

# MEMORANDUM

**TO:** All Counsel  
**FROM:** Hon. James W. McCarthy, Supreme Court Justice  
**SUBJECT:** Initial Matrimonial Orders To Show Cause/Motions  
[Revised November 8, 2012]

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**PLEASE NOTE: COUNSEL FOR THE MOVING PARTY IS REQUIRED TO SERVE THIS NOTICE WITH THE ORDER TO SHOW CAUSE/MOTION ON THE OPPOSING PARTY AND COUNSEL, IF KNOWN.**

Please be advised pursuant to 22 NYCRR 202.16(1), the Court is scheduling a Preliminary Conference in this contested matrimonial to be heard on the return date of the enclosed Order To Show Cause/Motion.

22 NYCRR 202.16(c)(1) requires each attorney to file a copy of his/her retainer agreement with the Court only accompanying the statement of net worth.

## APPLICATION FOR ATTORNEY'S FEES

**In the event counsel for a party is making, or will be making, an application for counsel fees at any stage of the action to be paid by the opposing party, counsel seeking the attorney's fees must provide a copy of his/her retainer agreement to opposing counsel. Failure to comply with this transmittal of retainer agreement to opposing counsel will result in denial of the application for counsel fees (22 NYCRR 202.16(c)(1) and (K)(2), 22 NYCRR 1400.3). Counsel applying for attorney's fees must also comply with 22 NYCRR 202.16 (K)(3).**

The court requires that the following papers be exchanged between the parties and filed with the Court pursuant to the time frames prior to the return date of the Order To Show Cause/Motion:

- N.B.**
- a) Statements of Net Worth – an original and two copies to the court;
  - b) all filed state and federal income tax returns for the previous three (3) years, including both personal returns and returns filed on behalf of any partnership or closely held corporation of which the party is a partner or shareholder;
  - c) all W-2 wage and tax statements, 1099 forms, and K-1 forms for any year in the past three (3) years in which the party did not file state and federal income tax returns; and
  - d) all W-2 wage and tax statements, 1099 forms, and K-1 forms for any year in the past three (3) years in which the party did not file state and federal income tax returns.

**NOTE: ANY PAPERS SUBMITTED BY A PARTY (INCLUDING NET WORTH STATEMENTS) THAT CONTAIN STATEMENTS OR ALLEGATIONS OF FACT, MUST BE CERTIFIED BY COUNSEL THAT COUNSEL HAS NO KNOWLEDGE THAT THE SUBSTANCE OF THE FACTUAL SUBMISSIONS ARE FALSE (22 NYCRR 202.16(e)).**

## ORDERS TO SHOW CAUSE/MOTION TIME LIMITS FOR FILING PAPERS WITH THE COURT AND COUNSEL

On the return date of the Order To Show Cause/Motion, the Court will establish a timetable for completion of discovery proceedings, direct the parties thereafter to stipulate to all resolved issues and to all issues with respect to fault, custody, and finance that remain unresolved (22 NYCRR 202.16(f)(3)) and will also set a compliance conference date.

Other matters by way of cross motions only for *pendente lite* relief will be considered at this time. Any cross motions for *pendente lite* relief and answering affidavits to the Order To Show Cause/Motion must be submitted to the Court and opposing counsel no later than seven (7) days prior to the return date of the Order To Show Cause/Motion. Answering affidavits to cross motions must be received at least three (3) days prior to the return date. Reply affidavits to answering affidavits to cross motions must be received at least one (1) day prior to the return date (If the Court shortens the time for the return of the original Order To Show Cause/Motion, the times for filing papers herein shall be amended accordingly).

### **ALL FURTHER PROCEEDINGS:**

Please note that pursuant to §202.16(g)(2), each expert witness whom a party expects to call at the trial shall file with the Court a written report, which shall be exchanged and filed with the Court no later than sixty (60) days before the date set for trial, and reply reports, if any, shall be exchanged and filed no later than thirty (30) days before such date. Failure to file with the Court a report in conformance with these requirements may, in the Court's discretion, preclude the use of the experts. Except for good cause shown, the reports exchanged between the parties shall be the only reports admissible at trial.

**IN ADDITION, PLEASE BE ADVISED THIS COURT WILL ADHERE TO §202.16(h), A STATEMENT OF PROPOSED DISPOSITION SHALL BE FILED (RECEIVED) BY THE COURT AND OPPOSING COUNSEL NO LATER THAN 10 DAYS PRIOR TO THE TRIAL DATE TO BE SET BY THE COURT.**

Please note that failure to appear may be treated as a default under 22 NYCRR 202.27, and may result in a directed judgment or dismissal of claims.

#### **\*NOTE WELL:**

- 1) In the event the net worth statement is not filed (received) by the Court within the time frames as outlined above, the Court may hold a sanctions hearing on the return date of the Order To Show Cause/Motion pursuant to 22NYCRR §130-1.1(d), and may impose sanctions upon the party having failed to file the net worth statement with the Court. The Court may also treat any filing of the net worth statement outside the time frame listed above as a nullity solely in regard to any requested relief by the other party at the preliminary conference.
- 2) All motion arguments will be conducted on the record with the parties present.
- 3) **Do not send (except for correspondence or documentation the Court has directed to be provided to it) the Court copies of correspondence between the attorneys. If you want the Court to take affirmative action, pay the appropriate fee to the County Clerk and file and serve a timely Motion or Order to Show Cause. The Court will not take affirmative action at any subsequent requested conferences unless by stipulation of the parties or by a Notice of Motion or Order to Show Cause properly made.**
- 4) **It has been, and continues to be, the policy of this Chambers that any and all documentation submitted for the Judge's signature be accompanied by a self addressed postage paid envelope with sufficient postage for the return of those papers. Therefore, any documentation submitted for a signature that does not include a self addressed postage paid envelope, or does not include an envelope with sufficient postage, will not be returned. Chambers will not call to request a postage paid envelope and/or an envelope with sufficient postage.**