

HON. MARITZA FUGARO, J.F.C.

Westchester County Family Court

131 Warburton Avenue

Yonkers, New York 10701

PART 5

914-831-6513

Part Clerk
Court Attorney
Secretary

Eric Larsen
Pamela Sullivan, Esq.
Elizabeth Mulvaney

elarsen@nycourts.gov
pjsulliv@nycourts.gov
emulvane@nycourts.gov

CHECK IN

All parties must check in with Clerk's Office upon arrival to the courthouse. Counsel and agencies must check in with the court officer who is on duty with the part.

COMMUNICATION WITH THE COURT

Ex-parte communications to the Court are prohibited. Correspondence with the Court must clearly indicate that all counsel and/or *pro-se* parties have been copied and shall indicate the ***file number*** in the subject line.

Unless directed otherwise, all communications with the Part shall be made in writing by email to emulvane@nycourts.gov and pjsulliv@nycourts.gov, even if you have filed the communication with the Clerk's Office. Delays will result from failure to communicate with chambers directly. Telephone calls to the Court staff should be limited to situations requiring immediate attention that cannot otherwise be addressed by correspondence.

The Court does not permit litigation by letter. Any such submission shall be disregarded.

The Court shall not be copied on correspondence between/among counsel unless so directed by the Court.

Correspondence not in conformance with the above will not be considered.

Parties represented by counsel are not permitted to contact the Court.

Should counsel have need of the Court's assistance at any time, a virtual/telephonic attorneys conference may be arranged through the Court Attorney, and shall include all counsel. Conference requests will only be granted where the attorneys and/or parties have made substantial good-faith efforts to resolve the dispute or issue, but have been unsuccessful. Counsel requesting such conference must specify the efforts that have been made to resolve the issue before the Court will respond to the request.

ADJOURNMENTS

All adjournment requests shall be made by email *to chambers*, with a copy filed with the Clerk's Office, and shall include all counsel and/or *pro se* parties, and indicate the file number and date of next appearance.

All adjournments must be approved by the Court, even where all parties and counsel have consented. If the Court does not affirmatively approve the request, all parties and counsel must appear as scheduled. If the matter is adjourned, all counsel must confirm in writing that they have notified their clients of the adjournment.

All requests for an adjournment must be made at least 72 hours prior to the scheduled appearance, shall indicate that all counsel have been copied, shall state the reason for the request and that the request is on consent of all counsel and/or *pro se* parties, or that a good effort was made to obtain that consent.

An adjournment without the consent of the counsel and/or parties will only be granted if there is an affidavit of actual engagement in full compliance with 22 NYCRR §125.1.

The party requesting an adjournment is expected to provide available dates from all counsel and parties in order to coordinate a date with the Court. When the Court grants an adjournment, the party seeking the adjournment must notify the appropriate parties and counsel of the date of the adjournment. No additional notices to appear will be issued by the Court.

ADJOURNMENTS FOR PRELIMINARY PROCEEDINGS

Petitioners will not be granted an adjournment for Preliminary Proceedings unless extraordinary circumstances exist. Respondents requesting an adjournment of a preliminary proceeding must acknowledge service and waive any defects in service and follow the above procedure for adjourning a court appearance. The matter will then be placed on the court calendar for conference. All temporary orders will be extended through the next court date.

MOTION PRACTICE

All motions and orders to show cause shall be in conformance with all statutory requirements, including but not limited to CPLR 2214.

All motions and orders to show cause, and any responsive papers, are to be submitted to the Clerk's Office, with courtesy copies to chambers by email. No motion papers will be accepted in the courtroom.

A moving party shall include an affirmation or affidavit detailing the good faith efforts made to resolve issues prior to seeking Court intervention.

All motions/proceedings brought on by notice of motion or notice of petition shall be made returnable at the Yonkers Family Courthouse, 131 Warburton Avenue, Yonkers, NY. Motion papers are to be submitted to the Court, the Court does not accept papers of any sort by fax or email unless expressly indicated by the Court. The usual CPLR provisions with regard to motion practice will apply.

Where a motion is brought by Order to Show Cause, the motion return date, the necessity of appearances and dates for responsive papers, if necessary, shall be determined by the Court. Any order to show cause seeking interim relief must comply with the provisions of 22 NYCRR §202.7(f). 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 the Order to Show Cause is signed by the Court, a copy of it shall be sent by email to counsel for the moving party.

APPEARANCES

All counsel and parties shall appear **in person** unless prior permission to appear virtually or by telephone has been obtained from the Court. Requests for a virtual/telephonic appearance or to have an appearance waived must be made in writing and sent by email to chambers, with a copy filed with the Clerk's Office, stating good cause for the request, and whether all counsel have consented.

In all cases, counsel shall meet with their client(s) and confer and make a good faith effort to resolve/narrow issues prior to the appearance.

Attorney conferences will take place only on consent. By participating in an attorney conference, counsel represents that they have obtained their client's consent.

The Court encourages and is available to facilitate settlement conferences. On consent, counsel may contact the Court to schedule a settlement conference.

PRELIMINARY PROCEEDINGS

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

FACT FINDING HEARINGS

In matters for which the Court has issued a pre-trial order/order of fact-finding rules and procedures, counsel must adhere to all requirements and deadlines set forth in the order, absent good cause and/or prior Court approval. Failure to comply may result in preclusion of evidence or

witnesses at trial.

Counsel must be prepared to go forward on all scheduled fact-finding dates. Adjournments will not be granted absent advance notice and good cause. Oral applications on the date of the fact finding will not be entertained.

Counsel and any *pro se* litigants shall be familiar with rules and procedures governing discovery in Family Court proceedings and be fully familiar with applicable procedure, rules of evidence, objections and proper questioning of witnesses.

COVERAGE

The attorney of record is responsible for obtaining case coverage. Any covering attorney must be sufficiently familiar with the facts and circumstances of the case. They must have full authority to enter into any agreement on behalf of their client.

The attorney of record is responsible for providing the covering attorney with available dates for at least the next eight weeks. Failure to provide dates will result in the Court selecting a date convenient to the Court and other counsel and parties, which may be marked final.

PROPOSED ORDERS

All proposed orders submitted to the Court for signature must be filed with the Clerk's Office and copied to chambers by email.

Any proposed order submitted to the Court for signature must indicate it has been made on notice of settlement unless notice of settlement has been waived in writing by all counsel.

All proposed orders submitted on consent shall be signed by all counsel or have attached copies of emails from all counsel indicating approval as to form and substance unless the complete terms of settlement have been placed upon the record and the Court has completed a satisfactory *voir dire* of all parties.

Opposition to any proposed order shall be negotiated in good faith to resolve the issue(s). If negotiations are unsuccessful, the party opposing the order must email chambers, and file with the Clerk's Office a proposed counter-order prior to the date on which the order is noticed for settlement. The Court will not entertain suggested changes by letter.

Proposed orders that do not accurately reflect the record may be modified *sua sponte* by the Court or returned unsigned.

Failure to submit a proper and timely order may result in dismissal of the case, reassignment of assigned counsel or Attorney for the Child, and/or any other relief the Court finds just and proper.

SUBPOENAS

All subpoenas shall be filed with the Clerk's Office, with a courtesy copy sent to chambers by email, along with proof that service of the subpoena was made on all parties to the litigation promptly after service on the recipient. Subpoenas for the production of documents and/or records shall be properly captioned as "subpoenas duces tecum."

Where a judge's signature is required to issue the subpoena pursuant to CPLR Article 23, an application to have subpoena *so ordered*, must be made by motion on at least one (1) days' notice to the recipient pursuant to CPLR § 2302 (b), unless the Court orders otherwise. Pursuant to CPLR § 2303 (a), the signed subpoena must be served on all parties to the litigation promptly after service on the recipient.

CHANGE OR WITHDRAWAL OF ATTORNEY

Any application seeking a change or withdrawal of an attorney shall comport with the CPLR and other applicable requirements. Counsel seeking the change or withdrawal must continue the representation pending a Court determination that the application has been granted.

ALTERNATE SERVICE

All applications for alternate service must be made by motion in conformance with all statutory requirements, including but not limited to CPLR 2214.

SETTLED CASES

Counsel shall notify the Court immediately if a case is settled.

All stipulations must contain complete *voir dire* language. All parties and counsel, including the Attorney for the Child, must sign indicating approval as to form and content.

DECISIONS

Decisions may be rendered from the bench or in writing in the discretion of the Court. Any party seeking a written order of a bench decision may submit a proposed order, on notice, along with a copy of the transcript of the proceeding during which the bench decision was rendered.

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) MATTERS

SIJS Motions, Proposed Orders, Letters of Guardianship and other related legal documents must be filed with the Clerk's Office directly through Virtual Westchester Family Court Yonkers @ VirtualWestchesterFamilyCourtYonkers@nycourts.gov.

Any guardianship or custody matter in which Special Immigrant Juvenile Status findings are requested must include a notarized consent with the following language:

1. I am the father/mother of the above-named child;
2. I waive issuance and service of process in this matter;
3. I waive issuance of service of any motions or other legal document pertaining to this matter, including the Motion for Special Findings;
4. I waive Hague Convention service of process (if applicable), and accept personal service of the summons and petition;
5. I understand that there may be a finding of fact of abuse, neglect, and /or abandonment entered against me;
6. (for guardianship petitions) I consent that (name of guardian) be appointed the guardian of the person of the above-named child and that Letters of Guardianship may be granted to (name of guardian) or to any other person entitled thereto without notice to the undersigned.

If a consent is not submitted, the affidavit of service must indicate that all documents with respect to the guardianship/custody petition and SIJS motion were translated into the respondent's native language and a copy of the translated documents must be included with the affidavit of service.

A home study may be required in any case in which the guardian or custodian is not the biological parent of the child. All private home studies must be done by a member of the Mental Health Professionals Panel pursuant to 22 NYCRR Part 623.

Each document must be filed as a separate document or attachment and not grouped as a single attachment to an email or filed with the Clerk's Office stapled as a packet.

Children of school age should not miss school for a Court appearance if at all possible.

JUVENILE DELINQUENCY AND PINS PROCEEDINGS

As soon as possible, the Attorney for the Child shall notify the Court if a *Guardian Ad Litem* is required. The Attorney for the Child shall be prepared to report on the child's placement and how long the child has been and will be in placement.

FORENSIC REPORTS AND EVALUATIONS

All Court-ordered forensic reports and evaluations shall be submitted into evidence as the Court's exhibit(s) without further foundation testimony or evidence, subject to cross examination. A party who chooses to cross-examine the forensic evaluator or preparer of any report or evaluation shall be responsible for all costs and fees for the preparation for testifying, travel and waiting time, and testimony, unless otherwise directed by the Court.

Following the issuance of a forensic evaluation Order, counsel shall contact the chambers, at least one week prior to the next appearance, if possible, to ascertain the status of the evaluation/report.

MISCELLANEOUS

Any document submitted in a foreign language must be accompanied by an English translation

with a sworn affidavit of the translator stating their qualifications to translate the document and that the document is accurate.

Any document signed by a person who is not literate in English must be accompanied by a sworn affidavit of the person reading or orally interpreting the document that the reading or oral interpretation is accurate. Oral interpreters must also include a statement of their qualifications to orally interpret the contents of the document.

The Court can only provide case information to an attorney of record who has filed a notice of appearance.

ADOPTION PROCEEDINGS

Only official forms created by the Office of Court Administration (available online) will be accepted in adoption proceedings.

GENERAL RULES OF COURT

All attorneys and parties must be on time and ready to proceed.

A Notice of Appearance must be filed with the Family Court Clerk at the time that counsel is retained. Counsel must be familiar with the case and have full authority to enter into any agreement, either substantive or procedural, on behalf of their clients.

Sanctions may be imposed for failure to comply with this rule.

It is expected that all parties and counsel shall conduct themselves and communicate appropriately in all in-court and out-of-court proceedings. In the Courtroom, all remarks shall be directed to the Court. Comments shall not be made to opposing counsel or self-represented parties.

Litigants and counsel are expected to dress appropriately for all court appearances.

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

Cases will not be heard until all counsel, parties, and necessary agencies are accounted for. The Court must be made aware immediately if an attorney or party involved will not be appearing or is running late. Counsel who are present are requested to contact missing parties to inquire as to their whereabouts.

Except for correspondence as permitted herein, all filings (proposed orders, notices of appearance, motions, etc.), SHALL be filed with the Clerk's Office unless otherwise directed by the Court in a particular matter.

If an action is settled, discontinued, or otherwise disposed, counsel shall immediately inform the Court by submission of a copy of the stipulation or other document evidencing the disposition.