

Hon. Sherri L. Eisenpress, A.J.S.C., J.F.C.
Supreme Court: Integrated Domestic Violence Part
Rockland County Family Court
1 South Main Street
New City, New York 10956

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Communication with the Court

Whenever possible, communication with the Court should be made in writing. Counsel and parties should strive to limit telephone calls to the Court staff to situations requiring immediate attention that cannot otherwise be addressed by correspondence. Telephone communication should be limited to contact with the Judicial Assistant regarding non-substantive, administrative issues in a case. At no time shall an attorney or litigant contact the Court Attorney to speak about or ask questions relating to the merits of the case, or inquire about substantive issues within the case.

All letters, on any subject, to the Court must be (1) copied to **all counsel or *pro se* parties** (and sent via email, whenever possible, to the *pro se* party); (2) contain email addresses for all counsel; and (3) state the next appearance date. Letters not complying with these rules will be disregarded and returned to the sender. Correspondence between attorneys and/or parties shall not be copied to the Court unless there is some specific judicial purpose to be served by transmitting copies to the Court.

Neither Chambers nor the Clerk of the Family Court will accept faxed or emailed copies of papers that must otherwise be filed in original form with the Office of the Family Court Clerk (such as objections, petitions, proofs of service, motions, opposition to motions, replies, proposed Orders, and documents to be "So Ordered").

Communication about substantive issues via letter to the Court is not encouraged. Parties or counsel should either wait to address substantive issues at the next scheduled court appearance or file the appropriate application with the Court in lieu of litigating via facsimile. Requests for telephone conferences with Chambers shall be limited to situations where the attorneys and/or parties have made substantial good-faith efforts to resolve the dispute or issue, but have been unsuccessful. Letters requesting such conference must specify the nature of the efforts that have been made to resolve the issue before the Court will respond to the request for a conference.

Under no circumstances may parties represented by counsel contact the Court.

Ex parte communications are strictly prohibited except upon consent of all counsel, or with respect to scheduling matters, or the presentation of Orders to Show Cause for signature.

Appearances

Counsel/parties should address questions about scheduling appearances or adjourning appearances to Chambers via facsimile, (including the case name, family unit number, date of next appearance and the post office and email addresses and phone and fax numbers of all counsel). Please note that no request for an adjournment will be considered unless it is:

- in writing; and
- made at least **72 hours prior to the appearance**; and
- states that the request is on consent of the other attorney(s) or party(ies) or that a good-faith effort was made to obtain that consent; and
- provides at least two (2) alternate dates and times when all parties and attorneys are available to appear before the Court with such dates coordinated with the Family Court calendar clerk for Judge Eisenpress who can be reached by calling 845-483-8210.

Adjournments of appearances without the consent of the other attorney(s) or party(ies) will not be granted unless (1) there is an affirmation of prior engagement in full compliance with 22 NYCRR § 125.1, and it must include the date the conflicting appearance was scheduled; or (2) there are exceptional circumstances.

Do not telephone the Court to determine the status of an adjournment request; the Court will respond as soon as possible. If you do not receive a response, it means the adjournment was not granted.

Note that the party requesting the adjournment is responsible for notifying all parties and counsel of the status of the adjournment in writing, and a copy of that letter must be copied to the Court via facsimile. No additional notices to appear will be issued by the Court with the adjourned court date.

Appearance of Counsel

A Notice of Appearance must be filed with the Family Court Clerk at the time that counsel is retained (or with the Supreme Court Part Clerk if the matter is pending in the IDVC). Once counsel has filed a Notice of Appearance, the attorney-of-record, or an attorney appearing

on his or her behalf, is expected to appear at *each and every* court appearance with his or her client until the case is disposed or counsel is relieved. Counsel must be discharged, and a Consent to Change Attorney form filed, or a motion to be relieved must have been made and granted, before counsel is relieved.

Counsel who appear in Court must be fully familiar with the case, have met with their clients and have authority to enter into any agreement, either substantive or procedural, on behalf of their clients. Counsel and their clients must be **on time** for all scheduled appearances.

The failure of any attorney or party to appear for a scheduled conference or appearance date may be treated as a default and may, when appropriate, result in the dismissal of a petition.

Orders

Orders must be submitted in accordance with 22 NYCRR § 202.48, either with Notice of Settlement attached to the proposed order, or as a proposed consent order, with signatures from all parties whereby Notice of Settlement is waived. Each attorney submitting a proposed order is expected to take copious notes of the proceedings or to obtain a transcript of the proceedings so that the order accurately reflects the settlement placed on the record in open Court. If the proposed order is not reflective of the actual settlement reached, it will be returned to the attorney who drafted it and the attorney will be directed to correct the order and resubmit it within seven (7) days of it being returned.

All counter-orders and counter-judgments must be submitted with a cover letter and a “red-lined” copy highlighting the language which differs from that of the originally submitted order or judgment pursuant to 22 NYCRR § 202.48.

All proposed orders or other documents, including transcripts, for the Judge’s signature must include a “So-Ordered” signature line with the Honorable Sherri L. Eisenpress, J.F.C. (or Honorable Sherri L. Eisenpress, A.S.J.C.) pre-printed.

Discontinuing a Matter

If a matter is settled, discontinued, or otherwise disposed, counsel shall *immediately* provide written confirmation of the settlement to Chambers via facsimile. Counsel is also responsible for ensuring that the other parties, his or her client and any witnesses scheduled to appear at the next court date are notified that the matter has concluded and that there is no future court date.

Counsel shall also advise the Court if there are any outstanding motions or scheduled

conferences, hearings or trial dates.

As soon as is practicable, counsel shall provide the Court with a fully executed stipulation or proposed consent order evidencing the disposition. If the matter is already scheduled for a fact-finding hearing and no fully executed stipulation or proposed consent order is submitted prior to the scheduled fact-finding date, the matter will be deemed active and the parties will be expected to appear in Court to try the matter.

Motions

Return dates on Orders to Show Cause or Notice of Motions require appearances, unless the parties and counsel are notified otherwise by the Court.

Adjournments of motions

(1) On consent: If the motion is adjourned on consent, send a letter to Chambers via facsimile copied to all parties identifying the date to which both parties seek the adjournment. Open-ended adjournment requests without a specific proposed adjourned date will not be considered. No more than two adjournments will be allowed without the Court's permission.

(2) Without consent: If a party does not consent to the requested adjournment, send a letter to Chambers via facsimile indicating the reason for the adjournment request, and the reason for the refusal to consent.

Answering papers

Papers must be received by the Court at least twenty-four (24) hours before the date and time set forth in the Order to Show Cause or return date in the Notice of Motion in order to be considered. Late papers will be rejected unless good cause is shown and there is no prejudice caused by the delay.

Papers must only address the relief sought in the Order to Show Cause/Notice of Motion. New issues raised in opposition or reply papers shall not be considered without specific permission from the Court. Cross-motions which seek only the denial of the relief in the original motion will not be recognized as motions with respect to which a reply may be submitted. Sur-replies shall not be considered without specific permission from the Court. Permission for sur-replies will be granted only upon a showing of exceptional circumstances.

Orders to Show Cause

In addition to the motion rules, the following provisions are applicable to orders to show cause:

Counsel or a party filing an Order to Show Cause **must provide a facsimile number and an email address in a cover letter or on the litigation back** so that if the Court chooses to sign the order to show cause, it can be faxed and/or emailed to the filing party/counsel for service purposes.

If an order to show cause requests temporary relief, counsel must comply with the provisions of 22 NYCRR § 202.7(f) and notify the opposing counsel/party that he or she has 48 hours to respond via letter to the Court to the request for temporary relief, unless counsel provides an affirmation alleging that there would be significant prejudice suffered by complying with this requirement, or if the order to show cause seeks an order of protection via temporary restraining order. If counsel has complied with this provision, the order to show cause must clearly specify such, either in a separate affirmation or an accompanying letter to the Court. Failure to comply with this section will result in all temporary relief being struck; however, compliance with this section does not ensure that temporary relief will be granted.

If a requested order has specific urgency, counsel should make the Clerk of the Family Court aware of the issue. The Court will use every effort to address all orders as soon as is practical after their receipt. If a proposed order to show cause contains a request for a temporary order of protection or other emergency *ex parte* relief, counsel should advise the Clerk of the Family Court upon filing and should be prepared, with his or her client, for a hearing at such time as the Court will direct. Counsel should not appear without permission from the Court.

Forensic Evaluations

All requests for a forensic evaluation may be made in open Court or in writing as set forth above. If the parties have consented to a forensic evaluation and the request is being made in writing, please list the reasons for why a forensic evaluation is being requested, what issues the parties wish to have the forensic evaluator examine, whether the parties have agreed on how the fee should be paid, and the names of three (3) forensic evaluators that the parties would like for the Court to consider assigning to the matter.

A request for a forensic evaluation in a custody or visitation matter must be made as soon as possible, but no later than sixty (60) days prior to any scheduled fact-finding hearing on the pending matter.

When the Court has issued an order directing a forensic evaluation, all parties must participate and cooperate with the forensic evaluator. The evaluation must be completed by the deadline set forth in the Court's order absent further order from the Court discontinuing the evaluation.

After the forensic order is issued and a court-appointed neutral forensic evaluator is assigned, all correspondence to such evaluator as well as any documents supplied to the evaluator

shall be copied on the other party/attorney in the case. Prior to the completion of the forensic evaluation report and its submission to the Court, all communications between the attorneys and the forensic evaluator shall be in writing, copied on all parties. After submission of the report to the Court, if the forensic evaluator consents, counsel may either meet with the forensic evaluator or speak with the forensic evaluator for purposes of preparing testimony, discussions regarding the substance of the report, scheduling of testimony, etc.; however, prior to initiating such communication, counsel shall advise in writing to the other party/attorneys in the case that such communication is being initiated. Except for purposes of inquiring about scheduling testimony for trial, parties and attorneys shall refrain from any communication with the forensic examiner's staff following the production of the report. Any communications between the forensic examiner and an attorney will not be privileged and may be the proper subject of questioning during trial.

Where parties have privately retained counsel, only private forensic evaluators will be appointed unless there are exceptional circumstances.

An attorney-of-record may obtain a copy of a forensic evaluation upon the signing of an Affirmation that is filed with the Court and must comply with the requirements as set forth in the Affirmation. A *pro se* party may review a forensic evaluation report on his or her matter between the hours of 2:30-4:30 p.m. at the Family Court Clerk's Office upon filling out a request to review the file, unless otherwise arranged with the Court in writing via facsimile to Chambers.

Forensic Evaluation and Sexual Abuse Validation Report Admissibility

1. The forensic evaluation report or validation report in its entirety ("report") shall be admissible in evidence if all parties to the action stipulate to its admission.
2. If one or more parties do not stipulate to the admission of the report, then the report shall be admitted into evidence only if:
 - a. the evaluator testifies at the hearing regarding the contents of his or her report and demonstrates that he or she relied upon collateral information accepted in the profession as a basis in forming an opinion and that such out-of-court material is accompanied by evidence at the hearing establishing its reliability (see Wagman v. Bradshaw, 292 A.D.2d 84 (2d Dept. 2002); D'Esposito v. Kepler, 14 A.D.3d 509 (2d Dept. 2005)). Ultimately, the evaluator's ultimate opinion must be based principally upon legally competent evidence (see Lisa W. v. Seine W., 9 Misc. 3d 1125A, 862 N.Y.S.2d 809 (Fam. Ct. Kings Co. 2005)(citing People v. Stone, 35 N.Y.2d 69 (1974)); **or**
 - b. the evaluator testifies at the hearing regarding the contents of his or her report and the out-of-court statements made by collateral sources in the report are derived from a witness or

witnesses subject to full cross-examination at the hearing (see Wagman v. Bradshaw, 292 A.D.2d 84 (2d Dept. 2002)).

If hearsay from a collateral contact is not “of a kind accepted in the profession as reliable in forming a professional opinion” and if there is no “independent evidence establishing the reliability of the out-of-court material”, and the “collateral source” does not testify then the hearsay portions of the report must be stricken from the report prior to the report’s admission into evidence. See Lubit v. Lubit, 885 N.Y.S.2d 492 (1st Dept. 2009).

3. If one or more parties do not stipulate to the admission of the report, then the report, excluding all hearsay sections of the report relating to “collateral contacts” (which shall be stricken and not be considered by the Court), shall be admitted into evidence only if:

a. the evaluator has stated under oath in the report that his or her final opinion is principally based upon discussions with and observations of the parties and the children and that his or her opinion did not rely upon inadmissible “collateral contact” hearsay (see Ashmore v. Ashmore, 92 A.D.3d 817 (2d Dept. 2012)(citing Mohammed v. Mohammed, 23 A.D.3d 476 (2d Dept. 2005)); **or**

b. the evaluator testifies at the hearing that his or her final opinion is principally based upon discussions with and observations of the parties and the children and that his or her opinion did not rely upon inadmissible “collateral contact” hearsay (see Ashmore v. Ashmore, 92 A.D.3d 817 (2d Dept. 2012)(citing Mohammed v. Mohammed, 23 A.D.3d 476 (2d Dept. 2005)), and the evaluator’s testimony as to the express contents of the out-of-court material will not be admissible (see Wagman v. Bradshaw, 292 A.D.2d 84 (2d Dept. 2002)).

Failure to satisfy (a) or (b) above will render the report inadmissible.

Hearings/Trials

Trial Subpoenas

When subpoenas are directed to documents in the possession, custody or control of libraries, hospitals, and municipal corporations and their departments and bureaus the subpoena notice must be “So Ordered” by the Court (“judicial subpoena”) pursuant to CPLR §§ 2306 and 2307 and then be served on the intended recipient at least three (3) days before the time fixed for the production of the documents, unless such notice is waived by the Court due to emergency circumstances as set forth in CPLR § 2307. The judicial subpoena must be served on all counsel and parties to the proceeding promptly after service on the witness, as required by CPLR § 2303(a).

Any party wishing to obtain a judicial trial subpoena must move the Court on one (1) day's notice to the person having custody of the record or document pursuant to CPLR § 2302 (b) and must do so at least seven (7) days prior to the scheduled fact-finding hearing, except in exceptional circumstances. Fact-finding hearings will not be adjourned for failure to comply with this provision, except for good cause. Motions for judicial subpoenas should be delivered to the Office of the Family Court Clerk at the Courthouse. The Court's issuance of a judicial subpoena does not constitute a ruling as to the admissibility of the subpoenaed materials.

Contents of a "Trial Notebook"

No less than two (2) weeks before the first scheduled trial date on a matter, each party or counsel must file with the Court a "Trial Notebook" and provide a copy of that notebook to each attorney or unrepresented party to the matter.

The Trial Notebook shall consist of:

1. Witness List

The list shall identify the name, address and telephone number of the proposed witness and a brief statement, or offer of proof, as to why the witness is being called and to what the party expects the witness to testify.

If a witness is not identified in the witness list provided to opposing counsel or party as part of the trial notebook, the witness may not be permitted to testify in a party's case-in-chief unless an adequate explanation is provided for the failure to identify such witness prior to trial. Fact witnesses and expert witnesses should be advised of the scheduled dates at the time the dates are set. Absent unanticipated, exigent circumstances, last minute claims of unavailability will not be accommodated where the trial dates have been previously set. All witnesses should be on one-hour phone call notice so that their waiting time in court is minimized. Professional witnesses, such as doctors, nurses and social workers, and witnesses who are public employees, such as teachers, counselors and police officers, will be permitted to testify out of order to accommodate their employment schedules. School teachers should be scheduled after 3:00 p.m. so that it is not necessary for their employers to provide substitutes. Rebuttal witnesses need not be listed.

2. Exhibit List with copies of Pre-Marked proposed Exhibits

The list shall enumerate all exhibits to be offered into evidence at trial by each party with a brief description of each exhibit and the "trial notebook" shall contain a copy of each proposed exhibit that the party/attorney intends to offer into evidence in support of his or her case-in-chief at trial.

Any exhibit not identified in the exhibit list provided to opposing counsel or party, other than an exhibit offered for the purpose of impeachment or rebuttal, may not be admitted into evidence unless an adequate explanation is provided for the failure to identify such exhibit prior to trial. Exhibits marked into evidence at trial will not be returned until the final conclusion of the matter. Exhibits marked for identification will be retained by the offering attorney during trial, unless taken into evidence.

Interpreters and Special Services

There is a Spanish Interpreter available on-site. However, if a party requires an interpreter for any other language, no later than one week prior to the date for any scheduled court appearance, counsel shall advise the Family Court Clerk's Office if the services of a foreign language interpreter are required for any party or witness, or if any special services are required for any party or witness who is hearing-impaired or who suffers from any other disability.