



**MEMORANDUM**

To: All Interested Persons

From: Eileen D. Millett

Re: Request for Public Comment on the Proposed Amendment of 22 NYCRR §§ 202.16-b, 202.16(k) to Allow Self-Represented Litigants to Seek E-filing Costs When Making Motions for Counsel Fees and to Require Page Limits on All Forms of Written Applications in Contested Matrimonial Actions

Date: October 16, 2020

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Matrimonial Practice Advisory and Rules Committee (“Committee”), to amend 22 NYCRR §§ 202.16-b and 202.16(k) of Part 202 of the Uniform Civil Rules for the Supreme and County Courts (Exhibit 1). The proposed amendment would add a requirement that motions for counsel fees would now include costs for processing New York State Court Electronic Filing (NYSCEF) documents and fees and expenses for experts to assist in e-filing. The proposed amendment would allow a self-represented party who lacked resources to e-file (such as computer or internet access) to make a motion to have the monied spouse pay for e-filing fees. The Committee posits that the rule change would increase access to justice and encourage greater use of e-filing.

The Committee also submits a proposed rule change to impose page limitations on all forms of written applications in contested matrimonial actions (Exhibit 1). While pendente lite written applications in contested matters have had a page limitation since 2017, the Committee suggests expanding the page limitation requirement to all applications, including post-judgment applications, in order to reduce the volume of submissions and to avoid duplication of efforts.

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Persons wishing to comment on the proposal should e-mail their submissions to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) or write to: Eileen D. Millett, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11<sup>th</sup> Fl., New York, New York, 10004. Comments must be received no later than November 30, 2020.

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 1**



STATE OF NEW YORK  
**UNIFIED COURT SYSTEM**

360 ADAMS STREET  
BROOKLYN, NY 11201  
(347) 296-1527

**LAWRENCE K. MARKS**

Chief Administrative Judge

**JEFFREY S. SUNSHINE**

Statewide Coordinating Judge for  
Matrimonial Cases

**MEMORANDUM**

**To:** Hon. Lawrence Marks, Chief Administrative Judge

**From:** Hon. Jeffrey Sunshine, Statewide Coordinating Judge for Matrimonial Cases and  
Chair, Matrimonial Practice Advisory and Rules Committee

**Re:** Proposed Amendments to 22 NYCRR §§ 202.16-b and 202.16(k) of the of Part 202 of the  
Uniform Civil Rules for the Supreme and County Courts

**Date:** June 8, 2020

At my request, the Matrimonial Practice Advisory and Rules Committee unanimously proposes two amendments to the matrimonial rules for contested matrimonial cases (Exhibit A) for approval of the Administrative Board.

**I. Costs to be Awarded to Self-Represented Litigants to Assist in E-Filing**

The rule regarding motions for counsel fees to enable a spouse to carry on or defend a matrimonial action should be modified to expressly include in fees and expenses of experts the costs for processing of NYSCEF documents because of the inability of a self-represented party that desires to e-file to have computer access or afford internet accessibility. This proposed amendment would further the legislative intent of leveling the playing field in matrimonial litigation underlying DRL § 237. The amendment makes clear that a self-represented litigant lacking the ability to e-file themselves could pay someone to e-file for them (or assist them) and make a motion to have the monied spouse pay for the costs either before the consent or pendente lite or later. Under the proposal, if the self-represented party did not wish to use e-filing, he or she could still file by paper as permitted under the current statute and court rules. This measure would both increase access to justice and encourage greater use of e-filing.

**II. Page Limitations for All Matrimonial Actions in Court**

The Page Limitation Requirements that have been in effect in pendente lite written applications in contested matrimonial actions pursuant to 22 § NYCRR 202.16-b since July 1, 2017 should be expanded to all forms of written applications, including post-judgment applications, in contested Supreme Court Matrimonial actions. There will be numerous applications for relief, not only because of unresolved pending matters, but also because of increased volume of new

applications. Adoption of this rule will reduce the volume of the submissions and the duplication of efforts, thereby increasing court efficiency.

A draft Administrative Order is included for your consideration.

cc: John W. McConnell

Eileen Millett

Marc Bloustein

Susan Kaufman

# EXHIBIT A

**ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE  
COURTS**

Pursuant to the authority vested in me, and upon consultation with, and approval by, the Administrative Board of the Courts, I hereby amend, effective immediately, Sections 202.16(k) and 202.16-b of Part 202 of the Uniform Civil Rules for the Supreme and County Courts in matrimonial contested actions, as follows:

- Section 202.16(k) addressing motions for alimony, maintenance, counsel fees pendente lite, and child support, is hereby amended to read as follows:

**202.16(k) Motions for alimony, maintenance, counsel fees pendente lite and child support (other than under section 237[c] or 238 of the Domestic Relations Law).**

Unless, on application made to the court, the requirements of this subdivision be waived for good cause shown, or unless otherwise expressly provided by any provision of the CPLR or other statute, the following requirements shall govern motions for alimony, maintenance, counsel fees (other than a motion made pursuant to section 237[c] or 238 of the Domestic Relations Law for counsel fees for services rendered by an attorney to secure the enforcement of a previously granted order or decree) or child support or any modification of an award thereof:

- (1) Such motion shall be made before or at the preliminary conference, if practicable.
- (2) No motion shall be heard unless the moving papers include a statement of net worth in the official form prescribed by subdivision (b) of this section.
- (3) No motion for counsel fees and expenses shall be heard unless the moving papers also include the affidavit of the movant's attorney stating the moneys, if any, received on account of such attorney's fee from the movant or any other person on behalf of the movant, the hourly amount charged by the attorney, the amounts paid, or to be paid, to counsel and any experts, and any additional costs, disbursements or expenses, and the moneys such attorney has been promised by, or the agreement made with, the movant or other persons on behalf of the movant, concerning or in payment of the fee. Fees and expenses of experts shall include appraisal, accounting, actuarial, investigative and other fees and expenses **(including costs for processing of NYSCEF documents because of the inability of a self-represented party that desires to e-file to have computer access or afford internet accessibility)** to enable a spouse to carry on or defend a matrimonial action or proceeding in the Supreme Court.
- (4) The party opposing any motion shall be deemed to have admitted, for the purpose of the motion but not otherwise, such facts set forth in the moving party's statement of net worth as are not controverted in:
  - (i) a statement of net worth, in the official form prescribed by this section, completed and sworn to by the opposing party, and made a part of the answering papers; or
  - (ii) other sworn statements or affidavits with respect to any fact which is not feasible to controvert in the opposing party's statement of net worth.
- (5) The failure to comply with the provisions of this subdivision shall be good cause, in the discretion of the judge presiding, either:
  - (i) to draw an inference favorable to the adverse party with respect to any disputed fact or issue affected by such failure; or
  - (ii) to deny the motion without prejudice to renewal upon compliance with the provisions of this section.

- (6) The notice of motion submitted with any motion for or related to interim maintenance or child support shall contain a notation indicating the nature of the motion. Any such motion shall be determined within 30 days after the motion is submitted for decision.
- (7) Upon any application for an award of counsel fees or fees and expenses of experts made prior to the conclusion of the trial of the action, the court shall set forth in specific detail, in writing or on the record, the factors it considered and the reasons for its decision.

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- Section 202.16-b is hereby amended to read as follows:

**Section 202.16-b 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 **in all** applications (**including post-judgment applications**) for alimony, maintenance, counsel fees, child support, exclusive occupancy, custody and visitation 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 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 may be punishable by the issuance of sanctions pursuant to Part 130 of the Rules of the Chief Administrative Judge. Any application designated as an emergency without good cause shall be processed and considered in the ordinary course of local court procedures.
  - (ii) Where practicable, all orders to show cause, motions or cross-motions for relief should be made in one order to show cause or motion or cross-motion.
  - (iii) All orders to show cause and motions or cross motions shall be submitted on one-sided copy except as otherwise provided in 22 NYCRR §202.5(a), or electronically where authorized, with one-inch margins on eight and one half by eleven (8.5 x 11) inch 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 or attorney affirmation in support or opposition or memorandum of law shall not exceed twenty (20) pages. Any expert affidavit required shall not exceed eight (8) additional pages. Any attorney affirmation in support or opposition or memorandum of law shall contain only discussion and argument on issues of law except for facts known only to the attorney. Any reply affidavits or affirmations to the extent permitted shall not exceed ten (10) 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 of which may include attachments thereto, all exhibits annexed to any motion, cross motion, order to show cause, opposition or reply may not be greater than three (3) inches thick without prior permission of the court. All exhibits must contain exhibit tabs.
- (vi) If the application or responsive papers exceed the page or size limitation provided in this section, counsel or the self-represented litigant must certify in good faith the need to exceed such limitation, and the court may reject or require revision of the application if the court deems the reasons insufficient.
- (3) Nothing contained herein shall prevent a judge or justice of the court or of a judicial district within which the court sits from establishing local part rules to the contrary or in addition to these rules.

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Chief Administrative Judge of the Courts

Dated:                   , 2020

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