

COURT NOTICES

AMENDMENT OF RULE Rules of the Chief Administrator

Pursuant to the authority vested in me, and upon consultation with the Administrative Board of the Courts, I hereby adopt, effective immediately, a new Part 144 of the Rules of the Chief Administrator, establishing the New York State Parent Education and Awareness Program, to read as follows:

PART 144

NEW YORK STATE PARENT EDUCATION AND AWARENESS PROGRAM

§ 144.1 Scope of Program

The New York State Parent Education and Awareness Program ("Program") provides information to parents about the impact of parental breakup or conflict on children, how children experience family change, and ways in which parents can help their children manage the family reorganization. The curriculum is child-centered and directed primarily toward promoting children's healthy adjustment and development by educating parents about ways they can minimize the stress of family change and protect their children from the negative effects of ongoing parental conflict. The administration and curriculum of the parent education program is sensitive to domestic violence concerns and must be in compliance with the Guidelines and Procedures for Certification of Parent Education and Awareness Programs.

§ 144.2 Definitions

(a) "Parent education and awareness program": A parent education and awareness program certified by the Office of Court Administration.

(b) "Provider": The entity responsible for applying for certification and for presentation of a parent education and awareness program.

(c) "Program administrator": The individual associated with the parent education provider ultimately responsible for administering all aspects of the parent education and awareness program.

(d) "Court": A justice, judge, judicial hearing officer, matrimonial referee, court attorney-referee, or support magistrate who handles issues of child custody and visitation and child support.

(e) "Guidelines": The Guidelines and Procedures for Certification of Parent Education and Awareness Programs, which contain the minimum standards for parent education programs to be certified and approved by the Office of Court Administration to accept participants referred by the courts of the State of New York.

(f) "Program Director": The individual employed by the Office of Court Administration responsible for administration and oversight of the New York State Parent Education and Awareness Program.

§ 144.3 Application of Program

(a) The New York State Parent Education and Awareness Program may apply in any action or proceeding:

(1) that affects the interests of children under 18 years of age; and

(2) that is brought in Supreme Court or Family Court: (i) to annul a marriage or declare the nullity of a void marriage, (ii) for separation, (iii) for divorce, (iv) to obtain custody of or visitation with minor children, (v) to obtain a modification of a prior order of custody or visitation with minor children, or (vi) where, in the exercise of the court's discretion, a determination is made in a particular matter that attendance by the parents would provide information that would be of benefit to them and their children.

(b) In any action or proceeding to which the Program may apply, the court, in its discretion, may order both parents to attend a parent education and awareness program. The order must direct that both parents attend, not just one parent, but the parents shall not attend the same class session. Such order shall be made as early in the proceeding as practicable.

(c) In determining whether to order parents to attend a parent education and awareness program, a court shall consider all relevant factors bearing upon the parties to the underlying action or proceeding and their children, including, but not limited to, any concern for the safety of an alleged victim of domestic violence; medical, financial or travel hardship; language barrier; and whether a parent has previously attended parent education.

(d) An order to attend a parent education and awareness program shall not delay the expeditious progress of the underlying proceeding.

(e) A parent who is a victim of domestic violence and for whom safety in traveling to or attending parent education is a concern may opt out of attendance by contacting a program administrator.

§ 144.4 Provider Certification

(a) General. Each provider that wishes to accept court-referred participants must be certified by the Office of Court Administration. In order to receive certification, potential providers must submit a certification application and any requested materials to the Program Director and be in compliance prior to being eligible to receive court-referred participants. A provider is under a continuing duty to advise the Program Director of changes in its education and awareness program or administration, including changes in staff, contact information, presenters/facilitators, locations, and class schedules.

(b) Certification Application ("application"). To receive certification, a provider must submit information and documentation that demonstrates that it is in compliance with the Guidelines. Each provider must submit three copies of the application and appended materials for each program, which must address all of the elements. If a provider expects that it will not be able to comply with a requirement, an explanation must be provided. A provider may also be required to submit additional information and materials for continued certification or re-certification, or in the event a complaint or other information is received by the Program Director indicating that the program may not be in compliance with the Guidelines.

(c) Waiver or Modification of Requirements. A waiver or modification of one or more of the requirements for certification or re-certification may be requested by a provider and must be included in the provider's application as well as in the cover letter to the

application. Requests must be made by letter to the Program Director sent via first class mail. Such request may be granted in the discretion of the Program Director in consultation with the Chief Administrator of the Courts or his or her designee after review and consideration of the impact of the deviation upon the underlying intent and purpose of the Guidelines.

(d) Review Process. Certification applications shall be reviewed by the Program Director in a timely manner. After a satisfactory initial review of the application, an on-site review of the program shall be conducted by the Program Director or his or her designee. During the on-site review, the Program Director shall observe the presentation of a full program cycle and may interview the program administrator. To promote consistency in the review process, the Program Director shall use a uniform written instrument to evaluate the programs. The determination of the Program Director shall be communicated to the provider by letter sent via first class mail. The opportunity for a provider to seek a review of any denial of certification or re-certification or suspension or revocation of certification shall be in accordance with the provisions set forth in the Guidelines.

(e) Approved Providers. Approved providers will be compiled in a list that will be updated and distributed regularly to the courts, Supreme and County and Family Court Chief Clerks, and others, as appropriate, and posted on the Program website. A provider is required to keep the Program Director apprised of its current information. Approved providers may indicate in advertisements and other uses that their program is certified by the Office of Court Administration.

§ 144.5 Fees

In accordance with the Guidelines, parent education and awareness programs may require attendees to pay a fee. The fee must be reasonably related to the cost of providing the services, cannot exceed the maximum authorized fee as set forth in the Guidelines, and must be subject to waiver or reduction if requiring a person to pay the full fee would work a hardship on the person or his or her immediate family.

§ 144.6 Confidentiality

(a) Any communication made by a party as part of his or her participation in a parent education and awareness program shall be a confidential communication and shall not be available for evidentiary use in any action or proceeding.

(b) The Court shall obtain information about compliance with its order sending parents to parent education only from the provider pursuant to the provisions in the Guidelines.

(c) Any provider, its program administrator or designee who is provided information from a parent, either in writing or orally, shall not divulge that information to the attorneys representing the parties, the attorney(s) for the children, the other party, or the court, and its chambers or administrative staffs, except that information may be provided, without indication of a parent's name, to the Program Director or his or her designee as part of the certification and evaluation process.

AMENDMENT OF RULE

Uniform Civil Rules for the Supreme and County 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 October 1, 2006, section 202.7 of the Uniform Civil Rules for the Supreme and County Courts, to add a new subdivision (f), relating to temporary restraining orders, to read as follows:

§202.7 Calendaring of Motions; Uniform Notice of Motion Form; Affirmation of Good Faith

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(f) Upon an application for an order to show cause or motion for a preliminary injunction seeking a temporary restraining order, the

application shall contain, in addition to the other information required by this section, an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by the giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application. This subdivision shall not be applicable to orders to show cause or motions in special proceedings brought under Article 7 of the Real Property Actions and Proceedings Law.

AMENDMENT OF RULE

Uniform Civil Rules of the Supreme and County 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 October 1, 2006, section 202.26(e) of the Uniform Civil Rules of the Supreme and County Courts, relating to the pre-trial conference, to read as follows:

§ 202.26 Pretrial Conference

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(e) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations, or accompanied by a person empowered to act on behalf of the party represented, will be permitted to appear at a pre-trial conference. Where appropriate, the court may order parties, representatives of parties, representatives of insurance carriers or persons having an interest in any settlement, including those holding liens on any settlement or verdict, to also attend in person or telephonically at the settlement conference. Plaintiff shall submit marked copies of the pleadings. A verified bill of particulars and a doctor's report or hospital record, or both, as to the nature and extent of injuries claimed, if any, shall be submitted by the plaintiff and by any defendant who counterclaims. The judge may require additional data, or may waive any requirement for submission of documents on suitable alternate proof of damages. Failure to comply with this paragraph may be deemed a default under CPLR 3404. Absence of an attorney's file shall not be acceptable excuse for failing to comply with this paragraph.

AMENDMENT OF RULE

Uniform Rules for Trial Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby adopt, effective October 1, 2006, a new Part 221 of the Uniform Rules for the Trial Courts, relating to the conduct of depositions, to read as follows:

PART 221

UNIFORM RULES FOR THE CONDUCT OF DEPOSITIONS

§221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule

3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

§221.2 Refusal to answer when objection is made

A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

§221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.