PART RULES FOR
HON. JOSEPH J. SPOFFORD, JR.
Putnam County Courthouse
20 County Center
Carmel, New York 10512
Court Attorney: Robert A. Noah
Secretary: Evlyn (Eve) Richardson
Chambers Telephone Number: (845) 208-7811
Chambers Fax Number: (845) 431-1931
9jd-JudgeSpofford@nycourts.gov

(revised January 2024)

COMMUNICATION WITH COURT

1. Communication with the Court shall be in writing. Counsel and parties should strive to limit telephone calls and email communications to Court staff to situations requiring immediate attention that cannot otherwise be addressed by written correspondence. Telephone and email communication should be limited to contact with the secretary or court attorney regarding non-substantive, administrative issues in a case. At no time shall an attorney or litigant contact the judge or court attorney to speak about or ask questions relating to the merits of the case, status updates or inquire about substantive issues within the case.

2. All letters, or any subject, to the Court must be: (1) copied to all counsel and pro se parties (and sent to counsel via email, whenever possible); (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 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.

3. A letter to the Supreme Court, Family Court, County Court or Surrogate's Court may be transmitted via email to the email address VirtualPutnamMultiCourt@nycourts.gov 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 Judge Spofford, counsel shall direct the email to the attention of the secretary or court attorney but file the letter with the appropriate Court Clerk through VirtualPutnamMultiCourt@nycourts.gov .

4. All correspondence in Surrogate's Court matters including letters/emails to the Court and/or Surrogate's Court Clerk shall be copied to all parties and should include the Surrogate's File Number and sent to the Surrogate Clerk.

5. Neither Chambers nor the Clerks of the Supreme Court, Family Court, County Court or Surrogate's Court will accept faxed or emailed copies of papers that must otherwise be filed in original form with the office of the appropriate clerk**.** **NO FAXES IN EXCESS OF 5 PAGES MAY BE SENT WITHOUT PRIOR APPROVAL FROM THE CLERK'S OFFICE.**

6. Communication about substantive issues via letter to the Court is strongly discouraged. 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 letter.

7. Requests for 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 and must be sent only to VirtualPutnamMultiCourt@nycourts.gov .

8. 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

1. Parties who are not represented by counsel should address questions about scheduling appearances or adjourning appearances to the appropriate part clerk via facsimile or email, (including the case name, (index number, surrogate's file number or family unit number or indictment number) date of next appearance and the post office and email addresses and phone and fax numbers of counsel). In cases where all parties are represented by counsel, such inquiries may be made by email. 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 appearances; and
   - States that the request is on consent of the other attorneys(s) or party(ies) or that a good-faith effort was made to obtain that consent; and
   - Provides at least three (3) alternate dates and times when all parties and attorneys are available to appear before the Court with such dates coordinated with the Supreme Court calendar clerk, Family Court calendar clerk, County Court Clerk, Surrogate's Court Clerk and Ms. Richardson by calling (845) 208-7811.

2. 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.

3. Do not telephone the Court to determine the status of an adjournment request. All communication is to go through the Clerks of the Family, County and Surrogate's Court; the Clerks will respond as soon as possible. If you do not receive a response, it means the adjournment was not granted.

4. 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 and the appropriate Court Clerk.

5. A Notice of Appearance must be filed with the Supreme Court Clerk, Family Court Clerk, County Court Clerk or Surrogate's Court Clerk at the time that counsel is retained and must list the attorney's address, phone number, fax and email address. 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. Attorneys must comply with CPLR § 321.

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

7. 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 an action or petition.

FILING PAPERS

1. ***FORM OF PAPERS***: All papers filed with the Court are scanned upon receipt. Therefore, all submissions should be bound with removable clips and all exhibits must be labeled with enough clarity to allow the Court to locate the exhibit. All papers must include either the Index Number, Surrogate's File Number, the Family Court Docket Number and Family Unit Number or the Indictment Number.

2. ***BACKS***: Backs are not required, but if a back is used please make sure that color is light enough that it is legible upon scanning.

3. ***E-FILING***: The Family and County Court's do not yet participate in e-filing.

4. ***PROOF OF SERVICE***: Proof of service must be filed with the Clerk of the appropriate Court (Family or Surrogate Court) at least two days before the return or appearance date.

MOTIONS

1. Motions shall be filed with the Clerk of the appropriate Court. Return dates on Orders to Show Cause or Notice of Motions in Family Court require appearance, unless the parties and counsel are notified otherwise by the Court. In Supreme Court, County Court and Surrogate's Court unless otherwise ordered by the Court, no appearances are required on motion return dates. If the Court determines that oral argument would assist the Court in deciding the motion, the movant's attorney will be advised of the date for such argument, with direction to notify all other parties.

2. Generally, motions should be filed by Notice of Motion unless immediate emergency relief is absolutely necessary as per CPLR § 6631. Non-emergency motions filed by Order to Show Cause will be treated as if they had been filed by Notice of Motion.

3. ***RETURN DATES***: Motions in Supreme Court shall be made returnable on any Monday that the Court is in session. Motions in Family Court shall be made returnable on any Wednesday that the Court is in session. The Court will provide a motion schedule at appearances or in writing. Motions in County Court shall be made returnable on any Tuesday that the Court is in session.

4. ***WITHDRAWAL OF MOTIONS***: If a matter has been resolved and the parties no longer require a decision from the Court, counsel are directed to immediately notify the Court in writing. If the entire action has been settled or otherwise resolved, counsel shall file a Stipulation of Settlement or a Stipulation of Discontinuance.

5. The Court makes every effort to issue written decisions and orders within sixty (60) days of the matter being marked fully submitted.

Adjournments of motions

6. Any adjournments, extensions or changes to the motion schedule must be obtained through correspondence with the Court through the appropriate Court Clerk.

7. **ON CONSENT:** If the motion is adjourned on consent, send a letter to Chambers and the appropriate Court Clerk 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.

8. **WITHOUT CONSENT:** If a party does not consent to the requested adjournment, send a letter to Chambers and the appropriate Court Clerk indicating the reason for the adjournment request, and the reason for the refusal to consent.

Answering Papers

9. 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.

10. 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

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

   Submit one original and one copy.

2. 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.

3. If an order to show causes 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 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.**

4. If a requested order has specific urgency, counsel should make the appropriate Court Clerk of 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.

DISCOVERY DISPUTES

1. Counsel should make every effort to resolve discovery disputes amongst themselves and avoid written discovery motions.
2. If the parties reach an impasse, the party seeking discovery or objecting to discovery demands may request a conference with the Court Attorney for assistance in resolving the issues.
3. Leave of Court shall be required before making motions related to discovery disputes.

ORDERS IN FAMILY COURT

1. Orders (one original and one copy) 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.

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

3. All proposed orders or other documents, including transcripts for the Judge's signature must include a "So-Ordered" signature line with the name of the Judge pre-printed as follows:

   Honorable Joseph J. Spofford, Jr., J.F.C.

DISCONTINUING A MATTER IN FAMILY COURT

If a matter is settled, discontinued, or otherwise disposed, counsel shall immediately provide written confirmation of settlement to Chambers via facsimile. If all parties are represented by counsel, this communication may be sent by email as noted above. 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 will be deemed active and the parties will be expected to appear in Court to try the matter.

FORENSIC EVALUATIONS IN FAMILY COURT

All requests for a forensic evaluation may be may 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, 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 the matter.

A request for a forensic evaluation in a custody or visitation matter must be made as soon as possible, **but not 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 to 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, 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 be 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 by arranging a time with the Family Court Clerk's Office after filing a request to review the file, unless otherwise arranged with the Court during an appearance.

Forensic Evaluations and Sexual Abuse Validation Report Admissibility

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.

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

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:

(1) 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*, 299 AD2d 84 [2d Dept 2002]; *D'Espositio v. Kepler*, 14 AD3d 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 Misc3d 1125A, 862 NYS2d 809 [Fam Ct Kings Co 2005] *citing People v Stone,* 35 NY2d 69 [1974].

(2) The evaluator testifies at the hearing regarding the contents of his or her report and the out-of-of court statements made by collateral sources in the report are derived from a witnessor witnesses subject to full cross-examination at the hearing (see *Wagman v. Bradshaw*, 292 AD2d 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 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 NYS2d 492 [1st Dept 2009].

Failure to satisfy (a) or (b) above will render the report inadmissible, assuming that one or more parties has properly raised an objection in accordance with the procedure outlined above.

HEARINGS/TRIALS

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 appropriate Court

Clerk at the Courthouse. **The Court's issuance of a judicial subpoena does not constitute a ruling as to admissibility of the subpoenaed materials.**

Contents of a "Trial Notebook"

No less than **one (1) week** before the first scheduled trial date on a matter, each party or counsel must file with the appropriate Court Clerk 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 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 at the discretion of the Court and upon application of the party calling the witness. 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.

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 prior to the commencement of the hearing or trial. Additionally, the counsel (or pro se litigants) will be required to appear for a pre-trial conference with the Judge's Court Attorney for the purpose of pre-marking exhibits, discussing stipulations that have been agreed upon between counsel/parties, scheduling and

resolving as many remaining disputed evidentiary issues as possible. The pre-trial conference will take place approximately **one to two weeks** before the trial date depending on the Court's availability.

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 at the discretion of the Court, 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.

3. Motions in Limine

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

SIJS CASES

Applications for guardianship and "Special Immigration Juvenile Status" findings shall be made by submitting a Petition for Guardianship that includes a request for SIJS findings in the relief sought. The Petition filed with the Court must have a notation clearly marked on its face that it seeks SIJS findings.

Such proceedings may be filed by way of Order to Show Cause only where the subject child will be turning 21 years of age imminently. In all other instances, the proper procedure is to file a petition for Guardianship that includes a request for SIJS findings, clearly noting on the face of the Petition that it is a SIJS case.

INTERPRETERS AND SPECIAL SERVICES

If a party requires an interpreter for any 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 is 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.

SURROGATE'S COURT

Parties are directed to familiarize themselves with the Surrogate's Court Procedure Act ("SCPA"), the Estates Powers and Trust law ("EPTL") sand the Uniform Rules for Surrogate's Court, found at *22 NYCRR § 207*. Official forms in fillable versions are available on the court website at www.nycourts.gov. Contact the Office of the Clerk of Surrogate Court directly for inquiries regarding pending matters, procedural questions and any other type of assistance for Surrogate's matters.