

WESTCHESTER SUPREME COURT
MATRIMONIAL PART OPERATIONAL RULES
Effective 1/1, 2020

By Order of the Hon. Kathie E. Davidson, Administrative Judge of the Ninth Judicial District, the operational rules of the Matrimonial Part of the Supreme Court, Westchester County, are revised and restated, effective January 1, 2020.

These operational rules are intended to promote active and effective matrimonial case management consistent with the requirements and guidelines set forth in the CPLR and in the Uniform Civil Rules for the Supreme Court. These rules focus the use of judicial resources by concentrating the use of judges on trials and the resolution of substantive motions, while at the same time, assuring intensive case supervision throughout the civil litigation process. It is also the policy of the Part to encourage the use of mediation and alternate dispute resolution where appropriate.

The revisions are designed to assure that trial ready cases receive prompt settlement conferences and that all cases requiring trials are tried promptly and on a continuing day-to-day basis. This will assure that each case receives the full attention of the court and that the expense to the parties of having to prepare for multiple trial dates spaced widely apart will be eliminated. The revisions are also designed to reduce, if not entirely eliminate, the backlog of cases either awaiting trial or awaiting completion of trials. These operational rules continue the procedures for expeditious resolution of pre-trial matrimonial disputes, which has served to avoid the cost, expense and delay of unnecessary motions and court appearances, conserve judicial resources, and reduce expense, delay, and emotional trauma for the parties and their children. These operational rules have been developed in consultation with Hon. Linda Christopher, then Supervising Judge of Matrimonial Matters of the Ninth Judicial District, the Justices presiding in the Matrimonial Part and after receiving input from the Matrimonial Bar. The revised rules are part of the efforts within the Ninth Judicial District to improve and enhance judicial case management and decisional responsibility in accordance with the Excellence Initiative of Chief Judge Janet DiFiore.

Application

These rules shall apply to all matrimonial actions and proceedings in the Supreme Court, Westchester County, including any applications to enforce or modify matrimonial judgments, including those in the Post-Judgment Matrimonial Part.

A. Appearances Before the Court Attorney Referees and Court

Counsel, parties, and self-represented parties are advised that the Court expects all attorneys and parties to be present and ready to proceed at the date and time of all court appearances. Counsel and self-represented parties are expected to appear for all court appearances on time and be ready to proceed. Counsel and self-represented parties

must be fully familiar with these rules and the facts of the action on which they appear. At all court appearances, counsel must be authorized and prepared to discuss all factual and legal issues presented by the litigation and settlement demands or offers.

B. Assignment of Court Attorney Referees in Pre-Judgment Actions

A court attorney referee shall be assigned to pre-judgment cases on a random basis and it shall be designated at the same time that a Matrimonial Justice is assigned to the case, which is also done on a random basis. Once a court attorney referee is assigned to a case, she or he shall continue with that assignment, subject only to the determination of the District Administrative Judge. The Matrimonial Part Justices do not have the authority to change or modify the assignment of court attorney referees.

C. (Reserved for future provisions)

D. Pre-Note of Issue Court Conferences

1. The assigned court attorney referee shall conduct a Preliminary Conference, which shall be scheduled and conducted in accordance with 22 NYCRR § 202.16(f), provided that a Preliminary Conference may not be adjourned for more than fourteen (14) days from the date for which it is initially scheduled without the prior written authorization of the Supervising Judge of the Matrimonial Part and provided, further in all events each Preliminary Conference must be held within forty-five (45) days of the filing of the Request for Judicial Intervention.

2. In each case, the attorneys for the parties (including a party not represented by counsel) shall meet in person whenever practicable, or conduct a meaningful phone conference at least five (5) days prior to the Preliminary Conference to review and complete a proposed Preliminary Conference order that they shall submit at least two (2) days prior to the Preliminary Conference. <mailto:MatrimonialWestchester@nycourts.gov>. The form of Preliminary Conference Order that shall be utilized is annexed hereto. Net Worth Statements must also be prepared and filed no later than the time of the Preliminary Conference. Failure to comply with the provisions of this paragraph may result in the imposition of sanctions upon a party or counsel who fails to comply, including, but not limited to, an award of counsel fees to the compliant party, the denial of counsel fees to the non-compliant party, a referral to the Administrative Judge, the imposition of monetary sanctions upon the non-compliant party and/or counsel to such party, and other appropriate sanctions.

3. The assigned court attorney referee shall meet personally with counsel for the parties (including a party not represented by counsel) and with the parties at the Preliminary Conference and at any other conferences held by the assigned court attorney referee. Unless agreed to by the parties personally in the presence of the assigned court

attorney referee, and the court attorney referee and the parties shall be personally present throughout all conferences.

4. If all issues relating to decision-making and/or parenting time with a child have not been completely resolved by the conclusion of the Preliminary Conference, the court attorney referee shall require that the parties each separately submit, within ten (10) days after the date of the Preliminary Conference, a proposed parenting plan which sets forth the parent's plan for caring for and raising each child, addressing such matters as the child's health care, education, religious training and education (if any), extra-curricular activities and including a proposed schedule for access with and to the other parent. The proposed parenting plan shall be submitted utilizing the form annexed hereto. The assigned court attorney referee shall ensure that the plans are timely submitted and shall review the plans submitted by the parties, in consultation with the assigned Matrimonial Part Justice. Upon such review, the assigned court attorney referee shall either:

(a) refer the parties to the Family Counseling and Case Analyst who shall conduct a prompt conference. The Family Counseling and Case Analyst shall confer with the parties for the purposes of resolving any and all differences in the parenting plans submitted by the parties. In the event that a parenting plan is agreed upon, either in whole or in part, the Family Counseling and Case Analyst shall forward the plan to the assigned court attorney referee for inclusion as an order of the Court. The parties may request a conference with the Family Counseling and Case Analyst at any time prior to trial to resolve issues relating to decision-making and/or parenting time with a child. The assigned Matrimonial Part Justice may order the parties to conference with the Family Counseling and Case Analyst concerning issues relating to decision-making and/or parenting time with a child. Such meetings, in the Family Counseling and Case Analyst's discretion, may be with the parties together or separately, with or without counsel. The refusal of a party to participate in a conference ordered by the court may be reported to the court, but all statements made by the parties in the context of the meetings shall be deemed to be made solely for the purpose of settlement and shall not be admissible at any hearing or trial in any court or other tribunal. The Family Counseling and Case Analyst shall not be subpoenaed by either party with regard to her opinion or statements made by the parties and his or her notes shall not be maintained in any court file;
or

(b) refer the parties to the Westchester Supreme Court Matrimonial Mediation Program for the purposes of resolving any and all differences in the parenting plans submitted by the parties subject to objection by a party to participation in mediation. In the event a party objects to participating in mediation, the parties shall appear before

the assigned Matrimonial Part Justice who shall hear the objection(s) and determine whether mediation is appropriate under the circumstances presented, including, but not limited to, consideration of whether issues of domestic violence, lack of representation by counsel, or imbalances of power are such as to render mediation inappropriate. In the event that the Matrimonial Part Justice determines, on the record, that mediation is appropriate, the Justice may order the parties to mediate with a mediator concerning issues relating to decision-making and/or parenting time with a child. The mediation shall be conducted by a mediator assigned by the Program Administrator who is both: (1) a member of the mediation panel of the Program; and (2) a member of panel of attorneys designated by the Appellate Division, Second Department, as eligible to be appointed attorney for children. The mediation be without charge for the amount of time specified in the Matrimonial Mediation Program protocol and may not exceed such time limit without the consent of both parties and without an agreement as to whether the mediator may charge a fee for future sessions and, if so, in what amount and by whom such fee should be paid. In the event that a parenting plan is agreed upon, either in whole or in part, the mediator shall forward the plan to the assigned court attorney referee for inclusion as an order of the Court. The parties may *jointly* request a further conference with the mediator at any time prior to trial to resolve issues relating to decision-making and/or parenting time with a child. Such meetings, in the mediator's discretion, may be with the parties together or separately, with or without counsel, provided that no meeting may be held without counsel over counsel's objection. The refusal of a party to participate in a mediation ordered by the court may be reported to the court, but all statements made by the parties in the context of the meetings shall be deemed to be made solely for the purpose of settlement and shall not be admissible at any hearing or trial in any court or other tribunal. The mediator shall not be subpoenaed by either party with regard to any opinions, recommendations or statements made by the parties and his or her notes shall not be maintained in any court file; or

(c) schedule a prompt conference with the parties for the purposes of resolving any and all differences in the parenting plans submitted by the parties. In the event that a parenting plan is agreed upon, either in whole or in part, the court attorney referee shall arrange for the plan to be reduced to an order of the court.

5. In the event that, absent good cause, a party fails or refuses to submit the proposed parenting plan in accordance with Paragraph D(4) above, the assigned court attorney referee shall promptly advise the assigned Matrimonial Part Justice and shall recommend, in writing, a proposed method of enforcement, including but not limited to an

order, to be issued after notice and an opportunity to be heard, which: deems issues that should have been addressed by the proposed plan resolved against the position of the non-compliant party; directs an appearance before the assigned Matrimonial Part Justice; awards counsel fees to the compliant party withholds a counsel fee award to the non-compliant party on account of the additional work, labor or services brought about by the failure to comply; or imposes costs or sanctions upon the non-compliant party. Such remedies for non-compliance may be imposed cumulatively.

6. The court attorney referee may recommend to the assigned Matrimonial Part Justice that the parties be directed to participate in the Westchester Supreme Court Matrimonial Mediation Program or other form of alternative dispute resolution. The order of reference to the Matrimonial Mediation Program may be signed by the court attorney referee, if the parties consent, or, if there is no consent, the Matrimonial Part Justice may order mediation pursuant to the provisions of Paragraph 4(b) above.

7. During the Preliminary Conference, the court attorney referee shall ascertain whether the granting of a divorce is contested. In the event that the parties agree that the granting of a divorce will not be contested, a stipulation to that effect shall be entered into no later than thirty (30) days following the conclusion of the Preliminary Conference. In the event that a complaint or answer has not been served, the stipulation shall provide that the parties waive and relinquish any right either may otherwise have to discontinue the action as of right. In the event that a party opposes the granting of a divorce, then the court attorney referee shall suspend the Preliminary Conference and direct the parties and counsel to appear on a date certain before the Matrimonial Trial Ready Part (MTRP) for a trial on the issue of divorce.

8. During the Preliminary Conference, the court attorney referee shall provide appropriate direction to resolve any existing or anticipated disclosure disputes.

9. If a party or their counsel requests the appointment of an Attorney for the Children], or requests the appointment of a forensic evaluator for issues relating to a child, the party or parties making such request may do so only after the completion of the conferences/mediation provided for in Paragraph 4(a) - (c) above. The Matrimonial Part Justice shall determine the application within ten (10) days of the submission of the request or at such other time as it appears necessary by written order.

10. No attorney shall be appointed for a child nor a child forensic evaluation ordered, except upon order of the assigned Matrimonial Part Justice which shall be made: (a) upon a motion made by order to show cause pursuant to these Rules or (b) as a result of a conference before a Matrimonial Judge, upon evaluation of the requests made by a party or parties, the parties' net worth statements and most recent tax returns, any recommendation by the assigned court attorney referee, and any recommendation by the Family Counseling and Case Analyst. The order appointing a child forensic evaluation shall specify the issues to be evaluated. Nothing contained herein shall be deemed to limit or restrict the authority of the Matrimonial Part Justice, in accordance with the law, to make

any appointment, it being the purpose of this rule to simplify the process and reduce cost, expense, and burden to the court and to the parties.

11. Upon the entry of the parties into a stipulation or settlement of the issues involving children, the Attorney for the Children shall submit to the Court an application for final approval of compensation within twenty (20) days of the entry of the stipulation, including an affidavit or affirmation describing all services rendered and describing the reasons why the requested compensation should be approved, together with a proposed order approving compensation and the forms required by 22 NYCRR Part 36. Opposition to the application shall be served and filed within ten (10) days of the service of the application. Where issues involving children are to be determined at a trial or hearing, the Attorney for the Children shall submit to the Court an application for final approval of compensation, including an affidavit or affirmation describing all services rendered and the reasons why the requested compensation should be approved, together with a proposed order and the forms required by 22 NYCRR Part 36, at such time as is directed by the assigned Justice, but in no event later than twenty (20) days after the entry of a decision or order by the Court determining the issue. Failure to timely submit such applications or to provide an affidavit or affirmation of services may result in the denial of any further compensation in that case or a directive that monies previously received be refunded or may be taken into account in determining whether the attorney involved should receive further assignments. Opposition to the application shall be served and filed within ten (10) days of the service of the application. Where issues involving children are to be determined at a trial or hearing copies of all orders approving or authorizing compensation to an Attorney for the Child or children shall be forthwith filed with the Fiduciary Clerk of the Supreme Court, Westchester County, for purposes of assuring compliance with 22 NYCRR Part 36.

12. Report of Neutral Forensic Evaluator (Child Issue):

A report of a neutral forensic evaluator appointed by the court to evaluate an issue or issues with regard to a child is a confidential report to be reviewed by the attorneys for the parties. It shall not be copied or disclosed to any person except as permitted by order of the Court. Any attorney who wishes to receive a copy of the report must first sign an affirmation that may be obtained from the Judge's Part Clerk. A party (client) may review the report, but may not possess a copy of the report. Pro se litigants may make arrangements directly with the Judge's Part Clerk to review the report at the Courthouse. No device capable of recording or photographing shall be allowed in the room where the *pro se* litigant is reviewing the report. Persons may take notes. If counsel seeks to retain experts or trial consultant, counsel may apply to the Court for permission to have the expert or consultants receive a copy of the report. The experts or consultants shall sign a confidentiality agreement prior to receipt of the report. In no event is a copy of a report or description of its contents to be disseminated to any person or published or distributed to anyone other than court personnel, except that

counsel may provide a copy of the report to co-counsel. Any counsel or party who violates these restrictions is subject to sanctions.

13. In the order of appointment, the Matrimonial Part Justice shall set a date for the submission of a report by a neutral forensic evaluator appointed to evaluate an issue or issues relating to a child or children. In the event that the expert does not complete the assignment within the time set by the assigned Matrimonial Part Justice, the assigned Matrimonial Part Justice may disqualify the expert, may order a refund or return of any monies paid to the expert, and may take the expert's failure to complete the assignment timely in deciding whether to appoint such expert to another matter. The Fiduciary Clerk of the Supreme Court, Westchester County shall be provided with copies of all assignment orders and shall apprise the Matrimonial Part Justices of the names of experts who have not timely completed their assignments.

14. Counsel (including a party not represented by counsel) may stipulate at a Preliminary or other conference to designate a particular person or firm to conduct a property evaluation and to the allocation of the expense thereof between the parties and or the business. In the event that counsel (including any party not represented by counsel) agree upon the evaluation as necessary and as to the allocation of expenses, but cannot agree upon a person or firm to conduct the evaluation, they may submit proposed names to the court attorney-referee who shall forward them to the assigned Matrimonial Part Justice to order the designation. In the event that the parties cannot agree upon the necessity for the evaluation or upon the allocation of responsibility therefor, an application shall be made, on notice to all parties, to the assigned Matrimonial Part Justice who shall determine the application. In addition, the requesting party shall include: the issues and properties to be valued, the proposed apportionment of responsibility between the parties, including the reasons therefor. Such statement shall be served upon all adverse parties, and any party opposing the application, in whole or in part, shall submit a statement, setting forth which part(s) of the application is opposed and the basis for such opposition. Nothing contained herein shall be deemed to limit or restrict the authority of the Matrimonial Part Justice, in accordance with the law, to make any appointment, it being the purpose of this rule to simplify the process and reduce cost, expense, and burden to the court and to the parties.

15. At the conclusion of the Preliminary Conference, the court attorney referee shall set a date for a Status Conference to review the progress of the parties in completing disclosure. The court attorney referee shall conduct periodic status conferences as needed to assure that disclosure is being completed on a timely basis.

16. The court attorney referee shall conduct a Compliance Conference, which shall be held at least twenty (20) days prior to the date by which disclosure is to be completed, for the purpose of confirming that all disclosure is complete or will be completed timely.

17. The court attorney referee shall conduct a Trial Ready Conference within five (5) days of the date set for completion of discovery. <mailto:MatrimonialWestchester@nycourts.gov>. At the Trial Ready Conference, the court attorney referee shall confirm that all disclosure has been completed or that sufficient time has been given within which such disclosure should have been completed. **Any disclosure which was not completed in conformity with the Preliminary Conference Order may be deemed waived or appropriate sanctions imposed against a party who failed to timely provide discovery. The Trial Readiness Conference may be continued to another date, but only once and only for a period not to exceed thirty (30) days.**

17a. Notwithstanding any provision herein to the contrary, all Trial Readiness Conferences must be held, and a Trial Readiness Order issued, within six (6) months of the filing of the Request for Judicial Intervention. No exceptions to this provision will be permitted without the approval of the Matrimonial Justice before whom the case is pending, who shall, prior to granting such approval, notify in writing the District Administrative Judge of his or intention to grant such approval and stating the reasons why such approval is appropriate and the actions to be taken to assure that all required pre-trial proceedings will be completed without further delay.

18. At the Trial Ready Conference, if the court attorney referee determines that the case is ready for trial, a proposed Trial Ready Order shall be presented to the assigned Matrimonial Part Justice. Upon consideration of the recommendation made by the court attorney referee, if the assigned Matrimonial Part Justice determines that the case is ready for trial, a Trial Ready Order shall be entered. The trial date shall be stated in the Trial Ready Order. Counsel and the parties shall be consulted and reasonable efforts shall be made to accommodate any scheduling issues of the parties and counsel.

19. Once a Trial Ready Order is issued, no further disclosure may be had, except upon order of the Court.

20. At the conclusion of every conference conducted by a court attorney referee, including a Preliminary Conference, the court attorney referee shall have counsel for the parties (including any party not represented by counsel) and the attorney for the Children], if any, execute a stipulation as to any issues resolved at the conference, which may be referred to the assigned Matrimonial Part Justice to be signed and entered as an order of the court. The court attorney referee may issue a report to the assigned Matrimonial Part Justice as to each unresolved issue, summarizing the positions and arguments advanced by the parties and counsel, and may also submit a recommended order as to each unresolved issue. The court attorney referee may make recommendations to the assigned Matrimonial Part Justice as to any matters, procedural or substantive, relating to the case. Copies of the report shall be provided to counsel for the parties (including any party not represented by counsel), and the Attorney for the Children], if any. Counsel shall have five (5) days within which to submit comments on the report, which comments shall not exceed 3 pages in length. The assigned Matrimonial Part Justice may consider the report(s) and

recommendation(s) of the court attorney referee, and the comments thereon, in making any determinations in the case, including any determination as to the awarding of counsel fees or the allocation of responsibility for any expenses, including the expenses of an Attorney for the Children] and forensic evaluation.

21. Conferences with the court attorney referee may be requested in a writing, not to exceed two (2) pages in length, outlining the issues to be considered, the amount of time needed for the conference and setting forth the availability of counsel and the parties. Counsel for the parties (including any party not represented by counsel) and the Attorney for the Children], if any, shall consult with each other in person whenever practicable, or conduct a meaningful phone conference prior to requesting any conference and make a good faith effort to resolve the outstanding issues on their own without court intervention. A request for a conference shall include a certification pursuant to 22 NYCRR §130-1.1a by the person requesting a conference that he or she personally had a conference with opposing counsel (or party where appropriate) and the Attorney for the Children], if any, and made a good faith effort to resolve the issues, which certification shall include the type of conference (in person or phone), the date of such conference, the time the conference began and ended, and the specific issues discussed. Failure to submit such certification may result either in the denial of the conference or the imposition of appropriate sanctions. The written request for a conference shall be transmitted by e-mail (with the request contained in a letter appended in WordPerfect, Word or PDF format) to: MatrimonialWestchester@nycourts.gov. The subject line of the e-mail to the Matrimonial Part shall include the name of the assigned court attorney referee, the case name, and the index number. Copies shall be served upon all adverse parties and the Attorney for the Children], if any, contemporaneously by e-mail or hand delivery. Any response to a conference request shall likewise not exceed two (2) pages in length and shall be transmitted to the Matrimonial Part by e-mail, by 5:00 p.m. of the next court day following the transmission of the request, with copies sent contemporaneously to all adverse parties by e-mail or hand delivery. There shall be no reply by counsel to any such response nor any sur-reply to any unauthorized reply. All unauthorized submissions shall be rejected, not considered, and shall not be included in the court files. The court attorney referee shall notify counsel of the action taken in response to the conference request within two (2) court days following the transmission of the request. The failure of counsel to engage in a conference in a good faith effort to resolve the issues prior to requesting a conference or appearing at a conference may result in the award of counsel fees to the other party/attorney for the time involved in preparing for and attending the conference and/or in the denial of counsel fees to the non-compliant party/attorney for the time involved in preparing for and attending the conference, including the time spent in preparing correspondence to the court addressing the issue of non-compliance.

22. In the event that any party or the Attorney for the Children], if any, objects to or disagrees with the recommended order of the court attorney referee, such party or the Attorney for the Children], if any, must indicate the basis for the objection or disagreement at the Preliminary Conference or other conference. In the event there are issues that cannot be resolved, any party or the attorney for the Children], if any, may request that the court attorney-referee issue a briefing schedule for any motions that any party may wish

to bring with respect to any unresolved issue, pursuant to the provisions of paragraph E below.

23. The Court may impose sanctions on a party who fails to appear for a court conference before a court attorney referee or Judge, which may include dismissal of the action or entry of a default judgment.

24. Nothing contained herein shall preclude the assigned Matrimonial Part Justice from conducting conferences in any case pre-note of issue.

E. Motions

1. For pre-note of issue cases, except in the event of an emergency that requires immediate relief from a Matrimonial Part Justice, no motions are to be made without the movant first requesting a pre-motion conference and without the holding of a pre-motion conference, unless the motion seeks to vacate or modify a recommended order.
2. For pre-note of issue cases, a pre-motion conference is to be requested by letter application to the assigned court attorney referee. The request shall not exceed two (2) pages in length and shall briefly enumerate the subjects to be discussed. Counsel for the parties (including any party not represented by counsel) and the Attorney for the Children], if any, shall consult with each other in person whenever practicable, or conduct a meaningful phone conference prior to requesting any conference and make a good faith effort to resolve the outstanding issues on their own without court intervention. A request for a conference shall include a certification pursuant to 22 NYCRR §130-1.1a by the person requesting a conference that he or she personally had a conference with opposing counsel (or party where appropriate) and the Attorney for the Children], if any, and made a good faith effort to resolve the issues, which certification shall include the type of conference (in person or phone), the date of such conference, the time the conference began and ended, and the specific issues discussed. Failure to submit such certification may result either in the denial of the conference or the imposition of appropriate sanctions. The written request for a conference shall be transmitted by e-mail (with the request contained in a letter appended in Word Perfect, Word or PDF format) to: MatrimonialWestchester@nycourts.gov. The subject line of the e-mail to the Matrimonial Part shall include the name of the assigned court attorney referee, the case name, and the index number. Copies shall be served upon all adverse parties and the Attorney for the Children], if any, contemporaneously by e-mail or hand delivery. Any response to a conference request shall likewise not exceed two (2) pages in length and shall be transmitted to the Matrimonial Part by e-mail, by 5:00 p.m. of the

next court day following the transmission of the request, with copies sent contemporaneously to all adverse parties by e-mail or hand delivery. There shall be no reply by counsel to any such response nor any sur-reply to any unauthorized reply. All unauthorized submissions shall be rejected, not considered, and shall not be included in the court files. The court attorney referee shall notify counsel of the action taken in response to the conference request within two (2) court days following the transmission of the request. The failure of counsel to engage in a conference in a good faith effort to resolve the issues prior to requesting a conference or appearing at a conference may result in the award of counsel fees to the other party/attorney for the time involved in preparing for and attending the conference and/or in the denial of counsel fees to the non-compliant party/attorney for the time involved in preparing for and attending the conference, including the time spent in preparing correspondence to the court addressing the issue of non-compliance. Failure by counsel (or party, where appropriate) to make himself or herself available for a direct conversation with the person seeking a conference, or failure to make a good faith effort to resolve the issues before, during or after the pre-motion conference may result in the denial of counsel fees related to the conference or the motion to the non-compliant party/attorney and/or the award of counsel fees to the compliant party for the conference/motion.

3. For pre-note of issue cases, the assigned court attorney referee shall conduct the pre-motion conference, either in person, in the courthouse or by telephone conference. The procedures set forth in Section D, Paragraph 20 shall apply to the completion of pre-motion conferences.
4. The motions should be filed in accordance with Rule E herein. However, in the event that a party or the Attorney for the Children], if any, perceives that an emergency exists that requires immediate judicial intervention, such person may submit an order to show cause directly to the assigned Matrimonial Part Justice. Except with respect to applications for orders of protection, in the event that a temporary restraining order or similar relief is requested, unless the person making the motion sets forth in an affidavit that significant prejudice would be suffered by him or her by giving notice to the other parties, notice shall be given to all adverse parties and the attorney for the Children], if any, of the time and place when the application will be submitted. Notice shall be given sufficiently in advance to permit the adverse parties and the attorney for the Children], if any, an opportunity to appear and respond to the application. A full copy of the application shall be provided to all adverse parties and the attorney for the Children], if any, contemporaneously with its presentation to the assigned Justice. In the event that the assigned Justice determines that the matter is not emergent, the Justice may decline to sign the order to show cause and refer the parties for a pre-motion conference.

5. For pre-note of issue cases, except in the event of an emergency that requires immediate relief from a Matrimonial Part Justice, motions (and cross motions) may only be made in pre-note of issue matters following a pre-motion conference with a court attorney referee where the issues could not be resolved and a motion briefing schedule has been established. All motions shall be made by order to show cause and shall include a Rule E Motion Compliance Sheet that sets forth the basis for which the motion is authorized under these rules. In the event of an emergency, the Rule E Motion Compliance Sheet shall be signed by counsel for the movant, or the party if not represented by counsel, pursuant to 22 NYCRR §130-1.1a, and shall include a statement as to the nature of the emergency requiring immediate relief. If the motion is made following a pre-motion conference, the Rule E Motion Compliance Sheet shall be signed by the court attorney referee and shall set forth the relief that may be requested in the motion(s) and the motion briefing schedule. The movant may not seek any relief other than that authorized by the court attorney referee at the pre-motion conference and specified in the Rule E Motion Compliance Sheet. In the event that the parties fail to follow the briefing schedule, the assigned Matrimonial Part Justice may deem the issues raised at the pre-motion conference to be abandoned or may decline to consider untimely papers.

6. No motion in any matrimonial action, whether pre-judgment or post-judgment, may be adjourned without approval from the assigned Matrimonial Part Justice. All requests for adjournment of motions must be approved by the Court.

7. For motions in all matrimonial actions, unless expressly authorized by the assigned Matrimonial Part Justice: (a) no affidavit or affirmation shall exceed 15 pages in length; (b) affirmations or affidavits of counsel shall address only those facts which are within their personal knowledge and shall not contain any citations to statutes or legal authorities; (c) any matters of law shall be addressed only in a separate memorandum of law, which may not exceed 15 pages in length; (d) the only exhibits that shall be attached to motion papers shall be those which are specifically referred to in an accompanying affidavit or affirmation and only that portion of the document which is specifically referenced shall be attached as an exhibit; and (e) there shall be no oral argument on motions unless expressly authorized by the assigned Matrimonial Part Justice. All exhibits shall be labeled with external tabs with separated exhibits. Plaintiff's exhibits shall be numbered in seriatim and defendant's shall be lettered alphabetically. Type point shall be at least type point 12 and double spaced. Any unauthorized papers or submissions will not be considered and other appropriate sanctions may be granted, including

but not limited to an award of counsel fees and expenses to the party required to respond to papers submitted in violation of this provision.

8. There is no requirement for a pre-motion conference where a motion is needed to address an urgent matter which cannot be delayed pending the holding of a pre-motion conference. All such emergency matters shall be brought on by order to show cause. The assigned Matrimonial Part Justice may decline to sign an Order to Show Cause in the event the Matrimonial Part Justice determines that there is no emergency. Additionally, if the motion proceeds, the Matrimonial Part Justice may grant counsel fees to the non-moving party for the time involved in defending the motion, and/or may deny counsel fees to the moving party for the time involving in prosecuting the motion, in the event the Court determines that the situation was not so emergent as to warrant a deviation from the general requirement of pre-motion conferences. The intent of these Rules is not to prevent motions from being made where necessary and appropriate to resolve disputes between the parties, but to conserve judicial resources and party resources by first attempting to resolve disputes through good faith conferencing prior to resort to expensive motion practice.
9. Sur-Reply and Post Submission Papers: Counsel and self-represented parties are reminded that the CPLR does not provide for the submission of sur-reply papers, however denominated, or the presentation of papers or letters to the Court after the return date of a motion. The Court does not permit motion practice by correspondence.
10. Settled Motions: In the event that the parties settle a motion or part of a motion before the motion return date or before a decision has been rendered, they shall immediately inform the Court in writing.
11. Where an action or proceeding is pending in the Matrimonial Part, all applications for relief shall be brought in accordance with the procedures set forth above. In the event that an application for relief is brought in the Family Court, in a circumstance in which a prior action has been pending (and process served) in the Matrimonial Part, the parties shall promptly notify the assigned court attorney referee, who shall hold a conference within two (2) court days of notification to review whether the Family Court proceeding should be removed to the Matrimonial Part. Nothing contained herein shall be construed as limiting or restricting the right of any party to seek relief in Family Court. The purpose of this provision is to coordinate whether, if a proceeding is brought in Family Court, the proceeding should continue there or be removed to Supreme Court, in the interests of judicial economy and in the interests of the parties and any children of the parties. As a general proposition, in the event that a matrimonial action is pending at the time that Family Court jurisdiction is first invoked, all Family Court proceedings

involving the family will be administratively removed and assigned to the Supreme Court. Conversely, if Family Court proceedings are pending for a substantial period of time prior to the commencement of a matrimonial action in Supreme Court, the Supreme Court action may be stayed pending the determination of the Family Court proceedings.

12. All motions will be decided by the assigned Matrimonial Part Justice, who, in doing so, may consider any reports and recommendations of the court attorney referee. For any motion made following a pre-motion conference with a court attorney referee in a pre-note of issue case where a briefing schedule has been set forth in the Rule E Motion Compliance Sheet, the assigned Matrimonial Part Justice may refer the motion to the court attorney referee to hear and report or may obtain the assistance of the court attorney referee in preparing a motion decision and order to be entered by the assigned Matrimonial Part Justice.
13. All motions shall be decided within sixty (60) days of the submission of the papers in opposition or reply, whichever is later, or, if no such papers are submitted, within sixty (60) days of the return date, except if the motion is for *pendente lite* relief, the motion shall be decided within thirty (30) days of the submission of the papers in opposition or reply, whichever is later, or, if no such papers are submitted, within thirty (30) days of the return date. Pendente lite maintenance and child support awards shall be retroactive to the date that the request for a pre-motion conference was made or the date that the motion was made, whichever is earlier.

14. Settlements:

Cases which are being discontinued through a Notice or Stipulation of Discontinuance will be marked disposed when a file-stamped copy of the Notice or Stipulation is filed with the Part Clerk of the Assigned Matrimonial Justice. Cases which are settled will not be marked settled or disposed unless and until a Judgment of Divorce (or other appropriate marital relief) is signed and entered. All case management time limits remain in full force and effect unless and until a fully-executed copy of a Stipulation of Settlement or Separation Agreement is filed with the Part Clerk of the Assigned Matrimonial Justice. Upon the filing of such Stipulation of Settlement or Separation Agreement, the assigned court attorney referee or Matrimonial Justice will give counsel a date certain for the submission of the required papers for the entry of judgment. If counsel fail to timely submit the papers, the action may be dismissed.

F. Note of Issue Procedures

1. Plaintiff shall serve and file a Note of Issue and Certificate of Readiness within ten (10) days of the date of entry of the Trial Ready Order. A file-stamped copy shall be submitted to the Part Clerk for the assigned Matrimonial Part Justice within two (2) business days of filing. If the Plaintiff fails to do so, the Court shall require the parties and counsel to appear on a date certain. If counsel fails to appear as directed, the Court may dismiss the action or strike the pleadings. In the event that a party shall fail to serve the Note of Issue as directed, the court may impose appropriate sanctions, including the granting of counsel fees to the compliant party or the withholding of counsel fees from the non-compliant party.
2. Expert reports must be furnished in accordance with 22 NYCRR §202.16(g). Failure to exchange and file the reports not later than sixty (60) days prior to the trial date (and replies not later than thirty (30) days before the trial date) may, in the Court's discretion, preclude the use of the expert.

G. Trials and Matrimonial Trial Ready Part (MTRP)

1. Upon the filing of the Note of Issue, the action shall be assigned to the Matrimonial Trial Assignment Part (MTRP). Any and all applications shall be made to the Justice Presiding in MTRP unless and until the action is assigned to a different Justice for trial.
2. The Trial Ready Order shall set forth the date for trial. Absent good cause, the date for trial shall be at least sixty (60) days after the issuance of the Trial Ready Order and shall be within one-hundred and twenty (120) days of the issuance of the Trial Ready Order. Counsel and the parties shall be consulted as to the date selected and reasonable efforts shall be made to accommodate pre-existing trial and other commitments and previously scheduled vacations. Once the trial date is set forth in the Trial Ready Order, adjournments will not be granted, except for the most unusual and exigent circumstances.
3. The provisions of 22 NYCRR §125.1(g) shall apply with respect to the scheduling and priority of trials and the engagement of counsel. Attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she must produce substitute trial counsel. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed). Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced.

4. No trial may proceed unless a Note of Issue has been filed with the Westchester County Clerk. A copy of the Note of Issue shall be provided to the Part Clerk for MTRP. Unless otherwise directed by the Justice presiding in the Matrimonial Trial Assignment Part, all cases (motions, trials, conferences) in MTRP shall be scheduled for Wednesdays at 2 p.m.
5. Counsel and parties shall appear before MTRP on the date for trial and shall be prepared to proceed immediately to trial. A call of the trial calendar will be held promptly at 2:00 p.m. by the Justice Presiding. Trial counsel for all parties must appear and be ready to commence trial. No requests for adjournments will be granted, absent exigent circumstances. Sanctions and/or costs may be imposed on counsel who are not present upon the call of the MTRP Calendar. Failure to proceed may result in the dismissal of the complaint or the striking of the answer, or other remedies, including, but not limited to, those set forth in CPLR §3404 and 22 NYCRR §202.21 and §202.27, as well as the awarding of counsel fees pursuant to DRL §237.
6. All matrimonial trials and hearings shall proceed day-to-day until conclusion.
7. All actions will be assigned out for immediate trial unless either: (a) a file-stamped copy of a Notice or Stipulation of Discontinuance is filed with the Part Clerk of MTRP; or (b) a fully-executed copy of a Stipulation of Settlement or Separation Agreement is filed with the Part Clerk of MTRP. Upon the filing of such Stipulation of Settlement or Separation Agreement, counsel will be provided with a date certain to either submit the required papers for the entry of judgment or appear in MTRP. If counsel fail to timely submit the papers and/or fail to appear in MTRP as required, the action may be dismissed. In the event that on the trial date, counsel represent that the parties have resolved all of the issues but have not yet entered into a formal agreement, the Justice presiding may, in his or her discretion: (a) require the parties to place their agreement on the record as an oral stipulation of settlement as authorized by CPLR §2104; (b) grant a limited adjournment for the purpose of allowing the submission of a Stipulation of Settlement or Separation Agreement; or (c) require counsel and the parties to proceed to trial.
8. No letters or other correspondence shall be sent to MTRP by any means (e.g., e-mail, fax, personal delivery) without prior authorization. Any unauthorized communications will be disregarded, will not be acted upon, and will not be considered. Counsel receiving an unauthorized communication shall not reply. Violations are subject to the imposition of sanctions, particularly in the case of repeat offenders.
10. Counsel wishing to communicate with MTRP shall contact the MTRP Coordinator at (914) 824-5337 by telephone with all other counsel on the

telephone. Counsel shall not contact the part clerks or chambers of any individual Justice regarding matters in MTRP.

11. Settlement conferences will be conducted upon request of counsel. Counsel may contact the MTRP Coordinator at (914) 824-5337, with all counsel on the telephone, to schedule a settlement conference.
12. All motions made following the service and filing of the Note of Issue shall be shall be returnable in MTRP.
 - (a) All motions, for any form of relief are to be made solely by order to show cause so that the Court may fix the return date and so that the motion can be promptly determined given that cases are expected to be pending in MTRP for no more than 120 days.
 - (b) Counsel are advised that applications for adjournments of a trial made in sufficient advance of the trial will be heard, to the extent possible, without delay. However, counsel are cautioned that applications made on the eve of trial may not be heard until the day of trial.
 - (c) Counsel are encouraged to consider that, absent an emergency, initial requests for *pendente lite* relief, absent an emergency, will likely be referred to the trial court, particularly since it may be that the action will be referred out to trial prior to submission of the motion or prior to decision within 60 days of submission.
13. Motions and Authorized Submissions in E-filed Cases:
 - (a) MTRP requires the submission of “working copies” of all electronically filed motions and other documents. Working copies are to be submitted to MTRP by mail or delivery to the 10th Floor Lobby Drop Off Basket designated for such purpose. The Court may not act upon, or take notice of, or consider papers that are electronically filed without the provision of “working copies”.
 - (b) All working copies submitted to MTRP must include a copy of the NYSCEF Confirmation Notice firmly fastened to the front cover page of the submission and comply with all the other requirements set forth in the Joint Protocols for New York State Courts E-Filing (NYSCEF) for Cases Filed in Westchester County. Working copies without the Confirmation Notice will not be accepted. Working copies are to be delivered no later than 10 a.m. on the first business day following the electronic filing of the document on the NYSCEF site.

- (c) MTRP will reject any hard copy submissions in E-filed cases unless those submissions bear the Notice of Hard Copy Submission - E-Filed Case required by Uniform Rule §202.5-b(d)(1). The form is available at www.nycourts.gov/efile.

14. At the commencement of trial, counsel must submit to the Court the following documents:

- (a) marked pleadings;
- (b) a fully executed stipulation of relevant facts. It is expected that even in the most contentious case, there are facts that are not in dispute (*e.g.*, the date of the marriage, the names and birth dates of children, location of real estate, etc.). Failure to stipulate to undisputed facts may increase a counsel fee award payable by the party who failed to stipulate or may decrease a counsel fee award payable to a party who failed to stipulate.
- (c) an exhibit list. Counsel are advised that, absent unusual circumstances, each side may be limited to no more than 15 exhibits, bearing in mind that the need for exhibits (such as tax returns and bank statements) may be reduced, if not eliminated, by stipulations as to undisputed facts (*e.g.*, the amount of the mortgage as of a given date, the amount on deposit in a bank as of a given date);
- (d) a list of witnesses, with an estimate of the amount of time that counsel expects that each witness' testimony will take;
- (e) a child support worksheet, if applicable;
- (f) a maintenance worksheet, if applicable;
- (g) updated statements of net worth.

15. Counsel are advised that, absent unusual circumstances, matrimonial trials are expected to be completed within five (5) full days.

H. DECISIONS AND ORDERS

1. All orders or judgments, including counter-orders and judgments, submitted for signature on notice will be returned unsigned unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with Uniform Rule § 202.48 have been included.

2. Proposed orders or judgments may not be submitted by fax transmission.

3. If the proposed order or judgment resulted from a proceeding on the record, including a bench decision, a copy of the transcript of proceedings shall be provided in support of the proposed order or judgment.

4. Any proposed counter-order or judgment shall be submitted with a copy clearly marked to delineate each proposed change to the order or judgment to which objection is made in accordance with Uniform Rules §202.48(2). Letters do not constitute counter-orders.

5. The parties are responsible to obtain copies of all written orders and decisions. Copies will be mailed only when Chambers are provided with a stamped, self-addressed envelope.

6. Qualified Domestic Relations Orders should be submitted at the time of the submission of the proposed Judgment of Divorce or as soon thereafter as is reasonably practical.

I. SETTLED AND DISCONTINUED CASES

1. Counsel or self-represented parties shall immediately notify the Court of a case disposition. Following the initial notification, counsel shall submit a copy of the stipulation of discontinuance to Chambers, with proof of filing in the Office of the County Clerk, so that the matter may be marked off the calendar.

2. In all settled cases, the Court will provide a date by which the Judgment of Divorce, Findings of Fact and Conclusions of Law, etc. are to be filed. **This date is a firm date.** Counsel and the parties must appear on this date if the papers have not been timely filed. There is no need for an appearance on the date set by the Court if the papers were timely filed and counsel has given the Court the requisite notice (set forth below) has been given of such filing.

3. After filing the required papers, a letter must be transmitted by fax or email to chambers of the assigned Justice (or if the case is in MTRP to the Matrimonial Coordinator), on notice to all other parties, advising the Court that the papers were filed and the date on which they were filed.

4. If all required papers have **NOT** been timely filed, **all counsel and parties must appear on the appearance date set by the Court.** Failure to appear may result in dismissal of the action pursuant to Court Rule 202.27 or such other sanction as the court deems appropriate.

5. Counsel or self-represented parties shall retrieve their exhibits from the Part Clerk within 30 days of signing of Judgment of Divorce or they shall be discarded.

J. Rules of Conduct

1. All attorneys and parties must be present at the time scheduled for a conference or trial. In the event that an attorney or party fails to timely appear, such lateness or failure to appear may be considered in the award of counsel fees and expenses.

2. Unless expressly authorized by the court attorney referee or Matrimonial Part Justice to whom it is directed, or unless specifically authorized by these rules, no letter or other written communication is to be transmitted to the Matrimonial Part by any means of transmission. Attorneys or self-represented parties shall not copy the Part on any correspondence between them unless there is a specific judicial purpose. All correspondence must bear the full Title and Index Number of the action and the date of the next Court appearance. Correspondence to the Court shall, without exception, be copied to all counsel and to self-represented parties who have appeared in the action and be so reflected in the correspondence. There shall be no replies to any unauthorized submissions and all unauthorized papers shall not be considered, shall be rejected, and shall not be filed in the court records.

3. All requests for adjournments shall be in writing, must be addressed to the assigned Justice and directed to the Part Clerk.

4. Failure by counsel (or party, where appropriate) to make himself or herself available for a direct conversation with counsel (including a party not represented by counsel) or failure to make a good faith effort to resolve the issues before, during or after any conference may be considered in connection with any application for counsel fees and expenses.

5. Violations of the provisions of these Rules may result in the imposition of appropriate sanctions, including the award of counsel fees and expenses to the non-violating parties or by the denial of counsel fees and expenses to the violating party.

6. Fax transmissions: Unless specifically approved by the Court, the Court does not accept legal papers of any kind by fax transmission. Copies of letters requesting or confirming an adjournment of a motion or conference shall be sent to the Court by fax to the Part Clerk.

K. Post-Judgment Part

The Post-Judgment Part shall hear and determine all post-judgment matters.

1. Motions: The provisions requiring what is known as Rule E compliance governing motions shall not apply to the initiation of a post-judgment application in the Matrimonial

Part. All motions in post-judgment actions should be brought by order to show cause whenever practicable.

2. Parenting Issues: The Post-Judgment Matrimonial Part Justice may order the parties to conference with the Family Counseling and Case Analyst issues relating to decision-making and/or parenting time with a child. The provisions of paragraph 4 of Section D, *infra*, shall apply to the conduct of any such conference.

3. Alternative Dispute Resolution: The Post-Judgment Matrimonial Part Justice may order the parties to participate in mediation in accordance with the protocol set forth in the Westchester Supreme Court Matrimonial Mediation Program, or other form of alternative dispute resolution. The post-judgment application may be adjourned not more than two (2) times, for a total not to exceed sixty (60) days, pending the outcome of the mediation or alternative dispute resolution process. A protocol for mediation is separately established.

L. Compensation for Attorneys for the Children] and Court-Appointed Experts

1. In any order appointing an Attorney for the Children] or appointing an expert, the Matrimonial Part Justice shall designate the name of the person or firm appointed, shall provide for an initial payment to the appointee, and shall provide for the allocation of financial responsibility as between the parties, subject to reallocation by the Court upon conclusion of the matter.

2. Attorneys for the Children] and all court-appointed experts shall submit itemized statements of their services directly to each parent or party and their counsel at least every sixty (60) days. These statements shall be labeled "Informational Only". No demand shall be made upon any parent or party for any payment not authorized in an order of the assigned Matrimonial Part Justice. In the event that an Attorney for a Child or a court-appointed expert seeks additional interim payment(s) above the amount of the initial payment, such attorney or expert shall make application to the assigned Matrimonial Part Justice, on notice to each parent and all parties. Such application shall include an affirmation or affidavit of services, identifying what additional services are required and anticipated difficulties, if any, in providing them, and provide an estimate of the amount of time and funds necessary to complete the appointment through the date of completion of disclosure or the conclusion of trial. The assigned Matrimonial Part Justice shall make a determination as to the amount of any further payments and shall allocate responsibility therefor between the parents or parties, subject to reallocation by the Court upon the conclusion of the matter. The failure to comply with this provision may result in the denial of fees and/or an order directing disgorgement of fees and such other sanction as may be appropriate. The foregoing provisions relating to billing and payment shall not apply where the Attorney for the Children] or experts are compensated by public funds. Copies of all orders authorizing or approving compensation shall be forthwith provided to the Fiduciary Clerk of Supreme Court, Westchester County, for purposes of assuring compliance with 22 NYCRR Part 36.

M. E-Filing Rules and Protocols

The Westchester Matrimonial Part allows for e-filing.

In accordance with §202.5-b of the Uniform Rules for the New York State Trial Courts, e-filing is authorized in the Matrimonial Part of Westchester County Supreme Court. All e-filing rules pursuant to §202.5-b, apply.

Working Copies: The Judges assigned to this Part require a working copy of each motion, exhibits with external tabs properly sequenced, letter, transcript, stipulation, and proposed order, whether e-filed or not, which shall be delivered to the Part Clerk. (see § 202.5-b [d] [4] of the Uniform Rules for the New York State Trial Courts). All working copies submitted MUST include a copy of the NYSCEF Confirmation Notice firmly fastened to the front cover page of the working copy submission and must comply with all of the other requirements set forth in the Westchester County Protocol. (see § § 202.5-b [d] [3] [ii] and [4] of the Uniform Rules for the New York State Trial Courts). The Confirmation Notice is generated when the case is e-filed and is available in the specific case file at www.nycourts.gov/efile. Working copies that do not include a NYSCEF Confirmation Notice may be rejected. Working copies shall be mailed or hand-delivered so as to be received by Chambers within 24 business hours of the e-filing, or as otherwise directed by the Court. For convenience, working copies may be delivered to the designated basket for the assigned Justice's Chambers.

N. Miscellaneous

All papers which are submitted for signature by the Court shall be identified on the signature page so that the document being signed by the Court can be identified.

Example: Jones v. Jones, Index # , Type of Document (Judgment of Divorce, etc.)