

**Kings County Contested Matrimonial Part Uniform Rules and Protocols  
July 1, 2024**

**NOTICE: No photography or video or audio recording is permitted during court appearances (virtual or in-person) without express Court permission. Violation of this provision could result in arrest or being held in Contempt of Court.**

These rules apply to all matrimonial actions in Kings County, New York.

Note: EDDS is not to be used in Matrimonial Proceedings except to upload an application to convert a pending action to electronic filing.

22 NYCRR 202.16 has been amended and harmonized with the Supreme Court Rules contained in 22 NYCRR 202.

The Matrimonial Clerk's office can be reached at  
[360ASupremeCivilMatrimonial@nycourts.gov](mailto:360ASupremeCivilMatrimonial@nycourts.gov) or 347-296-1714

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NOTE: ALL E-MAIL COMMUNICATIONS WITH THE COURT MUST BE ON NOTICE TO ALL PARTIES/COUNSEL. THE COURT WILL NOT ACCEPT *EX PARTE* (ONE-SIDED) COMMUNICATIONS. THIS REQUIRES INCLUSION OF ATTORNEYS FOR THE CHILDREN.

E-mails to the Court should only be sent during courthouse business hours **NOT** after courthouse business hours, on weekends or on holidays. If you are represented by an attorney, you cannot communicate with chambers or the Court directly. All communications either written or oral must be civil, free from any profanity and respectful to the sanctity of the Court process. **Please note that you may NOT litigate by way of e-mail absent express court permission.**

Many forms and resources are located at [nycourts.gov](http://nycourts.gov) and on the Kings County Supreme Court website at [Divorce.Forms|NYCOURTS.GOV](http://Divorce.Forms|NYCOURTS.GOV) where the most up-to-date information about protocols and scheduling will be posted.

## **Office of Self-Represented Litigants**

At present, the Office of Self-Represented can be reached by telephone at 347-296-1740 or by e-mail at [360ASupremeCivilSelfHelp@nycourts.gov](mailto:360ASupremeCivilSelfHelp@nycourts.gov). You may visit, the Office of Self-Represented for assistance at 360 Adams Street, Room 123, Brooklyn NY 11201. The Office of Self-Represented is open every Monday, Tuesday, Wednesday and Thursday from 9:30 a.m. – 12:45 p.m. and 2:15 p.m. – 4:30 p.m.

## **E-Filing**

Electronic filing (e-filing) provides a safe alternative to in-person filings and is an efficient, convenient and practical tool to afford the legal community access to courts. The unified courts systems e-filing platform is referred to as NYSCEF.

At this time EDDS should ONLY be used to upload the consent to e-filing stipulation or the letter application. All subsequent filings should be through the NYSCEF unless otherwise directed by the Court. E-filing should be used whenever possible to mitigate unnecessary in-person trips to the courthouse to file papers. Self-represented litigants are not required to utilize NYSCEF but are encouraged to do so to facilitate contactless processing.

Proceedings may be converted to e-filing pursuant to Administrative Order 114/20 (available at [nycourts.gov](http://nycourts.gov)) where both parties are represented by counsel, except for commencement or pursuant to court order. To consent to e-filing: upload a consent to convert stipulation through the EDDS system at <https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm>.

1. E-mail addresses for all parties/counsel should be included on all filings to facilitate and expedite scheduling and resolution.
2. E-filing is not to be used to upload communications with adversaries and/or the Court without prior Court permission. Any such communications will be rejected.
3. Do not upload letters to e-filing, without court permission, letters become part of the permanent records of the Office of the County Clerk.
4. When e-filing documents make sure you click the right document. Clearly identify *ex parte* or Emergency Applications. Please do not file documents as uncontested just because you settled the case. If an action is commenced as a contested matrimonial then any judgment of divorce submitted through e-filing must be uploaded as a contested judgment of divorce.
5. There is a letter application to convert to e-filing ([application.convert.pending.action.pdf \(state.ny.us\)](#)) where you cannot get the consent of your adversary. There is also a Notice of Conversion ([EF-28a](#)). The forms can be accessed in NYSCEF- just click the forms option.
6. Additional information about NYSCEF, including how to register and tutorial for attorneys and litigants is available at:

<https://iappscontent.courts.state.ny.us/NYSCEF/live/training.htm>

**TRIALS, HEARINGS, MANY MOTIONS AND CONFERENCES HAVE NOW RETURNED TO IN-PERSON APPEARANCES, AND YOU SHOULD FOLLOW THE INSTRUCTIONS OF THE INDIVIDUAL JUDGE OR PART.** Please note that just because an initial or subsequent Order to Show Cause or conference was designated “virtual” it does not mean the following appearance will not be in-person. For example, a virtual conference or an Order to Show Cause that is marked as virtual may be changed by the Judge to an in-person at any time and visa-versa.

### **Virtual Appearances**

The Court has returned to an in-person model, with some virtual appearances by direction of the Court.

Preliminary conference will be **in-person** unless otherwise directed by the Court.

1. PROPER COURTROOM DECORUM IS REQUIRED AT ALL TIMES.
2. If a party does not have access to the virtual platform, arrangements for a telephonic proceeding for a conference or court proceeding may be made.
3. IN KINGS COUNTY SUPREME ALL VIRTUAL PROCEEDINGS OR TELEPHONIC PROCEEDINGS FOR COURT APPEARANCES SHALL BE SET UP BY COURT STAFF. **There is a new Teams invite for each appearance.** Make sure you have the new link and that you are not signing in on an old link. This is a common mistake that causes delay.
4. Before any TEAMS appearance, you are REQUIRED to do a practice run with your client. Failure to do so causes delays in proceedings and is a waste of judicial resources.
5. Counsel and parties must adhere to all pre-scheduled appointments. Counsel and litigants are expected to join the virtual proceeding **10 minutes before** the scheduled court proceeding to test audio/visual equipment in ADVANCE of the scheduled time so as to not to keep the judge and court staff waiting.
6. No recording of any proceedings or conferences are permitted except by the official court reporter.
7. Participants should MUTE their microphones when they are not speaking to reduce background noise interference. Counsel and parties may not talk over each other or the Court.
8. Litigants must take steps necessary to ensure no children can overhear or witness any court appearances and/or proceedings and should ensure they are participating from a location without background noise interference (TV, radio, street noise). There are no provisions for childcare.
9. All parties must be present at each in-court or virtual appearance unless excused by the Court.
10. A Notice of Appearance shall be e-filed before the first appearance by counsel.
11. Training on Teams and other virtual platforms can be accessed at:  
<https://portal.nycourts.gov/knowledgebase/article/KA-01070>

## **Adjournments**

1. Requests for adjournments should be made in advance. If the request for adjournment is granted by the Court, then counsel or self-represented litigants shall prepare a stipulation including the caption and index number of the case, the appearance date, the adjourn date, and the reason for the adjournment. The stipulation shall be e-mailed to the chambers e-mail listed above, NOT uploaded to e-filing, at least one (1) day prior to the scheduled appearance date. *All adjournments are subject to final approval by the Judge.* If approved, the Court will upload the *so ordered* stipulation to NYSCEF.
2. All adjournments on the grounds of engagement of counsel shall be granted only in accordance with Part 125 of the Rules of the Chief Administrator of the Courts. Affirmations in e-filed cases must be submitted through NYSCEF. In cases that have not been converted to e-filing, affirmations must be emailed to the Court using the Part e-mail address listed above at least one (1) day prior to the court appearance on notice to all sides.
3. It is the obligation of the parties/counsel to notify the Court if there are existing Temporary Order(s) of Protection that would expire on the scheduled court appearance. If the Temporary Order(s) of Protection are continuing to the adjourn date, the parties must appear on the originally scheduled date for service for an extended Temporary Order(s) of Protection to the adjourn date.

## **Applications for Substituted Service, Poor Person Relief or Address Confidentiality**

In Kings County Matrimonial parts, these applications must be made by an *ex parte* application with a no fee RJI and no notice is required. Only where there is already a pending case will the application be referred to the Justice assigned. **Do not file a Notice of Motion or Order to Show Cause unless directed by a Judge.** You should not file a contested RJI even though you think the case may eventually be contested.

## **Temporary Orders of Protection**

1. *Ex parte* Orders of Protection are heard within twenty-four (24) hours of filing and, when possible, they are heard the same day they are filed (N.Y. Domestic Relations Law § 240). No notice to opposing counsel or litigant is required pursuant to 22 NYCRR 202.7. The party filing any application that includes a request for an *ex parte* order of protection shall notify the Matrimonial Clerk's Office that it is a request for a temporary order of protection at [360ASupremeCivilMatrimonial@nycourts.gov](mailto:360ASupremeCivilMatrimonial@nycourts.gov) or 347-296-1714 and, if a Judge is assigned, to the part e-mail listed above.
2. There is no notice required for an *ex parte* Order of Protection. When e-filing *ex parte* order of protection, the drop-down option "EX PARTE ORDER (PROPOSED) – NO PRIOR NOTICE" should be used. The opposing party will know if they are on NYSCEF that something was filed but they will not know what

it is and will not be able to see it. IF YOU ARE CONCERNED YOU MAY APPLY FOR AN ORDER OF PROTECTION IN-PERSON, WITH A PAPER COPY EVEN IF THE CASE IS AN E-FILED CASE.

3. Applications for orders of protection shall be made by Order to Show Cause, not by Notice of Motion.
4. Moving counsel are required to have their clients available and in Court, unless excused by the Court.

### **Ex Parte Applications**

Any application for temporary injunctive relief shall contain an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by giving notice. In the absence of a showing of significant prejudice, an affirmation must demonstrate that a good faith effort has been made to notify the party against whom the restraining order is sought in accordance with 22 NYCRR 202.7. This rule does NOT apply to Temporary Orders of Protection. The parties must be available to participate. The Judge will determine if the application will be heard in-person or virtually. You must be prepared to be ordered to appear in-person, and in fact, most emergency applications will at this time be heard in-person. PLEASE NOTE: THERE MUST BE A TRUE EMERGENCY THAT REQUIRES INTERIM RELIEF.

An affidavit with Notice must be attached pursuant to 22 NYCRR 202.8 except for good cause shown or a request for a Temporary Order of Protection. The affidavit should be Exhibit A of any order to show cause.

### **Court Interpreter Services**

Chambers staff and the part clerk must be notified via the Part e-mail at least **three (3) court days** in advance of EACH court proceeding (including conference, oral argument, hearing, trial) if a court interpreter is needed. Note that requests for interpreters must be made at least ten (10) days before the preliminary conference together with the other required submissions (see below). You must provide the language and dialect for the requested interpretation services.

### **Presumptive mediation - Alternative Dispute Resolution (ADR)**

See Exhibit A. Link can be found at

[KingsCounty-MatrimonialMediationProgramRules.pdf \(nycourts.gov\)](#)

### **Automatic Orders**

Pursuant to Domestic Relations Law § 236 B (2), when serving a summons, a copy of the Automatic Orders, Notice of Domestic Relations Law § 255, and Notice of the Maintenance Guidelines must also be served.

### **Request for Judicial Intervention (RJI)**

1. Pursuant to 22 NYCRR 202.16(d), an RJI shall be filed within forty-five (45) days of the date of service of the summons. The Preliminary Conference (PC) must be scheduled within forty-five (45) days of the RJI being filed and adjournments will be limited.
2. A request for a preliminary conference shall accompany the RJI and both must be served on all parties.
3. A copy of the RJI and the request for a Preliminary Conference (PC) shall be e-filed. If the party is not using e-filing, these copies must be filed with the Kings County Clerk's office and the Matrimonial Clerk's office. If not previously filed, a copy of the notice of appearance should be filed at this time.

### **Motions and Orders to Show Cause**

1. Initial applications for relief must be made by Order to Show Cause. Many Judges prefer the Order to Show Cause as the method to bring forth requested relief. Please check the individual part rules for the Judge. **Please note that counsel and parties must appear unless excused by the Judge.**
2. Motions shall be made returnable only on the part's motion date(s), or they can be calendared to the part's next available motion date by the Matrimonial Clerk's Office. If the case already has a date scheduled in the future, the motion may be made returnable on that previously assigned date even if it is not a regularly scheduled motion date.
3. Oral argument is required on all motions unless dispensed with by the Judge.
4. All responsive papers, including cross-motions, shall be e-filed (or filed in the Matrimonial Clerk's Office) at least three (3) days prior to the return date of the motion except filing is acceptable within two (2) days if made by overnight mail. All cross-motions must conform to CPLR 2215. In calculating service dates the date of filing is not included pursuant to General Construction Law §20.
5. All exhibits to in-person appearances are to be tabbed and all pages should be single-sided. In cases that are e-filed, exhibits must be uploaded separately.
6. Any application related to child support shall include a Child Support Standards Act worksheet. All applications and responses thereto for *pendente lite* maintenance shall include a worksheet and calculation pursuant to the applicable maintenance guideline in effect as of the date of commencement of the action as well as an affidavit of net worth. Any request for deviation must articulate which of the deviation factors the moving party is relying upon and the reason for the deviation request. All applications for financial relief, or in opposition to requested financial relief, including counsel fee applications must contain a current affidavit of net worth and supporting documents attached in the official form. The form affidavit of net worth can be printed from:  
<https://www.nycourts.gov/divorce/forms.shtml#Statewide>.

7. Pursuant to the CPLR, after argument of an application, sur-replies, memoranda and letters addressed to the substance of the pending application will not be considered without prior permission of the Court.
8. Allegations of fact submitted to the Court, including allegations contained in an affidavit or the complaint must be certified by counsel in the form prescribed by the Chief Administrative Judge.
9. Copies of the Family Court petition and any existing orders must be submitted with the application to consolidate. All orders to show cause and motions for consolidation must be served on all attorneys who have appeared or been appointed in the Family Court if there is presently an action pending in Family Court. **IN ANY APPLICATION TO CONSOLIDATE YOU MUST INFORM THE SUPREME COURT OF THE NEXT DATE YOU ARE SCHEDULED TO BE IN FAMILY COURT, AND THE NAME OF THE JUDGE, REFEREE OR SUPPORT MAGISTRATE ASSIGNED TO YOUR CASE.**
10. Initial post-judgment applications shall be brought by Order to Show Cause. In the event there is a post-judgment application pending, further applications may be made by Notice of Motion or Cross-motion.
11. All motions for contempt must be made by Order to Show Cause in conformity with the Judiciary Law and contain the required warning in correct type face and type size.
12. All submissions must comply with the requirements, including page limits, detailed in 22 NYCRR 202.16-b.

### **Preliminary Conference**

1. Uniform P.C. Forms can be filled out in Omni Form from the Court website. Please note, the preliminary conference form has been amended as of March 1, 2024, to conform to changes in the matrimonial rules. The preliminary conference form can be executed in counterparts and can be found at [Divorce Forms | NYCOURTS.GOV](#)
2. At the preliminary conference, the Court considers the following:
  - a. applications for pendente lite relief, including interim counsel fees;
  - b. compliance with the requirement of compulsory financial disclosures and a timetable for completion;
  - c. simplification and limitation of issues, including the scheduling of a compliance conference and pretrial conference; and
  - d. any other matters that the Court shall deem appropriate.
3. Unless necessary and ordered by the Court in advance, all preliminary conferences to be held **in-person** and shall be attended by all counsel and litigants.
4. The following information shall be emailed to the assigned judge's part no later than **ten (10) days** before the preliminary conference to facilitate scheduling the virtual appearance:
  - a. the litigants' email addresses;
  - b. the retained attorneys' email addresses;

- c. any request for an interpreter, including the specific language and dialect;
  - d. a completed copy of the preliminary conference order, which is available on the court's website at [Divorce Forms | NYCOURTS.GOV](#); and
  - e. a completed DRL 240 Registry Check form.
5. Pursuant to 22 NYCRR 202.16 (f) (1), all pleadings and net worth affidavits shall be filed with the Part **ten (10) days** prior to the conference date, accompanied by the attorneys' retainer statements and the parties' recent pay stubs or W-2/1099 statements. A blank statement of net worth can be found at [NetWorthStatementFillable.pdf \(nycourts.gov\)](#)
  6. It is your responsibility to notify your adversary, any successor adversary, or any self-represented litigant of the preliminary conference date.
  7. Your time specified for a preliminary conference must be adhered to. Given the present number of cases to prevent overcrowding-if you are late, you may miss your court appearance.
  8. The party that filed the RJI must file proof of service of the RJI, the request for preliminary conference and this notice on the opposing litigant/attorney no later than **ten (10) days** before the preliminary conference.
  9. Failure to comply with the document filing requirements of 22 NYCRR 202.16 (f) (1) or any provision in these rules may result in sanctions (*see* <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#16>).
  10. A STATUTORY RECORDS CHECK FORM MUST BE COMPLETED AND SUBMITTED TO THE PART CLERK IN EVERY CASE WHERE THERE ARE CHILDREN UNDER THE AGE OF EIGHTEEN (18) YEARS OLD, unless waived by the Court because a statutory records check was previously completed within the prior ninety (90) days. Please notify chambers at least ten (10) days before the preliminary conference and at least **one (1) day** in advance of each subsequent court appearance where a statutory records check is required and submit the form so the records check can be prepared in advance of the court appearance.
  11. Where practicable, and where authentication of records is not required, production of financial records may be provided by online access from clients' accounts instead of subpoenas and direct requests from agencies.

### **Compliance Conference-Time Specified**

1. Appearances by both litigants and counsel shall occur either virtually or in-court at the discretion of the Court. You must appear on time.

### **Pre-Trial Conference-Time Specified**

1. A Note of Issue shall be filed prior to the Pre-Trial Conference, in accordance with the compliance conference order. You must appear on time.
2. If you are directed to file a Note of Issues on a date certain you must file it unless you have permission of the court to extend the date of filing.

3. Each party shall provide the Court with a statement of proposed disposition, updated net worth statement, maintenance guidelines calculation, child support worksheet (if applicable), and the last three (3) years tax returns with all attached W-2s, 1099s, K-1s and schedules. If the prior year's tax return has not yet been filed, copies of all W-2, K-1, and 1099 statements, and a copy of the filed extension must be provided.
4. All motions *in limine* shall be made by the time of the Pre-Trial Conference.

### **Pre-marking Conference - Time Specified**

1. Virtual or in-person pre-marking shall be held with part clerk or law clerk at least one (1) week prior to trial for electronic submission.

### **Trial**

1. Please check with the Court part prior to trial/hearing regarding specific protocols in effect, if any, related to uploading evidence in advance.
2. If a case has been resolved, please notify the Court by conference call and/or email if there is a signed stipulation of settlement and do not wait until the trial date. Proposed stipulations of settlement shall **NOT** be uploaded to e-filing – they shall be provided to the Court for review as PDF attachments by e-mail on notice to all parties. If a stipulation of settlement is approved by the Court, it will then be uploaded into e-filing.
3. The following, if applicable, shall be provided to the Court at least one (1) week prior to the date of trial, if not previously provided at a pre-trial conference:
  - a. Marked pleadings
  - b. Updated affidavits of net-worth, copies of three (3) years prior tax returns (if the tax filing deadline has not expired and returns have not been filed for the prior year that party must provide current W-2/1099s/K-1/etc.), statement of proposed dispositions, and maintenance and child support worksheets. Blank form of the statement of net worth can be downloaded at <http://www.nycourts.gov/divorce/forms.shtml#Statewide>.
  - c. A witness list and any pre-trial memorandum
  - d. Expert reports which were served no later than thirty (30) days before trial.
  - e. A list of all proposed exhibits. **Forensic Reports and ACS Reports shall NOT be uploaded to NYSCEF.**
  - f. A list of documents, pre-marked by counsel, which counsel may stipulate into evidence
  - g. A written copy of any issues or facts to which parties can stipulate before trial, to be read into the record or marked into evidence at the commencement of trial
  - h. In complex financial cases, counsel is encouraged to utilize the voluminous writing exception to the best evidence rule (*see Ed Guth Realty, Inc. v. Gingold*, 34 NY2d 440, 452, 358 NYS2d 367 [1974]). The rule saves time and counsel fees by creation of a chart outlining the documentary evidence sought to be admitted. The backup documents that verify the content of the chart must

be sent to opposing counsel so they can verify the underlying documents and test the accuracy of the chart prior to trial. The proposed exhibit should be exchanged 10 days prior to trial.

4. There will be no adjournments of the trial date without express court permission.
5. Failure to proceed may result in a judgment of default or dismissal of the action.
6. Copies of trial memorandum/decisions will be uploaded to the e-filing system and can be accessed there by counsel and self-represented litigants.
7. Applications for counsel fees must include retainer agreement, copies of billing records and affirmation of services. If the parties do not stipulate to the issue of the final counsel fee award being decided on submission of papers, the Court must hear testimony at the conclusion of trial on the issue. Submission of documents can be uploaded through e-filing, where the case has been converted on consent, or other methodology as permitted by the Court on a case-by-case basis, pursuant to ongoing virtual trial protocols.

### **Trials, Hearings and/or Oral Arguments**

#### **Virtual Evidence Courtroom (VEC)**

The Virtual Evidence Courtroom (VEC) allows litigants and attorneys to upload documents into a separate courtroom for each type of hearing and mark them for identification. The VEC exists for the specific case and hearing/trial designated. So, for example, you can have a bifurcated custody trial and a VEC set up and then have another VEC for the financial aspects of case. Users can use it day-to-day and there is no need once you establish a VEC for a trial or hearing to create a new VEC on a particular case. The Court also has the discretion to use the one VEC for the entire case.

In the VEC there are drop downs to upload agreed upon evidence and even with court permission, documents for *in-camera* inspection. Only court users can move the documents into evidence. In accordance with our e-filing rules Forensic Evaluations and Child Protective Reports CANNOT be uploaded to the VEC. See A/O 162/21, Appendix B (a) (5). Training and information about the VEC can be located at <https://iappscontent.courts.state.ny.us/NYSCEF/live/help/EvidenceCourtInstructions.pdf>

#### **In-camera Interviews**

1. In-camera interviews will be **in-person**. Children shall **NOT** be brought to the courtroom. Do not bring children to the courthouse unless for a scheduled in-camera interview by Order of the Court.

#### **Inquests and Stipulations**

1. Inquests and allocations shall occur on the record in-person or at the Court's discretion virtually.

2. Proposed signed agreements, once fully executed, should be sent by e-mail as a PDF to Chambers for review at least three (3) days in advance of the scheduled inquest and allocution.
3. If the case involves custody of children, a fully completed registry check form shall also be provided at least two (2) days in advance.
4. Contact the Court part by e-mail for sample questions for inquests.

### **Forensic Reports and other Confidential Reports**

1. If confidentiality affirmations are signed by counsel, forensic reports can be sent to counsel confidentially by utilizing “@secure” in the e-mail subject line. They may be shared with the litigants, but not copied, only in the presence of counsel, and shall not be sent electronically to litigants. They may not be uploaded to NYSCEF.
2. Self-represented litigants may access the report in the courthouse by appointment only scheduled by the chambers of the individual justice assigned. Self-represented litigants shall not make copies or images of the reports.

### **Judgments of Divorce**

1. All proposed judgments of divorce shall include a completed copy of the Matrimonial Term Clerk office’s contested judgment checklist, including all necessary attachments. If the matter was e-filed or converted to e-filing, then the proposed judgment roll should be e-filed.
2. Pursuant to 22 NYCRR 202.48, proposed judgments with proof of service on all parties must be submitted for signature within sixty (60) days, unless otherwise directed by the Court.
3. All judgments and orders must include a notice of settlement in compliance with 22 NYCRR 202.48. If papers are rejected the re-submitted proposed judgment/order must include a new notice of settlement.
4. Counter-proposed judgments of divorce must comply with 22 NYCRR 202.48.  
NOTICE: IF YOUR PAPERS HAVE BEEN REJECTED AND HAVE TO BE RE-FILED YOU MUST SUBMIT THE PAPERS WITH A NEW NOTICE OF SETTLEMENT UNLESS WAIVED IN WRITING BY THE OTHER SIDE.

### **Post-Judgment Applications**

1. If a contested judgment of divorce was signed within 18 months of an application to modify the issue of custody and/or visitation, the application will be heard in the Supreme Court at the discretion of the Court.
2. **Post-judgment applications must be brought by order to show cause if there are no presently pending post-judgment applications with service as directed by the Court.**
3. Initial post-judgment applications must be personally served on litigant unless waived by the Court or adversary. Service on prior counsel is defective service.

4. Case law requires that a new retainer agreement be entered into by the litigant and counsel for post-judgment representation even if the attorney was the attorney of record on the underlying action.
5. All post-judgment applications, except requests for an *ex parte* Temporary Order of Protection, related to an order, judgment or agreement must have a copy of the underlying order, judgment and agreement annexed.

### **Referee Referrals**

Referrals to referee parts are expected to be trial ready on the date selected for trial and prepared to be heard day-to-day thereafter. These referrals are NOT for the purpose of extensive conferencing and the dates selected should not be adjourned, without good cause. Referees will notify the referring justice of any adjournments. The Referral Order must specify the exact issue being referred to the Referee. Referrals on the issue of contempt can only be to hear and report.

**PLEASE NOTE THAT EACH PART MAY HAVE ADDITIONAL INDIVIDUAL PART RULES.**

**A copy of the Kings County part rules can be found at :**

**<http://ww2.nycourts.gov/courts/2jd/kings/civil/KingsCivilSupremeRules.shtml#MatrimonialRules>**

## EXHIBIT A

### KINGS COUNTY SUPREME COURT MATRIMONIAL PART MEDIATION PROGRAM PROTOCOL

#### **I. INTRODUCTION**

Mediation, as a confidential dispute resolution process, aims to provide a neutral forum where parties can discuss their respective viewpoints and work towards mutually beneficial outcomes.

The Kings County Supreme Court Matrimonial Program is available in cases involving parenting time, custody, child support, and/or equitable distribution, preferably at the preliminary conference stage and in post-judgment applications. Inquiry as to mediation will be explored pursuant to a screening protocol.

Matrimonial cases assigned to the Kings County Matrimonial Part may be deemed eligible for mediation and may be assigned to one mandated mediation session at the Judges' discretion. The initial mediation session is at no cost to the parties for the mediator's services. A party or counsel may opt out of mediation by filing and signing an opt-out form on the date of the preliminary conference (PC) or on the adjourned date of the PC stating that they wish not to participate in mediation. If they wish to engage in mediation, a preliminary conference will be conducted considering expanded time frames to accommodate the mediation.

Parties meeting the criteria for participation in mediation will meet with a mediator to discuss the issues that brought them to Court, aiming toward resolution. The roster mediator is a trained neutral who may be associated with a not-for-profit mediation service provider or an independent mediator whose credentials and qualifications have been reviewed and approved to work together with the Court in this program. Some mediations may occur with co-mediators or experienced mediators who are professors accompanied by law students. To be eligible to serve as a mediator on the Program's Roster of Mediators, a mediator must meet specific prerequisites in accordance with Part 146 of the Rules of the Chief Administrative Judge. The comprehensive guideline is available from the Statewide Alternative Dispute Resolution Office within the New York State Unified Court System's Office of Court Administration webpage at [PART 146. Guidelines For Qualifications And Training Of ADR Neutrals Serving On Court Rosters](#) [NYCOURTS.GOV](http://NYCOURTS.GOV).

## **II. INITIAL SCREENING**

Screening for eligibility will be done virtually or in person by the Court with the assistance of the Court's Matrimonial Program Coordinator and the New York Peace Institute (NYPI), a not-for-profit Community Dispute Resolution Center. Not all cases will be deemed eligible for mediation. Eligibility may be denied based upon a host of factors, such as past or present orders of protection, a power imbalance, past or present neglect or abuse petitions, complexity of issues, need for extensive discovery, or other factors that determine a case to be ineligible.

## **III. CONFIDENTIALITY PROTOCOL**

To preserve the integrity of the mediation forum, communication that occurs during the mediation session(s), whether orally or in writing, is excluded from any court proceedings, as such information is deemed confidential. A party or counsel may not call the mediator as a witness in any pending or future court proceeding.

There are exceptions to confidentiality, which include allegations of child abuse or neglect or threats of harm to self or another individual. Under those circumstances, the mediator will have a duty to report and not adhere to the confidentiality provisions.

The parties or counsel shall not request to present in court any records created during the mediation session except for a written agreement delineating the parties' agreed-upon terms. The mediator or matrimonial program coordinator will not comment on any substantive aspect of the case.

## **IV. APPOINTMENT OF MEDIATORS**

The Matrimonial Program Coordinator will inform counsel of record via e-mail whether the matter is eligible or ineligible for mediation. The reason for ineligibility shall not be revealed. If a case is considered eligible for mediation, the Court will issue an Order of Reference directing the parties and counsel, if appropriate, to participate in an initial, free-of-charge 90-minute session with a mediator.

Counsel of record has five (5) business days to agree on a mediator of their choosing

if they desire. Resources will be made available by the Court's Matrimonial Program Coordinator to facilitate counsel's search. If the parties or counsel do not provide the name of their agreed-upon mediator within the five (5) business day window, a mediator will be assigned from the roster of mediators based upon availability and ensured to be free of any conflicts of interest.

All roster mediators must adhere to the New York State Unified Court System Standards of Conduct for Mediators. The Court's Matrimonial Program Coordinator will assign mediators to cases based on the mediation program's availability and any threshold income requirements.

Cases may be postponed for consideration of eligibility by the Judge pending determination of, or an agreement as to, interim issues of temporary child support, temporary maintenance, interim counsel fees or assignment of counsel (custody and visitation), or an attorney for the child(ren).

If parties wish to select their own mediator, they may do so but must notify the Court's Matrimonial Program Coordinator within five (5) business days of the mediator's name and the date and time of the scheduled mediation. The Matrimonial Program Coordinator will designate a mediator if the parties or counsel fail to provide the information.

A mediator is not a judge, does not give legal advice, and will not decide issues if parties cannot agree. Mediation is voluntary, which means that parties can stop the process at any time.

## **V. ROLE OF COUNSEL**

Counsel is encouraged to attend mediation with their clients. Counsel must notify opposing counsel and the assigned mediator if they plan not to attend with their clients. Any additional mediation sessions are optional for the parties and not mandated by the Court. If parties opt to continue mediating beyond the initial session, they may arrange to mediate with the same mediator or engage a new mediator. If the parties and mediator want to continue to mediate beyond the initial mediation session, and the mediator charges a fee, the mediator must enter into a written agreement with the parties, which shall specify the hourly fee and retainer particulars.

No mediation of pre or post-judgment financial ancillary issues may occur without the exchange of an affidavit of net worth and the prior year's tax returns with supporting W-

2s, 1099, and K-1 forms (unless waived), which, if they have not been provided as required by 22 NYCRR 202.16 at the preliminary conference, must be completed and exchanged five business days prior to the mediation, unless waived. While discovery should continue during the period of mediation, no depositions or financial experts need to be retained or appointed until after the mediation unless done so on consent or ordered by the Court.

Agreements facilitated by a mediator are voluntary and always subject to the review and advice of counsel of record. This is to ensure that all parties are adequately represented, and their interests are protected. If legal representation for either party is withdrawn for any reason, a consent to change attorney must be filed, except if directed otherwise by the Judge.

## **VI. SCHEDULING AND COMPLIANCE**

The first mediation session shall be held within thirty days (30 days) of the appointment of the mediator. The Matrimonial Program Coordinator will follow up with the assigned mediator within sixty days (60) to determine the mediation status.

If either party fails to attend the initial, free-of-charge scheduled session or does not provide 24-hour advance written notice to the mediator of their intent to cancel the session, they may forfeit the right to continue in mediation. In cases involving a non-responsive party/parties, the Matrimonial Program Coordinator will contact counsel of record within the 30-day compliance window to encourage participation; otherwise, the case will be deemed as “Non-Responsive,” and such disposition shall be communicated to the Judge to avoid delays.

Mediators will submit the Report of Mediator form to the Matrimonial Program Coordinator at least one (1) week in advance of the adjourned date, even if the session has not been held. The Matrimonial Program Coordinator will update the Part on the status of the mediator's report but will not comment on any substantive nature of the case.

## **VII. IMMUNITY**

All communications between the parties and the mediator about the dispute are excluded from court or any other proceedings, including any disclosures made with a view toward

settlement. However, when credible information concerning child abuse or neglect or serious threatened harm to anyone comes to the attention of the mediator, they are not required to adhere to the confidentiality restrictions.

Under this protocol, a party may not call the mediator as a witness to testify in any other proceeding regarding any aspect of the mediation. The parties shall not require the production in court or in any other proceeding of any records or documents made by the mediator.

Additionally, documents and information otherwise discoverable under the CPLR, DRL or other law, are not shielded from disclosure on the basis that they are submitted or referred to in the mediation.

### **VIII. PROGRAM EVALUATION**

Participant feedback is an essential element of program development. A post-mediation survey, focusing on key aspects of the mediation process, will be sent to the parties and counsel of record within fifteen days after the conclusion of the mediation.

**Honorable Jeffrey S. Sunshine**  
**Statewide Coordinating Judge for Matrimonial Matters**  
**Kings County Supreme Court Matrimonial Term**