

TO : File

FROM: Jennifer Weitz

DATE : October 24, 2019

RE : Status Update on the Evidentiary Standard for a Final Restraining Order Under SASPA

### **MEMORANDUM**

At the September Commission meeting, an update memorandum was presented regarding the evidentiary standard for a final restraining order under SASPA, as discussed by the Appellate Division in *B.C. v. V.C.*, 2017 WL 2705443 (2017). Holding that SASPA was not retroactive, the Appellate Division declined to address the trial court's opinion that the preponderance of evidence standard did not adequately protect parental rights, and that a clear and convincing standard should be applied instead.

As per the Commission's authorization, outreach was conducted to all county prosecutors, the Department of Children and Families (DCF), and several matrimonial law practitioners. Of that group, only DCF responded. They urged no change in the law, observing that the investigation they conduct in these situations is so thorough as to not require a more stringent evidentiary standard.

The Hudson County prosecutor's office declined to comment, but noted that generally, protective orders of this sort are granted according to a preponderance of the evidence standard.

Upon hearing the project update, the Commission ruled that at this point, given the general lack of response, and the lack of support for the project from DCF, no further action shall be taken by the Commission in this area of the law.