

COURT NOTICES

AMENDMENT OF RULE

Rules of the Chief Administrative Judge

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, the following sections of the Rules of the Chief Administrative Judge: §§ 127.4; 202.16; 205.4; 205.5; 205.16; 205.17; 205.26; 205.28; 205.49; 205.50; 205.52; 205.53; 205.64; 205.67; 205.80; and 205.81, to read as follows:

PART 127. ASSIGNMENT AND COMPENSATION OF COUNSEL, PSYCHIATRISTS, PSYCHOLOGISTS AND PHYSICIANS

Section 127.4. Compensation of [law guardians] *attorneys for children*.

Claims by [law guardians] attorneys for children for compensation, expenses and disbursements pursuant to section 245 of the Family Court Act and section 35 of the Judiciary Law shall be determined pursuant to the rules of the appropriate Appellate Division.

PART 202. UNIFORM CIVIL RULES FOR THE SUPREME COURT AND THE COUNTY COURT

Section 202.16. Matrimonial actions; calendar control of financial disclosure in actions and proceedings involving alimony, maintenance, child support and equitable distribution; motions for alimony, counsel fees pendente lite, and child support; special rules.

* * *

(3) At the close of the conference, the court shall direct the parties to stipulate, in writing or on the record, as to all resolved issues, which the court then shall “so order,” and as to all issues with respect to fault, custody and finance that remain unresolved. Any issues with respect to fault, custody and finance that are not specifically described in writing or on the record at that time may not be raised in the action unless good cause is shown. The court shall fix a schedule for discovery as to all unresolved issues and, in a noncomplex case, shall schedule a date for trial not later than six months from the date of the conference. The court may appoint [a law guardian] *an attorney* for the infant children, or may direct the parties to file with the court, within 30 days of the conference, a list of suitable [law guardians] *attorneys for children* for selection by the court.

* * *

PART 205. UNIFORM RULES FOR THE FAMILY COURT

Section 205.4. Access to Family Court proceedings.

* * *

(b) The general public or any person may be excluded from a courtroom only if the judge presiding in the courtroom determines, on a case-by-case basis based upon supporting evidence, that such exclusion is warranted in that case. In exercising this inherent and statutory discretion, the judge may consider, among other factors, whether:

(1) the person is causing or is likely to cause a disruption in the proceedings;

(2) the presence of the person is objected to by one of the parties, including the [law guardian] *attorney for the child*, for a compelling reason;

* * *

Section 205.5. Privacy of Family Court records.

Subject to limitations and procedures set by statute and case law, the following shall be permitted access to the pleadings, legal papers formally filed in a proceeding, findings, decisions and orders and, subject to the provisions of CPLR 8002, transcribed minutes of any hearing held in the proceeding:

(a) the petitioner, presentment agency and adult respondent in the Family Court proceeding and their attorneys;

(b) when a child is either a party to, or the child’s custody may be affected by, the proceeding:

(1) the parents or persons legally responsible for the care of that child and their attorneys;

(2) the guardian, guardian ad litem and [law guardian or] attorney for that child;

* * *

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

* * *

(b) A motion for such a determination shall be filed in writing on notice to the parties, including the [law guardian] *attorney for the child*, 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 child in foster care, children directly placed with relatives or other suitable persons and children freed for adoption.

* * *

(b) Scheduling for dates certain; deadlines for submitting permanency reports.

* * *

(3) In any case in which the court has made a determination, pursuant to section 1039-b or 1052(b) of the Family Court Act or section 358- a(3)(b) of the Social Services Law, that reasonable efforts to reunify the child with his or her parents are not required, a permanency hearing must be scheduled for a date certain within 30 days of the determination and the originally scheduled date shall be cancelled. In such a case, a permanency hearing report shall be transmitted to the parties and counsel, including the [law guardian] *child’s attorney*, on an expedited basis as directed by the court.

* * *

(5) If the child has been adopted or has been the subject of a final order of discharge or 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] *child’s attorney*, as well as all individuals required to be notified of the hearing pursuant to Family Court Act, section 1089.

(c) Required notice and transmittal of permanency reports. Except in cases involving children freed for adoption, in addition to sending the permanency hearing report and accompanying papers 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, each of whom shall be a party, and to the [law guardian] child's attorney. Petitioner shall also send the notice and report to a pre-adoptive parent or relative providing care for the child and shall send a notice, but not the report, to former foster parents who cared for the child in excess of one year unless the court has dispensed with such notice in accordance with paragraph two of subdivision (b) of section 1089 of the Family Court Act. 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 documentation of the notice or notices given to the respondent and non-respondent parents, their attorneys, the [law guardian] *child's attorney*, and any present or former foster parent, pre-adoptive parent or relative.

(d) Required papers to be submitted.

(3) 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] *child's attorney*, 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.

(e) In any permanency hearing under article 10-A of the Family Court Act, the child shall be represented by [a law guardian] *an attorney* and the Family Court shall consider the child's position regarding the child's permanency plan.

=====

Section 205.26. Procedure when remanded child absconds.

(b) Upon receipt of the written notice of absconding, the clerk shall cause the proceeding to be placed on the court calendar no later than the next court day for such action as the court may deem appropriate, and shall give notice of such court date to the presentment agency and [law guardian] *appointed* or privately retained counsel [of] *for* the child.

=====

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

(a) Pre-petition and pretrial detention; required findings.

The court may request the presentment agency and the local probation department to provide information to the court to aid in its determinations and may also consider information provided by the [law guardian] *child's attorney*.

=====

Section 205.49. Termination of parental rights; required papers; venue; putative father determination.

(d) Where a child is under the jurisdiction of the Family Court as a result of a placement in foster care pursuant to article 10 or 10-A of the Family Court Act or section 358-a of the Social Services Law, the petition regarding termination of parental rights to the child shall be assigned, wherever practicable, to the Family Court judge who last presided over the child's child protective, foster care placement or permanency proceeding or over a termination of parental rights

proceeding involving the child's other parent. Where the petition has been filed regarding such a child either before a different judge in a different court or before a court in a different county, the petitioner shall so indicate in the petition and the petitioner's attorney shall file an affirmation on a uniform form promulgated by the Chief Administrator of the Courts attesting to the reasons for, and circumstances regarding, such filing. The court in which the petition has been filed shall stay the proceeding for not more than 30 days in order to communicate with the Family Court judge who presided over the child's most recent child protective, foster care placement or permanency hearing or the termination of parental rights or surrender for adoption proceeding involving the child's other parent, and in order to afford the parties and [law guardian] *child's attorney* in the respective proceedings an opportunity to be heard orally, in person or by telephone, or in writing.

=====

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.

(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] *child's attorney* and intervenors, if any, regarding the respondent's compliance with the terms and conditions of the suspended judgment. The court may set additional times at which the respondent or the authorized agency caring for the child shall report to the court 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 motion or order to show cause seeking the revocation of the order may be filed;

(2) the 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) 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] *child's attorney* and intervenors, if any;

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

=====

Section 205.52. Adoption rules; application; timing and venue of filing of petition.

(c) Where a child is under the jurisdiction of the Family Court as a result of a placement in foster care pursuant to article 10 or 10-A of the Family Court Act or section 358-a of the Social Services Law, the adoption petition regarding the child shall be assigned, wherever practicable, to the Family Court judge who last presided over the child's child protective, foster care placement, permanency, surrender or termination of parental rights proceeding. Where the adoption petition has been filed regarding such a child either before a different judge in a different court or before a court in a different county, the petitioner shall so indicate in the petition and the petitioner's attorney shall file an affirmation by the attorney for the petitioner on a uniform form promulgated by the Chief Administrator of the Courts attesting to the reasons for, and circumstances regarding, such filing. The court in which the adoption petition has been filed shall stay the proceeding for not more than 30 days in order to communicate with the Family Court judge who presided over the child's most recent child protective, foster care placement, permanency, termination of parental rights or surrender proceeding, and afford the agency attorney and [law

guardian] *child's attorney* in the respective proceedings an opportunity to be heard orally, in person or by telephone, or in writing. . . .

* * *

Section 205.53. Papers required in an adoption proceeding.

* * *

(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:

* * *

(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] *child's attorney*, the attorneys for the respondent parents or the parents themselves, if they were self-represented, as well as any other parties;

* * *

Section 205.64. Procedure when remanded child absconds (PINS).

* * *

(b) Upon receipt of the written notice of absconding, the clerk shall cause the proceeding to be placed on the court calendar no later than the next court day for such action as the court may deem appropriate and shall give notice of such court date to the petitioner, presentment agency and [law guardian] *appointed* or privately retained counsel [of] *for* the child.

=====

Section 205.67. Procedures for compliance with Adoption and Safe Families Act (persons in need of supervision proceeding).

(a) Pretrial detention; required findings. In any case in which detention is ordered by the court pursuant to section 728 or 739 of the Family Court Act, the court shall make additional, specific written findings regarding the following issues:

* * *

The court may request the petitioner, presentment agency, if any, and the local probation department to provide information to the court to aid in its determinations and may also consider information provided by the [law guardian] *child's attorney*.

* * *

=====

Section 205.80. Procedure when remanded child absconds (child protective proceeding).

* * *

(b) Upon receipt of a written notice of absconding, the clerk of the court shall cause the proceeding to be placed on the calendar for the next court day for such action as the court shall deem appropriate, and shall give notice of such court date to the petitioner and [law guardian] *appointed* or privately retained counsel [of] *for* the child.

=====

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 in accordance with section 205.17 of this Part and shall make additional, specific written findings regarding the following issues:

* * *

(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 ap-

propriate, 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, the [law guardian] *child's attorney*, the non-respondent parent or parents, relatives and other suitable persons.

* * *

AMENDMENT OF RULE

Uniform Civil Rules for the Supreme and County Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, section 202.5-bb(a)(1) of the Uniform Civil Rules for the Supreme and County Courts, relating to electronic filing of actions in the Supreme Court, to read as follows:

§ 202.5-bb. Electronic Filing in Supreme Court; Mandatory Program.

(a) Application.

(1) There is hereby established a pilot program in which all documents filed and served in Supreme Court in the following civil actions (in the counties specified) shall be filed and served by electronic means: (i) commercial actions in New York County; (ii) *commercial actions and tort actions* in Westchester County....

AMENDMENT OF RULE

Uniform Civil Rules for the Supreme and County Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, section 202.16(k) of the Uniform Civil Rules for the Supreme and County Courts, addressing motions for alimony, maintenance, counsel fees pendente lite, and child support, to read as follows:

202.16(k) Motions for Alimony, Maintenance, Counsel Fees Pendente Lite and Child Support (other than under section 237(c) or 238 of the Domestic Relations Law).

Unless, on application made to the court, the requirements of this subdivision be waived for good cause shown, or unless otherwise expressly provided by any provision of the CPLR or other statute, the following requirements shall govern motions for alimony, maintenance, counsel fees (other than a motion made pursuant to section 237(c) or 238 of the Domestic Relations Law for counsel fees for services rendered by an attorney to secure the enforcement of a previously granted order or decree) or child support or any modification of an award thereof:

* * *

(3) No motion for counsel fees *and expenses* shall be heard unless the moving papers also include the affidavit of the movant's attorney stating the moneys, if any, received on account of such attorney's fee from the movant or any other person on behalf of the movant, *the hourly amount charged by the attorney, the amounts paid, or to be paid, to counsel and any experts, and any additional costs, disbursements or expenses*, and the moneys such attorney has been promised by, or the agreement made with, the movant or other persons on behalf of the movant, concerning or in payment of the fee. *Fees and expenses of experts shall include appraisal, accounting, actuarial, investigative and other fees and expenses to enable a spouse to carry on or defend a matrimonial action or proceeding in the Supreme Court.*

* * *

(7) Upon any application for an award of counsel fees or *fees and expenses of experts* [appraisal/accounting fees] made prior to the conclusion of the trial of the action, the court shall set forth in specific detail, in writing or on the record, the factors it considered and the reasons for its decision.

