should be issued at the final hearing if the court is able to consider testimony. All child support shall be paid by income withholding from any source of funds or income.

An order requiring the defendant to receive professional domestic violence counseling from either a private or court-appointed source and, in that event, at the court's discretion 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. [N.J.S.A.2C:25-29b(5).]

This section permits the court to order the defendant into a batterers intervention program **as part** of the professional domestic violence counseling option. Victims shall never be ordered into counseling of any kind.

**An** order restraining the defendant from entering the residence, property, school, or place of employment of the victim or 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. [*N.J.S.A. 2C:25-29b(6).*]

A victim shall not be required to disclose any residence or place **of** employment nor shall the court require such disclosure on the record. The FRO should include (where appropriate) specific names and addresses identifying the locations from which the defendant is barred and the people that the defendant is restrained from contacting, communicating with, harassing, or stalking.

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. [*N.J.S.A. 2C:25-29b(7).*]

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. [*N.J.S.A. 2C:25-29b(8).*]

**An** order granting either party temporary possession of specified property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

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. [*N.J.S.A. 2C:25-29b(10).*]

The court should determine, where necessary, the issue **of** paternity and the duty to support. If the defendant has a duty to support, as established by a prior finding **of** paternity, a Certificate of Paternity, **an** admission of paternity, or a presumption of Paternity based on marriage, the court should review the available information, apply the Child Support Guidelines if appropriate and enter a support order payable through income withholding The

order should be referenced in the FRO and entered on the two page support order form, payable and enforced **through** probation. In the event paternity of defendant is not established, any money paid for child support may be refunded to the defendant in accordance with applicable case law. The method by which the court determined paternity shall be indicated on the order.

If paternity **has** not been established, the court may order genetic testing and employ the same procedures used by the county in FD matters. In this instance the judge should enter an FRO including all of the other reliefs and restraints. This case will be “disposed” in FACTS with a standing **FRO**. When the results of the genetic test are received, the case should be reopened on the court’s motion for a hearing on the paternity and support issues. All proceedings are held on the FV docket before a judge.

Following the entry of an order under the FV docket, all subsequent applications between the parties involving paternity, custody, parenting time and support shall be taken and heard under the FV docket. A separate FD complaint should not be opened to address these issues. However, this section should not be construed to prevent a party from filing a dissolution complaint.

If **an** FRO has been entered with relief granted and there is an FD which has been filed but no orders yet entered, the FD will be dismissed and all subsequent applications/modifications (e.g., support, custody, parenting time) shall be made under the FV, so long as the FV is still in effect. If there is a pending FM, all reliefs except the restraints shall be incorporated into the FM with the restraints continuing in the FV docket and on the FRO. Subsequent applications or modifications for support, custody or parenting time should take place within the FM docket number. The FV should be reopened and modified as needed *so* the FM and FV are consistent.

After support has been entered on the FV, an application to dismiss the FRO and continue the support order should be addressed pursuant to the procedures in the FD manual (section 1104) to ensure that the support continues.

It is important to note that enforcement of support obligations or emergent monetary relief can be civil or criminal. If emergent monetary relief is entered under **Part I** of the FRO, then enforcement is by way of criminal contempt and mandatory arrest pursuant to *N.J.S.A. 2C:29-9b*. (See Section VI)

**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. [N.J.S.A. 2C:25-29b(11).]**

Violations of orders for temporary custody issued pursuant to this section are included within the scope of *N.J.S.A. 2C:29-9b*, Contempt. Arrest and criminal charges are mandatory when such an order is violated.

As set forth in the statute, when making custody decisions in domestic violence cases, the court must presume that “the best interests of the child are served by an award of custody to the non-abusive parent.” This mandate reflects the policy stated in the legislative findings section, *N.J.S.A. 2C:25-18*, “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.”

An order requiring that a law enforcement officer accompany either party to the residence or to 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. [*N.J.S.A. 2C:25-29b(12)*.]

Notwithstanding any provision of *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 *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. [*N.J.S.A. 2C:25-28.1*]

In-house restraining orders are specifically prohibited.

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. [*N.J.S.A. 2C:25-29b(14)*.]

The Plaintiff should not be denied any relief on the basis that it was not sought at the emergent hearing.

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. [*N.J.S.A. 2C:25-29b(15)*.]

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.A. 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. [*N.J.S.A. 2C:25-29b(16)*.]

See Section 5.10 for procedure.

A specific description of the weapon and its believed location should be set forth with **as** much detail **as** is known. The court must make findings on the record and state with specificity the reasons for its decision and the scope of the search. (See also Section on Weapons.)

**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 *N.J.S.A. 2C:12-10*. [*N.J.S.A. 2C:25-29b(17)*.]**

**An order requiring the defendant to undergo a psychiatric evaluation.** [*N.J.S.A. 2C:25-29b(18)*.]

#### **4.15 CIVIL PENALTY**

- 4.15.1 Upon the finding of an act of domestic violence and the entry of a FRO, the court is required to assess a civil penalty of \$50.00 to \$500.00 against the defendant under *N.J.S.A. 2C:25-29.1*. This fee may be waived due to “extreme financial hardship.” Such a finding must be made on the record. The court may order the payment to be made immediately, within **30** days, or within some other specific period of time. All orders must also include a provision **for** the payment of a **\$2.00** Comprehensive Adult Probation System (CAPS) transaction fee for each payment. For example, if one payment of \$50 is ordered, a **\$2** transaction fee is assessed, for a total **of** \$52. If a penalty of \$500 is ordered to be paid in five installments of \$100 each, a \$2 transaction fee must be added to each payment, for a fee of \$10 (five payments, \$2 each) and a total penalty of **\$510**. There is no provision for a refund of the penalty or the transaction fee after dismissal of a FRO.
- 4.15.2 Each county should prepare a set of specific instructions to defendants setting out the location and address of the Finance Office where the payments are to be made. The defendant should be provided with these instructions and directed to that office to make payments pursuant to the court’s order. If the defendant does not appear at the final hearing, payment instructions shall be served on the defendant along with the **FRO**. The Family Division should send a copy of the order to the appropriate finance office to enter into the *CAPS* system.
- 4.15.3 When the penalty is **not** paid in accordance with the **Court’s** order, the Comprehensive Enforcement Program (CEP) in the Probation Division will serve as the enforcement mechanism. These cases will be included in the normal CEP process.

#### **4.16 FINGERPRINTING AND PROCESSING**

All persons against whom a FRO has been entered shall submit to fingerprinting and photographing either on the same day as the entry of the final order or within a reasonable time thereafter. Failure to do so is a disorderly persons offense under *N.J.S.A. 53:1-15*. Each county must establish its own procedure to fingerprint, photograph and enforce these provisions against those who do not comply (See Appendix 11).

#### **4.17 AFTER AN FRO HAS BEEN ENTERED**

- 4.17.1 Where an FRO includes provisions for emergent monetary relief, monetary compensation, including child support or spousal support, custody, visitation (particularly supervised visitation), counseling or other evaluations, or where the order relates to third parties for whom addresses and other information are needed, or where intake monitoring is ordered, each party should be referred to the Family staff for their separate post-court interview. Care should be taken by staff that the parties have no contact during the interview process. Staff can facilitate any of these items, including the collection of the IV-D application, the initiation of Title IV-D procedures, where applicable, and can make other appropriate arrangements. Family staff can facilitate providing the defendant with a Child Support Probation Account Number for payments made to the New Jersey Family Support Payment Center (P.O. **Box** 4880, Trenton, NJ 08625-4880).
- 4.17.2 Professional domestic violence counseling for defendant should be considered whenever there has been a finding of domestic violence. Whenever possible, the order should also include provisions **for** monitoring or periodic court review.
- 4.17.3 Orders for ongoing support as a form of monetary compensation in a FRO pursuant to N.J.S.A. 2C:25-29b(4) should be made payable to the New Jersey Family Support Payment Center (P.O. **Box** 4880, Trenton, NJ 08625-4880) and the order shall be enforced by the Probation Division in the county in which the order was entered. The probation division will use all enforcement mechanisms applicable to the case. Staff should ensure that the “family violence indicator” in ACSES is correctly coded.

When ongoing child support is entered, or paternity established, the court must enter the child support, medical support and paternity decisions on the IV-D Uniform Summary Support Order (USSO), which shall be referenced in the FRO, using the same FV docket number. The USSO must indicate whether the child support obligation is based on the New Jersey Child Support Guidelines or if there was a deviation from the Guidelines.

- 4.17.4 Each county shall develop and implement procedures to monitor compliance with court ordered provisions, including counseling and evaluation.

#### **4.18 SERVICE OF FRO**

The defendant shall be personally served in court if present for the final hearing. If the defendant is not present, service shall be in accordance with the procedures set forth in the section entitled "Procedures for Service of Complaint/TRO/FRO."

#### **4.19 REQUESTS FOR DISMISSAL OR REOPENING**

##### **4.19.1 Withdrawals of Complaint/TRO by the plaintiff**

When a victim seeks to withdraw a civil Complaint/TRO after a TRO has been entered but prior to the entry of a final order, the victim should do so in person and before a judge. When the request is made by telephone, the victim should be directed to come to the courthouse and report to the domestic violence unit. Whether the request is made in person on a walk-in basis or on the scheduled final hearing date, the victim should be directed to the appropriate domestic violence staff person or intake. Victims do not need to wait until the final hearing to request a dismissal.

Where a municipal TRO was issued and the paperwork has not reached the Family ~~Part~~, the staff person should contact the police to obtain information about the Complaint/TRO, preferably receiving a FAXED copy. The matter must be docketed and a file prepared prior to the matter being brought before the judge.

A victim advocate should be available to speak to the plaintiff, in person or by telephone. Where this is not possible, the staff should make the plaintiff aware of the existence of an advocate along with a name and telephone number, preferably in writing.

A professional staff person is to meet with the victim to ascertain that:

- A. the victim has read and understood "What Dissolving a Restraining Order Means" (See Appendix 12);
- B. the victim has not been coerced or placed under duress to withdraw the Complaint/TRO;
- C. the victim understands the cycle of domestic violence and its probable recurrence;
- D. the victim is aware of the protective resources available through the court and the local domestic violence program, especially with regard to housing and court-ordered emergency custody and support;
- E. the victim clearly understands that withdrawal of the Complaint/TRO and dismissal of the TRO will eliminate the protections that had been issued;

- F. the victim is aware that such withdrawals, while they should not be done without careful thought, are not prejudicial if [s]he should need to seek protection in the future; and
- G. the victim is informed that any parallel criminal matters are separate and distinct and must be addressed in a separate venue. Victims should be advised to discuss the matter with the appropriate prosecutor.

Once the victim has been counseled as described above, if [s]he wishes to pursue withdrawal of the complaint, [s]he must fill out a Certification to Dismiss Complaint/ TRO (See Appendix 13). The completed form should be placed in the file and an available judge should be located. The victim should then be sent to the appropriate waiting area.

The judge should complete a review of the file and certification and question the victim, on the record, using the same procedure as a request for dismissal of a final order.

After reviewing the file and the Certification to Dismiss, the judge should review the above with the victim on the record. If the judge finds that the request for withdrawal is an informed one and not made under duress, the withdrawal shall be granted.

When the complaint has been withdrawn and the TRO dismissed, copies of the order of dismissal should be distributed to the plaintiff and any law enforcement agency that received the TRO, **and** served on the defendant in the same manner as the TRO, where it has been served, unless otherwise designated by the court.

Where the defendant was not served with the TRO, the dismissal shall not be served on the defendant.

#### **4.19.2 Dismissals with “Civil Restraints”**

The **court** should not initiate or suggest the use of “civil restraints” in domestic violence cases. If civil restraints are requested by the plaintiff, the court should question the victim on the record using the same standards as a request for a dismissal and in addition, ascertain the following:

- A. whether the victim is aware that the “civil restraints” in an FM (dissolution) or FD (nondissolution) matter will not provide the same protection **as** a TRO or FRO;
- B. whether the victim understands that the police must arrest for a violation of a domestic violence restraining order but there will be no arrest for the violation of “civil restraints” and the police are unlikely to respond to **a** call regarding such a violation;
- C. whether the victim will feel safe with the protections offered by the “civil” restraining order; and



- D. whether the victim understands [s]he has a right to obtain a new restraining order if another act of domestic violence occurs, even if “civil restraints” are in effect.

Under no circumstances shall an FD matter be opened for the sole purpose of effectuating “civil restraints.”

#### **4.19.3 Dismissal of FRO at the Request of the Plaintiff**

**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 the judge dissolving the order has available a complete record of the hearing or hearings on which the order was based. [N.J.S.A. 2C:25-29d]**

A request for dismissal of a final order should be handled in the same manner as a request for withdrawal of a Complaint/TRO (see section 4.19.2). The dismissal must be requested in person, and before the judge who entered the order or a judge who has available the complete court file, after the victim has been counseled concerning her/his rights and the ramifications of a dismissal. The court should determine whether an order for child support, custody and/or visitation was entered as part of the FRO and if so, determine whether the victim wants the relief to continue. If so, these provisions should be made part of an FD order, then and there, without undue waiting and refileing by the plaintiff.

#### **4.19.4 Dismissal of FRO at Request of the Defendant**

**An FRO may be dissolved upon “good cause shown,” N.J.S.A. 2C:25-29(d). A request by the defendant for dismissal of an FRO shall be brought to the court by Notice of Motion accompanied by an appropriate certification and brief. Service of the motion and supporting documents on plaintiff shall be through the Family Part and not served directly by the defendant. The motion shall be heard by the judge who entered the FRO if that judge is available. If that judge is not available, the motion shall be heard by another judge who shall read and consider the transcript of the final hearing and the findings by the original judge. The transcript, where needed, shall be provided by the defendant.**

The court shall consider the following as part of the determination of whether the defendant has established good cause to dissolve the **FRO**:

- A. As required by N.J.S.A. 2C:25-29(b)(5), determine whether the defendant attended and completed all court ordered counseling. If not, the motion must be denied.**

- B. Past history of domestic violence. If no findings were made by the court at a final hearing regarding any past history of domestic violence, the record may be supplemented with regard to such past history.
- C. Any other factors the court deems appropriate to assess whether the defendant has shown good cause that the FRO should be modified or dissolved.
- D. To protect the victim, courts should consider a number of factors when determining whether good cause has been shown that the FRO should be dissolved upon request of the defendant, including:
  - (1) whether the victim consented to dismiss 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 that the defendant has been convicted of contempt for violating the order;
  - (5) whether the defendant has a continuing involvement with 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) the 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) any other factors deemed relevant by the court.

The court shall make reasonable efforts to find and notify the plaintiff of the request for dismissal, but unless good cause is shown, the **court** cannot hold a hearing on this application unless the plaintiff **is** given notice and an opportunity to be heard.

#### **4.19.5 Request to Reopen Dismissed Matter by the Plaintiff**

If there is no new act of domestic violence since the filing of the initial Complaint/TRO and the plaintiff seeks to reopen a **TRO** or FRO which has been dismissed, a notice of motion must be filed pursuant to Rule 4:50-1.

Once the application has been filed, the case is **only** opened for the purpose of scheduling the motion hearing. The restraining order is still dismissed on **FACTS and** the DVCR.

An application to reinstate the Complaint/TRO and restraining order does not “activate” the restraining order. The order is not activated until and unless both parties are

notified, the court reviews the file, conducts a hearing, makes findings and then reinstates the order.

At the hearing, the judge may reinstate the order or let the dismissal stand. If reinstated, the status of the order would be “active” in FACTS and on the DVCR

#### **4.19.6 Request to Reopen Due to Duress**

When a plaintiff seeks to reopen a domestic violence matter that [s]he has withdrawn or asked to have dismissed, and alleges that [s]he made such a request because [s]he was put in fear by the defendant of proceeding with the case, a new complaint shall be taken. The original allegations of violence, coupled with the threats or other acts of duress, should be listed on the new complaint.

#### **4.19.7 Conditional Dismissals**

The conditional dismissal of a domestic violence Complaint/TRO or FRO is prohibited. Whether done at the request of the plaintiff, with the agreement of the defendant, or at the discretion of the judge at the end of trial, conditions may not be imposed on the dismissal of a Complaint/TRO or FRO. That is, no TRO/FRO shall be dismissed conditioned upon either party performing any specific act or upon the occurrence of any particular event.

#### **4.19.8 Dismissal of TRO for Failure of the Plaintiff to Appear at Final Hearing**

See section 4.9.3 or 4.

#### **4.19.9 Judge to Advise that Municipal and/or Criminal Complaints Continue**

At the time of dismissal of complaint and vacating of a TRO or FRO, the judge shall advise the parties who are present that any related municipal or criminal complaint(s) arising out of the incident shall continue and are in no way affected by the dismissal of the domestic violence Complaint/TRO. All parties present shall be advised of the need to comply with the conditions of bail and participate in all future court hearings related to such municipal or criminal actions. The parties should be advised to speak to the appropriate prosecutor.