

COURT NOTICES

AMENDMENT OF RULE Rules of the Chief Administrator of the Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, sections 130-1.4 and 130-2.4 of the Rules of the Chief Administrator of the Courts, relating to the creation of the title of support magistrates, to read as follows:

Section 130-1.4 Application to Officers Other Than Judges of the Courts of the Unified Court System.

The powers of a court set forth in this Subpart shall apply to judges of the housing part of the New York City Civil Court and to [hearing examiners] *support magistrates* appointed pursuant to section 439 of the Family Court Act, except that the powers of Family Court [hearing examiners] *support magistrates* shall be limited to a determination that a party or attorney has engaged in frivolous conduct, which shall be subject to confirmation by a judge of the Family Court who may impose any costs or sanctions authorized by this Subpart.

Section 130-2.4 Application to Officers Other Than Judges of the Courts of the Unified Court System.

The powers of a court set forth in this Subpart shall apply to judges of the housing part of the New York Civil Court, [hearing examiners] *support magistrates* appointed pursuant to section 439 of the Family Court Act, and judicial hearing officers, except that:

(a) the powers of the Family Court [hearing examiners] *support magistrates* shall be limited to a determination that an attorney, without good cause, has failed to appear at a time and place scheduled for a Family Court proceeding, which shall be subject to confirmation by a judge of the Family Court who may impose any sanctions authorized by this Subpart; and

(b) the powers of judicial hearing officers shall be limited to civil cases.

AMENDMENT OF RULE Uniform Rules for the Family Court

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, sections 205.3, 205.32, 205.33, 205.34, 205.35, 205.36, 205.37 and 205.43 of the Uniform Rules for the Family Court, relating to the creation of the title of support magistrates, to read as follows:

Section 205.3 Individual Assignment System; Structure.

(a) General. There shall be established for all proceedings heard in the Family Court an individual assignment system which provides for the continuous supervision of each proceeding by a single judge or, where appropriate, a single [hearing examiner] *support magistrate*. For the purposes of this Part, the word "judge" shall include a [hearing examiner] *support magistrate*, where appropriate. Except as otherwise may be authorized by the Chief Administrator or by these rules, every

proceeding shall be assigned and heard pursuant to the individual assignment system.

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Section 205.32 [Hearing Examiners] *Support Magistrates*.

(a) Qualifications. [Hearing examiners] *Support magistrates* shall be appointed by the Chief Administrator of the Courts to hear and determine support proceedings in Family Court pursuant to section 439 of the Family Court Act. They shall be attorneys admitted to the practice of law in New York for at least five years and shall be knowledgeable with respect to Family Court procedure, family law and Federal and State support law and programs.

(b) Term.

(1) [Hearing examiners] *Support magistrates* shall be appointed as nonjudicial employees of the Unified Court System on a full-time basis for a term of three years and, in the discretion of the Chief Administrator, may be reappointed for subsequent *five-year* terms, provided that if the Chief Administrator determines that the employment of a full-time [hearing examiner] *support magistrate* is not required in a particular court, the services of a full-time [hearing examiner] *support magistrate* may be shared by one or more counties or a [hearing examiner] *support magistrate* may be appointed to serve within one or more counties on a part-time basis.

(2) In the discretion of the Chief Administrator, an acting [hearing examiner] *support magistrate* may be appointed to serve during a [hearing examiner] *support magistrate's* authorized leave of absence. In making such appointment, the provisions for selection of [hearing examiners] *support magistrates* set forth in subdivision (c) of this section may be modified by the Chief Administrator as appropriate to the particular circumstances.

(3) A [hearing examiner] *support magistrate* shall be subject to removal or other disciplinary action pursuant to the procedure set forth in section 25.29(b) of the Rules of the Chief Judge (22 NYCRR 25.29[b]).

(c) Selection of [hearing examiners] *support magistrates*.

(1) The district administrative judge for the judicial district in which the county or counties where the [hearing examiner] *support magistrate* is authorized to serve is located, or the administrative judge for the courts in Nassau County or the administrative judge for the courts in Suffolk County, if the [hearing examiner] *support magistrate* is authorized to serve in either of those counties, or the administrative judge for the Family Court within the City of New York, if the [hearing examiner] *support magistrate* is to serve in New York City, shall:

(i) publish an announcement in the law journal serving the affected county or counties inviting applications from the bar or, if there is no law journal serving such area, in a newspaper of general circulation; and

(ii) communicate directly with bar associations in the affected county or counties to invite applicants to apply.

(2) The announcements and communications shall set forth the qualifications for selection as contained in subdivision (a) of this section, the compensation, the term of appointment and requirements

concerning restrictions on the private practice of law.

(3) A committee consisting of an administrative judge, a judge of the Family Court and a designee of the Chief Administrator shall screen each applicant for qualifications, character and ability to handle the [hearing examiner] *support magistrate* responsibilities, and shall forward the names of recommended nominees, with a summary of their qualifications, to the Chief Administrator, who shall make the appointment. The appointment order shall indicate the court or courts in which the [hearing examiner] *support magistrate* shall serve. The Chief Administrator further may authorize temporary assignments to additional courts.

(d) Training. The Chief Administrator shall authorize such training for [hearing examiners] *support magistrates* as appropriate to ensure the effective performance of their duties.

(e) Compensation and expenses. Compensation for [hearing examiners] *support magistrates* shall be fixed by the Chief Administrator. [Hearing examiners] *Support magistrates* shall be entitled to reimbursement of actual and necessary travel expenses in accordance with the rules governing the reimbursement of the travel expenses of nonjudicial court employees of the State of New York.

Section 205.33 Assignment of [hearing examiners] *support magistrates*.

The supervising judge of the Family Court in the county in which the [hearing examiner] *support magistrate* will serve, or the deputy administrative judge for the Family Court within the City of New York, if the [hearing examiner] *support magistrate* is to serve in New York City, shall assign [hearing examiners] *support magistrates* as required by the needs of the courts, in conformance with law and in conformance with section 205.3 of this Part.

Section 205.34 Referrals to [hearing examiners] *support magistrates*.

(a) A summons or warrant in support proceedings shall be made returnable by the clerk of the court before a [hearing examiner] *support magistrate* in the first instance, unless otherwise provided by the court. A net worth statement form prescribed by the Chief Administrator shall be appended by the clerk to the summons to be served upon the respondent and shall be given to the petitioner upon the filing of the petition.

(b) Whenever the parties are before a judge of the court when support is an issue, the judge shall make an immediate order, either temporary or permanent, with respect to support. If a temporary order is made, the court shall refer the issues of support to a [hearing examiner] *support magistrate*.

(c) The above provisions shall apply to initial determinations of support, subsequent modification or violation proceedings, and support proceedings referred to Family Court by the Supreme Court pursuant to part 6 of article 4 of the Family Court Act.

Section 205.35 Conduct of Hearing.

(a) Unless otherwise specified in the order of reference, the [hearing examiner] *support magistrate* shall conduct the hearing in the same manner as a court trying an issue without a jury in conformance with the procedures set forth in the Civil Practice Law and Rules and with section 205.3 of this Part.

(b) If a full or partial agreement is reached between the parties during the hearing, it shall be placed on the record and, if approved, shall be incorporated into an order, which shall be duly entered.

(c) The [hearing examiner] *support magistrate* shall require the exchange and filing of affidavits of financial disclosure.

Section 205.36 Findings of Fact; Transmission of Findings of Fact and Other Information; Quarterly Reports.

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(c) Each [hearing examiner] *support magistrate* shall file with the Chief Administrator, in such form as may be required, a quarterly report

indicating the matters that have been pending undecided before such hearing examiner for a period of 30 days after final submission, and the reasons therefor.

Section 205.37 Recording of Hearings; Objections.

(a) Hearings may be recorded mechanically. Any equipment used for such mechanical recording or for the production of such recording shall have the prior approval of the Chief Administrator of the Courts.

(b) Mechanical recordings shall be appropriately and clearly identified with the name of the case, docket number and date of hearing for storage and retrieval with proper precautions taken for security and preservation of confidentiality. Where hearings are recorded mechanically, the clerk of the court shall provide a means for the making of a duplicate recording or for an alternative method for preparation of a transcript where required by a judge reviewing objections to an order of a [hearing examiner] *support magistrate* or when requested by a party.

(c) A transcript of the proceeding before the [hearing examiner] *support magistrate* shall be prepared where required by the judge to whom objections have been submitted for review, in which event costs of duplication and of transcript preparation shall be borne by the objecting party. Either party may request a duplicate recording or transcript, in which event costs of duplication of the recording or preparation of the transcript shall be borne by the requesting party. A transcript shall bear the certification of the transcriber that the transcript is a true and accurate transcription of the proceeding. A party who is financially unable to pay the cost of the duplicate recording or the preparation of a transcript may seek leave of the court to proceed as a poor person pursuant to article 11 of the Civil Practice Law and Rules.

(d) Objections to the order of the [hearing examiner] *support magistrate* and rebuttals thereto shall be accompanied by an affidavit of service on the opposing party.

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Section 205.43 Hearings to Determine Willful Non-payment of Child Support.

(a) A petition that alleges a willful violation or seeks enforcement of an order of support shall be scheduled as soon as possible for a first appearance date in Family Court but in no event more than 30 days of the filing of the violation or enforcement petition.

(b) After service is made, the judge or [hearing examiner] *support magistrate* must commence a hearing to determine a willful violation within 30 days of the date noticed in the summons. The hearing must be concluded within 60 days of its commencement.

(c) Neither party shall be permitted more than one adjournment to secure counsel, except for good cause shown.

(d) On the scheduled hearing date on the issue of willfulness, the hearing may not be adjourned except for the following reasons:

- (1) actual engagement of counsel pursuant to Part 125 of the Rules of the Chief Administrator;
- (2) illness of a party; or
- (3) other good cause shown.

No adjournment shall be in excess of 14 days.

(e) If a willfulness hearing has commenced and must be continued, the adjourned date shall be within seven court days.

(f) Upon the conclusion of a willfulness hearing in a case heard by a [hearing examiner] *support magistrate*, the [hearing examiner] *support magistrate* shall issue written findings of fact within five court days.

(g) In a case heard by a [hearing examiner] *support magistrate*, if the [hearing examiner] *support magistrate* makes a finding of willfulness, the written findings shall include the following:

- (1) the specific facts upon which the finding of willfulness is based;
- (2) the specific amount of arrears established and a money

judgment for such amount. An award of attorney's fees may be issued with the findings or at a later date after the case is heard by the Family Court judge;

(3) a recommendation regarding the sanctions that should be imposed, including a recommendation whether the sanction of incarceration is recommended;

(4) a recommendation, as appropriate, regarding a specific dollar amount to be paid or a specific plan to repay the arrears.

(h) In a case heard by a [hearing examiner] *support magistrate*, if counsel is assigned, the assignment shall continue through the confirmation proceeding before the Family Court judge without further order of the court.

(i) In a case heard by a [hearing examiner] *support magistrate*, a Family Court judge may confirm the findings of the [hearing examiner] *support magistrate* by adopting his or her findings and recommendations in whole or in part. Alternatively, the Family Court judge may modify or refuse to confirm the findings and recommendations and may refer the matter back to the [hearing examiner] *support magistrate* for further proceedings. The court may, if necessary, conduct an evidentiary hearing.