

COURT NOTICES

AMENDMENT OF RULE

Rules of the Chief Judge

Pursuant to the power vested in me, and upon consultation with the Administrative Board of the Courts, and with the approval of the Court of Appeals of the State of New York, I hereby amend, effective immediately, section 41.1 of the Chief Judge's Rules, relating to Domestic Violence Parts, to read as follows:

§ 41.1. Integrated Domestic Violence Parts of Supreme Court and Domestic Violence Parts of Superior Courts.

(a) Integrated Domestic Violence Parts of the Supreme Court and Domestic Violence Parts of the Supreme or County Court may be established in one or more counties by order of the Chief Administrator of the Courts following consultation with and agreement of the Presiding Justice of the Judicial Department in which the affected county or counties are located. As provided by rule of the Chief Administrator promulgated pursuant to subdivision (b) of this section[, such Parts]:

(1) *Integrated Domestic Violence Parts* shall be devoted to the hearing and determination, in a single forum, of cases that are simultaneously pending in the courts if one of them is a domestic violence case in a criminal court and the other is a case in Supreme or Family Court that involves a party or witness in the domestic violence case; or if one is a case in criminal court, Family Court or Supreme Court and the other is a case in any other of these courts having a common party or in which a disposition may affect the interests of a party to the first case. The Chief Administrator also may provide that, where cases are disposed of in an Integrated Domestic Violence Part, subsequent cases that would have been eligible for disposition in such Part were they to have been pending simultaneously with the cases already disposed of shall be eligible for disposition therein. Where no Domestic Violence Part has been established in the county pursuant to rules of the Chief Administrator promulgated pursuant to subdivision (b) of this section, [The] *the* Chief Administrator may also provide that domestic violence cases pending in a criminal court in the county shall be eligible for disposition in the Integrated Domestic Violence Part if necessary to best utilize available court and community resources for domestic violence cases.

(2) *Domestic Violence Parts* shall be devoted to the hearing and determination of domestic violence cases pending in a criminal court in the county if necessary to best utilize available court and community resources for domestic violence cases.

(b) The Chief Administrator shall promulgate rules to regulate operation of Integrated Domestic Violence Parts in Supreme Court and Domestic Violence Parts in Supreme and County Courts. [Such rules] *The rules of the Integrated Domestic Violence Parts* shall permit a justice of the Supreme Court to transfer to such court, for disposition in an Integrated Domestic Violence Part thereof, any eligible case pending in another court in the same county. *The rules of the Domestic Violence Parts shall permit a justice of the Supreme Court or a judge of the County Court to transfer to such court, for disposition in a Domestic Violence Part thereof, any eligible case pending in another criminal court in the same county.*

AMENDMENT OF RULE

Rules of the Chief Judge

Pursuant to the power vested in me, and upon consultation with the Administrative Board of the Courts and with the approval of the Court

of Appeals of the State of New York, I hereby promulgate, effective immediately, new Part 46 of the Rules of the Chief Judge, relating to the operation of Superior Court Sex Offense Parts, to read as follows:

PART 46. SUPERIOR COURT SEX OFFENSE PARTS

§ 46.1 Superior Court Sex Offense Parts

(a) *Sex Offense Parts may be established in Supreme Court or County Court in any county by order of the Chief Administrator of the Courts following consultation with and agreement of the Presiding Justice of the Judicial Department in which such county is located. Sex Offense Parts shall be devoted to the hearing and determination of criminal cases arising in the courts of the county that charge defendant (i) with the commission of one or more offenses for which registration as a sex offender is required or (ii) with the commission of one or more offenses under Article 135, Article 140 or Article 260 of the Penal Law where the case is appropriate for disposition in the Sex Offense Part.*

(b) *The Chief Administrator, upon consultation with the Administrative Board of the Courts, shall promulgate rules to regulate operation of Sex Offense Parts and to permit a justice of the Supreme Court or a judge of the County Court to transfer to such court, for disposition in a Sex Offense Part, any eligible case pending in another court in the same county.*

AMENDMENT OF RULE

Rules of the Chief Administrator of the Courts

Pursuant to the authority vested in me, and upon consultation with the Administrative Board of the Courts, I hereby amend, effective immediately, Part 141 of the Rules of the Chief Administrator of the Courts, relating to Domestic Violence Parts, to read as follows:

Integrated Domestic Violence Parts and Domestic Violence Parts

§ 141.1. Definitions

(a) "IDV Part" shall refer to an Integrated Domestic Violence Part established by the Chief Administrator of the Courts pursuant to section 141.2 of this Part.

(b) For purposes of this rule and its application to an IDV Part established in a county, an "IDV-eligible case" shall refer to both of the following when they are simultaneously pending in the county: a domestic violence case commenced in a criminal court and a case commenced in Supreme or Family Court that involves a party or witness in the domestic violence case. If so provided by the administrative order promulgated pursuant to section 141.2 of this Part for such county[:

(1), an IDV-eligible case also shall refer to each of the following: (1) any case in criminal court, Family Court or Supreme Court where there is simultaneously pending in the county another case in any other of these courts having a common party or in which a disposition may affect the interests of a party to the first case; and

(2) where cases are IDV-eligible and are disposed of in an IDV Part, subsequent cases that would have been IDV-eligible were they to have been pending simultaneously with the cases already disposed of shall be IDV-eligible; and

(3) [in Monroe County,] any domestic violence case pending in a criminal court in the county if necessary to best utilize available court and community resources for domestic violence cases *where no Domestic Violence Part has been established in the county pursuant to section 141.2 of this Part.*

(c) “*DV Part*” shall refer to a Domestic Violence Part established by the Chief Administrator of the Courts pursuant to section 141.2 of this Part in Nassau, Queens and Westchester Counties. For purposes of this rule and its application to a *DV Part* established in a county, a “*DV-eligible case*” shall refer to a domestic violence case pending in a criminal court in the county.

§ 141.2. Establishment of IDV and DV Parts

Following consultation with and agreement of the Presiding Justice of the Judicial Department in which a county is located, the Chief Administrator, by administrative order, may establish an IDV Part in Supreme Court or a *DV Part* in Supreme or County Court in such county and assign one or more judges or justices to preside therein.

§ 141.3. Identification of IDV- and DV-Eligible Cases

Procedures shall be established in each court so as to insure that cases pending before it are identified as IDV-eligible or DV-eligible at the earliest possible time.

§ 141.4. Transfer of IDV- and DV-Eligible Cases

Unless the administrative order establishing an IDV Part or a *DV Part* in a county shall otherwise provide:

(a) Where an IDV-eligible case is pending in a court other than Supreme Court in such county or where a DV-eligible case is pending in a court other than the Supreme or County Court in such county:

(1) Originals or copies of papers and other documents filed in such court in connection with the case shall, directly following its identification as IDV-eligible or DV-eligible, be sent by the court to the respective IDV Part or *DV Part*.

(2) Not later than five days following receipt of the original papers and other documents in an IDV-eligible case in an IDV Part or a *DV-eligible case* in a *DV Part*, the justice or judge presiding in such Part shall determine whether or not a transfer of the case to the [Supreme Court] Part would promote the administration of justice. If the justice or judge determines that it would, he or she may order such transfer, in which event the case shall be referred for disposition to the [IDV] Part, all original papers, if not already sent, shall be sent from the originating court to the [IDV] Part, and all further proceedings shall be conducted therein. If the justice or judge determines that such a transfer would not promote the administration of justice, he or she shall cause all papers and other documents in the case to be returned to the court from which they were received, where all further proceedings in such case shall be conducted in accordance with law.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, where the case is a criminal case and the defendant is held by the local criminal court for the action of a grand jury empaneled by a County Court, only copies of the papers and other documents filed with such court shall be delivered to the IDV Part or *DV Part*; and the justice or judge presiding therein may at any time order a transfer of the case to the [Supreme Court] respective Part provided he or she determines that such a transfer would promote the administration of justice. The original papers and other documents filed with the local criminal court shall be delivered to the County Court as required by section 180.30(1) of the Criminal Procedure Law.

(b) Where [the] an IDV-eligible case is a case pending in Supreme Court or where a DV-eligible case is a case pending in the Supreme or County Court where a *DV Part* has been established, it shall be referred for disposition to the respective IDV Part or *DV Part* of such court and all further proceedings shall be conducted therein.

§ 141.5. Procedure in an IDV [Part] and DV Parts

(a) Unless otherwise authorized or required by law, no case transferred from another court to the Supreme Court and referred for disposition to an IDV Part thereof may be consolidated with any other case pending before such IDV Part.

(b) Each case transferred from another court to the Supreme Court and referred for disposition to an IDV Part thereof, and each case transferred from another court to the Supreme or County Court where a *DV Part* is established and referred for disposition to a *DV Part* thereof, shall be subject to the same substantive and procedural law as would have applied to it had it not been transferred, and no party thereto shall be required to pay any fee for the assignment of an index number thereto upon such transfer.

AMENDMENT OF RULE

Rules of the Chief Administrator of the Courts

Pursuant to the authority vested in me, and upon consultation with the Administrative Board of the Courts, I hereby promulgate, effective immediately, new Part 147 of the Rules of the Chief Administrator of the Courts, relating to the operation of Superior Court Sex Offense Parts, to read as follows:

PART 147. SUPERIOR COURT SEX OFFENSE PARTS

§ 147.1 Definitions

(a) “*Sex Offense Part*” shall refer to a part of court established by the Chief Administrator of the Courts pursuant to section 147.2 of this Part in Nassau, Orange, Queens, Suffolk and Westchester Counties.

(b) “*Sex Offense Part-eligible case*” shall refer to any case pending in a court of criminal jurisdiction in the county where the defendant is charged with one or more offenses for which registration as a sex offender is required, or with one or more offenses under article 135, article 140 or article 260 of the Penal Law where the case is appropriate for disposition in the Sex Offense Part. Offenses for which registration as a sex offender is required include, but are not limited to, offenses under: article 130 of the Penal Law; sections 135.05, 135.10, 135.20, and 135.25 of the Penal Law if the alleged victim is less than 17 years old and the offender is not a parent of the alleged victim; section 230.04 of the Penal Law if the person allegedly patronized is less than 17 years old; and sections 230.05, 230.06, 230.30(2), 230.32, 230.33, 230.34, 235.22, 250.45(2)-(4), 250.50, 255.25, 255.26, 255.27, 263.05, 263.10, 263.11, 263.15, and 263.16 of the Penal Law.

§ 147.2 Establishment of Superior Court Sex Offense Parts

Following consultation with and agreement of the Presiding Justice of the Judicial Department in which a county is located, the Chief Administrator of the Courts, by administrative order, may establish a Sex Offense Part in Supreme Court or County Court in such county and assign one or more justices or judges to preside therein. Such Sex Offense Part shall be devoted to the hearing and determination, in a single forum, of Sex Offense Part-eligible cases in accordance with this Part.

§ 147.3 Identification of Sex Offense Part-Eligible Cases

Procedures shall be established in each court so as to insure that cases pending before it are identified as Sex Offense Part-eligible at the earliest possible time.

§ 147.4 Transfer of Cases to Superior Court Sex Offense Part

(a) Transfer of cases pending in local criminal courts.

Where a Sex Offense Part-eligible case is pending in a court other than the Supreme Court or County Court in such county in which the Sex Offense Part is established:

(1) originals or copies of papers and other documents filed in such court in connection with such case shall be sent to the Sex Offense Part directly following its identification as Sex Offense Part-eligible.

(2) Not later than five days following receipt in a Sex Offense Part of the papers and other documents in a Sex Offense Part-eligible case, the justice or judge presiding in such Part shall determine whether or not a transfer of the case to the Supreme Court or County Court where the Sex Offense Part is established would promote the administration of justice. If the justice or judge presiding in such Part determines that it would, he or she may order such transfer, in which event the case shall be referred for disposition to the Sex Offense Part; all original papers, if not already sent, shall be sent from the originating court to the Sex Offense Part; and all further proceedings shall be conducted therein. If the justice or judge determines that such a transfer would not promote the administration of justice, he or she shall notify the local criminal court from which the reference was received of such determination and cause all original papers and other documents in the case to be returned to the court from which they were received, whereupon all further proceedings in such case shall be conducted in accordance with law.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, where the defendant in a case is held by the local criminal court for the action of a grand jury empaneled by a Supreme Court or a County Court, only copies of the papers and other docu-

ments filed with such court shall be delivered to the Sex Offense Part; and the justice or judge presiding therein may at any time order a transfer of the case to the Supreme Court or County Court where the Sex Offense Part is established provided he or she determines that such a transfer would promote the administration of justice. The original papers and other documents filed with the local criminal court shall be delivered to the Supreme Court or County Court as required by section 180.30(1) of the Criminal Procedure Law.

(b) Where a Sex Offense Part-eligible case is pending in the Supreme Court or County Court where the Sex Offense Part is established, it shall be referred for disposition to the Sex Offense Part of such court and all further proceedings shall be conducted therein.

§ 147.5 Procedure in a Sex Offense Part

Each case transferred from a local criminal court to the Supreme Court or County Court and referred for disposition to a Sex Offense Part thereof shall be subject to the same substantive and procedural law as would have applied to it had it not been transferred.

AMENDMENT OF RULE

Rules of the Chief Administrator of the Courts

Pursuant to the authority vested in me, and upon consultation with the Administrative Board of the Courts, I hereby promulgate, effective immediately, new Part 148 of the Rules of the Chief Administrator of the Courts, relating to a Relief from Federal Firearms Disabilities Program, to read as follows:

PART 148. RELIEF FROM FEDERAL FIREARMS DISABILITIES PROGRAM

§ 148.1 Application.

This rule establishes a relief from disabilities program, as required by federal law (Public Law 110-180, § 105 [2007]), for those individuals who have had guardians appointed for them and who would otherwise be prohibited from purchasing firearms because their names have been transmitted to the National Instant Criminal Background Check System database in accordance with state and federal law (L. 2008, ch. 49; 118 USC § § 922(d)(4) and (g)(4)).

§ 148.2 Definitions.

(a) "Eligible individual" is a person who at any time has had a guardian appointed for him or her pursuant to any provision of state law, based on a determination that, as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, he or she lacks the mental capacity to contract or manage his or her own affairs.

(b) "Administrative judge" shall mean the administrative judge of each judicial district, or the administrative judge of Nassau County or Suffolk County.

§ 148.3 Petition.

(a) A petition for relief from firearms disabilities must be made by an eligible individual in writing to the administrative judge of the district or county where the court that appointed the guardian is located. It shall be made on notice to any person or entity as designated by the administrative judge, which may include the guardian appointed for the eligible individual and the licensing officer responsible for issuing any license to possess a firearm in the appropriate jurisdiction.

(b) The request for relief shall include any relevant evidence that will assist in the determination of whether a certificate of relief from federal firearms disabilities should be issued, including, but not limited to:

(1) Affidavits attesting to the character or reputation of the applicant;

(2) Medical records detailing the applicant's mental health history;

(3) A current psychiatric evaluation, unless waived by the person deciding the application;

(4) A certified copy of the criminal history information of the eligible individual maintained on file at the New York State Division of Criminal Justice Services [DCJS], or a copy of a response from DCJS that there is no criminal history information;

§ 148.4 Proceeding.

(a) The administrative judge shall designate a hearing officer to hear and report on the application.

(b) The hearing officer may receive such evidence and testimony as necessary to make a report on the merits of the application.

(c) Proceedings shall be recorded, either by electronic means or any other method designed to produce an accurate record or transcript of the proceedings.

(d) In recommending whether to issue a certificate of relief from disabilities, the hearing officer must consider the following factors:

(1) The circumstances underlying the initial determination of mental disability;

(2) The eligible individual's mental health and criminal history records; and

(3) The reputation of the eligible individual as developed through character witness statements, testimony, or other character evidence.

§ 148.5 Report and Determination.

(a) The hearing officer shall issue a written report which shall include a recommendation on whether a certificate of relief from federal firearms disabilities should be issued. The report shall provide the basis for the recommendation, including whether the person to whom the certificate is to be issued is an eligible individual who will not be likely to act in a manner dangerous to public safety, and whether the relief to be granted by the certificate is contrary to the public interest.

(b) The administrative judge, upon considering the report of the hearing officer, shall determine whether to issue the certificate of relief from federal firearms disabilities. Where the application is granted, the administrative judge shall notify the Division of Criminal Justice Services that the person to whom the certificate was issued should be removed from the database that the federal and state government maintains and uses in connection with the National Instant Criminal Background Check System. Where the application is denied, the judge shall advise the petitioner of the right to appeal the determination.

§ 148.6 Appeal.

Where a petition for relief from firearms disabilities is denied, the petitioner shall have the right to appeal the determination to a court for a de novo review of the denial of the petition under Article 78 of the Civil Practice Law and Rules.

