



**NEW YORK STATE**  
**Unified Court System**

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS  
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL  
COUNSEL

## MEMORANDUM

January 18, 2017

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed New Rule Setting Page Limitations and Other Parameters in Applications in Matrimonial Matters (22 NYCRR §202.16-c)

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The Administrative Board of the Courts is seeking public comment on a proposed new rule setting forth parameters of applications made to the court in matrimonial actions (22 NYCRR §202.16-c), as recommended by the Unified Court System's Matrimonial Practice Advisory and Rules Committee (Exh. A). In brief, the proposed rule would impose page limitations, emergency notice provisions, margin, font, and legibility requirements, limitations in the thickness of supporting exhibits, and related provisions in applications filed in matrimonial proceedings. The goal of the proposed rule, as described in the Committee's supporting comments, is to save judicial time and resources, and to speed the divorce process.

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Persons wishing to comment on the proposed rule should e-mail their submissions to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than March 7, 2017.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

## **EXHIBIT A**

## **Memorandum**

**To:** John W. McConnell, Counsel

**From:** Susan W. Kaufman, Counsel, Matrimonial Practice Advisory and Rules Committee

**cc:** Hon. Jeffrey Sunshine, Chair, Matrimonial Practice Advisory and Rules Committee

**Date:** December 7, 2016

**Re: Proposed Rule Amendment on Page Limitation for Pendente Lite and other Applications [22NYCRR§ 202.16 -c] (new)**

In furtherance of Chief Judge DiFiore's Excellence Initiative, Committee Chair Hon. Jeffrey Sunshine proposed a new rule imposing a page limitation on pendente lite motion practice in an effort to expedite matrimonial proceedings while a contested divorce is pending. This rule imposes page limitations on such applications unless such limitations are waived by the Judge for good cause.

The rule will save judicial time and resources and will speed the time within applications can be granted or denied, thereby making the divorce process proceed more quickly. The rule provides a preference for emergency applications for processing and signature, but provides that designating an application as an emergency without good cause shall be punishable by sanctions, thus making it more likely that true emergencies will be dealt with on an emergency basis.

Where practicable, the rule requires that all pendente lite relief will be requested in one application so as to avoid repeated motion practice where possible, still recognizing that new issues may arise during the course of the action which could not have been foreseen.

Requirements are imposed as to formatting conventions, (including matters such as printing sides, paper size, font, margins, ink, spacing and tabbing of exhibits) to ensure that papers submitted are legible and can be scanned in and copied, while allowing self represented litigants the option to submit handwritten applications provided they are legible and otherwise comply with the rule. There are specific page limits on different types of affidavits and affirmations,

with a two-inch size limitation on exhibits. However specific exhibits required by, or necessary in order to comply with, the matrimonial rules or statutes are exempted from the size limitation on exhibits.<sup>1</sup> The rule defers to local practice by providing that nothing therein will prevent a Justice of the Court or a Judicial District from having its own local part rules in conflict with or in addition to the rule. However, where local practice is silent, the rule will provide some basic ground rules to the extent that there is no conflict with the CPLR or other statute. The provisions of 22 NYCRR§ 202.16 (k) still apply where applicable.

After discussion and suggestions from the Committee the following proposal was approved by the Committee, and is hereby submitted for consideration by Chief Administrative Judge Marks.

**Proposal:**

A new 22 NYCRR §202.16-c is added to read as follows:

**§202.16-c Submission of Written Applications in Contested Matrimonial Actions.**

(1) Applicability. This section shall be applicable to all contested matrimonial actions and proceedings in Supreme Court authorized by subdivision (2) of Part B of section 236 of the Domestic Relations Law.

(2) Unless otherwise expressly provided by any provision of the CPLR or other statute, and in addition to the requirements of 22 NYCRR §202.16 (k) where applicable, the following rules and limitations are required for the submission of papers unless said requirements are waived by the Judge for good cause shown:

(i) Applications that are deemed an emergency must comply with 22 NYCRR§202.7 and

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<sup>1</sup> Exempted exhibits include Affidavits of Net Worth, Retainer Agreements, maintenance guidelines worksheets and/ or child support worksheets, and counsel fee billing statements or affirmations or affidavits related to counsel fees.

provide for notice, where applicable, in accordance with same. These emergency applications shall receive a preference by the Clerk for processing and the Court for Signature. Designating an application as an emergency without good cause shall be punishable by the issuance of sanctions pursuant to Part 130 of the Rules of the Chief Administrative Judge.

- (ii) Where practicable, all applications for *pendente lite* relief should be made in one order to show cause or motion or cross-motion.
- (iii) All Orders to Show Cause and Motions shall be submitted on one-sided copy, or electronically where authorized, with one-inch margins on eight and one half by eleven (8.5 x 11) paper with all additional exhibits tabbed. They shall be in Times New Roman font 12 and double-spaced. They must be of sufficient quality ink to allow for the reading and proper scanning of the documents. Self-represented litigants may submit handwritten applications provided that the handwriting is legible and otherwise in conformity with these rules.
- (iv) The supporting Affidavit or Affidavit in Opposition shall not exceed fifteen (15) pages. Any expert affidavit required shall not exceed five (5) additional pages. Any Attorney Affirmation in Opposition or Memorandum of Law shall contain only discussion and argument on issues of law. Any Reply Affidavits or Affirmations to the extent permitted shall not exceed seven (7) pages. Sur-Reply Affidavits can only be submitted with prior Court permission.
- (v) Except for affidavits of net worth (pursuant to 22 NYCRR §202.16 (b)), retainer agreements (pursuant to Rule 1400.3 of the Joint Rules of the Appellate Division),

maintenance guidelines worksheets and/ or child support worksheets, or counsel fee billing statements or affirmations or affidavits related to counsel fees (pursuant to Domestic Relations Law §237 and 22 NYCRR §202.16(k)), all exhibits annexed to any motion, order to show cause, opposition or reply may not be greater than two (2) inches thick without prior permissions of the Court. All exhibits must contain exhibit tabs.

(3) Nothing contained herein shall prevent a Justice of the Court or Judicial Districts from establishing local part rules to the contrary or in addition to these rules.