

The New Motion Practice Rules  
By Joel R. Brandes

Title 22, Part 202 of the New York Codes, Rules and Regulations (NYCRR) contains the Uniform Rules for Trial Courts (“Uniform Rules”). They supplement the Civil Practice Law and Rules to regulate practice and procedure in all civil actions and proceedings in the Supreme Court and the County Court. (22 NYCRR 202.1) Recently, the Chief Administrative Judge promulgated numerous amendments and additions to the Uniform Rules which became effective on February 1, 2021. (See AO/270/2020).

Two of the Uniform Rules are specifically applicable in matrimonial actions and are referred to in this article as the “matrimonial rules”. 22 NYCRR 202.16 is applicable to all contested actions and proceedings in the Supreme Court in which statements of net worth are required to be filed by Domestic Relations Law §236, and in which a judicial determination may be made with respect to alimony, counsel fees, pendente lite, maintenance, custody and visitation, child support, or the equitable distribution of property, including those referred to Family Court by the Supreme Court pursuant Family Court Act §464. (See 22 NYCRR 202.16 (a)). Motions for alimony, maintenance, counsel fees or child support or any modification of such an award are governed by 22 NYCRR 202.16 (k)(3), which was amended on January 19, 2021 to include post judgment motions. This rule is not applicable to a motion pursuant to Domestic Relations Law §§237(c) or 238 for counsel fees for services rendered by an attorney to secure the enforcement of a previously granted order or decree.

22 NYCRR 202.16-b, which was adopted in 2017 and amended on January 19, 2021, is applicable to all matrimonial actions and proceedings in the Supreme Court authorized by Domestic Relations Law § 236 (B)(2). Unless otherwise expressly provided by any provision of the CPLR or other statute, its rules and limitations apply (in addition to the requirements of 22 NYCRR § 202.16(k) where applicable) to the submission of papers on pendente lite applications for alimony, maintenance, counsel fees, child support, exclusive occupancy, custody and visitation unless its requirements are waived by the judge for good cause. (See 22 NYCRR 202.16-b (2)).

Several of those new Uniform Rules, which are in addition to or compliment the matrimonial rules, are the subject of our discussion.

Word Count limits and Certification.

The matrimonial rules do not limit the number of words in document. However, new 22 NYCRR 202.8-b does. This addition to the Uniform Rules limits the number of words in documents submitted to the court on motions. It provides that unless otherwise permitted by the court, affidavits, affirmations, briefs and memoranda of law in chief are limited to 7,000 words each. Reply affidavits, affirmations, and memoranda must be no more than 4,200 words. (22 NYCRR 202.8-b (a)). The word count does not include the caption, table of contents, table of authorities, and signature block. (22 NYCRR 202.8-b (b)).

22 NYCRR 202.8-b (d) provides that the court may, upon oral or letter application on notice to all parties permit the submission of affidavits, affirmations, briefs or memoranda which exceed the limitations set forth in 22 NYCRR 202.8-b (a). Every brief, memorandum, affirmation, and affidavit must include a certification at the end of the document by the counsel who has filed the document setting forth the number of words in the document and certifying that the document complies with the word count limit. The counsel certifying compliance may rely on the word count of the word-processing system used to prepare the document. (22 NYCRR 202.8-b (c))

### Number of pages

The Uniform Rules do not limit the number of pages in a document. The Matrimonial Rules do limit the number of pages. The supporting affidavit or affidavit in opposition or attorney affirmation in support or opposition or memorandum of law may not exceed 20 pages. Reply affidavits or affirmations may not exceed 10 pages. Sur-reply affidavits can only be submitted with prior court permission. Any expert affidavit required may not exceed eight additional pages. (22 NYCRR 202.16-b (2) (iv)).

If the application or responsive papers exceed the page or size limitation, the attorney or the self-represented litigant must certify in good faith the need to exceed the limitation, and the court may reject or require revision of the application if the court deems the reasons insufficient. (22 NYCRR 202.16-b (2) (iv)).

### Format of Papers

The Uniform Rules now provide that if it is typewritten, every paper must have at least double space between each line, except for quotations and the names and addresses of attorneys appearing in the action, and must have at least one-inch margins. In addition, every paper filed in court, other than an exhibit or printed form, must contain writing on one side only. However, papers that are fastened on the side may contain writing on both sides. Papers must contain print “no smaller” than 12-point, or 8 ½ x 11 inch paper, bearing margins no smaller than one inch. The print size of footnotes must be “no smaller” than 10 point. Papers that are stapled or bound securely may not be rejected for filing because they are not bound with a backer of any kind. (22 NYCRR 202.5(a)(1) effective February 1, 2021)

Each electronically-submitted memorandum of law, affidavit and affirmation, exceeding 4500 words, must include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document. (22 NYCRR 202.5(a)(2); 22 NYCRR 202.5(a)(1)). There is no font type requirement in the Uniform Rules.

The matrimonial rules require that all orders to show cause and motions or cross

motions 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 × 11) inch paper with all additional exhibits tabbed. These are not the same size requirements as in the Uniform Rules. However, they also differ from the Uniform Rules in that the Font must be Times New Roman font and the type size must be 12 point and double spaced. The print must be of sufficient quality ink to allow for the reading and proper scanning of the documents. (22 NYCRR 202.16-b (2) (iii)).

### Argument limits

The Uniform Rules and matrimonial rules now each contain restriction on the type of arguments that may be made in motion papers. The Uniform rules provide that reply affidavits, affirmations, and memoranda may not contain any arguments that do not respond or relate to those made in the memoranda in chief. (22 NYCRR 202.8-b (a)).

The matrimonial rules provide that any attorney affirmation in support or opposition or memorandum of law may contain only discussion and argument on issues of law except for facts known only to the attorney. (22 NYCRR 202.16-b (2) (iv)).

### Exhibit Tabs

The Uniform Rules now provide that counsel “should” use tabs on hard or working copies when submitting papers containing exhibits. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel must attach excerpts and submit the full exhibit separately. (22 NYCRR 202.8 (a))

In contrast, the matrimonial rules require that all exhibits contain exhibit tabs. Exhibits annexed to any motion, cross motion, order to show cause, opposition or reply may not be greater than three inches thick without prior permission of the court.<sup>18</sup> This provision does not apply to 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 to them. (22 NYCRR 202.16-b (2) (v)).

### Emergency applications

The Uniform Rules and the Matrimonial Rules each deal with emergency applications, temporary restraining orders and motions for a stay. They appear to

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<sup>18</sup> 22 NYCRR 202.16-b (2) (v).

overlap and duplicate one another.

The current version of 22 NYCRR §202.7, which has been in effect since 2007 provides that any application for temporary injunctive relief, including but not limited to a motion for a stay or a temporary restraining order, must contain, in addition to the other information required by the section, an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application. (22 NYCRR §202.7(f)).

The matrimonial rules, which have been in effect since 2016, provide that applications that are deemed an emergency must comply with 22 NYCRR §202.7 and provide for notice, where applicable, in accordance with 22 NYCRR §202.7. 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. Any application designated as an emergency without good cause will be processed and considered in the ordinary course of local court procedures. (22 NYCRR 202.16-b (2) (i)).

Recently enacted 22 NYCRR 202.8-e appears to duplicate 22 NYCRR 202.7 (f). It provides that unless the moving party can demonstrate significant prejudice because of giving notice, or that notice could not be given despite a good faith effort to provide notice, a temporary restraining order should not be issued ex parte. Unless excused by the court, the applicant must give notice of the time, date and place that the application will be made in a manner, and provide copies of all supporting papers, to the opposing parties sufficiently in advance to permit them an opportunity to appear and contest the application. Any application for temporary injunctive relief, including but not limited to a motion for a stay or a temporary restraining order, must contain, in addition to the other information required by 22 NYCRR 202.8-e, an affirmation demonstrating either that: (a) notice has been given; or (b) notice could not be given despite a good faith effort to provide it or (c) there will be significant prejudice to the party seeking the restraining order by giving of notice. (22 NYCRR 202.8-e).

### Conclusion

The recent additions and amendments to the Uniform Rules which we have discussed appear to contain different requirements for motion practice and procedure than the matrimonial rules. Are they to be read together and harmonized, or do the matrimonial rules take priority in matrimonial actions? Hopefully, there will be an early answer to this question by the judiciary or its Chief Administrator.

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