Hon. Wayne A. Humphrey, J.F.C.,
Westchester County Family Court
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, NY 10601
Chambers: (914) 824-5481
Chambers Facsimile (Fax): (212) 618-7981
Dated: February 20, 2020

Court Clerk: Michael P. Kenny
Part Clerk: Rosanna T. Hennessy - (914) 824-5502
Associate Court Attorney: Allison Burke, Esq. - (914) 824-5478/ alburke@nycourts.gov
Part Secretary: Elaine Fila - (914) 824-5481/ elfila@nycourts.gov

PART RULES

TIMELINESS

Parties and counsel must be on time for scheduled court appearances. Cases may be dismissed, or an Inquest may proceed if parties/counsel are not present when the matter is called. In the event of an emergency, please notify Chambers at (914) 824-5481 and e-mail Allison Burke, Esq. at alburke@nycourts.gov.

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 part secretary 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 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 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, counsel shall direct the email to the attention of the part secretary and the court attorney. Chambers will not 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").

Please send correspondence by only one method of communication as outlined above.

Communication about substantive issues via letter to the Court is 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 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.

REQUESTS FOR ADJOURNMENTS

Parties who are not represented by counsel 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). In cases where *all* parties are represented by counsel, such inquiries may be made via email. Please send correspondence regarding adjournment requests by only one method of communication as outlined above. 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 three (3) alternate dates and times when all parties and attorneys are available to appear before the Court with such dates coordinated with the Part Secretary.

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. If all parties are represented, this confirmation can be sent via email as described above. No additional notices to appear will be issued by the Court with the adjourned court date.

APPEARANCES

Retained attorneys must file a written Notice of Appearance on or before the date of his/her first appearance. In the case of Assigned Counsel and Attorneys for the Children, the Notice of Assignment/Appointment will serve as the Notice of Appearance.

All Attorneys must stand when addressing the Court on the record. Attorneys and parties should dress appropriately to conduct business with the Court.

No witnesses will be allowed in Court unless they are testifying.

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.

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.

Case coverage is the responsibility of the attorney of record. An attorney's failure to find coverage, submit a timely Affidavit/Affirmation of Engagement, or otherwise notify the Court of his/her inability to appear on a case, may result in the matter being reassigned to another 18B or attorney for child, or dismissed. If you find coverage, you must provide the covering attorney with a selection of dates and times for the next court appearance, whether it will be further conference or fact-finding hearing. AS THE COVERING ATTORNEY, IF YOU DO NOT HAVE ANY DATES AND TIMES FROM THE ATTORNEY FOR WHOM YOU ARE PROVIDING COVERAGE, THE NEXT COURT DATE SHALL BE MARKED "FINAL" AGAINST THE ATTORNEY AND HIS/HER CLIENT, WHETHER IT BE FOR A NON-APPEARANCE OR A REQUEST FOR A FURTHER ADJOURNMENT ON THE NEXT COURT DATE. SANCTIONS MAY BE IMPOSED

Preliminary Proceeding: If service of process is not completed by the Preliminary date, the case may be adjourned to complete personal service If service is not completed by the adjourned personal service date, the case may be dismissed for lack of service unless the court finds good cause for an additional adjournment.

Conference: After service is complete, typically the next Court appearance is a Conference. Retained and assigned counsel must contact opposing counsel and the attorney for the child to discuss the matter before appearing in Court, not the day of the Court appearance. Attorney Conferences, without parties present, with the Judge will only take place with the consent of all attorneys. Please use the Conference date as the opportunity to consult in good faith to narrow

and resolve issues in dispute, to make Motions/Orders to Show Cause returnable, to file amended pleadings, to file Orders to Produce/Bring Down Orders for the next court date, to review status of temporary Orders, review Probation Reports or Forensic Reports.

FACT-FINDING 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) days' 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.

Trial Notebook: No less than three (3) 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. 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 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. All exhibits expected to be used at a Fact-Finding Hearing, whether the exhibit will be marked for identification or moved into evidence, must be pre-marked and originals and sufficient copies for all parties shall be brought to the Fact-Finding Hearing. Petitioner’s exhibits shall be numbered. Respondent’s exhibits shall be lettered. Attorney for the Child exhibits will be designated AFC 1, 2, 3, etc.

Motions in Limine shall be filed at least (2) two weeks prior to trial. Failure to timely file said motion may result in the preclusion of any such motions thereafter. Do not argue proof on the record and in front of the witnesses.

ORDERS

Temporary/Interim Orders: The Court prefers that all Orders be computer generated. However, if a temporary or interim handwritten Short Form Order is necessary, the Short Form Order must be written in BLACK ink or it will not be accepted by the Court. All handwritten Orders must be neat and legible. If the Order is not legible, it may be returned to the writer and this may prolong the resolution of the case. If the Order is returned, the writer may be directed to submit a printed, computer generated Order by a date and time selected by the Court. Failure to comply with the directive of the Court to submit an Order, may result in dismissal of the case or reassignment of the 18B attorney or attorney for the child.

Final Orders: At the conclusion of the matter, Orders (one original and one copy) together with a self-addressed, stamped envelope, must be submitted within two (2) weeks from the date the matter is resolved, unless otherwise directed by the Court. The Order shall be single sided and doubled spaced, 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. If there is opposition to a proposed Order, the objecting attorney or party shall negotiate in good faith to resolve the language/provision being objected to. If the objection cannot be resolved, then the objecting attorney or party shall submit a proposed Counter Order to the Court prior to the Notice of Settlement date set forth on the initial proposed Final Order, unless otherwise directed by the Court. All counter-orders and counter-judgments must be submitted with a cover letter and a “redlined” copy highlighting the language which differs from that of the originally submitted order.

If no proposed Counter Order is received, the Court may sign the proposed Order or modify said Order sua sponte. 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 proposed orders or other documents, including transcripts that are to be submitted for the Judge's signature must include a "So-Ordered" signature line Honorable Wayne A. Humphrey, J.F.C.

MOTIONS

Motions (one original and one copy) shall be filed with the Court. 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 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 indicating the reason for the adjournment request, and the reason for the refusal to consent. Answering 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 of the Notice of Motion 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.

ORDER TO SHOW CAUSE

In addition to the motion rules, the following provisions are applicable to orders to show cause: Submit one original and one copy. 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 24 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.

Decisions on Motions may be rendered from the bench or done in writing. Written Decisions will be mailed to counsel or pro se parties only if counsel and/or pro se parties have provided the Court with a self-addressed stamped envelope with enough return postage. Otherwise a Decision on Motion will be available at the Clerk's Office.

NOTICES OF ASSIGNMENT & VOUCHERS

Questions regarding Notices of Assignment shall be directed to the Part Clerk, Rosanna T. Hennessey (914) 824-5502. Questions regarding vouchers shall be directed to Judge Humphrey's Secretary, Elaine Fila (914) 824-5481/elfila@nycourts.gov. All vouchers should be submitted in triplicate (original and two (2) copies) together with a stamped envelope addressed to either Legal Aid or the Appellate Division. Each voucher must be stapled individually. If an attorney is seeking payment on a case more than the maximum amount allowed, that attorney must submit a separate Affirmation detailing the reason for same.

INTERPRETERS

Typically, Spanish speaking interpreters are available on most days that the Court is in session, subject to availability. If a party requires the services of a non-Spanish speaking interpreter or sign language interpreter, the party or counsel requesting such service must notify the Court as soon as possible so that appropriate arrangements can be made. Please make an effort to notify the Court at least two weeks in advance of any scheduled appearance to ensure the availability of the interpreter.

FORENSIC EVALUATOR REPORTS

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, 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 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. 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.

Forensic Evaluation/Report Admissibility

1. All parties, or their attorneys if represented, have an opportunity to object to the admissibility of the forensic evaluation report/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.
2. The report in its entirety shall be admissible in evidence if all parties to the action stipulate to its admission.
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 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)).

4. If one or more parties properly object to the admission of the report in accordance with the procedure outlined above, 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 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)), or
b. 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)). Assuming that one or more parties has properly raised an objection in accordance with the procedure outlined above, failure to satisfy (a) or (b) above will render the report inadmissible.

Child Protective Services ("CPS") Reports/Court Ordered Investigations ("COI")

CPS reports are confidential pursuant to Social Services Law. Copies of CPS reports obtained by the court as part of a COI will not be given to counsel or parties. Counsel will be given an opportunity to review the CPS report on the date of an appearance but said report will be immediately returned to the Court. In the event that either both parties are unrepresented by counsel or one party is unrepresented, reports will not be provided for review. Instead, the Court will advise the parties that a report was received and disclose whatever information the Court deems relevant to any decision that will be made by the Court in reliance on its content.