

October 26, 2005

TO: Judges, Judicial Hearing Officers, Court Attorney Referees of the Family Court  
Chief Clerks of the Family Court

FROM: Jonathan Lippman

RE: Amendments to Sections 205.7, 205.15, 205.16, 205.17, 205.28, 205.50, 205.53, 205.62, 205.63, 205.67, 205.81 and 205.83 of the *Uniform Rules for the Family Court*

The attached Administrative Order of the Chief Administrative Judge of the Courts revises Sections 205.7, 205.15, 205.16, 205.17, 205.28, 205.50, 205.53, 205.62, 205.67, 205.81 and 205.83 and repeals Section 205.63 of the *Uniform Rules for the Family Court* to conform to the recently-enacted reforms of the child welfare and Persons in Need of Supervision laws [Laws of 2005, ch. 3 and 57] and to improve procedures for the resolution of family matters. These rules revisions, which were recommended by the Family Court Advisory and Rules Committee, have been approved by the Administrative Board of the Courts. In brief, the revisions include the following:

§205.7: The new permanency legislation requires cases of children in out-of-home care to remain on the Family Court's calendar, eliminates new petitions for each hearing, requires permanency hearings to be pre-scheduled and provides that the Family Court exercises continuous jurisdiction over persons and subject matter in child welfare proceedings. Therefore, the court rule has been amended to require proceedings to bear the docket number of the original proceeding in which the child was placed or, in the case of a child freed for adoption, of the surrender or termination of parental rights proceeding or proceedings. Since foster care reviews have been replaced by permanency hearings under Article 10-A of the Family Court Act, the "K" docket prefix has been eliminated.

§205.15: Proposed orders in child protective and permanency proceedings must be submitted to the Family Court within 14 days of the earlier of the Court's announcement of its decision or the signing and filing of its decision. Proposed orders of removal prior to the filing of a petition, pursuant to Family Court Act §1022, must be submitted immediately, but in no event later than the next court date following removal of the child from home.

§205.16: Since Social Services Law §392 has been repealed, the reference to that statute has been deleted from the court rule regarding motions to dispense with reasonable efforts to reunify families.

§205.17: The permanency hearing rule has been modified to solely address permanency hearings covered by the new Article 10-A of the Family Court Act, that is, reviews in child protective and voluntary placement cases, as well as reviews of children freed for adoption. Since the existing statutory requirements for petitions to be filed 60 days in advance still apply to permanency hearings regarding juvenile delinquents and Persons in Need of Supervision (PINS), procedures for those case categories are addressed in Sections 205.28 and 205.67, respectively.

The rule sets forth the new statutory requirements for scheduling a date certain for the first permanency hearing upon the first court order removing a child from his or her home, as well as subsequent hearings. The first permanency hearing must be held within eight months of the removal of the child from the home and every six months from the conclusion of each permanency hearing. A permanency hearing for a child freed for adoption must take place within 30 days of the earlier of the Family Court's announcement of its decision or the signing and filing of its written decision. If the child has been adopted or has been the subject of a final order of custody or guardianship, the permanency hearing must be cancelled and the petitioner must promptly notify the Family Court, all parties and all individuals required to be noticed for permanency hearings.

Since detailed requirements for the sworn permanency reports, which replace petitions, are spelled out in Family Court Act §1089, the court rule has been shortened to simply cross-reference the statute. The Family Court has discretion to direct that additional documents be submitted, including, among others, photographs, school report cards and prior court orders. The copy of the report transmitted to the attorneys and parties need not be sworn, so long as the sworn copy submitted to the Family Court contains a certification that the copies are identical in content. The court copy must also contain a confidential listing of the names and addresses of individuals to whom the report was sent.

§205.28: The rule regarding permanency hearings in juvenile delinquency cases has been expanded to include the provisions formerly contained in §205.17, including those relating to the contents of the permanency petitions and attached service plans.

§205.50: New statutory parameters for suspended judgments in permanent neglect cases have been incorporated in the court rule, including, among others, the limit upon extensions of suspended judgments, the requirement for submission of reports and court reviews prior to expiration of suspended judgment periods and procedures for violations of suspended judgments. A permanency hearing must be completed within 60 days of a court order that a suspended judgment has been deemed satisfied or has been extended and, where the suspended judgment has been unsuccessful, within 60 days of the transfer of guardianship and custody of the child to the agency.

§205.53: The rule regarding documents required in agency adoption cases has been amended to require submission by the agency attorney of an affidavit attesting to the fact that no appeals of termination of parental rights, surrender or surrender revocation proceedings are pending regarding the child. This affidavit must be sent to all parties and the law guardian in the termination or surrender proceeding. Additionally, the mandates regarding criminal history and child maltreatment registry reports have been incorporated, along with a requirement that a post-

adoption contact agreement, if any, that was approved by the Family Court in the course of approving a surrender of a child be submitted along with the order of approval.

§205.62: Reflecting the amendments to the PINS statute, the court rule regarding PINS diversion has been modified to direct court clerks not to accept petitions for filing unless they have attached to them the required notification from the designated diversion agency and, in the case of PINS petitions filed by school officials, the required documentation of efforts made by the school district to resolve the respondent child's school problems. In addition to gathering information regarding the efficacy of diversion services and alternatives to detention, the diversion agency is directed to obtain information necessary to permit the Family Court to make informed determinations required by the *Adoption and Safe Families Act*, that is, whether remaining at home would be contrary to the child's best interests and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his or her home.

§205.63: In light of the requirement in the new PINS statute for all counties to have uniform, mandatory diversion procedures, this rule has been repealed.

§205.67: The rule regarding permanency hearings in PINS cases has been expanded to include the provisions formerly contained in §205.17, including those relating to the contents of the permanency petitions and attached service plans.

§205.81: The court rule regarding compliance with the *Adoption and Safe Families Act* in child protective proceedings has been modified to comport with the new permanency legislation, including the mandate to set a date certain for the first permanency hearing in the first Family Court order removing a child from his or her home. In light of the emphasis upon early investigation of, and, if appropriate, temporary and long-term placements with relatives and other suitable persons, these individuals are enumerated as possible sources of information for the Family Court's required *ASFA* determinations, that is, whether remaining at home would be contrary to the child's best interests and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his or her home. Findings regarding needed independent living services, requisites of all orders of placement, must be made regarding juveniles 14, instead of 16, years of age and older. Finally, the court rule has been shortened to simply cross-reference the permanency hearing provisions of §205.17.

§205.83: The court rule regarding orders of supervision in child protective cases has been clarified to provide that where such an order is issued in conjunction with an order of placement, the supervision order is coextensive in duration with the placement order and must be reviewed as part of the permanency hearing regarding the placement.

Attachment  
Hon. Ann Pfau  
Hon. Jan Plumadore  
Hon. Joan B. Carey  
Administrative Judges

**ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, sections 205.7, 205.15, 205.16, 205.17, 205.28, 205.50, 205.53, 205.62, 205.63, 205.67, 205.81 and 205.83 of the *Uniform Rules for the Family Court*, relating to the implementation of recent legislative enactments and improvement of procedures for resolution of family matters, to read as follows:

**Section 205.7. Papers filed in court; docket number; prefix; forms.**

\* \* \*

(b) The prefixes for the docket numbers assigned to Family Court proceedings shall be:

\* \* \*

[K–Foster Care Review]

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(c) Proceedings for extensions of placement in Person in Need of Supervision and juvenile delinquency proceedings and for permanency hearings in child protective and voluntary foster care proceedings pursuant to Article 10-A of the Family Court Act shall bear the prefix and docket number of the original proceeding in which the placement was made. Permanency hearings pursuant to Family Court Act Article 10-A regarding children freed for adoption shall bear the prefix and docket number of the proceeding or proceedings in which the child was freed: the surrender and/or termination of parental rights proceedings. Permanency reports submitted pursuant to Article 10-A shall not be considered new petitions.

**Section 205.15. Submission of orders for signature.**

[(a)] Proposed orders, with proof of service on all parties, must be submitted for signature unless otherwise directed by the court within thirty days after the signing and filing of the decision

directing that the order be settled or submitted. Proposed orders in child protective proceedings and permanency hearings pursuant to Articles 10 and 10-A of the Family Court Act, respectively, must be submitted for signature immediately, but in no event later than 14 days of the earlier of the Court's oral announcement of its decision or signing and filing of its decision, unless otherwise directed by the Court, provided, however, that proposed orders pursuant to section 1022 of the Family Court Act must be submitted for signature immediately, but in no event later than the next court date following the removal of the child. Orders in termination of parental rights proceedings pursuant to Article 6 of the Family Court Act or section 384-b of the Social Services Law shall be settled not more than 14 days after the earlier of the Family Court's oral announcement of its decision or signing and filing of its decision.

[(b) When settlement of an order is directed by the court:

(1) a copy of the proposed order or judgment with notice of settlement, returnable at the office of the clerk of the part in which the order or judgment was granted, or before the judge of the court if the court has so directed or if the clerk is unavailable, shall be served on all parties either:

- (i) by personal service not less than five days before the date of settlement; or
- (ii) by mail not less than ten days before the date of settlement;

(2) proposed counter-orders or judgments shall be made returnable on the same date and at the same place, and shall be served on all parties by personal service, not less than two days, or by mail, not less than seven days, before the date of settlement .]

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

(a) This section shall govern any motion for a judicial determination, pursuant to section 352.2(2)(c), 754(2)(b), 1039-b or 1052(b) of the Family Court Act or section 358-a(3)(b) [or 392(6-a)] of the Social Services Law, that reasonable efforts to prevent or eliminate the need for removal of the child from the home or to make it possible to reunify the child with his or her parents are not required.

(b) A motion for such a determination shall be filed in writing on notice to the parties, including the law guardian, on the form officially promulgated by the Chief Administrator of the Courts and set forth in Chapter IV of Subtitle D of this Title and shall contain all information required therein.

**Section 205.17 Permanency hearings for children in foster care, children directly placed with relatives or other suitable persons and children freed for adoption**

(a) This section shall govern all permanency hearings conducted pursuant to [articles 3, 7 and] Article 10-A of the Family Court Act [and sections 358-a and 392 of the Social Services Law].

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

(1) [A petition] The first court order remanding a child into foster care or into direct placement with a relative or other suitable person in a proceeding pursuant to Article 10 or approving a voluntary placement instrument pursuant to section 358-a of the social services law must contain a date certain for the initial permanency hearing [in a case brought pursuant to article 3 or 7 of the Family Court Act or section 358-a or 392 of the Social Services Law shall be filed at least 60 days prior to the expiration of one year following the entry] pursuant to Article 10-A of the

Family Court Act, which must be not later than eight months from the date of removal of the child [into foster care] from his or her home.

(2) A [petition for the initial] permanency hearing [in a case arising under article 10 of the Family Court Act shall be filed at least 60 days prior to the expiration of one year following the entry of the child into foster care. For purposes of this paragraph, the child shall be deemed to have entered foster care on the earlier of the date of the fact finding of abuse or neglect of the child pursuant to section 1051 of the Family Court Act or 60 days after the date the child was removed from his or her home.

(3) In a case brought pursuant to section 1055-a of the Family Court Act] with respect to a child who has been freed for adoption [but not placed in an adoptive home, or who has been freed for adoption and placed in an adoptive home but for whom a petition for adoption has not been filed, a petition for a permanency hearing] shall be [filed 60 days prior to the earlier of the expiration of one year following the last permanency hearing or six months after] scheduled for a date certain not more than 30 days after the earlier of the Family Court's oral announcement of its decision or the signing and filing of its decision freeing the child [has been freed] for adoption. [With respect to a child freed for adoption for whom an adoption petition is pending, a petition for a permanency hearing shall be filed 60 days prior to the expiration of one year following the last permanency hearing.

(4) (3) In any case in which the court has made a determination, pursuant to section [352.2(2)(c), 754(2)(b),] 1039-b or 1052(b) of the Family Court Act or section 358-a(3)(b) [or 392(6-a)] of the Social Services Law, that reasonable efforts to [prevent or eliminate the need for removal of the child from the home or to make it possible to] reunify the child with his or her

parents are not required, a permanency hearing must be [held] scheduled for a date certain within 30 days of [such finding] the determination and the originally scheduled date shall be cancelled. In such a case, a [petition for a] permanency hearing report shall be [filed and served] transmitted to the parties and counsel, including the law guardian, on an expedited basis as directed by the court.

[(5) Following the initial] (4) Each permanency hearing order [in a case in which a child remains in foster care, a petition for a subsequent] must contain a date certain for the next permanency hearing, which shall be [filed at least 60 days prior to the expiration of one year] not more than six months following the [date] completion of the [preceding] permanency hearing, except as provided in paragraph (3) [or (4)] of this subdivision.

[(6)](5) If the child has been adopted or has been the subject of a final order of custody or guardianship by the scheduled date certain, the permanency hearing shall be cancelled and the petitioner shall promptly so notify the court, all parties and their attorneys, including the law guardian, as well as all individuals required to be notified of the hearing pursuant to Family Court Act §1089.

(c) Required notice and [service. In] transmittal of permanency reports. Except in cases involving children freed for adoption, in addition to [serving] sending the [petition] permanency hearing report and accompanying papers[upon the parties, including the law guardian,] to the respondent parents' last-known address and to their attorneys not less than 14 days in advance of the hearing date, the petitioner shall make reasonable efforts to provide actual notice of the permanency hearing to the respondent parents through any additional available means, including, but not limited to, case-work, service and visiting contacts. Additionally, not less than 14 days in

advance of the hearing date, the petitioner shall send a notice of the permanency hearing and the report and accompanying documents to the non-respondent parent(s) and the foster parent or parents caring for the child [and any], each of whom shall be a party, and to the law guardian. Petitioner shall also send the notice and report to a pre-adoptive parent or relative providing care for the child [in accordance with sections 355.5(6), 741-a, 1040 and 1055-a(4) of the Family Court Act and section 358-a(4)(c) and 392(4)(i) of the Social Services Law. The] and shall send a notice, but not the report, to former foster parents who cared for the child in excess of one year. The Court shall give such persons an opportunity to be heard, but they shall not be considered parties and their failures to appear shall not constitute cause to delay the hearing. As provided in subdivision (d) of this section, the petitioner shall submit on or before the return date [appropriate proof of service upon the parties and] documentation of the notice or notices given to the respondent and non-respondent parents, their attorneys, the law guardian, and any present or former foster parent, pre-adoptive parent or relative.

(d) Required papers to be [filed] submitted.

(1) A sworn permanency [petition] report shall be [filed] submitted on the form officially promulgated by the Chief Administrator of the Courts and set forth in Chapter IV of Subtitle D of this Title, and shall contain all information required [therein. The petition shall include, but not be limited to, the following: the date by which the permanency hearing must be held; the date by which any subsequent permanency petition must be filed; the proposed permanency goal for the child; the reasonable efforts, if any, undertaken to achieve the child's return to his or her parents and other permanency goal; the visitation plan for the child and his or her sibling or siblings and, if parental rights have not been terminated, for his or her parent or parents; and

current information regarding the status of services ordered by the court to be provided, as well as other services that have been provided, to the child and his or her parent or parents.

(2) In all cases, the permanency petition shall be accompanied by the most recent uniform case review containing, at minimum: the child's permanency goal and projected timeframe for its achievement; the reasonable efforts that have been undertaken and are planned to achieve the goal; impediments, if any, that have been encountered in achieving the goal; and the service plan for the child and (where parental rights have not been terminated) the child's parent or parents.] by section 1089 of the Family Court Act.

(2) The permanency [petition] report shall be accompanied by additional reports and documents as directed by the court [. A permanency petition filed pursuant to article 3 of the Family Court Act shall contain or have annexed to it a plan for the release or conditional release of the child, as required by section 353.3(7) of the Family Court Act], which may include, but not be limited to, periodic school report cards, photographs of the child, clinical evaluations and prior court orders in related proceedings.

(3) [Not later than five days prior to the date of the permanency hearing, the petitioner shall file a report containing updated information with the court and shall provide copies to the parties, the law guardian, the foster parent caring for the child and any pre-adoptive parent or relative providing care for the child. The report shall provide information, including, but not limited to: the current status of the child; changes, if any, in the child's foster care placement, permanency goal or service plan; updated information regarding allegations in the petition and accompanying documents and any further reports directed by the court.] The copy of the report submitted to the Family Court must be sworn and must be accompanied by a list of all persons and addresses to

whom the report and/or notice of the permanency hearing were sent. Except as otherwise directed by the Family Court, the list containing the addresses shall be kept confidential and shall not be part of the court record that may be subject to disclosure pursuant to Section 205.5 of this title. The copies of the permanency hearing report required to be sent to the parties and their attorneys, including the law guardian, not less than 14 days prior to the scheduled date certain need not be sworn so long as the verification accompanying the Family Court's sworn copy attests to the fact that the copies transmitted were identical in all other respects to the Court's sworn copy.

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

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(d) Permanency hearing; extension of placement.

(1) A petition for a permanency hearing and, if applicable, an extension of placement, pursuant to sections 355.3 and 355.5 of the Family Court Act, shall be filed at least 60 days prior to the expiration of one year following the respondent's entry into foster care; provided, however, that if the Family Court makes a determination, pursuant to section 352.2(2)(c) of the Family Court Act, that reasonable efforts are not required to prevent or eliminate the need for removal of the respondent from his or her home or to make it possible to reunify the respondent with his or her parents, the permanency hearing shall be held within 30 days of such finding and the petition for the permanency hearing shall be filed and served on an expedited basis as directed by the court.

(2) Following the initial permanency hearing in a case in which the

governed by section 205.17 of this Part.]

(3) The permanency petition shall include, but not be limited to, the following: the date by which the permanency hearing must be held; the date by which any subsequent permanency petition must be filed; the proposed permanency goal for the child; the reasonable efforts, if any, undertaken to achieve the child's return to his or her parents or other permanency goal; the visitation plan for the child and his or her sibling or siblings and, if parental rights have not been terminated, for his or her parent or parents; and current information regarding the status of services ordered by the court to be provided, as well as other services that have been provided, to the child and his or her parent or parents.

(4) In all cases, the permanency petition shall be accompanied by the most recent service plan containing, at minimum: the child's permanency goal and projected time-frame for its achievement; the reasonable efforts that have been undertaken and are planned to achieve the goal; impediments, if any, that have been encountered in achieving the goal; and the services required to achieve the goal. Additionally, the permanency petition shall contain or have annexed to it a plan for the release or conditional release of the child, as required by section 353.3(7) of the Family Court Act.

**Section 205.50 Terms and conditions of order suspending judgment in accordance with section 633 of the Family Court Act or section 384-b(8)(c) of the Social Services Law.**

(a) An order suspending judgment entered pursuant to section 631 of the Family Court Act or section 384-b(8)(c) of the Social Services Law shall be related to the adjudicated acts or omissions of respondent and shall contain at least one of the following terms and conditions requiring respondent to:

(1) sustain communication of a substantial nature with the child by letter or telephone at stated intervals;

(2) maintain consistent contact with the child, including visits or outings at stated intervals;

(3) participate with the authorized agency in developing and effectuating a plan for the future of the child;

(4) cooperate with the authorized agency's court-approved plan for encouraging and strengthening the parental relationship;

(5) contribute toward the cost of maintaining the child if possessed of sufficient means or able to earn such means;

(6) seek to obtain and provide proper housing for the child;

(7) cooperate in seeking to obtain and in accepting medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, employment or family counseling or child guidance, and permit information to be obtained by the court from any person or agency from whom the respondent is receiving or was directed to receive such services; and

(8) satisfy such other reasonable terms and conditions as the court shall determine to be necessary or appropriate to ameliorate the acts or omissions which gave rise to the filing of the

petition.

(b) The order shall set forth the duration, terms and conditions of the suspended judgment and shall contain a date certain for review of respondent's compliance not less than 30 days in advance of the expiration of the suspended judgment. The suspended judgment may last for up to one year and may, if exceptional circumstances warrant, be extended by the Court for one additional period of up to one year. A copy of the order, along with a current service plan, shall be furnished to the respondent. The order shall contain a written statement informing the respondent that a failure to obey the order may lead to its revocation and to the issuance of an order for the commitment of the guardianship and custody of a child. Where the child is in foster care, the order shall set forth the visitation plan for the child and the respondent, as well as for the child and his or her sibling or siblings, if any, and shall require the agency to notify the respondent of case conferences. The order shall further contain a determination in accordance with subdivision 12 of section 384-b of the Social Services Law of the existence of any person or persons to whom notice of an adoption would be required pursuant to section 111-b of the Domestic Relations Law and, if so, whether such person or persons were given notice of the termination of parental rights proceeding and whether such person or persons appeared.

(c) Not later than 60 days in advance of the expiration of the period of suspended judgment, the petitioner shall file a report with the Family Court and all parties, including the respondent and his or her attorney, the law guardian and intervenors, if any, regarding the respondent's compliance with the terms and conditions of the suspended judgment. The court may set [a time or] additional times at which the respondent or the authorized agency caring for the child shall report to the court [as to whether there is] regarding compliance with the terms and conditions of

the suspended judgment.

(d) If a respondent fails to comply with the terms and conditions of an order suspending judgment made pursuant to section 631 of the Family Court Act or section 384-b(8)(c) of the Social Services Law:

(1) a [petition for] motion or order to show cause seeking the revocation of the order may be filed;

(2) the [petition] affidavit accompanying the motion or order to show cause shall contain a concise statement of the acts or omissions alleged to constitute noncompliance with the order;

(3) [service of a summons and a copy of the petition shall be made as provided for by section 617 of the Family Court Act; and] the motion or order to show cause shall be served upon the respondent by mail at the last known address or as directed by the court and shall be served upon all attorneys, the law guardian and intervenors, if any;

(4) during the pendency of the motion or order to show cause, the period of the suspended judgment is tolled; and

(5) if, after a hearing or upon the respondent's admission, the court is satisfied that the allegations of the [petition] motion or order to show cause have been established and upon a determination of the child's best interests, the court may modify, revise or revoke the order of suspended judgment or if exceptional circumstances warrant and the suspended judgment has not already been extended, the court may extend the suspended judgment for an additional period of up to one year.

(e) The court may at any time, upon notice and opportunity to be heard to the parties, their attorneys and the law guardian, revise, modify or enlarge the terms and conditions of a

suspended judgment previously imposed.

(f) If the child remains in foster care during the pendency of a suspended judgment or after a suspended judgment has been deemed satisfied or if guardianship and custody have been transferred to the agency as a result of a revocation of the suspended judgment, a permanency hearing must be scheduled for a date certain and must be completed immediately following or not more than 60 days after the earlier of the Family Court's oral announcement of its decision or signing and filing of its written order. Subsequent permanency hearings must be held as required by section 1089 of the Family Court Act at intervals of not more than six months from the date of completion of the prior permanency hearing.

**Section 205.53 Papers required in an adoption proceeding.**

(a) All papers submitted in an adoption proceeding shall comply with section 205.7 of this Part.

(b) In addition to those papers required by the Domestic Relations Law, the following papers, unless otherwise dispensed with by the court, shall be submitted and filed prior to the placement of any adoption proceeding on the calendar:

(1) a certified copy of the birth certificate of the adoptive child;

(2) an affidavit or affidavits by an attorney admitted to practice in the State of New York or, in the discretion of the court, by a person other than an attorney who is known to the court, identifying each of the parties;

(3) a certified marriage certificate, where the adoptive parents are husband and wife or where an individual adoptive parent is the spouse of the natural parent;

(4) a certified copy of a decree or judgment, where an adoptive parent's marriage has been

terminated by decree or judgment;

(5) a certified death certificate, where an adoptive or natural parent's marriage has been terminated by death or where it is alleged that consent or notice is not required because of death;

(6) a proposed order of adoption;

(7) a copy of the attorney's affidavit of financial disclosure filed with the Office of Court Administration pursuant to section 603.23, 691.23, 806.14 or 1022.33 of this Title; and either an attorney's affirmation that the affidavit has been personally delivered or mailed in accordance with such rules or the dated receipt from the Office of Court Administration; [and]

(8) an affidavit of financial disclosure from the adoptive parent or parents, and from any person whose consent to the adoption is required by law, setting forth the following information:

(i) name, address and telephone number of the affiant;

(ii) status of the affiant in the proceeding and relationship, if any, to the adoptive child;

(iii) docket number of the adoption proceeding;

(iv) the date and terms of every agreement, written or otherwise, between the affiant and any attorney pertaining to any fees, compensation or other remuneration paid or to be paid by or on behalf of the adoptive parents or the natural parents, directly or indirectly, including but not limited to retainer fees on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption;

(v) the total amount of fees, compensation or other remuneration to be paid to such attorney by the affiant, directly or indirectly, including the date and amounts of each payment already made, if any, on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption;

(vi) the name and address of any other person, agency, association, corporation, institution, society or organization who received or will receive any fees, compensation or other remuneration from the affiant, directly or indirectly, on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or proposed adoption; the amount of each such fee, compensation or other remuneration; and the reason for or services rendered, if any, in connection with each such fee, compensation or other remuneration; and

(vii) the name and address of any person, agency, association, corporation, society or organization who has or will pay the affiant any fee, compensation or other remuneration, directly or indirectly, on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother, or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or adoption; the amount of each such fee, compensation or other remuneration; and the reason for or services rendered, if any, in connection with each such fee, compensation or other remuneration;

(9) in the case of an adoption from an authorized agency in accordance with title 2 of article 7 of the Domestic Relations Law, a copy of the criminal history summary report made by the New York State Office of Children and Family Services to the authorized agency pursuant to section 378-a of the Social Services Law regarding the criminal record or records of the prospective adoptive parent or parents and any adult over the age of 18 currently residing in the home, as well as a report from the New York State Central Registry of Child Abuse and Maltreatment regarding any indicated reports regarding the prospective adoptive parent or parents and any

adult over the age of 18 currently residing in the home;

(10) in the case of an adoption from an authorized agency, an affidavit by the attorney for the agency attesting to the fact that no appeal from a surrender, surrender revocation or termination of parental rights proceeding is pending in any court and that a notice of entry of the final order of disposition of the surrender, surrender revocation or termination of parental rights proceeding had been served upon the law guardian, the attorneys for the respondent parents or the parents themselves, if they were self-represented, as well as any other parties; and

(11) in the case of an adoption from an authorized agency in which a post-adoption contact agreement has been approved by the Family Court in conjunction with a surrender of the child, a copy of the post-adoption contact agreement, as well as the order of the Court that approved the agreement as being in the child's best interests.

(c) Prior to the signing of an order of adoption, the court may in its discretion require the filing of a supplemental affidavit by the adoptive parent or parents, any person whose consent to the adoption is required, the authorized agency and the attorney for any of the aforementioned, setting forth any additional information pertaining to allegations in the petition or in any affidavit filed in the proceeding.

**Section 205.62 Preliminary [probation] diversion conferences and procedures (PINS):**

[ (Not applicable in jurisdictions that have designated an assessment service pursuant to an approved assessment and services plan as described in section 243-a of the Executive Law; reference should be made to the procedures set forth in section 735 of the Family Court Act.)]

(a) Any person seeking to originate a proceeding under Article 7 of the Family Court Act to

determine whether a child is a person in need of supervision shall first be referred to the designated lead diversion agency, which may be either the probation service or the local department of social services. The clerk shall not accept any petition for filing that does not have attached the notification from the lead diversion agency required by section 735 of the Family Court Act and, in the case of a petition filed by a school district or school official, documentation of the efforts made by the school district or official to remediate the child's school problems.

(b) The [probation service] lead diversion agency shall begin to conduct preliminary conferences with the person seeking to originate the proceeding, the potential respondent and any other interested person, on the same day that such persons are referred to the [probation service concerning advisability of filing a petition and ] diversion agency in order to gather information needed [for a determination of the suitability] to assist in diversion of the case [for adjustment] from petition, detention and placement through provision of or referral for services. The [probation service] diversion agency shall permit any participant who is represented by a lawyer to be accompanied by the lawyer at any preliminary conference.

(c) During the preliminary [probation] conferences, the [probation service] diversion agency shall ascertain, from the person seeking to originate the proceeding, a brief statement of the underlying events, an assessment of whether the child would benefit from diversion services, respite care and other alternatives to detention and, if known to that person, a brief statement of the factors that would be of assistance to the court in determining whether the potential respondent should be detained or released in the event that a petition is filed. Such factors include whether there is a substantial probability that the respondent would not be likely to appear in court if released, whether he or she would be likely to benefit from diversion services,

whether all available alternatives to detention have been exhausted and, in the case of a child 16 years of age or older, whether special circumstances exist warranting detention. The diversion agency shall also gather information to aid the court in its determination of whether remaining in the home would be contrary to the child's best interests and, where appropriate, whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home.

(d)[ In order to determine whether the case is suitable for the adjustment process, the probation service shall consider the following circumstances, among others:

(1) the age of the potential respondent;

(2) whether the conduct of the potential respondent involved:

(i) a serious risk to the welfare and safety of the community; or

(ii) an act which seriously endangered the safety of the respondent or another person.

(3) whether there is a substantial likelihood that the potential respondent would not appear at scheduled conferences with the probation service or with an agency to which he or she may be referred;

(4) whether there is a substantial likelihood that the potential respondent will not participate in or cooperate with the adjustment process;

(5) whether there is a substantial likelihood that, in order to adjust the case successfully, the potential respondent would require services that could not be administered effectively in less than four months;

(6) whether there is a substantial likelihood that the potential respondent will, during the adjustment process:

(i) engage in conduct that endangers the physical or emotional health of the potential respondent or a member of the potential respondent's family or household; or

(ii) harass or menace the person seeking to originate the proceeding or the complainant or a member of that person's family or household, where demonstrated by prior conduct or threats;

(7) whether there is pending another proceeding to determine whether the potential respondent is a person in need of supervision, a juvenile delinquent or a juvenile offender;

(8) whether there have been prior adjustments or adjournments in contemplation of dismissal under article 3 or 7 of the Family Court Act;

(9) whether there has been a prior adjudication of the potential respondent as a person in need of supervision, a juvenile delinquent or a juvenile offender;

(10) whether there is a substantial likelihood that the adjustment process would not be successful unless the potential respondent is temporarily removed from his or her home and that such removal could not be accomplished without invoking court process; and

(11) whether the potential respondent refuses to return home or refuses to remain at home and the reasons therefor do not justify the filing of a proceeding under article 10 of the Family Court Act.

(e)] At the first appearance at a conference by each of the persons listed in subdivision (b) of this section, the [probation service] diversion agency shall inform such person concerning the function [and limitations] of[,and the alternatives to,] the [adjustment] diversion process and that:

(1) he or she has the right to participate in the [adjustment] diversion process;

(2) the [probation service] diversion agency is not authorized to and cannot compel any

person to appear at any conference, produce any papers or visit any place, but if the person seeking to originate the proceeding does not cooperate with the diversion agency, he or she will not be able to file a petition. The court may direct the parties to cooperate with the diversion agency even after a petition has been filed;

(3) [the person seeking to originate the proceeding is entitled to have access to the court at any time for the purpose of filing a petition under article 7 of the Family Court Act;]

(4) the adjustment process may continue for a period of two months and may be extended for an additional 60 days upon written application to the court;

(5) ] statements made to the [probation service] diversion agency are subject to the confidentiality provisions contained in section 735 of the Family Court Act;[ and

6] (4) if the [adjustment] diversion process is [commenced but is] not successfully concluded for reasons other than the noncooperation of the person seeking to originate the proceeding, the [persons participating therein] diversion agency shall [be notified orally or] notify the person seeking to originate the proceeding in writing of that fact and that the person seeking to originate the proceeding is entitled to access to the court for the purpose of filing a petition; oral notification [will] shall be confirmed in writing.

[ (f) If the adjustment process is not commenced:

(1) the record of the probation service shall contain a statement of the grounds therefor; and

(2) the probation service shall give written notice to the persons listed in subdivision (b) of this section who have appeared:

(i) that the adjustment process will not be commenced;

(ii) that the person seeking to originate the proceeding is entitled to access to the court for

the purpose of filing a petition; and

(iii) that, where applicable, the adjustment process was not commenced on the ground that the court would not have jurisdiction over the case and that the person seeking to originate the proceeding may test the question of the court's jurisdiction by filing a petition.]

(e) If the diversion process is not successfully concluded, the diversion agency shall notify all the persons who participated therein, in writing, of that fact and of the reasons therefor, including a description of the services offered and efforts made to avert the filing of a petition. The notification shall be appended to the petition.

**[Section 205.63 Duties of the probation service and procedures relating to the adjustment process (PINS).**

(Not applicable in jurisdictions that have designated an assessment service pursuant to an approved assessment and services plan as described in section 243-a of the Executive Law; reference should be made to the procedures set forth in section 735 of the Family Court Act.)

(a) Upon a determination by the probation service that a case is suitable for the adjustment process, it shall include in the process the potential respondent and any other persons listed in section 205.62(b) of this Part who wish to participate therein. The probation service shall permit any participant who is represented by a lawyer to be accompanied by the lawyer at any conference.

(b) If an extension of the period of the adjustment process is sought, the probation service shall apply in writing to the court and shall set forth the services rendered to the potential respondent, the date of commencement of those services, the degree of success achieved, the services

proposed to be rendered and a statement by the assigned probation officer that, in the judgment of such person, the matter will not be successfully adjusted unless an extension is granted.

(c) The probation service may discontinue the adjustment process if, at any time:

(1) the potential respondent or the person seeking to originate the proceeding requests that it do so; or

(2) the potential respondent refuses to cooperate with the probation service or any agency to which the potential respondent or a member of his or her family has been referred.

(d) If the adjustment process is not successfully concluded, the probation service shall notify all the persons who participated therein, in writing:

(1) that the adjustment process has not been successfully concluded; and

(2) that the person seeking to originate the proceeding is entitled to access to the court for the purpose of filing a petition; and, in addition to the above, shall notify the potential respondent in writing of the reasons therefor.

(e) The case record of the probation service required to be kept pursuant to section 243 of the Executive Law and the regulations promulgated thereunder shall contain a statement of the grounds upon which:

(1) the adjustment process was commenced but was not successfully concluded; or

(2) the adjustment process was commenced and successfully concluded.]

**Section 205.67 Procedures for compliance with the Adoption and Safe Families Act**

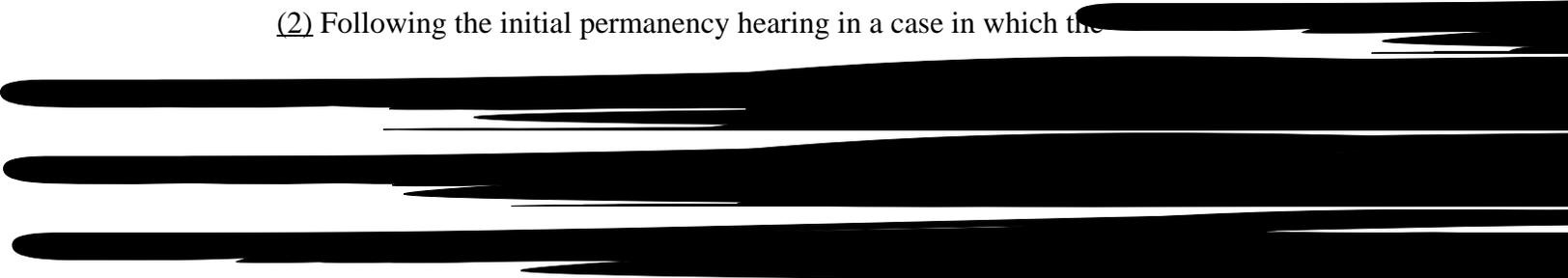
**(Persons in Need of Supervision proceeding)**

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(d). Permanency hearing; extension of placement.

(1) A petition for a permanency hearing and, if applicable, an extension of placement, pursuant to section 756-a of the Family Court Act, shall be filed at least 60 days prior to the expiration of one year following the respondent's entry into foster care; provided, however, that if the Family Court makes a determination, pursuant to section 754(2)(b) of the Family Court Act, that reasonable efforts are not required to prevent or eliminate the need for removal of the respondent from his or her home or to make it possible to reunify the respondent with his or her parents, the permanency hearing shall be held within 30 days of such finding and the petition for the permanency hearing shall be filed and served on an expedited basis as directed by the court.

(2) Following the initial permanency hearing in a case in which the



governed by section 205.17 of this Part.]

(3) The permanency petition shall include, but not be limited to, the following: the date by which the permanency hearing must be held; the date by which any subsequent permanency petition must be filed; the proposed permanency goal for the child; the reasonable efforts, if any, undertaken to achieve the child's return to his or her parents and other permanency goal; the visitation plan for the child and his or her sibling or siblings and, if parental rights have not been terminated, for his or her parent or parents; and current information regarding the status of services ordered by the court to be provided, as well as other services that have been provided, to the child and his or her parent or parents.

(4) In all cases, the permanency petition shall be accompanied by the most recent service plan containing, at minimum: the child's permanency goal and projected time-frame for its achievement; the reasonable efforts that have been undertaken and are planned to achieve the goal; impediments, if any, that have been encountered in achieving the goal; the services required to achieve the goal; and a plan for the release or conditional release of the child, including information regarding steps to be taken to enroll the child in a school or, as applicable, vocational program.

**Section 205.81 Procedures for compliance with Adoption and Safe Families Act (child protective proceeding)**

(a) Temporary removal; required findings. In any case in which removal of the child is ordered by the court pursuant to part 2 of article 10 of the Family Court Act, the court shall set a date certain for a permanency hearing and shall make additional, specific written findings regarding the following issues:

(1) whether the continuation of the child in his or her home would be contrary to his or her best interests; and

(2) whether reasonable efforts, where appropriate, were made, prior to the date of the court hearing that resulted in the removal order, to prevent or eliminate the need for removal of the child from his or her home, and, if the child had been removed from his or her home prior to such court hearing, whether reasonable efforts, where appropriate, were made to make it possible for the child to safely return home. The petitioner shall provide information to the court to aid in its determinations. The court may also consider information provided by respondents [and], the

law guardian, the non-respondent parent or parents, relatives and other suitable persons.

(b) Motion for an order that reasonable efforts are not required. A motion for a judicial determination, pursuant to section 1039-b of the Family Court Act, that reasonable efforts to prevent or eliminate the need for removal of the child from his or her home or to make it possible to reunify the child with his or her parents are not required shall be governed by section 205.16 of this Part.

(c) Placement; required findings. In any case in which the court is considering ordering placement pursuant to section 1055 of the Family Court Act, the petitioner shall provide information to the court to aid in its required determination of the following issues:

(1) whether continuation in the child's home would be contrary to his or her best interests and, if the child was removed from his or her home prior to or at the time of the [date of such] dispositional hearing and a judicial determination has not yet been made, whether such removal was in his or her best interests;

(2) whether reasonable efforts, where appropriate, were made, prior to the date of the dispositional hearing, to prevent or eliminate the need for removal of the child from his or her home and, if the child was removed from his or her home prior to the date of such hearing, whether reasonable efforts, where appropriate, were made to make it possible for the child to return safely home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from his or her home were not made, but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding;

(3) in the case of a child for whom the permanency plan is adoption, guardianship or some other permanent living arrangement other than reunification with the parent or parents of the

child, whether reasonable efforts have been made to make and finalize such other permanency plan;

(4) in the case of a respondent who has attained the age of [16] 14, the services needed, if any, to assist the respondent to make the transition from foster care to independent living; and

(5) in the case of an order of placement specifying a particular authorized agency or foster care provider, the position of the local commissioner of social services regarding such placement.

(d) Permanency hearing[; extension of placement. A petition for a permanency hearing and, if applicable, an extension of placement, pursuant to section 1055 of the Family Court Act, shall be filed at least 60 days prior to the expiration of one year following the child's entry into foster care. For purposes of this section, the child's entry into foster care shall be deemed to have commenced the earlier of the date of the fact finding of abuse or neglect of the child pursuant to section 1051 of the Family Court Act or 60 days after the date the child was removed from his or her home; provided, however, that if the court makes a determination pursuant to section 1039-b of the Family Court Act, that reasonable efforts are not required to prevent or eliminate the need for removal of the child from his or her home or to make it possible to reunify the child with his or her parents, the permanency hearing shall be held within 30 days of such determination and the petition for the permanency hearing shall be filed and served on an expedited basis as directed by the court. Following the initial permanency hearing in a case in which the child remains in placement, a petition for a subsequent permanency hearing and, if applicable, extension of placement shall be filed at least 60 days prior to the expiration of one year following the date of the preceding permanency hearing.] . If the child or children is or are placed in foster care or directly placed with a relative or other suitable person, the court shall set

a date certain for a permanency hearing under Article 10-A of the Family Court Act. All [petitions for ] permanency hearings under Article 10-A shall be governed by section 205.17 of this Part.

**Section 205.83 Terms and conditions of order in accordance with sections 1053, 1054 and 1057 of the Family Court Act (child protective proceeding).**

(a) An order suspending judgment entered pursuant to section 1052 of the Family Court Act shall, where the child is in foster care, set forth the visitation plan between respondent and the child and between the child and his or her sibling or siblings, if any, and shall require the agency to notify the respondent of case conferences. A copy of the order, along with a current service plan, shall be furnished to the respondent. Any order suspending judgment entered pursuant to section 1052 of the Family Court Act shall contain at least one of the following terms and conditions that relate to the adjudicated acts or omissions of the respondent, directing the respondent to:

- (1) refrain from or eliminate specified acts or conditions found at the fact-finding hearing to constitute or to have caused neglect or abuse;
- (2) provide adequate and proper food, housing, clothing, medical care, and for the other needs of the child;
- (3) provide proper care and supervision to the child and cooperate in obtaining, accepting or allowing medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, counseling or child guidance services for the child;
- (4) take proper steps to insure the child's regular attendance at school; and

(5) cooperate in obtaining and accepting medical treatment, psychiatric diagnosis and treatment, alcoholism or drug abuse treatment, employment or counseling services, or child guidance, and permit a child protective agency to obtain information from any person or agency from whom the respondent or the child is receiving or was directed to receive treatment or counseling.

(b) An order pursuant to section 1054 of the Family Court Act placing the person to whose custody the child is released under the supervision of a child protective agency, social services officer or duly authorized agency, or an order pursuant to section 1057 placing the respondent under the supervision of a child protective agency, social services official or authorized agency, shall contain at least one of the following terms and conditions requiring the respondent to:

- (1) observe any of the terms and conditions set forth in subdivision (a) of this section;
- (2) cooperate with the supervising agency in remedying specified acts or omissions found at the fact-finding hearing to constitute or to have caused the neglect or abuse;
- (3) meet with the supervising agency alone and with the child when directed to do so by that agency;
- (4) report to the supervising agency when directed to do so by that agency;
- (5) cooperate with the supervising agency in arranging for and allowing visitation in the home or other place;
- (6) notify the supervising agency immediately of any change of residence or employment of the respondent or of the child; or
- (7) do or refrain from doing any other specified act of omission or commission that, in the judgment of the court, is necessary to protect the child from injury or mistreatment and to help

safeguard the physical, mental and emotional well-being of the child.

(c) When an order is made pursuant to section 1054 or 1057 of the Family Court Act:

(1) the court shall notify the supervising agency in writing of its designation to act and shall furnish to that agency a copy of the order setting forth the terms and conditions imposed;

(2) the order shall be accompanied by a written statement informing the respondent that a willful failure to obey the terms and conditions imposed may result in commitment to jail for a term not to exceed six months; and

(3) the court may, if it concludes that it is necessary for the protection of the child, direct the supervising agency to furnish a written report to the court at stated intervals not to exceed six months, setting forth whether, and to what extent:

(i) there has been any alteration in the respondent's maintenance of the child that is adversely affecting the child's health or well-being;

(ii) there is compliance with the terms and conditions of the order of supervision; and

(iii) the supervising agency has furnished supporting services to the respondent.

(d) A copy of the order, setting forth its duration and the terms and conditions imposed, shall be furnished to the respondent.

(e) If an order of supervision is issued in conjunction with an order of placement pursuant to section 1055 of the Family Court Act, the order shall, unless otherwise ordered by the court, be coextensive in duration with the order of placement and shall extend until the completion of the permanency hearing. The order of supervision shall be reviewed along with the placement at the permanency hearing.

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Chief Administrative Judge of the Courts

Dated:

AO/

/2005