

COURT NOTICES

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 January 17, 2006, Part 202 of the Uniform Civil Rules of the Supreme and County Courts, to add the attached new section 202.70, relating to the Commercial Division of the Supreme Court.

§202.70 Rules of the Commercial Division of the Supreme Court

(a) Monetary thresholds

Except as set forth in subdivision (b), the monetary thresholds of the Commercial Division, exclusive of punitive damages, interests, costs, disbursements and counsel fees claimed, is established as follows:

Albany County	\$25,000
Erie County	\$25,000
Kings County	\$50,000
Nassau County	\$75,000
New York County	\$100,000
Queens County	\$50,000
Seventh Judicial District	\$25,000
Suffolk County	\$25,000
Westchester County	\$100,000

(b) Commercial cases

Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or equitable or declaratory relief is sought:

(1) Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

(2) Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units);

(3) Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only;

(4) Shareholder derivative actions – without consideration of the monetary threshold;

(5) Commercial class actions – without consideration of the monetary threshold;

(6) Business transactions involving or arising out of dealings with commercial banks and other financial institutions;

(7) Internal affairs of business organizations;

(8) Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters;

(9) Environmental insurance coverage;

(10) Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage);

(11) Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures – without consideration of the monetary threshold; and

(12) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues – without consideration of the monetary threshold.

(c) Non-commercial cases

The following will not be heard in the Commercial Division even if the monetary threshold is met:

(1) Suits to collect professional fees;

(2) Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;

(3) Residential real estate disputes, including landlord-tenant matters, and commercial real estate disputes involving the payment of rent only;

(4) Proceedings to enforce a judgment regardless of the nature of the underlying case;

(5) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; and

(6) Attorney malpractice actions except as otherwise provided in paragraph (b)(8).

(d) Assignment to the Commercial Division

(1) A party seeking assignment of a case to the Commercial Division shall indicate on the Request for Judicial Intervention (RJI) that the case is "commercial." A party seeking a designation of a special proceeding as a commercial case shall check the "other commercial" box on the RJI, not the "special proceedings" box.

(2) The party shall submit with the RJI a brief signed statement justifying the Commercial Division designation, together with a copy of the proceedings.

(e) Transfer into the Commercial Division

If a case is assigned to a non-commercial part because the filing party did not designate the case as "commercial" on the RJI, any other party may apply by letter application (with a copy to all parties) to the Administrative Judge, within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division. The determination of the Administrative Judge shall be final and subject to no further administrative review or appeal.

(f) Transfer from the Commercial Division

(1) In the discretion of the Commercial Division justice assigned, if a case does not fall within the jurisdiction of the Commercial Division as set forth in this section, it shall be transferred to a non-commercial part of the court.

(2) Any party aggrieved by a transfer of a case to a non-commercial part may seek review by letter application (with a copy to all parties) to the Administrative Judge within ten days of receipt of the designation of the case to a non-commercial part. The determination of the Administrative Judge shall be final and subject to no further administrative review or appeal.

(g) Rules of practice for the Commercial Division

Unless these rules of practice for the Commercial Division provide specifically to the contrary, the rules of Part 202 also shall apply to the Commercial Division, except that Rules 7 through 15 shall supersede section 202.12 (Preliminary Conference) and Rules 16 through 24 shall supersede section 202.8 (Motion Procedure).

Rule 1. Appearance by Counsel with Knowledge and Authority. Counsel who appear in the Commercial Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. Counsel should also be prepared to discuss any motions that have been submitted and are outstanding. Failure to comply with this rule may be regarded as a default and dealt with appropriately. See Rule 12. It is important that counsel be on time for all scheduled appearances.

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by submission of a copy of the stipulation or a letter directed to the clerk of the part along with notice to chambers via telephone or e-mail. This notification shall be made in addition to the filing of a stipulation with the County Clerk.

Rule 3. Alternative Dispute Resolution (ADR). At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation.

Rule 4. Electronic Submission of Papers.

(a) Papers and correspondence by fax. Papers and correspondence filed by fax should comply with the requirements of section 202.5-a except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. Correspondence sent by fax should not be followed by hard copy unless requested.

(b) Papers submitted in digital format. In cases not pending in the court's Filing by Electronic Means System, the court may permit counsel to communicate with the court and each other by e-mail. In the court's discretion, counsel may be requested to submit memoranda of law by e-mail or on a computer disk along with an original and courtesy copy.

Rule 5. (This rule shall apply only in the First and Second Judicial Departments) Information on Cases. Information on future court appearances can be found at the court system's future appearance site (www.nycourts.gov/ecourts). Decisions can be found on the Commercial Division home page of the Unified Court System's internet website: www.courts.state.ny.us/comdiv or in the New York Law Journal. The clerk of the part can also provide information about scheduling in the part (trials, conferences, and arguments on motions). Where circumstances require exceptional notice, it will be furnished directly by chambers.

Rule 6. Form of Papers. All papers submitted to the Commercial Division shall comply with CPLR 2101 and section 202.5(a). Papers shall be double-spaced and contain print no smaller than twelve-point, or 8½ x 11 inch paper, bearing margins no smaller than one inch. The print size of footnotes shall be no smaller than ten-point. Papers also shall comply with Part 130 of the Rules of the Chief Administrator.

Rule 7. Preliminary Conference; Request. A preliminary conference shall be held within 45 days of assignment of the case to a Commercial Division justice, or as soon thereafter as is practicable. Except for good cause shown, no preliminary conference shall be adjourned more than once or for more than 30 days. If a Request for Judicial Intervention is accompanied by a dispositive motion, the preliminary conference shall take place within 30 days following the decision of such motion (if not rendered moot) or at such earlier date as scheduled by the justice presiding. Notice of the preliminary conference date will be sent by the court at least five days prior thereto.

Rule 8. Consultation prior to Preliminary and Compliance Conferences.

(a) Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery and any other issues to be discussed at the conference; and (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

(b) Prior to the preliminary conference, counsel shall confer with regard to anticipated electronic discovery issues. Such issues shall be addressed with the court at the preliminary conference and shall include but not be limited to (i) implementation of a data preservation plan; (ii) identification of relevant data; (iii) the scope, extent and form of production; (iv) anticipated cost of data recovery and proposed initial allocation of such cost; (v) disclosure of the programs and manner in which the data is maintained; (vi) identification of computer system(s) utilized; (vii) identification of the individual(s) responsible for data preservation; (viii) confidentiality and privilege issues; and (ix) designation of experts.

Rule 9. (Reserved)

Rule 10. Submission of Information. At the preliminary conference, counsel shall be prepared to furnish the court with the following: (i) a complete caption, including the index number; (ii) the name, address, telephone number, e-mail address and fax number of all counsel; (iii) the dates the action was commenced and issue joined; (iv) a statement as to what motions, if any, are anticipated; and (v) copies of any decisions previously rendered in the case.

Rule 11. Discovery

(a) The preliminary conference will result in the issuance by the court of a preliminary conference order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as (i) directions for submission to the alternative dispute resolution program; (ii) a schedule of limited-issue discovery in aid of early dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure.

(b) The order will also contain a comprehensive disclosure schedule, including dates for the service of third-party pleadings, discovery, motion practice, a compliance conference, if needed, a date for filing the note of issue, a date for a pre-trial conference and a trial date.

(c) The preliminary conference order may provide for such limitations of interrogatories and other discovery as may be necessary to the circumstances of the case.

(d) The court will determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3214(b), pending the determination of any dispositive motion.

Rule 12. Non-Appearance at Conference. The failure of counsel to appear for a conference may result in a sanction authorized by section 130.2.1 of the Rules of the Chief Administrator or section 202.27, including dismissal, the striking of an answer, an inquest or direction for judgment, or other appropriate sanction.

Rule 13. Adherence to Discovery Schedule

(a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Such deadlines, however, may be modified upon the consent of all parties, provided that all discovery shall be completed by the discovery cutoff date set forth in the preliminary conference order. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party pursuant to CPLR 3126.

(b) If a party seeks documents as a condition precedent to a deposition and the documents are not produced by the date fixed, the party seeking disclosure may ask the court to preclude the non-producing party from introducing such demanded documents at trial.

Rule 14. Disclosure Disputes. Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure. See section 202.7. Except as provided in Rule 24 hereof, if counsel are unable to resolve any disclosure dispute in this fashion, the aggrieved party shall contact the court to arrange a conference as soon as practicable to avoid exceeding the discovery cutoff date. Counsel should request a conference by telephone if that would be more convenient and efficient than an appearance in court.

Rule 15. Adjournments of Conferences. Adjournments on consent are permitted with the approval of the court for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the preliminary conference order, unless otherwise directed by the court.

Rule 16. Motions in General.

(a) **Form of Motion Papers.** The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should use tabs when submitting papers containing exhibits. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated. CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

(b) **Proposed Orders.** When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, *pro hac vice* admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion.

(c) **Adjournment of Motions.** Dispositive motions (made pursuant to CPLR 3211, 3212 or 3213) may be adjourned only with the court's consent. Non-dispositive motions may be adjourned on consent no more than three times for a total of no more than 60 days unless otherwise directed by the court.

Rule 17. Length of Papers. Unless otherwise permitted by the court:

(i) briefs or memoranda of law shall be limited to 25 pages each; (ii) reply memoranda shall be no more than 15 pages and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits and affirmations shall be limited to 25 pages each.

Rule 18. Sur-Reply and Post-Submission Papers. Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule shall not respond in kind.

Rule 19. Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. See Rule 20. Absent advance permission, reply papers shall not be submitted on orders to show cause.

Rule 19-a. Motions for Summary Judgment; Statements of Material Facts.

(a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

Rule 20. Temporary Restraining Orders. Unless the moving party can demonstrate that there will be significant prejudice by reason of giving notice, a temporary restraining order will not be issued. The applicant must give notice to the opposing parties sufficient to permit them an opportunity to appear and contest the application.

Rule 21. Courtesy Copies. Courtesy copies should not be submitted unless requested or as herein provided. However, courtesy copies of all motion papers and proposed orders shall be submitted in cases in the court's Filing by Electronic Means System.

Rule 22. Oral Argument. Any party may request oral argument on the face of its papers or in an accompanying letter. Except in cases before justices who require oral argument on all motions, the court will determine, on a case-by-case basis, whether oral argument will be heard and, if so, when counsel shall appear. Notice of the date selected by the court shall be given, if practicable, at least 14 days before the scheduled oral argument. At that time, counsel shall be prepared to argue the motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing.

Rule 23. 60-Day Rule. If 60 days have elapsed after a motion has been finally submitted or oral argument held, whichever was later, and no decision has been issued by the court, counsel for the movant shall send the court a letter alerting it to this fact with copies to all parties to the motion.

Rule 24. Advance Notice of Motions

(a) Nothing in this rule shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, in order to permit the court the opportunity to resolve issues before motion practice ensues, and to control its calendar in the context of the discovery and trial schedule, pre-motion conferences in accordance herewith must be held. The failure of counsel to comply with this rule may result in the motion being held in abeyance until the court has an opportunity to conference the matter.

(b) This rule shall not apply to disclosure disputes covered by Rule 14 nor to dispositive motions pursuant to CPLR 3211, 3212 or 3213 made at the time of the filing of the Request for Judicial Intervention or after discovery is complete. Nor shall the rule apply to motions to be relieved as counsel, for *pro hac vice* admission, for reargument or in limine.

(c) Prior to the making or filing of a motion, counsel for the moving party shall advise the Court in writing (no more than two pages) on notice to opposing counsel outlining the issue(s) in dispute and requesting a telephone conference. If a cross-motion is contemplated, a similar motion notice letter shall be forwarded to the court and counsel. Such correspondence shall not be considered by the court in reaching its decision on the merits of the motion.

(d) Upon review of the motion notice letter, the court will schedule a telephone or in-court conference with counsel. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the

scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(e) If the matter can be resolved during the conference, an order consistent with such resolution may be issued or counsel will be directed to forward a letter confirming the resolution to be "so ordered." At the discretion of the court, the conference may be held on the record.

(f) If the matter cannot be resolved, the parties shall set a briefing schedule for the motion which shall be approved by the court. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(g) On the face of all notices of motion and orders to show cause, there shall be a statement that there has been compliance with this rule.

(h) Where a motion must be made within a certain time pursuant to the CPLR, the submission of a motion notice letter, as provided in subdivision (a), within the prescribed time shall be deemed the timely making of the motion. This subdivision shall not be construed to extend any jurisdictional limitations period.

Rule 25. Trial Schedule. Counsel are expected to be ready to proceed either to select a jury or to begin presentation of proof on the scheduled trial date. Once a trial date is set, counsel shall immediately determine the availability of witnesses. If, for any reason, counsel are not prepared to proceed on the scheduled date, the court is to be notified within ten days of the date on which counsel are given the trial date or, in extraordinary circumstances, as soon as reasonably practicable. Failure of counsel to provide such notification will be deemed a waiver of any application to adjourn the trial because of the unavailability of a witness. Witnesses are to be scheduled so that trials proceed without interruption. Trials shall commence each court day promptly at such times as the court directs. Failure of counsel to attend the trial at the time scheduled without good cause shall constitute a waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel's absence. There shall be no adjournment of a trial except for good cause shown. With respect to trials scheduled more than 60 days in advance, section 125.1(g) of the Rules of the Chief Administrator shall apply and the actual engagement of trial counsel in another matter will not be recognized as an acceptable basis for an adjournment of the trial.

Rule 26. Estimated Length of Trial. At least ten days prior to trial or such other time as the court may set, the parties, after considering the expected testimony of and, if necessary, consulting with their witnesses, shall furnish the court with a realistic estimate of the length of the trial.

Rule 27. Motions in Limine. The parties shall make all motions in limine no later than ten days prior to the scheduled pre-trial conference date, and the motions shall be returnable on the date of the pre-trial conference, unless otherwise directed by the court.

Rule 28. Pre-Marking of Exhibits. Counsel for the parties shall consult prior to the pre-trial conference and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. At the pre-trial conference date, each side shall then mark its exhibits into evidence as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the clerk of the part for guidance. The court will rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked.

Rule 29. Identification of Deposition Testimony. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony

to be read questions and answers that are irrelevant to the point for which the deposition testimony is offered. Each party shall prepare a list of deposition testimony to be offered by it as to which objection has not been made and, identified separately, a list of deposition testimony as to which objection has been made. At least ten days prior to trial or such other time as the court may set, each party shall submit its list to the court and other counsel, together with a copy of the portions of the deposition testimony as to which objection has been made. The court will rule upon the objections at the earliest possible time after consultation with counsel.

Rule 30. Settlement and Pretrial Conferences.

(a) **Settlement Conference.** At the time of certification of the matter as ready for trial or at any time after the discovery cut-off date, the court may schedule a settlement conference which shall be attended by counsel and the parties, who are expected to be fully prepared to discuss the settlement of the matter.

(b) **Pre-trial Conference.** Prior to the pretrial conference, counsel shall confer in a good faith effort to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. At the pre-trial conference, counsel shall be prepared to discuss all matters as to which there is disagreement between the parties, including those identified in Rules 27-29, and settlement of the matter. At or before the pre-trial conference, the court may require the parties to prepare a written stipulation of undisputed facts.

Rule 31. Pre-Trial Memoranda, Exhibit Book and Requests for Jury Instructions

(a) Counsel shall submit pre-trial memoranda at the pre-trial conference, or such other time as the court may set. Counsel shall comply with CPLR 2103(e). A single memorandum no longer than 25 pages shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference or at such other time as the court may set, counsel shall submit an indexed binder or notebook of trial exhibits for the court's use. A copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses shall be prepared and submitted. Plaintiff's exhibits shall be numerically tabbed and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions - Civil, a reference to the PJI number will suffice. Submissions should be by hard copy and disk or e-mail attachment in WordPerfect 12 format, as directed by the court.

Rule 32. Scheduling of witnesses. At the pre-trial conference or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility.

Rule 33. Preclusion. Failure to comply with Rules 28, 29, 31 and 32 may result in preclusion pursuant to CPLR 3126.

AMENDMENT OF RULE

Uniform Civil Rules for the Supreme and County Courts

Pursuant to the authority vested in me, and upon the advice and consent of the Administrative Board of the Courts, I hereby amend, effective January 17, 2006, section 202.8 of the Uniform Civil Rules for the Supreme and County Courts, to add a new subdivision (h), relating to motions not decided within 60 days, to read as follows:

(h) 60-Day Rule. If 60 days have elapsed after a motion has been finally submitted or oral argument held, whichever was later, and no decision has been issued by the court, counsel for the movant shall send the court a letter alerting it to this fact with copies to all parties to the motion.

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 205.7, 205.15, 205.16, 205.17, 205.28, 205.50, 205.53, 205.62, 205.63, 205.67, 205.81 and 205.83 of the Uniform Rules for the Family Court, relating to the implementation of recent legislative enactments and improvement of procedures for resolution of family matters, to read as follows:

Section 205.7. Papers filed in court; docket number; prefix; forms.

* * *

(b) The prefixes for the docket numbers assigned to Family Court proceedings shall be:

* * *

[K–Foster Care Review]

* * *

(c) Proceedings for extensions of placement in *Person in Need of Supervision and juvenile delinquency proceedings and for permanency hearings in child protective and voluntary foster care proceedings pursuant to Article 10-A of the Family Court Act* shall bear the prefix and docket number of the original proceeding in which the placement was made. *Permanency hearings pursuant to Family Court Act Article 10-A regarding children freed for adoption shall bear the prefix and docket number of the proceeding or proceedings in which the child was freed: the surrender and/or termination of parental rights proceedings. Permanency reports submitted pursuant to Article 10-A shall not be considered new petitions.*

Section 205.15. Submission of orders for signature.

[(a)] Proposed orders, with proof of service on all parties, must be submitted for signature unless otherwise directed by the court within thirty days after the signing and filing of the decision directing that the order be settled or submitted. *Proposed orders in child protective proceedings and permanency hearings pursuant to Articles 10 and 10-A of the Family Court Act, respectively, must be submitted for signature immediately, but in no event later than 14 days of the earlier of the Court's oral announcement of its decision or signing and filing of its decision, unless otherwise directed by the Court, provided, however, that proposed orders pursuant to section 1022 of the Family Court Act must be submitted for signature immediately, but in no event later than the next court date following the removal of the child. Orders in termination of parental rights proceedings pursuant to Article 6 of the Family Court Act or section 384-b of the Social Services Law shall be settled not more than 14 days after the earlier of the Family Court's oral announcement of its decision or signing and filing of its decision.*

[(b)] When settlement of an order is directed by the court:

(1) a copy of the proposed order or judgment with notice of settlement, returnable at the office of the clerk of the part in which the order or judgment was granted, or before the judge of the court if the court has so directed or if the clerk is unavailable, shall be served on all parties either:

(i) by personal service not less than five days before the date of settlement; or

(ii) by mail not less than ten days before the date of settlement;

(2) proposed counter-orders or judgments shall be made returnable on the same date and at the same place, and shall be served

on all parties by personal service, not less than two days, or by mail, not less than seven days, before the date of settlement.]

Section 205.16 Motion for judicial determination that reasonable efforts are not required for child in foster care.

(a) This section shall govern any motion for a judicial determination, pursuant to section 352.2(2)(c), 754(2)(b), 1039-b or 1052(b) of the Family Court Act or section 358-a(3)(b) [or 392(6-a)] of the Social Services Law, that reasonable efforts to prevent or eliminate the need for removal of the child from the home or to make it possible to reunify the child with his or her parents are not required.

(b) A motion for such a determination shall be filed in writing on notice to the parties, including the law guardian, on the form officially promulgated by the Chief Administrator of the Courts and set forth in Chapter IV of Subtitle D of this Title and shall contain all information required therein.

Section 205.17 Permanency hearings for children in foster care, *children directly placed with relatives or other suitable persons and children freed for adoption*

(a) This section shall govern all permanency hearings conducted pursuant to [articles 3, 7 and] *Article 10-A* of the Family Court Act [and sections 358-a and 392 of the Social Services Law].

(b) [Filing] *Scheduling for dates certain; deadlines for submitting permanency reports.*

(1) [A petition] *The first court order remanding a child into foster care or into direct placement with a relative or other suitable person in a proceeding pursuant to Article 10 or approving a voluntary placement instrument pursuant to section 358-a of the social services law must contain a date certain for the initial permanency hearing [in a case brought pursuant to article 3 or 7 of the Family Court Act or section 358-a or 392 of the Social Services Law shall be filed at least 60 days prior to the expiration of one year following the entry] pursuant to Article 10-A of the Family Court Act, which must be not later than eight months from the date of removal of the child [into foster care] from his or her home.*

(2) A [petition for the initial] permanency hearing [in a case arising under article 10 of the Family Court Act shall be filed at least 60 days prior to the expiration of one year following the entry of the child into foster care. For purposes of this paragraph, the child shall be deemed to have entered foster care on the earlier of the date of the fact finding of abuse or neglect of the child pursuant to section 1051 of the Family Court Act or 60 days after the date the child was removed from his or her home.

(3) In a case brought pursuant to section 1055-a of the Family Court Act] with respect to a child who has been freed for adoption [but not placed in an adoptive home, or who has been freed for adoption and placed in an adoptive home but for whom a petition for adoption has not been filed, a petition for a permanency hearing] shall be [filed 60 days prior to the earlier of the expiration of one year following the last permanency hearing or six months after] *scheduled for a date certain not more than 30 days after the earlier of the Family Court's oral announcement of its decision or the signing and filing of its decision freeing the child [has been freed] for adoption. [With respect to a child freed for adoption for whom an adoption petition is pending, a petition for a permanency hearing shall be filed 60 days prior to the expiration of one year following the last permanency hearing.*

(4) (3) In any case in which the court has made a determination, pursuant to section [352.2(2)(c), 754(2)(b),] 1039-b or 1052(b) of the Family Court Act or section 358-a(3)(b) [or 392(6-a)] of the Social Services Law, that reasonable efforts to [prevent or eliminate the need for removal of the child from the home or to make it possible to] reunify the child with his or her parents are not required, a permanency hearing must be [held] *scheduled for a date certain within 30 days of [such finding] the determination and the originally scheduled date shall be cancelled. In such a case, a [petition for a] permanency hearing report*

shall be [filed and served] *transmitted to the parties and counsel, including the law guardian*, on an expedited basis as directed by the court.

[(5) Following the initial] (4) *Each permanency hearing order* [in a case in which a child remains in foster care, a petition for a subsequent] *must contain a date certain for the next permanency hearing, which shall be* [filed at least 60 days prior to the expiration of one year] *not more than six months following the* [date] *completion of the* [preceding] *permanency hearing, except as provided in paragraph* (3) [or (4)] *of this subdivision.*

[(6)](5) *If the child has been adopted or has been the subject of a final order of custody or guardianship by the scheduled date certain, the permanency hearing shall be cancelled and the petitioner shall promptly so notify the court, all parties and their attorneys, including the law guardian, as well as all individuals required to be notified of the hearing pursuant to Family Court Act §1089.*

(c) Required notice and [service. In] *transmittal of permanency reports. Except in cases involving children freed for adoption, in addition to* [serving] *sending the* [petition] *permanency hearing report and accompanying papers*[upon the parties, including the law guardian,] *to the respondent parents' last-known address and to their attorneys not less than 14 days in advance of the hearing date, the petitioner shall make reasonable efforts to provide actual notice of the permanency hearing to the respondent parents through any additional available means, including, but not limited to, case-work, service and visiting contacts. Additionally, not less than 14 days in advance of the hearing date, the petitioner shall send a notice of the permanency hearing and the report and accompanying documents to the non-respondent parent(s) and the foster parent or parents caring for the child* [and any], *each of whom shall be a party, and to the law guardian. Petitioner shall also send the notice and report to a pre-adoptive parent or relative providing care for the child* [in accordance with sections 355.5(6), 741-a, 1040 and 1055-a(4) of the Family Court Act and section 358-a(4)(c) and 392(4)(i) of the Social Services Law. The] *and shall send a notice, but not the report, to former foster parents who cared for the child in excess of one year. The Court shall give such persons an opportunity to be heard, but they shall not be considered parties and their failures to appear shall not constitute cause to delay the hearing. As provided in subdivision (d) of this section, the petitioner shall submit on or before the return date* [appropriate proof of service upon the parties and] *documentation of the notice or notices given to the respondent and non-respondent parents, their attorneys, the law guardian, and any present or former foster parent, pre-adoptive parent or relative.*

(d) Required papers to be [filed] *submitted.*

(1) A *sworn permanency* [petition] *report shall be* [filed] *submitted on the form officially promulgated by the Chief Administrator of the Courts and set forth in Chapter IV of Subtitle D of this Title, and shall contain all information required* [therein. The petition shall include, but not be limited to, the following: the date by which the permanency hearing must be held; the date by which any subsequent permanency petition must be filed; the proposed permanency goal for the child; the reasonable efforts, if any, undertaken to achieve the child's return to his or her parents and other permanency goal; the visitation plan for the child and his or her sibling or siblings and, if parental rights have not been terminated, for his or her parent or parents; and current information regarding the status of services ordered by the court to be provided, as well as other services that have been provided, to the child and his or her parent or parents.

(2) In all cases, the permanency petition shall be accompanied by the most recent uniform case review containing, at minimum: the child's permanency goal and projected timeframe for its achievement; the reasonable efforts that have been undertaken and are planned to achieve the goal; impediments, if any, that have been encountered in

achieving the goal; and the service plan for the child and (where parental rights have not been terminated) the child's parent or parents.] *by section 1089 of the Family Court Act.*

(2) The permanency [petition] *report shall be accompanied by additional reports and documents as directed by the court* [. A permanency petition filed pursuant to article 3 of the Family Court Act shall contain or have annexed to it a plan for the release or conditional release of the child, as required by section 353.3(7) of the Family Court Act], *which may include, but not be limited to, periodic school report cards, photographs of the child, clinical evaluations and prior court orders in related proceedings.*

(3) [Not later than five days prior to the date of the permanency hearing, the petitioner shall file a report containing updated information with the court and shall provide copies to the parties, the law guardian, the foster parent caring for the child and any pre-adoptive parent or relative providing care for the child. The report shall provide information, including, but not limited to: the current status of the child; changes, if any, in the child's foster care placement, permanency goal or service plan; updated information regarding allegations in the petition and accompanying documents and any further reports directed by the court.] *The copy of the report submitted to the Family Court must be sworn and must be accompanied by a list of all persons and addresses to whom the report and/or notice of the permanency hearing were sent. Except as otherwise directed by the Family Court, the list containing the addresses shall be kept confidential and shall not be part of the court record that may be subject to disclosure pursuant to Section 205.5 of this title. The copies of the permanency hearing report required to be sent to the parties and their attorneys, including the law guardian, not less than 14 days prior to the scheduled date certain need not be sworn so long as the verification accompanying the Family Court's sworn copy attests to the fact that the copies transmitted were identical in all other respects to the Court's sworn copy.*

Section 205.28 Procedures for compliance with the Adoption and Safe Families Act (*juvenile delinquency proceeding*)

* * *

(d) Permanency hearing; extension of placement.

(1) A petition for a permanency hearing and, if applicable, an extension of placement, pursuant to sections 355.3 and 355.5 of the Family Court Act, shall be filed at least 60 days prior to the expiration of one year following the respondent's entry into foster care; provided, however, that if the Family Court makes a determination, pursuant to section 352.2(2)(c) of the Family Court Act, that reasonable efforts are not required to prevent or eliminate the need for removal of the respondent from his or her home or to make it possible to reunify the respondent with his or her parents, the permanency hearing shall be held within 30 days of such finding and the petition for the permanency hearing shall be filed and served on an expedited basis as directed by the court.

(2) Following the initial permanency hearing in a case in which the respondent remains in placement, a petition for a subsequent permanency hearing and, if applicable, extension of placement, shall be filed at least 60 days prior to the expiration of one year following the date of the preceding permanency hearing. [All petitions for permanency hearings shall be governed by section 205.17 of this Part.]

(3) *The permanency petition shall include, but not be limited to, the following: the date by which the permanency hearing must be held; the date by which any subsequent permanency petition must be filed; the proposed permanency goal for the child; the reasonable efforts, if any, undertaken to achieve the child's return to his or her parents or other permanency goal; the visitation plan for the child and his or her sibling or siblings and, if parental rights have not been terminated, for his or her parent or parents; and current information regarding the status of services ordered by the court to be provided, as well as other*

services that have been provided, to the child and his or her parent or parents.

(4) *In all cases, the permanency petition shall be accompanied by the most recent service plan containing, at minimum: the child's permanency goal and projected time-frame for its achievement; the reasonable efforts that have been undertaken and are planned to achieve the goal; impediments, if any, that have been encountered in achieving the goal; and the services required to achieve the goal. Additionally, the permanency petition shall contain or have annexed to it a plan for the release or conditional release of the child, as required by section 353.3(7) of the Family Court Act.*

Section 205.50 Terms and conditions of order suspending judgment in accordance with section 633 of the Family Court Act or section 384-b(8)(c) of the Social Services Law.

(a) An order suspending judgment entered pursuant to section 631 of the Family Court Act or section 384-b(8)(c) of the Social Services Law shall be related to the adjudicated acts or omissions of respondent and shall contain at least one of the following terms and conditions requiring respondent to:

(1) sustain communication of a substantial nature with the child by letter or telephone at stated intervals;

(2) maintain consistent contact with the child, including visits or outings at stated intervals;

(3) participate with the authorized agency in developing and effectuating a plan for the future of the child;

(4) cooperate with the authorized agency's court-approved plan for encouraging and strengthening the parental relationship;

(5) contribute toward the cost of maintaining the child if possessed of sufficient means or able to earn such means;

(6) seek to obtain and provide proper housing for the child;

(7) cooperate in seeking to obtain and in accepting medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, employment or family counseling or child guidance, and permit information to be obtained by the court from any person or agency from whom the respondent is receiving or was directed to receive such services; and

(8) satisfy such other reasonable terms and conditions as the court shall determine to be necessary or appropriate to ameliorate the acts or omissions which gave rise to the filing of the petition.

(b) The order shall set forth the duration, terms and conditions of the suspended judgment and shall contain a date certain for review of respondent's compliance not less than 30 days in advance of the expiration of the suspended judgment. The suspended judgment may last for up to one year and may, if exceptional circumstances warrant, be extended by the Court for one additional period of up to one year. A copy of the order, along with a current service plan, shall be furnished to the respondent. The order shall contain a written statement informing the respondent that a failure to obey the order may lead to its revocation and to the issuance of an order for the commitment of the guardianship and custody of a child. Where the child is in foster care, the order shall set forth the visitation plan for the child and the respondent, as well as for the child and his or her sibling or siblings, if any, and shall require the agency to notify the respondent of case conferences. The order shall further contain a determination in accordance with subdivision 12 of section 384-b of the Social Services Law of the existence of any person or persons to whom notice of an adoption would be required pursuant to section 111-b of the Domestic Relations Law and, if so, whether such person or persons were given notice of the termination of parental rights proceeding and whether such person or persons appeared.

(c) *Not later than 60 days in advance of the expiration of the period of suspended judgment, the petitioner shall file a report with the Family Court and all parties, including the respondent and his or her attorney, the law guardian and intervenors, if any, regarding the respondent's*

compliance with the terms and conditions of the suspended judgment. The court may set [a time or] additional times at which the respondent or the authorized agency caring for the child shall report to the court [as to whether there is] regarding compliance with the terms and conditions of the suspended judgment.

(d) If a respondent fails to comply with the terms and conditions of an order suspending judgment made pursuant to section 631 of the Family Court Act or section 384-b(8)(c) of the Social Services Law:

(1) a [petition for] *motion or order to show cause seeking the revocation of the order may be filed;*

(2) the [petition] *affidavit accompanying the motion or order to show cause shall contain a concise statement of the acts or omissions alleged to constitute noncompliance with the order;*

(3) [service of a summons and a copy of the petition shall be made as provided for by section 617 of the Family Court Act; and] *the motion or order to show cause shall be served upon the respondent by mail at the last known address or as directed by the court and shall be served upon all attorneys, the law guardian and intervenors, if any;*

(4) *during the pendency of the motion or order to show cause, the period of the suspended judgment is tolled; and*

(5) if, after a hearing or upon the respondent's admission, the court is satisfied that the allegations of the [petition] *motion or order to show cause have been established and upon a determination of the child's best interests, the court may modify, revise or revoke the order of suspended judgment or if exceptional circumstances warrant and the suspended judgment has not already been extended, the court may extend the suspended judgment for an additional period of up to one year.*

(e) The court may at any time, upon notice and opportunity to be heard to the parties, their attorneys and the law guardian, revise, modify or enlarge the terms and conditions of a suspended judgment previously imposed.

(f) *If the child remains in foster care during the pendency of a suspended judgment or after a suspended judgment has been deemed satisfied or if guardianship and custody have been transferred to the agency as a result of a revocation of the suspended judgment, a permanency hearing must be scheduled for a date certain and must be completed immediately following or not more than 60 days after the earlier of the Family Court's oral announcement of its decision or signing and filing of its written order. Subsequent permanency hearings must be held as required by section 1089 of the Family Court Act at intervals of not more than six months from the date of completion of the prior permanency hearing.*

Section 205.53 Papers required in an adoption proceeding.

(a) All papers submitted in an adoption proceeding shall comply with section 205.7 of this Part.

(b) In addition to those papers required by the Domestic Relations Law, the following papers, unless otherwise dispensed with by the court, shall be submitted and filed prior to the placement of any adoption proceeding on the calendar:

(1) a certified copy of the birth certificate of the adoptive child;

(2) an affidavit or affidavits by an attorney admitted to practice in the State of New York or, in the discretion of the court, by a person other than an attorney who is known to the court, identifying each of the parties;

(3) a certified marriage certificate, where the adoptive parents are husband and wife or where an individual adoptive parent is the spouse of the natural parent;

(4) a certified copy of a decree or judgment, where an adoptive parent's marriage has been terminated by decree or judgment;

(5) a certified death certificate, where an adoptive or natural parent's marriage has been terminated by death or where it is alleged that consent or notice is not required because of death;

(6) a proposed order of adoption;

(7) a copy of the attorney's affidavit of financial disclosure filed with the Office of Court Administration pursuant to section 603.23, 691.23, 806.14 or 1022.33 of this Title; and either an attorney's affirmation that the affidavit has been personally delivered or mailed in accordance with such rules or the dated receipt from the Office of Court Administration; [and]

(8) an affidavit of financial disclosure from the adoptive parent or parents, and from any person whose consent to the adoption is required by law, setting forth the following information:

(i) name, address and telephone number of the affiant;

(ii) status of the affiant in the proceeding and relationship, if any, to the adoptive child;

(iii) docket number of the adoption proceeding;

(iv) the date and terms of every agreement, written or otherwise, between the affiant and any attorney pertaining to any fees, compensation or other remuneration paid or to be paid by or on behalf of the adoptive parents or the natural parents, directly or indirectly, including but not limited to retainer fees on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption;

(v) the total amount of fees, compensation or other remuneration to be paid to such attorney by the affiant, directly or indirectly, including the date and amounts of each payment already made, if any, on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption;

(vi) the name and address of any other person, agency, association, corporation, institution, society or organization who received or will receive any fees, compensation or other remuneration from the affiant, directly or indirectly, on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or proposed adoption; the amount of each such fee, compensation or other remuneration; and the reason for or services rendered, if any, in connection with each such fee, compensation or other remuneration; and

(vii) the name and address of any person, agency, association, corporation, society or organization who has or will pay the affiant any fee, compensation or other remuneration, directly or indirectly, on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother, or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or adoption; the amount of each such fee, compensation or other remuneration; and the reason for or services rendered, if any, in connection with each such fee, compensation or other remuneration;

(9) in the case of an adoption from an authorized agency in accordance with title 2 of article 7 of the Domestic Relations Law, a copy of the criminal history summary report made by the New York State Office of Children and Family Services to the authorized agency pursuant to section 378-a of the Social Services Law regarding the criminal record or records of the prospective adoptive parent or parents and any adult over the age of 18 currently residing in the home, *as well as a report from the New York State Central Registry of Child Abuse and Maltreatment regarding any indicated reports regarding the prospective adoptive parent or parents and any adult over the age of 18 currently residing in the home;*

(10) *in the case of an adoption from an authorized agency, an affidavit by the attorney for the agency attesting to the fact that no appeal from a surrender, surrender revocation or termination of parental rights proceeding is pending in any court and that a notice of entry of the final order of disposition of the surrender, surrender revocation or termination of parental rights proceeding had been*

served upon the law guardian, the attorneys for the respondent parents or the parents themselves, if they were self-represented, as well as any other parties; and

(11) in the case of an adoption from an authorized agency in which a post-adoption contact agreement has been approved by the Family Court in conjunction with a surrender of the child, a copy of the post-adoption contact agreement, as well as the order of the Court that approved the agreement as being in the child's best interests.

(c) Prior to the signing of an order of adoption, the court may in its discretion require the filing of a supplemental affidavit by the adoptive parent or parents, any person whose consent to the adoption is required, the authorized agency and the attorney for any of the aforementioned, setting forth any additional information pertaining to allegations in the petition or in any affidavit filed in the proceeding.

Section 205.62 Preliminary [probation] diversion conferences and procedures (PINS):

[(Not applicable in jurisdictions that have designated an assessment service pursuant to an approved assessment and services plan as described in section 243-a of the Executive Law; reference should be made to the procedures set forth in section 735 of the Family Court Act.)]

(a) Any person seeking to originate a proceeding under Article 7 of the Family Court Act to determine whether a child is a person in need of supervision shall first be referred to the *designated lead diversion agency, which may be either the probation service or the local department of social services. The clerk shall not accept any petition for filing that does not have attached the notification from the lead diversion agency required by section 735 of the Family Court Act and, in the case of a petition filed by a school district or school official, documentation of the efforts made by the school district or official to remediate the child's school problems.*

(b) The [probation service] *lead diversion agency* shall begin to conduct preliminary conferences with the person seeking to originate the proceeding, the potential respondent and any other interested person, on the same day that such persons are referred to the [probation service concerning advisability of filing a petition and] *diversion agency* in order to gather information needed [for a determination of the suitability] *to assist in diversion* of the case [for adjustment] *from petition, detention and placement through provision of or referral for services.* The [probation service] *diversion agency* shall permit any participant who is represented by a lawyer to be accompanied by the lawyer at any preliminary conference.

(c) During the preliminary [probation] conferences, the [probation service] *diversion agency* shall ascertain, from the person seeking to originate the proceeding, a brief statement of the underlying events, *an assessment of whether the child would benefit from diversion services, respite care and other alternatives to detention* and, if known to that person, a brief statement of the factors that would be of assistance to the court in determining whether the potential respondent should be detained or released in the event that a petition is filed. *Such factors include whether there is a substantial probability that the respondent would not be likely to appear in court if released, whether he or she would be likely to benefit from diversion services, whether all available alternatives to detention have been exhausted and, in the case of a child 16 years of age or older, whether special circumstances exist warranting detention. The diversion agency shall also gather information to aid the court in its determination of whether remaining in the home would be contrary to the child's best interests and, where appropriate, whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home.*

(d)[In order to determine whether the case is suitable for the adjustment process, the probation service shall consider the following circumstances, among others:

- (1) the age of the potential respondent;
- (2) whether the conduct of the potential respondent involved;
 - (i) a serious risk to the welfare and safety of the community;

or

(ii) an act which seriously endangered the safety of the respondent or another person.

(3) whether there is a substantial likelihood that the potential respondent would not appear at scheduled conferences with the probation service or with an agency to which he or she may be referred;

(4) whether there is a substantial likelihood that the potential respondent will not participate in or cooperate with the adjustment process;

(5) whether there is a substantial likelihood that, in order to adjust the case successfully, the potential respondent would require services that could not be administered effectively in less than four months;

(6) whether there is a substantial likelihood that the potential respondent will, during the adjustment process:

(i) engage in conduct that endangers the physical or emotional health of the potential respondent or a member of the potential respondent's family or household; or

(ii) harass or menace the person seeking to originate the proceeding or the complainant or a member of that person's family or household, where demonstrated by prior conduct or threats;

(7) whether there is pending another proceeding to determine whether the potential respondent is a person in need of supervision, a juvenile delinquent or a juvenile offender;

(8) whether there have been prior adjustments or adjournments in contemplation of dismissal under article 3 or 7 of the Family Court Act;

(9) whether there has been a prior adjudication of the potential respondent as a person in need of supervision, a juvenile delinquent or a juvenile offender;

(10) whether there is a substantial likelihood that the adjustment process would not be successful unless the potential respondent is temporarily removed from his or her home and that such removal could not be accomplished without invoking court process; and

(11) whether the potential respondent refuses to return home or refuses to remain at home and the reasons therefor do not justify the filing of a proceeding under article 10 of the Family Court Act.

(e) At the first appearance at a conference by each of the persons listed in subdivision (b) of this section, the [probation service] *diversion agency* shall inform such person concerning the function [and limitations] off[,and the alternatives to,] the [adjustment] *diversion* process and that:

(1) he or she has the right to participate in the [adjustment] *diversion* process;

(2) the [probation service] *diversion agency* is not authorized to and cannot compel any person to appear at any conference, produce any papers or visit any place, *but if the person seeking to originate the proceeding does not cooperate with the diversion agency, he or she will not be able to file a petition. The court may direct the parties to cooperate with the diversion agency even after a petition has been filed;*

(3) [the person seeking to originate the proceeding is entitled to have access to the court at any time for the purpose of filing a petition under article 7 of the Family Court Act;

(4) the adjustment process may continue for a period of two months and may be extended for an additional 60 days upon written application to the court;

(5) statements made to the [probation service] *diversion agency* are subject to the confidentiality provisions contained in section 735 of the Family Court Act;[and

6] (4) if the [adjustment] *diversion* process is [commenced but is] not successfully concluded *for reasons other than the noncooper-*

ation of the person seeking to originate the proceeding, the [persons participating therein] *diversion agency* shall [be notified orally or] *notify the person seeking to originate the proceeding* in writing of that fact and that the person seeking to originate the proceeding is entitled to access to the court for the purpose of filing a petition; oral notification [will] *shall* be confirmed in writing.

[(f) If the adjustment process is not commenced:

(1) the record of the probation service shall contain a statement of the grounds therefor; and

(2) the probation service shall give written notice to the persons listed in subdivision (b) of this section who have appeared:

(i) that the adjustment process will not be commenced;

(ii) that the person seeking to originate the proceeding is entitled to access to the court for the purpose of filing a petition; and

(iii) that, where applicable, the adjustment process was not commenced on the ground that the court would not have jurisdiction over the case and that the person seeking to originate the proceeding may test the question of the court's jurisdiction by filing a petition.]

(e) *If the diversion process is not successfully concluded, the diversion agency shall notify all the persons who participated therein, in writing, of that fact and of the reasons therefor, including a description of the services offered and efforts made to avert the filing of a petition. The notification shall be appended to the petition.*

[Section 205.63 Duties of the probation service and procedures relating to the adjustment process (PINS).
(Not applicable in jurisdictions that have designated an assessment service pursuant to an approved assessment and services plan as described in section 243-a of the Executive Law; reference should be made to the procedures set forth in section 735 of the Family Court Act.)

(a) Upon a determination by the probation service that a case is suitable for the adjustment process, it shall include in the process the potential respondent and any other persons listed in section 205.62(b) of this Part who wish to participate therein. The probation service shall permit any participant who is represented by a lawyer to be accompanied by the lawyer at any conference.

(b) If an extension of the period of the adjustment process is sought, the probation service shall apply in writing to the court and shall set forth the services rendered to the potential respondent, the date of commencement of those services, the degree of success achieved, the services proposed to be rendered and a statement by the assigned probation officer that, in the judgment of such person, the matter will not be successfully adjusted unless an extension is granted.

(c) The probation service may discontinue the adjustment process if, at any time:

(1) the potential respondent or the person seeking to originate the proceeding requests that it do so; or

(2) the potential respondent refuses to cooperate with the probation service or any agency to which the potential respondent or a member of his or her family has been referred.

(d) If the adjustment process is not successfully concluded, the probation service shall notify all the persons who participated therein, in writing:

(1) that the adjustment process has not been successfully concluded; and

(2) that the person seeking to originate the proceeding is entitled to access to the court for the purpose of filing a petition; and, in addition to the above, shall notify the potential respondent in writing of the reasons therefor.

(e) The case record of the probation service required to be kept pursuant to section 243 of the Executive Law and the regulations promulgated thereunder shall contain a statement of the grounds upon which:

(1) the adjustment process was commenced but was not successfully concluded; or

(2) the adjustment process was commenced and successfully concluded.]

Section 205.67 Procedures for compliance with the Adoption and Safe Families Act (*Persons in Need of Supervision proceeding*)

* * *

(d) Permanency hearing; extension of placement.

(1) A petition for a permanency hearing and, if applicable, an extension of placement, pursuant to section 756-a of the Family Court Act, shall be filed at least 60 days prior to the expiration of one year following the respondent's entry into foster care; provided, however, that if the Family Court makes a determination, pursuant to section 754(2)(b) of the Family Court Act, that reasonable efforts are not required to prevent or eliminate the need for removal of the respondent from his or her home or to make it possible to reunify the respondent with his or her parents, the permanency hearing shall be held within 30 days of such finding and the petition for the permanency hearing shall be filed and served on an expedited basis as directed by the court.

(2) Following the initial permanency hearing in a case in which the respondent remains in placement, a petition for a subsequent permanency hearing and, if applicable, extension of placement, shall be filed at least 60 days prior to the expiration of one year following the date of the preceding permanency hearing. [All petitions for permanency hearings shall be governed by section 205.17 of this Part.]

(3) *The permanency petition shall include, but not be limited to, the following: the date by which the permanency hearing must be held; the date by which any subsequent permanency petition must be filed; the proposed permanency goal for the child; the reasonable efforts, if any, undertaken to achieve the child's return to his or her parents and other permanency goal; the visitation plan for the child and his or her sibling or siblings and, if parental rights have not been terminated, for his or her parent or parents; and current information regarding the status of services ordered by the court to be provided, as well as other services that have been provided, to the child and his or her parent or parents.*

(4) *In all cases, the permanency petition shall be accompanied by the most recent service plan containing, at minimum: the child's permanency goal and projected time-frame for its achievement; the reasonable efforts that have been undertaken and are planned to achieve the goal; impediments, if any, that have been encountered in achieving the goal; the services required to achieve the goal; and a plan for the release or conditional release of the child, including information regarding steps to be taken to enroll the child in a school or, as applicable, vocational program.*

Section 205.81 Procedures for compliance with Adoption and Safe Families Act (*child protective proceeding*)

(a) Temporary removal; required findings. In any case in which removal of the child is ordered by the court pursuant to part 2 of article 10 of the Family Court Act, the court shall *set a date certain for a permanency hearing and shall* make additional, specific written findings regarding the following issues:

(1) whether the continuation of the child in his or her home would be contrary to his or her best interests; and

(2) whether reasonable efforts, where appropriate, were made, prior to the date of the court hearing that resulted in the removal order, to prevent or eliminate the need for removal of the child from his or her home, and, if the child had been removed from his or her home prior to such court hearing, whether reasonable efforts, where appropriate, were made to make it possible for the child to safely return home. The petitioner shall provide information to the court to aid in its determinations. The court may also consider information provided by respondents [and], the law guardian, *the non-respondent parent or parents, relatives and other suitable persons.*

(b) Motion for an order that reasonable efforts are not required. A motion for a judicial determination, pursuant to section 1039-b of the Family Court Act, that reasonable efforts to prevent or eliminate the need for removal of the child from his or her home or to make it possible to reunify the child with his or her parents are not required shall be governed by section 205.16 of this Part.

(c) Placement; required findings. In any case in which the court is considering ordering placement pursuant to section 1055 of the Family Court Act, the petitioner shall provide information to the court to aid in its required determination of the following issues:

(1) whether continuation in the child's home would be contrary to his or her best interests and, if the child was removed from his or her home prior to *or at the time of* the [date of such] *dispositional hearing and a judicial determination has not yet been made*, whether such removal was in his or her best interests;

(2) whether reasonable efforts, where appropriate, were made, prior to the date of the dispositional hearing, to prevent or eliminate the need for removal of the child from his or her home and, if the child was removed from his or her home prior to the date of such hearing, whether reasonable efforts, where appropriate, were made to make it possible for the child to return safely home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from his or her home were not made, but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding;

(3) in the case of a child for whom the permanency plan is adoption, guardianship or some other permanent living arrangement other than reunification with the parent or parents of the child, whether reasonable efforts have been made to make and finalize such other permanency plan;

(4) in the case of a respondent who has attained the age of [16] 14, the services needed, if any, to assist the respondent to make the transition from foster care to independent living; and

(5) in the case of an order of placement specifying a particular authorized agency or foster care provider, the position of the local commissioner of social services regarding such placement.

(d) Permanency hearing[; extension of placement. A petition for a permanency hearing and, if applicable, an extension of placement, pursuant to section 1055 of the Family Court Act, shall be filed at least 60 days prior to the expiration of one year following the child's entry into foster care. For purposes of this section, the child's entry into foster care shall be deemed to have commenced the earlier of the date of the fact finding of abuse or neglect of the child pursuant to section 1051 of the Family Court Act or 60 days after the date the child was removed from his or her home; provided, however, that if the court makes a determination pursuant to section 1039-b of the Family Court Act, that reasonable efforts are not required to prevent or eliminate the need for removal of the child from his or her home or to make it possible to reunify the child with his or her parents, the permanency hearing shall be held within 30 days of such determination and the petition for the permanency hearing shall be filed and served on an expedited basis as directed by the court. Following the initial permanency hearing in a case in which the child remains in placement, a petition for a subsequent permanency hearing and, if applicable, extension of placement shall be filed at least 60 days prior to the expiration of one year following the date of the preceding permanency hearing.] *If the child or children is or are placed in foster care or directly placed with a relative or other suitable person, the court shall set a date certain for a permanency hearing under Article 10-A of the Family Court Act.* All [petitions for] permanency hearings *under Article 10-A* shall be governed by section 205.17 of this Part.

Section 205.83 Terms and conditions of order in accordance with sections 1053, 1054 and 1057 of the Family Court Act (*child protective proceeding*).

(a) An order suspending judgment entered pursuant to section 1052 of the Family Court Act shall, where the child is in foster care, set forth the visitation plan between respondent and the child and between the child and his or her sibling or siblings, if any, and shall require the agency to notify the respondent of case conferences. A copy of the order, along with a current service plan, shall be furnished to the respondent. Any order suspending judgment entered pursuant to section 1052 of the Family Court Act shall contain at least one of the following terms and conditions that relate to the adjudicated acts or omissions of the respondent, directing the respondent to:

(1) refrain from or eliminate specified acts or conditions found at the fact-finding hearing to constitute or to have caused neglect or abuse;

(2) provide adequate and proper food, housing, clothing, medical care, and for the other needs of the child;

(3) provide proper care and supervision to the child and cooperate in obtaining, accepting or allowing medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, counseling or child guidance services for the child;

(4) take proper steps to insure the child's regular attendance at school; and

(5) cooperate in obtaining and accepting medical treatment, psychiatric diagnosis and treatment, alcoholism or drug abuse treatment, employment or counseling services, or child guidance, and permit a child protective agency to obtain information from any person or agency from whom the respondent or the child is receiving or was directed to receive treatment or counseling.

(b) An order pursuant to section 1054 of the Family Court Act placing the person to whose custody the child is released under the supervision of a child protective agency, social services officer or duly authorized agency, or an order pursuant to section 1057 placing the respondent under the supervision of a child protective agency, social services official or authorized agency, shall contain at least one of the following terms and conditions requiring the respondent to:

(1) observe any of the terms and conditions set forth in subdivision (a) of this section;

(2) cooperate with the supervising agency in remedying specified acts or omissions found at the fact-finding hearing to constitute or to have caused the neglect or abuse;

(3) meet with the supervising agency alone and with the child when directed to do so by that agency;

(4) report to the supervising agency when directed to do so by that agency;

(5) cooperate with the supervising agency in arranging for and allowing visitation in the home or other place;

(6) notify the supervising agency immediately of any change of residence or employment of the respondent or of the child; or

(7) do or refrain from doing any other specified act of omission or commission that, in the judgment of the court, is necessary to protect the child from injury or mistreatment and to help safeguard the physical, mental and emotional well-being of the child.

(c) When an order is made pursuant to section 1054 or 1057 of the Family Court Act:

(1) the court shall notify the supervising agency in writing of its designation to act and shall furnish to that agency a copy of the order setting forth the terms and conditions imposed;

(2) the order shall be accompanied by a written statement informing the respondent that a willful failure to obey the terms and conditions imposed may result in commitment to jail for a term not to exceed six months; and

(3) the court may, if it concludes that it is necessary for the protection of the child, direct the supervising agency to furnish a written report to the court at stated intervals not to exceed six months, setting forth whether, and to what extent:

(i) there has been any alteration in the respondent's maintenance of the child that is adversely affecting the child's health or well-being;

(ii) there is compliance with the terms and conditions of the order of supervision; and

(iii) the supervising agency has furnished supporting services to the respondent.

(d) A copy of the order, setting forth its duration and the terms and conditions imposed, shall be furnished to the respondent.

(e) If an order of supervision is issued in conjunction with an order of placement pursuant to section 1055 of the Family Court Act, the order shall, unless otherwise ordered by the court, be coextensive in duration with the order of placement and shall extend until the completion of the permanency hearing. The order of supervision shall be reviewed along with the placement at the permanency hearing.