

NYS Supreme Court, Kings County – Part 5T
Hon. Delores J. Thomas, J.S.C.
Matrimonial Part Rules
(Effective August 15, 2019)

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Part 5T adheres to the Kings County Supreme Court Uniform Contested Matrimonial Rules,¹ the Uniform Civil Rules for the Supreme Court and the County Court,² and the New York Civil Practice Law and Rules in addition to the following rules.

General Part Rules

All calendars will be called at 9:30 a.m. The default/dismissal calendar will be called at or around 10:30 a.m.

All adjournments require prior approval of the court. Requests to adjourn the preliminary conference shall be made to the Part Clerk.³ All other requests for adjournment shall be made by conference call to the court by the parties' attorneys and the attorney for the child(ren), if one has been appointed. The request must be made no later than one day prior to the appearance. The stipulation of adjournment, containing the caption and index number, shall be faxed to chambers at least one day prior to the scheduled appearance, and shall indicate the new date and the reason for the adjournment. All adjournments are subject to final approval by the Judge. If no stipulation is submitted or if it is untimely and the parties and counsel do not appear, the matter will not be adjourned and the party(ies) will be held in default.

Adjournments on the ground of engagement of counsel will be granted in accordance with Part 125 of the Rules of the Chief Administrator of the Courts. Affirmations must be faxed to the court at least one (1) day prior to the court appearance. Upon sending the affirmation of actual engagement, the parties must contact the court by conference call to request the adjournment in accordance with the foregoing paragraph.

Unless excused by the court, counsel and parties must be present at all appearances.

¹ <http://www.nycourts.gov/COURTS/2jd/KINGS/Civil/KingsCivilSupremeRules.shtml#MatrimonialRules>

² <http://ww2.nycourts.gov/rules/trialcourts/202.shtml>

³ Counsel are reminded that pursuant to 22 NYCRR § 202.16(f)(1), net worth affidavits are to be filed with the court ten (10) days prior to the preliminary conference together with the attorney's retainer agreement and the parties' most recently filed tax returns and most recent pay stubs and/or W-2 statements.

Correspondence between counsel is **NOT** to be copied to chambers.

The court will not accept courtesy copies. All papers shall be filed with the 10th floor Matrimonial Clerk's office and/or the County Clerk's Office.

All papers submitted to Part 5T must include a fax number and/or an email address. Attorneys and pro se litigants must provide the court with a current phone number and fax number and/or email address where they can be reached.

The court will not engage in *ex parte* communications. All phone calls to chambers shall be made with all parties and/or counsel on the line, including the attorney for the child(ren) if one has been appointed.

Motions

All motions will be returnable on **Thursdays at 9:30 a.m.** Oral argument is required on all motions and orders to show cause unless waived by the court.

Counsel must submit a completed **Child Support Worksheet (Form UD-8)**⁴ with all applications for *pendente lite* child support and all requests for or in opposition to modification of a prior child support order.

Applications for or in opposition to interim maintenance must include a completed **Temporary Maintenance Guidelines Worksheet (including Appendix B)**.⁵ Applications for temporary maintenance which request a deviation from the guidelines amount must specify the presumptive guidelines amount and the reason(s) for the deviation.

All allegations of fact submitted to the Court, including allegations contained in an affidavit and/or the complaint, must be certified by counsel in the form prescribed by the Chief Administrative Judge.

Any motion for consolidation must include copies of the Family Court petition and all existing orders from the Family Court, as well as a statement regarding the procedural history and status of the Family Court proceeding.

Orders of Protection

Applications for an order of protection are heard the same day they are filed and must be accompanied by the Family Protection Registry Information Sheet.⁶ **The litigant seeking protection must be present.** Motions to consolidate Family Court orders of protection must contain a complete copy of the Family Court file.

⁴ http://www.nycourts.gov/divorce/forms_instructions/ud-8.pdf

⁵ <http://www.nycourts.gov/divorce/TMG-Worksheet.pdf>

⁶ https://www.nycourts.gov/LegacyPDFS/FORMS/familycourt/pdfs/info_she.pdf

Preliminary Conference

Preliminary conferences are held on **Thursdays** at **9:30 a.m.**

Compliance Conference

Compliance conferences will be held on **Thursdays** at either **9:30 a.m.** or **2:00 p.m.** The date of the compliance conference will be set at the time of the preliminary conference. Counsel should not wait until the date of the compliance conference to bring the failure to comply with preliminary conference directives and discovery orders to the attention of the court. Such failure must be addressed prior to the compliance conference either by motion or conference call to chambers. Failure to timely comply with court-ordered discovery may result in the imposition of sanctions and counsel fees.

Pre-Trial Conference

Prior to the pre-trial conference, the parties with their counsel as well as any appointed attorney(s) for the child(ren) shall engage in a settlement conference to try to resolve any and all ancillary issues.

The parties shall submit the following pre-trial documents **to chambers** no later than **seven days prior** to the pre-trial conference:

1. statements of proposed disposition;
2. updated statements of net worth with the last three years of tax returns;
3. proposed parenting plans if custody/visitation is at issue;
4. child support worksheets if applicable;
5. maintenance worksheets if either party is seeking post-divorce maintenance; and
6. proposed witness lists.

The Note of Issue shall be filed prior to the pre-trial conference and in accordance with the compliance conference order.

All motions in limine shall be made prior to the pre-trial conference.

Failure to submit pre-trial documents in accordance with these rules or present a fully executed stipulation of settlement on the date of the conference may result in dismissal and/or sanctions.

Please stipulate to all facts and documents not in dispute prior to trial.

Once a case has been assigned a trial date, it is presumed ready for trial. Trials will be day to day or as scheduled by the court. No consent adjournments will be accepted. Failure to proceed without good cause will result in a finding of default, striking

of the pleadings, and/or dismissal of the action. **Chambers shall be notified immediately if the action is resolved prior to the trial date.**

Requirements for Trial

The court is to be provided with the following documents **seven days prior** to the first day of trial:

1. Marked pleadings;
2. Updated statements of net worth, statements of proposed disposition and child support and maintenance worksheets, if applicable;
3. Two copies of the list of proposed witnesses, any pre-trial memorandum, copies of cases and authorities upon which you will be relying, especially opinions not contained in the official reporters, and a copy of all prior decisions in the case;
4. Copies of all EBTs intended for use at trial;
5. A list of all proposed exhibits. Proposed exhibits should be pre-marked for identification and are to be shown to opposing counsel. Plaintiff's exhibits are to be assigned a numeric symbol (i.e., 1, 2, 3, etc.) and Defendant's an alphabetical one (i.e., A, B, C, etc.). A copy of each proposed exhibit must be provided to opposing counsel.
6. A list of documents which counsel may stipulate into evidence. Such documents are to be pre-marked by counsel;
7. Any Notices to Admit;
8. A written copy of any issues or facts to which the parties have stipulated *in advance of trial*. Said stipulation shall be read into the record at the commencement of the trial.

The court shall be provided with a copy of all above listed items in a properly indexed trial notebook contained in a 3-ring binder and on flash drive.

If a witness needs an interpreter, please indicate the language and dialect prior to trial. At the start of each trial day, please check in with the Part Clerk and inform the court if an interpreter is necessary.

Parties and all counsel are reminded that, pursuant to 22 NYCRR § 202.16 (9), all expert reports are to be exchanged and filed with the court sixty (60) days before the date set for trial. Reply reports, if any, shall be exchanged and filed no later than thirty (30) days before said date.

The court shall be provided with trial transcripts and transcripts shall be paid for by the parties, the cost of which shall be shared equally.

At the conclusion of trial, the parties shall file a copy of their post-trial memoranda and proposed Findings of Fact and Conclusions of Law both in hard copy and electronic format (i.e., documents saved to a flash drive).

Conduct During the Trial

Do not approach a witness without permission of the court.

Do not show anything, including exhibits, to a witness without first showing it to opposing counsel.

Do not interrupt the witness. Please allow the witness to finish his/her answer before asking the next question.

The court will permit direct, cross, re-direct and re-cross examinations. Cross, re-direct, re-cross examinations will be limited in scope by the preceding examination and is not an opportunity to explore new areas. The court does not permit multiple re-direct or re-cross examinations of witnesses.

Exhibits left in the courtroom after settlement or the end of the trial will be discarded after ten (10) business days have elapsed or at the discretion of the court.

Judgments

All proposed judgments of divorce shall include a completed copy of the Matrimonial Term Clerk's Office Contested Judgment Checklist, indicating all necessary forms are being submitted. All documents must be completed, including all sections of the certificate of dissolution.

All judgments must be submitted within 60 days as directed by the court or the action may be deemed abandoned and dismissed.

All qualified domestic relations orders (QDROs) must be accompanied by written plan approval and must be submitted with the proposed judgment. If the QDRO is not ready at the time the proposed judgment is due to be filed, it shall be filed no later than 45 days from the signing of the judgment of divorce.

Additional Notes

When preparing documents for the judge's signature, do not put the judge's signature line on a blank page.

Judicial subpoenas must be made returnable to the N.Y.S. Supreme Court Subpoenaed Records Room, 360 Adams Street, 6th Floor, Brooklyn, New York 11201.

Sanctions and/or costs may be imposed for failure to comply with any rule set forth herein.