ROCKLAND FAMILY COURT PART RULES

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New City, New York 10956
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Filing Papers

All papers shall be filed by EDDS or in hard copy with the Office of the Family Court Clerk. Only one copy of any document is needed unless otherwise directed. Neither Chambers nor the Clerk of the Family Court will accept faxed or emailed copies of papers that must be filed in original form through EDDS or in hard copy (such as objections, petitions, proofs of service, motions, opposition to motions, replies, proposed Orders, and documents to be "So Ordered").

Communication with the Court

Communication with the Court shall be in writing. Counsel and parties should strive to limit telephone calls to Court staff to situations requiring immediate attention that cannot otherwise be addressed by written 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 or court clerical staff to speak about or ask questions relating to the merits of the case or to inquire about substantive issues within the case.

All written communication on any subject to the Court must be: (1) **copied to all counsel** and ***pro se*** **parties** (and sent to counsel via email, whenever possible). Where there is a *pro se* party to a case, attorneys cannot email chambers with correspondence. That correspondence must be filed through EDDS; (2) contain email addresses for all counsel; and (3) state the next appearance date. Letters not complying with these rules will be disregarded and/or 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.

A letter to the Court in PDF form may be transmitted via email in cases where all parties are represented by counsel (the email must be copied to all counsel on the case – **do not copy clients on any emails that include court staff**). If the matter is pending before a Family Court Judge, counsel shall direct the email to the attention of the judicial assistant and the court attorney. If the matter is pending before the Referee, the email shall be directed to the attention of the Referee.

Requests for telephone/Teams 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 directly contact the Court by letter, email, or phone, nor may they file new petitions or application with the Court without the assistance of their counsel.

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.

Adjournments

In cases where all parties are represented by counsel, requests to adjourn appearances or submission dates shall be made in writing through EDDS (including the case name, family unit number, date of next appearance and the email addresses of all counsel). Parties who are not represented by counsel should also send a letter through EDDS. All requests for an adjournment shall:

- Be made in writing; and
- Be made at least **48 hours prior to the appearance or submission date**; and
- State that it is on consent of the other attorney(s) or party(ies) or that a good-faith effort was made to obtain that consent.

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. No verbal requests for adjournments will be considered.

Note that the party requesting the adjournment is responsible for notifying all parties and counsel of the status of the adjournment in writing, with a copy of that notice to the Court. No additional notices will be issued by the Court with the adjournment date.

Appearances

Appearances are presumed to be in person in the Courthouse unless counsel and parties are notified otherwise. Requests for virtual appearances must be made at least 48 hours in advance whenever possible and the Judge or Referee will have the sole discretion to have the appearance be in-person or virtual. Parties may not appear virtually for a hearing or trial.

Counsel should file a Notice of Appearance with the Family Court Clerk at the time that counsel is retained. 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 entire case is disposed or counsel is relieved, regardless of whether additional petitions are filed during the pending of the case.

Counsel 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. Scheduling conflicting appearances shall not be an acceptable excuse for tardiness. 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.

Before counsel is relieved, either a Consent to Change Attorney form must be filed or a motion to be relieved must have been made by Order to Show Cause and granted. Attorneys must comply with CPLR § 321.

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 fully executed consent order with signatures from all parties and counsel. **ONLY ONE COPY** of a settlement order should be submitted. The attorney who has been directed to submit the 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 documents submitted for the Judge's signature must include a "So-Ordered" signature line with the name of the Judge or Referee pre-printed. The signature line **should not** be on a page by itself without any substantive terms from the order.

Discontinuing a Matter

If a petitioner wishes to discontinue a matter, counsel (or petitioner if *pro se*) shall withdraw the petition in writing. If all parties are represented by counsel, this communication may be sent by email as noted above. Pro se parties may file the letter by EDDS or by fax. Petitioner is responsible for ensuring that the other parties and attorneys are notified that the matter has concluded and that there is no future court date.

Orders to Show Cause and Motions

Petitions should only be filed by Order to Show Cause when a very quick return date and/or immediate relief is required. Petitions that are judged not to have particular urgency will be scheduled as if filed per normal procedures.

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/she/they 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.

Counsel or party filing an Order to Show Cause must provide an email address so that the conformed order to show cause can be emailed to the filing party/counsel so that they can serve it on the other parties in the manner and on the time-line directed in the Order to Show Cause.

Motions shall be filed by Notice of Motion with the Court in hard copy or by EDDS. Notices of Motion shall include the CPLR 2214 language identifying the return dates and the dates for opposition and reply.

Answering papers

Answering papers must be received by the Court on the date set forth in the Order to Show Cause or the Notice of Motion. 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.

Forensic Evaluations

Request for a forensic evaluation may be made in open Court or in writing. 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, whether the parties have agreed on how the fee should be paid, and the name of an agreed-upon evaluator or the names of three (3) forensic evaluators per party 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/her/their matter at the Family Court Clerk's Office upon filling out a request to review the file, unless otherwise arranged with the Court in writing to Chambers.

Once the report is received, if the parties and/or counsel consent to the Court reviewing the report prior to an upcoming conference, the Court should be advised in writing at least three days prior to the conference. Consent to the Court's review of the report does not render the report admissible. Please see **Appendix A** for detailed Forensic Evaluation Admissibility Rules.

HEARINGS/ TRIALS

Subpoenas

Any party wishing to obtain a so-ordered 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.

A request for a so-ordered subpoena must be made by motion. The motion shall include the proposed subpoena, an attorney affirmation supporting the request, and an affidavit of service indicating that the motion has been served on all counsel and the target. Motions for judicial subpoenas should be filed by EDDS or in hard copy. The Court's issuance of a judicial subpoena does not constitute a ruling as to the admissibility of the subpoenaed materials.

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).

Trial Notebooks

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.

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. Petitioner shall use NUMBERS for their exhibits; Respondent shall use LETTERS.

The parties/counsel shall make a good faith effort to resolve any disputes regarding admissibility of evidence and stipulate to the admissibility of as many exhibits as possible. Additionally, the counsel (or pro se litigants) will be required to appear for a pre-trial conference with the Court Attorney Referee or the Judge's Court Attorney for the purpose of pre-marking exhibits, discussing stipulations that have been agreed upon between counsel/parties, and resolving as many remaining disputed evidentiary issues as possible. The pre-trial conference will take place approximately two weeks before the first trial date.

Witnesses who are not identified in the witness list and/or exhibits not identified in the exhibit list may not be called to testify or admitted into evidence unless an adequate explanation is provided for the failure to identify such witness/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.

3. Motions in Limine

Motions in Limine shall be filed at least two weeks prior to trial. Failure to timely file said motion may result in the preclusion of any such motions thereafter.

SIJS Cases

Applications for guardianship and "Special Immigrant Juvenile Status" findings shall be made by submitting a Petition for Guardianship or Custody that includes a request for SIJS findings in the relief sought. Such a proceeding may be filed by way of Order to Show Cause only where the subject child will be turning 21 years of age imminently or when an immigration hearing has been scheduled.

Along with the guardianship petition, the petitioner must submit the OCFS form and a copy of each of the children's birth certificates. Please note - the OCFS form is not necessary for guardianship petitions filed by a parent of a child under 18.

Fingerprints are not required in any case where a parent is filing for guardianship of their child.

Presumptive Mediation/ADR

Pursuant to the presumptive mediation/ alternative dispute resolution rules of the 9th JD, certain custody/visitation matters will be flagged for mediation. A first appearance on the petition will be held in person in front of the Judge, and a mediation order will issue. Parties with appointed counsel or without counsel will be referred to CLUSTER. Parties with retained counsel will select a mediator from the roster and will be responsible to pay for all mediation fees in accordance with the Court's Order of Referral.

Interpreters and Special Services

There is a Spanish Interpreter available on-site. However, to ensure that we have sufficient interpreters available, counsel shall advise the Family Court Clerk's Office in writing if the services of a foreign language interpreter are required for any party or witness, at least **two weeks prior** to the date for any scheduled court appearance. Similarly, please inform the Court at least two weeks in advance if any special services are required for any party or witness who is hearing-impaired or who suffers from any other disability. Failure to provide timely notice may result in the matter hiving to be adjourned.

Family Treatment Court

Family Treatment Court participation shall be governed by the Family Treatment Court Procedure Manual which is provided to attorneys assigned to that part and their clients upon their entry into the program.

Appendix A:

Forensic Evaluation and Sexual Abuse Validation Report Admissibility

1. The report in its entirety shall be admissible in evidence if all parties to the action stipulate to its admission.

2. All parties, or their attorneys if represented, have an opportunity to object to the admissibility of the forensic evaluation report or validation report ("report"). Said objection to the admissibility of the report must be made in writing and filed with the Court, copied to all sides. **The written objection must be received on or before the earlier of the following two dates: (1) two weeks before the date of the scheduled trial; or (2) on the date of the compliance conference with the court attorney.**

   If a written objection to the admissibility of the report is not properly received by the Court in accordance with this procedure, then such objection will be deemed waived, and the report will be automatically received into evidence as Court's Exhibit #1 at the commencement of trial. In that circumstance, any party (or his/her attorney) that wishes to cross-examine the maker of the report will be responsible to secure his/her attendance during the hearing, and payment of any attendance fees, subject to reallocation.

3. If one or more parties properly object to the admission of the report in accordance with the procedure outlined above, then the report shall be admitted into evidence only if:

   a. the evaluator testifies at the hearing regarding the contents of the report and demonstrates that they 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)); **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).

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