New Rules Governing Matrimonial Actions

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22 N.Y.C.R.R. §§ 202.16, 202.16-a, 202.16-b, and 202.18, of the Uniform Rules for the Supreme Court and the County Court ("Uniform Rules") are the "matrimonial rules." Effective July 1, 2022, the matrimonial rules were revised to specifically incorporate 22 N.Y.C.R.R. Part 202 which contains many of the Commercial Division rules.[1]

In this article, we discuss the revisions to 22 N.Y.C.R.R. § 202.16 and § 202.16-b and some of the Part 202 Uniform Rules that are incorporated into those rules and affect how we practice matrimonial law from now on.

The Uniform Rules that have been incorporated into the matrimonial rules encourage appearances for the argument of motions and conferences by electronic means. 22 N.Y.C.R.R. § 202.8-f provides that oral arguments may be conducted by the court by electronic means and requires each court or court part to adopt a procedure governing requests for oral argument of motions. In the absence of such a procedure by a particular court or part, any party may request oral argument of a motion by a letter accompanying the motion papers. Notice of the date selected by the court must be given, if practicable, at least 14 days before the scheduled oral argument. 22 N.Y.C.R.R. § 202.10(a) provides that any party may request to appear at a conference by electronic means. Where feasible and appropriate, the court is encouraged to grant such requests.

Revisions to 22 N.Y.C.R.R. § 202.16

(a) Applicability

22 N.Y.C.R.R. § 202.16 has been retitled to add the words: "Application of Part 202 and 22 N.Y.C.R.R. § 202.16. Former 22 N.Y.C.R.R. § 202.16(a)(1) has been renumbered 22 N.Y.C.R.R. § 202.16(a)(2). 22 N.Y.C.R.R. § 202.16(a)(1) now provides that Part 202 shall apply to civil actions and proceedings in the Supreme Court, including, but not limited to, matrimonial actions and proceedings, except as otherwise provided in § 202.16 and in §§ 202.16-a, 202.16-b, and 202.18, which sections shall control in the event of a conflict.

(b) Form of statements of net worth

22 N.Y.C.R.R. § 202.16(b) has been amended to require that statements of net worth must be in substantial compliance with the form contained in Appendix A. 22 N.Y.C.R.R. § 202.16(b) now provides: Form of Statements of Net Worth. Sworn statements of net worth, except as provided in subdivision (k) of this section, exchangedand filed with the court pursuant to § 236 of the Domestic Relations Law, shall be in substantial compliance with the Statement of Net Worth form contained in appendix A of this Part.[2]

(e) Certification

22 N.Y.C.R.R. § 202.16(e) dealing with certification has been amended to change the title of the section to "Certification of Paper and Obligations of Counsel Appearing Before the Court."

22 N.Y.C.R.R. § 202.16(e)(2) has been added. It requires attorneys who appear before the court to be fully familiar with the case and authorized to discuss and settle all issues. A failure to comply with this rule may be treated asa default for purposes of 22 N.Y.C.R.R. § 202.27 and/or may be treated as a failure to appear for purposes of 130.21.[3] In matrimonial actions and proceedings, consistent with applicable case law on defaults in matrimonial actions, failure to comply with this rule may, either in lieu of or in addition to any other direction, be considered in the determination of any award of attorney fees or expenses.[4]

(f) Preliminary Conference

22 N.Y.C.R.R. § 202.16(f) was amended to add subdivision (1-a). It requires counsel to consult with each other before the preliminary conference and discuss in good faith the matters in 22 N.Y.C.R.R. § 202.16(f)(2) and 22 N.Y.C.R.R. § 202.11.[5] Any agreements reached must be submitted to the court in writing which the court shall "so order" if approved and in proper form. This provision applies only where both parties are represented by counsel.[6]

22 N.Y.C.R.R. § 202.16(f) was amended to add subdivision (1-b)(1) which requires that both parties personally must be present in court at the time of the conference, and the judge personally must address the parties at some time during the conference.[7]

22 N.Y.C.R.R. § 202.16(f)(1-b)(2) provides that the matters to be considered at the conference may include, among other things, compliance with the requirement of compulsory financial disclosure, including the exchange and filing of a supplemental statement of net worth indicating material changes in any previously exchanged and filed statement of net worth, and, including the number and length of depositions, the number of interrogatories, and agreement of the parties to comply with Guidelines on Electronically Stored Information.[8]

Interrogatories and Depositions

Inserted in this section is the provision that unless otherwise stipulated by the parties or ordered by the court, interrogatories shall be no more than 25 in number including subparts, and depositions shall be no more than seven hours long.[9]

The Provisions of N.Y.C.R.R. § 202.20-b(a)(l) limiting the number of depositions taken by plaintiffs, or by defendants, or third-party defendants, do not apply to matrimonial actions.[10]

Compliance Conference

22 N.Y.C.R.R. § 202.16(f)(1-b) has been amended to add 22 N.Y.C.R.R. § 202.16(f)(4) which provides that unless the court excuses their presence, the parties personally must be present in court at thetime of the compliance conference. If the parties are present in court, the judge personally must address them at some time during the conference.[11] If the parties are present in court, the judge personally must address them at some point during the conference.[12]

Where both parties are represented by counsel, counsel must consult with each other before the compliance conferencein a good faith effort to resolve any outstanding issues. Notwithstanding N.Y.C.R.R. § 202.11,[13] no prior consultation is required where either or both of the parties are self-represented.[14]

Counsel must, before or at the compliance conference, submit to the court a writing with respect to any resolutions reached, which the court must "so order" if approved and in proper form.[15]

Document Preclusion

22 N.Y.C.R.R. § 202.16(f)(1-b) has been amended to add subdivision (5). It provides that absent good cause, in accordance with 22 N.Y.C.R.R. § 202.20-c(f),[16] a party may not use at trial or otherwise any document that was not produced in response to a request for the document or category of document where the request was not objected to or where an objection to the request was overruled by the court.[17]

The court may exercise its discretion to impose other or additional penalties for non-disclosure authorized by law which may be more appropriate in a matrimonial action, other than preclusion or where there is a continuing obligation to update documents.[18]

22 N.Y.C.R.R. § 202.16(f)(1-b) has been amended to add 22 N.Y.C.R.R. § 202.16(f)(1-b)(6). It requires the court to alert the parties to the requirements of 22 N.Y.C.R.R. § 202.20-c regarding requests for documents; § 202.20-e regarding adherence to discovery schedule,[19] and § 202.20-f regarding discovery disputes.[20] The court must also address the issues of potential for default, preclusion, denial of discovery, drawing inferences, or deeming issues to be true, as well as sanctions and/or counsel fees in the event of default or preclusion or such other remedies are not appropriate in a matrimonial action.

Commentary—Interrogatories and Document Preclusion

Both 22 N.Y.C.R.R. § 202.16(f)(1-b) as amended effective July 1, 2022, as well as 22 N.Y.C.R.R. § 202.20 which has been incorporated into the matrimonial rules effective July 1, 2022, limit the use of Interrogatories in matrimonial actions to 25 in number, including subparts, unless the parties agree or the court orders otherwise. Due to the usual animosity of the parties in contested matrimonial actions, we doubt that a monied spouse would agree to let his spouse serve more than 25 interrogatories. This rule places the burden on the proponent of the interrogatories to make a motion or an application at the preliminary conference to serve more than 25 interrogatories.

Interrogatories may relate to any matters embraced in the disclosure requirement of CPLR 3101. The answers may be used to the same extent as the depositions of a party. Interrogatories may require copies of documents or photographs as are relevant to the answers required unless an opportunity for this examination and copying be afforded.[21] Interrogatories may be used to impeach or contradict the testimony of a party—provided that the interrogatories are answered in proper form.[22] In *Kaye v Kaye*[23] the Appellate Division held that the use of interrogatories as an initial disclosure device in complex equitable distribution cases will expedite the discovery process.[24] The general rule is that a party is "free to choose both the pretrial disclosure devices it wishes to use and the order in which to use them." It noted that Special Term's direction that the parties proceed to depositions upon oral examination, rather than interrogatories, would not expedite disclosure but may instead operate to prejudice the plaintiff by preventing the use of another, more appropriate, intermediate device.

Interrogatories are frequently used as the first disclosure device in matrimonial actions because they are far less costly than counsel spending hours at a deposition. They take less time than a deposition because the answers are due within 30 days of their service, and they may be used to ascertain the existence of identification documents that may be requested to be returned with the answers to the interrogatories.

In *Lobatto v. Lobatto*,[25] although the wife's interrogatories were detailed and extensive, the court noted that where, as here, the case is lengthy and complex and made even more difficult by the husband's reluctance to furnish the necessary information on the ground that the wife had no entitlement to his assets, claiming it was separate property, the interrogatories are appropriate. In *Snow v. Snow*[26] the defendant was ordered

to answer the following interrogatories: whether he currently owns or is covered by any insurance policies, whether he has any interest in any corporations, partnerships, or other financial or business entities, whether he has received or will receive any benefits from employment-related agreements (*e.g.*, pension plans, etc.), whether he has received or will receive any disbursements from an interest in trusts, and whether he owns any heretofore undisclosed personal property.

In *Briger v. Briger*,[27] the Appellate Division held that a wife's interrogatory pertaining to gifts from third parties valued over $500 was not unreasonable and should not have been stricken; that the wife was entitled to know in which separate property the husband would claim an interest; and that the interrogatories calling for data supporting information disclosed in the parties' net worth statements were proper. The husband was a lawyer with substantial tax shelter investments. Although there were 65 questions with 353 subparts, the court did not find them oppressive to the point of vacatur. It held that a spouse with a minority interest in a business enterprise may be required to provide information within his "possession, custody and control."

There is no obligation on the part of the recipient of the interrogatories to make a motion to strike any interrogatory. The burden to compel compliance is on the party serving the interrogatories. Where a person fails to respond to or comply with an interrogatory or document demand, the remedy for the party seeking disclosure is to move to compel compliance or a response.[28]

The new 25-question limit effectively precludes the parties from using interrogatories in matrimonial actions to expedite the discovery process. Moreover, it conflicts with CPLR 3130, which contains no limit on the number of interrogatories a party may serve. The limit prevents a party from serving comprehensive questions related to all of the elements of maintenance, child support, property distribution, and counsel fee awards and defenses, as well concerning the 16 maintenance factors, the 10 child support factors, the 20 equitable distribution factors, and the counsel fee factors.

Under the State Constitution, the authority to regulate practice and procedure in the courts is delegated primarily to the Legislature.[29] There are some matters which are not subject to legislative control because they deal with the inherent nature of the judicial function.[30] Generally, however, the Legislature has the power to prescribe rules of practice governing court proceedings, and any rules the courts adopt must be consistent with existing legislation and may be subsequently abrogated by statute.[31] In addition, court rules must be adopted in accordance with procedures prescribed by the Constitution and statute.[32]

N.Y. Constitution, Article VI, § 30, which is the source of the Appellate Division's broad judicial rule-making authority does not afford *carte blanche* to courts in promulgating regulations. A court may not significantly affect the legal relationship between litigating parties through the exercise of its rule-making authority No court rule can enlarge or abridge rights conferred by statute and this bars the imposition of additional procedural hurdles that impair statutory remedies.[33] This rule appears to abridge rights conferred by statute.

After an action is commenced, any party may serve on any other party[34] a notice or on any other person a subpoena duces tecum (i) to produce and permit the party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party or person served; or (ii) to permit entry upon designated land or other property in the possession, custody or control of the party or person served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any specifically designated object or operation on it.[35]

CPLR 3120 (2) which was added in 1994 provides that the notice . . . shall . . . set forth the items to be inspected, copied, tested, or photographed by individual item or by category, and shall describe each item and category with reasonable particularity. When "an inspection, copying, testing or photographing" of an item or items is sought, CPLR 3120(2) requires that the seeking party set them forth by individual item or by category, and describe each item and category with reasonable particularity.

If a party or person objects to the disclosure, inspection or examination, he must serve a response within 20 days of service of the notice, stating with reasonable particularity the reasons for each objection. If an objection is made to part of an item or category, the part must be specified.[36]

The First Department has held that the failure to object to the document demand within the 20 days as set forth in CPLR 3122(a) generally limits review to the question of privilege under CPLR 3101.[37] A person served with a disclosure notice who serves a timely objection but which fails to specify any particular grounds. waives objections based on any ground other than privilege or palpable impropriety.[38]

The Second Department has held that a defendant's failure to make a timely challenge to a plaintiff's document demand under CPLR 3122(a)(1) forecloses inquiry into the propriety of the information sought except with regard to material that is privileged under CPLR 3101 or requests that are palpably improper.[39]

In the absence of a timely motion for a protective order vacating a notice of discovery and inspection, the items of the notice will not be scrutinized by the court unless the notice is "palpably improper." The older cases held that the hallmark

of CPLR 3120 is "specific designation" in the notice and held that attempts to designate documents by use of the alternate phrases "all," "all other" or "any and all" rendered a request or notice for production under CPLR 3120 "palpably improper," even when the moving party failed to make a timely objection.[40] However, a demand may still be vacated in its entirety if it is found "unduly burdensome." In *Bennett v. State Farm Fire & Cas. Co.*,[41] the Appellate Divison held that a motion to compel responses to demands and interrogatories is properly denied where the demands and interrogatories seek information that is irrelevant, overly broad, or burdensome. Where discovery demands are overbroad, 'the appropriate remedy is to vacate the entire demand rather than to prune it.[42]

A party seeking disclosure under CPLR 3120 may move for an order under CPLR 3124 compelling disclosure with respect to any objection to, or other failure to respond to or permit inspection as requested by the notice or any part of it.[43] Disclosure enforcement may also be obtained under CPLR 3126. The court may make such orders with regard to the failure or refusal to disclose as are just, including, among other things that the issues to which the information is relevant be deemed resolved in accordance with the claims of the party who obtains the order. It may prohibit the disobedient party from supporting or opposing certain claims or defenses and from producing in evidence designated things or items of testimony. It may also strike all or parts of the pleadings, stay further proceedings until the order is obeyed, dismiss all or part of the action, and grant judgment by default against the disobedient party.[44]

22 N.Y.C.R.R. § 202.16(f)(1-b)(5) provides that absent good cause, in accordance with 22 N.Y.C.R.R. § 202.20-c(f),[45] a party may not use at trial or otherwise any document which was not produced in response to a request for the document or category of document, where the request was not objected to or where an objection to the request was overruled by the court.[46]

22 N.Y.C.R.R. § 202.16(f)(1-b)(5) creates a self-executing remedy not authorized by CPLR 3124 or CPLR 3126. It appears to constitute a denial of due process because preclusion is automatic. The rule does not require that a motion be made by the proponent of the document discovery before the document may not be used. In contrast, under the CPLR a party seeking document production under CPLR 3120 may move for an order under CPLR 3124 with respect to any objection to, or other failure to respond to as requested by the notice.[47] The party seeking disclosure may also obtain a preclusion order under CPLR 3126.

This rule changes the statutory burden to obtain relief by a disclosure enforcement motion. It automatically precludes the party who has failed to produce the document or category of documents (and failed to object, or who objected and was overruled) from using the document(s) at trial or for any other purpose. The rule places the burden on the party who has failed to produce the document or category of documents he has not objected to or provided to make a motion to obtain permission to use the document(s). This rule places the burden on the party who wants to use the document(s) to make a showing of good cause for his or her failure to object to the demand for it.[48]

It appears that this rule violates New York Constitution, article VI, § 30. This rule appears to abridge rights conferred by statute.[49]

Article I

(g) Expert witnesses

22 N.Y.C.R.R. § 202.16(g), formerly titled Expert Witnesses, is now titled "Expert Witnesses and Other Trial Matters" and has been amended to add 22 N.Y.C.R.R. §§ 202.16 (g)(3),(4),(5), and (6).

22 N.Y.C.R.R. § 202.16(g)(3) was added to provide that pursuant to N.Y.C.R.R. § 202.26,[50] in cases in which both parties are represented by counsel andeach party has called or intends to call, an expert witness on issues of finances, (such as equitable distribution. maintenance, child support), the court may direct that, before, or during the trial, counsel consult in good faith to identify those aspects of their respective experts' testimony thatare not in dispute. The court may also direct that any agreements reached must be reduced to a written stipulation.[51]

This consultation is not required where one or both parties are self-represented or where the expert testimony relates to matters of child custody or parental access, domestic violence, domestic abuse, or child neglect or abuse.[52]

22 N.Y.C.R.R. § 202.16(g)(4) was added to indicate that 22 N.Y.C.R.R. § 202.20-a regarding privilege logs do not apply to matrimonial actions and proceedings unless the court orders otherwise. 22 N.Y.C.R.R. § 202.16(g)(5) was added to state that the parties "should" adhere to the Electronically Stored Information (ESI) Guidelines set forth in an Appendix to the Uniform Civil Rules.[53]

Witness Lists

22 N.Y.C.R.R. § 202.16(g)(6) has been added to require that at the commencement of the trial or at such time as the court may direct, the parties must identify in writing for the court the witnesses he or she intends to call, the order in which they will testify and the estimated length of their testimony. It also requires the parties to provide a copy of their witness list to opposing counsel.[54]

Counsel must separately identify "for the court only" a list of the witnesses who may be called solely for rebuttal or with regard to credibility.[55]

For good cause shown and in the absence of substantial prejudice, the court may permit a party to call a witness to testify who was not identified on the witness list submitted by that party.[56]

The estimates of the length of testimony and the order of witnesses provided by counsel are advisory only. The court may permit witnesses to be called in a different order and may permit further testimony from a witness notwithstanding that the time estimate for such witness has been exceeded.[57]

(m) Premarking Exhibits, Memoranda, Exhibit Books

22 N.Y.C.R.R. § 202.34**,** Pre-Marking of Exhibits, provides that counsel for the parties are required to consult before trial and in good faith attempt to agree upon the exhibits that will be offered into evidence without objection.[58]

Before the commencement of the trial, each side must then mark its exhibits into evidence, subject to court approval, as to those to which no objection has been made. All exhibits not consented to must be marked for identification only.[59]

Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked. If the trial exhibits are voluminous, counsel must consult the clerk of the part for guidance. The court will rule upon the objections to the contested exhibits at the earliest possible time.[60]

22 N.Y.C.R.R. § 202.16(m) has been added to provide that for good cause the court may relieve the parties and counsel from pre-marking exhibits, memoranda, and exhibit books.[61]

Article II

(n) Direct Testimony of Party's Witness by Affidavit

22 N.Y.C.R.R. § 202.16(n) which allows direct testimony of Party's Witness by Affidavit, has been added to provide that upon request of a party, the court may permit direct testimony of that party's own witness to be submitted in affidavit form.[62]

It appears from the last sentence of this rule, which refers to the testimony of a party or a party's own witness, that the rule applies to both a party and his or her witnesses.

The opposing party has the right to object to statements in the direct testimony affidavit, and the court must rule on the objections, just as if the statements had been made orally in open court. Where an objection to a portion of a direct testimony affidavit is sustained, the court may direct that it be stricken.[63]

The submission of direct testimony in affidavit form must not affect any right to conduct cross-examination or re-direct examination of the witness. Except as provided in N.Y.C.R.R. § 202.18,[64] a party or a party's own witness may not testify on direct examination by affidavit in an action for custody, visitation, contempt, order of protection, or exclusive occupancy.[65]

22 N.Y.C.R.R. § 202.16(n) is in addition to and supersedes[66] 22 N.Y.C.R.R. § 202.20-i[67] which provides that the court *may require* that direct testimony of a party's own witness in a non-jury trial or evidentiary hearing be submitted in affidavit form.

22 N.Y.C.R.R. § 202.16(n) does not set forth the procedure to be followed by a party to obtain the consent of the court to permit direct testimony of that party's own witness to be submitted. It would appear that due process requires that an application to permit the direct testimony of a party's own witness must be made by motion upon notice in accordance with CPLR 2214 or 2215. Nor does 22 N.Y.C.R.R. § 202.16(n) establish a procedure for the admission of the affidavit and the method by which the opposing party may object to statements in the direct testimony affidavit, or for the court to rule on the objections, just as if the statements had been made orally in open court.

In *Campaign for Fiscal Equity v. State*, 182 Misc.2d 676, 699 N.Y.S.2d 663, (Sup.Ct., 1999) the only reported New York case on the subject, the Supreme Court, New York County allowed direct testimony by affidavit, where plaintiffs estimated that they would call as many as 140 non-expert witnesses. It found that it had the power to do so under CPLR 4011, which empowers the court to "regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue in a setting of proper decorum." In that case, where there was no hearsay objection, the court held that:

> Under the procedures specified below, a fact witness shall swear to the truth of his affidavit in open court before undergoing cross-examination. Defendants will continue to be able to test a witness's direct testimony via cross-examination in open court. To the extent that defendants believe that a witness's testimony may be impugned because it was "crafted" by plaintiffs' lawyers, they will have the opportunity to bring this out on cross-examination. The court will be able to assess witnesses' credibility on cross-examination.
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> The parties shall have the right to submit the direct testimony of non-expert witnesses via affidavit, affidavit supplemented by live testimony, or solely by live testimony. If a witness's direct testimony shall be presented in whole

> or in part by affidavit, the affidavit shall be presented to the opposing party and to the court at least three business days prior to the appearance of the witness. The party offering the affidavit shall specify if the affidavit comprises the whole or a part of the witness's direct testimony. The affidavits shall consist of numbered paragraphs to assist the opposing party to make objections (if necessary) to portions of the affidavit. The facts stated shall be in narrative, as opposed to question and answer, form…When the witness appears at trial he or she shall take the stand and under oath adopt the affidavit as true and correct. The party offering the affidavit then shall offer the statement as an exhibit, subject to appropriate objections by the opposing party on which the court will then rule. Thereafter cross-examination and any redirect shall proceed in the ordinary course.

Commentary—Rule Against Hearsay

This rule creates a new, and questionable exception to the rule against hearsay. It allows the prima facie economic case of a party to a contested matrimonial action to be meticulously crafted by his or her attorney.

Hearsay has been defined as evidence of a statement which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated.[68] Hearsay includes not only an oral statement or written expression but also the non-verbal conduct of a person which is intended by him as a substitute for words in expressing the matter stated.[69]

The Court of Appeals has explained the rule against hearsay as follows: Out-of-court statements offered for the truth of the matters they assert are hearsay and "may be received in evidence only if they fall within one of the recognized exceptions to the hearsay rule, and then only if the proponent demonstrates that the evidence is reliable."[70] In determining reliability, a court must decide "whether the declaration was spoken under circumstances which render [ ] it highly probable that it is truthful."[71]

The rule against hearsay prohibits evidence of an out-of-court statement that is offered for its truth where there is an objection to the introduction of the evidence unless there is an exception to the rule. If there is no exception the evidence must be excluded.[72] 22 N.Y.C.R.R. § 202.16(n) is neither a recognized exception to the hearsay rule nor does it establish or contain a method for the court to determine that the evidence is reliable before permitting it to be submitted as direct evidence of a prima facie case.

The credibility of the witnesses is an inquiry within the province of the trial court.[73] Since the trial court has the opportunity to view the demeanor of the witnesses at the trial, it is in the best position to gauge their credibility, and its resolution of credibility issues is entitled to great deference on appeal.[74] Where the determination as to equitable distribution has been made after a nonjury trial, the trial court's assessment of the credibility of witnesses is afforded great weight on appeal.[75] A trial court's decision regarding the credibility of the witnesses is a determination that will only be disturbed on appeal when clearly unsupported by the record.[76]

Under this rule, there is no live direct verbal testimony by a witness to cross-examine. Neither the court nor opposing counsel have an opportunity to observe the demeanor of the witness whose testimony is offered by affidavit in order to make a credibility determination with regard to the evidence in support of her prima facie economic case. This rule allows the testimony of a party to be prepared by his or her attorney, who can draft it to avoid the usual grounds for objection to its introduction. It eliminates from the credibility equation the ability of the court to observe the demeanor and tone of the witness when presenting her prima facie case. It prevents counsel for the defendant from observing the weakness and hesitation in the direct testimony of the plaintiff which would ordinarily enable him to prepare an effective cross-examination. We believe that it denies the parties a fair trial by authorizing the use of hearsay evidence to establish a prima facie case.

(O) Omission or Redaction of Confidential Personal Information From Matrimonial Decisions.

Former 22 N.Y.C.R.R. § 202.16(m), Omission or Redaction of Confidential Personal Information from Matrimonial Decisions, has been renumbered subdivision (O). Omission or Redaction of Confidential Personal Information from Matrimonial Decisions.[77]

Article III

Revisions to 22 N.Y.C.R.R. § 202.16-b. Submission of Written Applications in Contested Matrimonial Actions

22 N.Y.C.R.R. § 202.16-b of the Uniform Rules governing matrimonial actions, was amended effective July 1, 2022. Former 22 N.Y.C.R.R. §§ 202.16-b(2)(i)(ii)(iii),(iv),(v),(vi) and (3) were amended.[78]

22 N.Y.C.R.R. § 202.16-b(2)(i) was amended to provide that applications that are deemed an emergency must comply with 22 N.Y.C.R.R. § 202.8(e) and provide for notice, where applicable, in accordance with the same.[79]

22 N.Y.C.R.R. § 202.16-b(2)(ii) was amended to add that "the utilization of the requirement to move by order to

show cause or notice of motion shall be governed by local part rule."[80]

Former 22 N.Y.C.R.R. § 202.16-b(3) was renumbered 22 N.Y.C.R.R. § 202.16-b(2)(vii). Former 22 N.Y.C.R.R. § 202.16-b(2)(iv) was renumbered 22 N.Y.C.R.R. 202.16-b(2)(iii). Former 22 N.Y.C.R.R. § 202.16-b(2)(iii), Former 22 N.Y.C.R.R. § 202.16-b(2)(iv), Former 22 N.Y.C.R.R. § 202.16-b(2)(vi) and Former 22 N.Y.C.R.R. § 202.16-b(3) were deleted.[81]

22 N.Y.C.R.R. § 202.16-b(2)(iii) was added to provide parties must "comply with the word limitations in 22 N.Y.C.R.R. § 202.8(b)(a)-(f) as amended."[82]

22 N.Y.C.R.R. § 202.16-b(2)(iv) was added to provide parties must comply with the requirements of 22 N.Y.C.R.R. § 202.5(a) as amended.[83]

22 N.Y.C.R.R. § 202.16-b(2)(v) was added to provide that notwithstanding 22 N.Y.C.R.R. § 202.5-a, papers and correspondence may be transmitted to the court by fax by a self-represented party without prior court approval unless prohibited by a local part rule or judicial order.[84] 22 N.Y.C.R.R. § 202.16-b(2)(vi) was added to provide that self-represented litigants may submit handwritten applications provided that the handwriting is legible and otherwise in conformity with all applicable rules.[85]

22 N.Y.C.R.R. § 202.16-b(2)(v) was renumbered 22 N.Y.C.R.R. § 202.16-b(2)(vii). It provides that except for affidavits of net worth (pursuant to 22 N.Y.C.R.R. § 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 N.Y.C.R.R. § 202.16(k)), all of which may include attachments, 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 such exhibits must contain exhibit tabs.[86]

22 N.Y.C.R.R. § 202.16-b(2)(vii) does not apply to documents that are electronically filed.

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Appendix A

Article I

Section 202.16. Application of Part 202 and Section 202.16. Matrimonial Actions; Calendar Control of Financial Disclosure in Actions and Proceedings Involving Alimony, Maintenance, Child Support and Equitable Distribution; Motions for Alimony, Counsel Fees Pendente Lite, and Child Support; Special Rules

(a) Applicability of Part 202 and Section 202.16.

(1) Part 202 shall be applicable to civil actions and proceedings in the Supreme Court, including, but not limited to, matrimonial actions and proceedings, except as otherwise provided in this section 202.16 and in sections 202.16-a, 202.16-b, and 202.18, which sections shall control in the event of conflict.

(2) This section shall be applicable to all contested actions and proceedings in the Supreme Court in which statements of net worth are required by section 236 of the Domestic Relations Law to be filed 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 to section 464 of the Family Court Act.

(b) Form of Statements of Net Worth.

Sworn statements of net worth, except as provided in subdivision (k) of this section, exchanged and filed with the court pursuant to section 236 of the Domestic Relations Law, shall be in substantial compliance with the Statement of Net Worth form contained in appendix A of this Part.

(c) Retainer Agreements.

(1) A signed copy of the attorney's retainer agreement with the client shall accompany the statement of net worth filed with the court, and the court shall examine the agreement to assure that it conforms to Appellate Division attorney conduct and disciplinary rules. Where substitution of counsel occurs after the filing with the court of the net worth statement, a signed copy of the attorney's retainer agreement shall be filed with the court within 10 days of its execution.

(2) An attorney seeking to obtain an interest in any property of his or her client to secure payment of the attorney's fee shall make application to the court for approval of said interest on notice to the client and to his or her adversary. The application may be granted only after the court

reviews the finances of the parties and an application for attorney's fees.

(d) Request for Judicial Intervention.

(e) Certification.

(1) Every paper served on another party or filed or submitted to the court in a matrimonial action shall be signed as provided in section 130-1.1a of this Title.

(2) Counsel who appear before the court must be familiar with the case with regard to which they appear and be fully prepared and authorized to discuss and resolve the issues which are scheduled to be the subject of the appearance. Failure to comply with this rule may be treated as a default for purposes of Rule 202.27 and/or may be treated as a failure to appear for purposes of Rule 130.21, provided that, in matrimonial actions and proceedings, consistent with applicable case law on defaults in matrimonial actions, failure to comply with this rule may, either in lieu of or in addition to any other direction, be considered in the determination of any award of attorney fees or expenses.

(f) Preliminary Conference.

(1) In all actions or proceedings to which this section of the rules is applicable, a preliminary conference shall be ordered by the court to be held within 45 days after the action has been assigned. Such order shall set the time and date for the conference and shall specify the papers that shall be exchanged between the parties. These papers must be exchanged no later than 10 days prior to the preliminary conference, unless the court directs otherwise. These papers shall include:

(i) statements of net worth, which also shall be filed with the court no later than 10 days prior to the preliminary conference;

(ii) all paycheck stubs for the current calendar year and the last paycheck stub for the immediately preceding calendar year;

(iii) all filed State and Federal income tax returns for the previous three years, including both personal returns and returns filed on behalf of any partnership or closely held corporation of which the party is a partner or shareholder;

(iv) all W-2 wage and tax statements, 1099 forms, and K-1 forms for any year in the past three years in which the party did not file State and Federal income tax returns;

(v) all statements of accounts received during the past three years from each financial institution in which the party has maintained any account in which cash or securities are held;

(vi) the statements immediately preceding and following the date of commencement of the matrimonial action pertaining to:

(a) any policy of life insurance having a cash or dividend surrender value; and

(b) any deferred compensation plan of any type or nature in which the party has an interest including, but not limited to, Individual Retirement Accounts, pensions, profit- sharing plans, Keogh plans, 401(k) plans and other retirement plans.

(1-a) Where both parties are represented by counsel, counsel shall consult with each other prior to the preliminary conference to discuss the matters set forth in paragraph (2) below and in N.Y.C.R.R. § 202.11 in a good faith effort to reach agreement on such matters. Notwithstanding N.Y.C.R.R. § 202.11, no prior consultation is required where either or both of the parties is self-represented. Counsel shall, prior to or at the conference, submit to the court a writing with respect to any resolutions reached, which the court shall "so order" if approved and in proper form.

(1-b) Both parties personally must be present in court at the time of the conference, and the judge personally shall address the parties at some time during the conference.

(2) The matters to be considered at the conference may include, among other things:

(i) applications for pendente lite relief, including interim counsel fees;

(ii) compliance with the requirement of compulsory financial disclosure, including the exchange and filing of a supplemental statement of net worth indicating material changes in any previously exchanged and filed statement of net worth, and, including the number and length of depositions, the number of interrogatories, and agreement of the parties to comply with Guidelines on Electronically Stored Information. Unless otherwise stipulated by the parties or ordered by the court, interrogatories shall be no more than 25 in number including subparts; and depositions shall be no more than 7 hours long. The Provisions of N.Y.C.R.R. § 202.20-b(a)(1) limiting the number of depositions taken by plaintiffs, or by defendants, or by third-party defendants, shall not apply to matrimonial actions.

(iii) simplification and limitation of the issues;

(iv) the establishment of a timetable for the completion of all disclosure proceedings, provided that all such procedures must be completed and the note of issue filed within six months from the commencement of the conference, unless otherwise shortened or extended by the court depending upon the circumstances of the case;

(v) the completion of a preliminary conference order substantially in the form contained in Appendix "G" to these rules, with attachments; and

(vi) any other matters which the court shall deem appropriate.

(3) At the close of the conference, the court shall direct the parties to stipulate, in writing or on the record, as to all resolved issues, which the court then shall "so order," and as to all issues with respect to fault, custody and finance that remain unresolved. Any issues with respect to fault, custody and finance that are not specifically described in writing or on the record at that time may not be raised in the action unless good cause is shown. The court shall fix a schedule for discovery as to all unresolved issues and, in a noncomplex case, shall schedule a date for trial not later than six months from the date of the conference. The court may appoint an attorney for the infant children, or may direct the parties to file with the court, within 30 days of the conference, a list of suitable attorneys for children for selection by the court. The court also may direct that a list of expert witnesses be filed with the court within 30 days of the conference from which the court may select a neutral expert to assist the court. The court shall schedule a compliance conference unless the court dispenses with the conference based upon a stipulation of compliance filed by the parties.

(4) Unless the court excuses their presence, the parties personally must be present in court at the time of the compliance conference. If the parties are present in court, the judge personally shall address them at some time during the conference. If the parties are present in court, the judge personally shall address them at some point during the conference. Where both parties are represented by counsel, counsel shall consult with each other prior to the compliance conference in a good faith effort to resolve any outstanding issues. Notwithstanding N.Y.C.R.R. § 202.11, no prior consultation is required where either or both of the parties is self-represented. Counsel shall, prior to or at the compliance conference, submit to the court a writing with respect to any resolutions reached, which the court shall "so order" if approved and in proper form.

(5) In accordance with Section 202.20-c(f), absent good cause, a party may not use at trial or otherwise any document which was not produced in response to a request for such document or category of document, which request was not objected to, or, if objected to, such objection was overruled by the court, provided, however, the court may exercise its discretion to impose such other, further, or additional penalty for non-disclosure as may be authorized by law and which may be more appropriate in a matrimonial action than preclusion or where there is a continuing obligation to update (e.g., updated tax returns, W-2 statements, etc.).

(6) The Court shall alert the parties to the requirements of 22 N.Y.C.R.R. § 202.20-c regarding requests for documents; § 202.20-e regarding adherence to discovery schedule, and § 202.20-f regarding discovery disputes, and shall address the issues of potential for default, preclusion, denial of discovery, drawing inferences, or deeming issues to be true, as well as sanctions and/or counsel fees in the event default or preclusion or such other remedies are not appropriate in a matrimonial action.

(g) Expert Witnesses and Other Trial Matters.

(1) Responses to demands for expert information pursuant to CPLR section 3101(d) shall be served within 20 days following service of such demands.

(2) Each expert witness whom a party expects to call at the trial shall file with the court a written report, which shall be exchanged and filed with the court no later than 60 days before the date set for trial, and reply reports, if any, shall be exchanged and filed no later than 30 days before such date. Failure to file with the court a report in conformance with these requirements may, in the court's discretion, preclude the use of the expert. Except for good cause shown, the reports exchanged between the parties shall be the only reports admissible at trial. Late retention of experts and consequent late submission of reports shall be permitted only upon a showing of good cause as authorized by CPLR 3101(d)(1)(i). In the discretion of the court, written reports may be used to substitute for direct testimony at the trial, but the reports shall be submitted by the expert under oath, and the expert shall be present and available for cross- examination. In the discretion of the court, in a proper case, parties may be bound by the expert's report in their direct case.

(3) Pursuant to N.Y.C.R.R. § 202.26, in cases in which both parties are represented by counsel and each party has called, or intends to call, an expert witness on issues of finances (e.g., equitable distribution, maintenance, child support), the court may direct that, prior to, or during trial, counsel consult in good faith to identify those aspects of their respective experts' testimony that are not in dispute. The court may further direct that any agreements reached in this regard shall be reduced to a written stipulation. Such consultation shall not be required where

one or both parties is self-represented or where the expert testimony relates to matters of child custody or parental access, domestic violence, domestic abuse, or child neglect or abuse.

(4) The provisions of section 202.20-a regarding privilege logs shall not apply to matrimonial actions and proceedings unless the court orders otherwise.

(5) Parties and non-parties should adhere to the Electronically Store Information (ESI) Guidelines set forth in an Appendix to the Uniform Civil Rules

(6) At the commencement of the trial or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court only a list of the witnesses who may becalled solely for rebuttal or with regard to credibility. The court may permit for good cause shown and in the absence of substantial prejudice, a party to call a witness to testify who was not identified on the witness list submitted by that party. The estimates of the length of testimony and the order of witnesses provided by counsel are advisory only and the court may permit witnesses to be called in a different order and may permit further testimony from a witness notwithstanding that the time estimate for such witness has been exceeded.

(h) Statement of Proposed Disposition.

(1) Each party shall exchange a statement setting forth the following:

(i) the assets claimed to be marital property;

(ii) the assets claimed to be separate property;

(iii) an allocation of debts or liabilities to specific marital or separate assets, where appropriate;

(iv) the amount requested for maintenance, indicating and elaborating upon the statutory factors forming the basis for the maintenance request;

(v) the proposal for equitable distribution, where appropriate, indicating and elaborating upon the statutory factors forming the basis for the proposed distribution;

(vi) the proposal for a distributive award, if requested, including a showing of the need for a distributive award;

(vii) the proposed plan for child support, indicating and elaborating upon the statutory factors upon which the proposal is based; and

(viii) the proposed plan for custody and visitation of any children involved in the proceeding, setting forth the reasons therefor.

(2) A copy of any written agreement entered into by the parties relating to financial arrangements or custody or visitation shall be annexed to the statement referred to in paragraph (1) of this subdivision.

(3) The statement referred to in paragraph (1) of this subdivision, with proof of service upon the other party, shall, with the note of issue, be filed with the court. The other party, if he or she has not already done so, shall file with the court a statement complying with paragraph (1) of this subdivision within 20 days of such service.

(i) Filing of Note of Issue.

No action or proceeding to which this section is applicable shall be deemed ready for trial unless there is compliance with this section by the party filing the note of issue and certificate of readiness.

(j) Referral to Family Court.

In all actions or proceedings to which this section is applicable referred to the Family Court by the Supreme Court pursuant to section 464 of the Family Court Act, all statements, including supplemental statements, exchanged and filed by the parties pursuant to this section shall be transmitted to the Family Court with the order of referral.

(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.

(l) Hearings or trials pertaining to temporary or permanent custody or visitation shall proceed from day to day conclusion. With respect to other issues before the court, to the extent feasible, trial should proceed from day to day to conclusion.

(m) The court may, for good cause, relieve the parties and counsel from the requirements of 22 N.Y.C.R.R. § 202.34 regarding pre-marking of exhibits and 22 N.Y.C.R.R. § 202.20-h. regarding pre-trial memoranda and Exhibit Books.

(n) Upon request of a party, the court may permit direct testimony of that party's own witness in a non-jury trial or evidentiary hearing shall be submitted in affidavit form, provided, however, that the opposing party shall have the right to object to statements in the direct testimony affidavit, and the court shall rule on such objections, just as if the statements had been made orally in open court. Where an objection to a portion of a direct testimony affidavit is sustained, the court may direct that such portion be stricken. The submission of direct testimony in affidavit form shall not affect any right to conduct cross-examination or re-direct examination of the witness. Notwithstanding the foregoing, in an action for custody, visitation, contempt, order of protection or exclusive occupancy, however, except as provided in N.Y.C.R.R. § 202.18, a party or a party's own witness may not testify on direct examination by affidavit.

(o) Omission or Redaction of Confidential Personal Information from Matrimonial Decisions.

(1) Except as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, prior to submitting any decision, order, judgment, or combined decision and order or judgment in a matrimonial action for publication, the court shall redact the following confidential personal information:

(i) the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof;

(ii) the actual home address of the parties to the matrimonial action and their children;

(iii) the full name of an individual known to be a minor under the age of eighteen (18) years of age, except the minor's initials or the first name of the minor with the first initial of the minor's last name; provided that nothing herein shall prevent the court from granting a request to use only the minor's initials or only the word "Anonymous";

(iv) the date of an individual's birth (including the date of birth of minor children), except the year of birth;

(v) the full name of either party where there are allegations of domestic violence, neglect, abuse, juvenile delinquency or mental health issues, except the party's initials or the first name of the party with the first initial of the party's last name; provided that nothing herein shall prevent the court from granting a re-

quest to use only the party's initials or only the word "Anonymous"; and

(vi) a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number (including a health insurance account number), except the last four digits or letters thereof.

(2) Nothing herein shall require parties to omit or redact personal confidential information as described herein or 22 N.Y.C.R.R. § 202.5(e) in papers submitted to the court for filing.

(3) Nothing herein shall prevent the court from omitting or redacting more personal confidential information than is required by this rule, either upon the request of a party or sua sponte.

Amended 202.16 on June 13, 2022, effective July 1, 2022

Appendix B

Article I

Section 202.16-b. Submission of Written Applications in Contested Matrimonial Actions.

(l) 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 N.Y.C.R.R. § 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 N.Y.C.R.R. § 202.8(e) 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. The utilization of the requirement to move by order to show cause or notice of motion shall be governed by local part rule.

(iii) Length of Papers: Parties shall comply with the word limitations in subsections (a)-(f) of 22 N.Y.C.R.R. § 202.8(b) as amended.

(iv) Form of Papers: Parties shall comply with the requirements of 22 N.Y.C.R.R. § 202.5(a) as amended.

(v) Notwithstanding 22 N.Y.C.R.R. § 202.5-a, papers and correspondence may be transmitted to the court by fax by a self-represented party without prior court approval unless prohibited by a local part rule or judicial order.

(vi) Self-represented litigants may submit handwritten applications provided that the handwriting is legible and otherwise in conformity with all applicable rules

(vii) Except for affidavits of net worth (pursuant to 22 N.Y.C.R.R. § 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 N.Y.C.R.R. § 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 such exhibits must contain exhibit tabs.

Amended 202.16-b on June 13, 2022, effective July 1, 2022

Endnotes

1. *See* AO142/22, amended on June 13, 2022, effective on July 1, 2022; *see also* AO270/2020, Added on Dec. 29. 2020, effective Feb. 1, 2021. The Uniform Rules which are incorporated into the matrimonial rules include the following rules which were added to 22 N.Y.C.R.R. Part 202 effective Feb. 1, 2021: 22 N.Y.C.R.R. § 202.8-a; 22 N.Y.C.R.R. § 202.8-b; 22 N.Y.C.R.R. § 202.8-c; 22 N.Y.C.R.R. § 202.8-d; 22 N.Y.C.R.R. § 202.8-e; 22 N.Y.C.R.R. § 202.8-f and 22 N.Y.C.R.R. § 202.8-g; 22 N.Y.C.R.R. § 202.10; 22 N.Y.C.R.R. § 202.11; 22 N.Y.C.R.R. § 202.20; 22 N.Y.C.R.R. § 202.20-a; 22 N.Y.C.R.R. § 202.20-b; 22 N.Y.C.R.R. § 202.20-c; 22 N.Y.C.R.R. § 202.20-d; 22 N.Y.C.R.R. § 202.20-e; 22 N.Y.C.R.R. § 202.20-f; 22 N.Y.C.R.R. § 202.20-g; 22 N.Y.C.R.R. § 202.20-h; 22 N.Y.C.R.R. § 202.20-I; 22 N.Y.C.R.R. § 202.20-j; 22 N.Y.C.R.R. § 202.23; 22 N.Y.C.R.R. § 202.29; 22 N.Y.C.R.R. § 202.34; and 22 N.Y.C.R.R. § 202.37

   In addition, the Uniform Rules, which are incorporated into the matrimonial rules, include the following rules which were amended: 22 N.Y.C.R.R. § 202.1, Added (f) & (g) on Dec. 29. 2020, effective Feb. 1, 2021; 22 N.Y.C.R.R. § 202.5, Amended (a)(1) & added (a)(2) on Dec. 29. 2020, effective Feb. 1, 2021; 22 N.Y.C.R.R. § 202.5-a, Amended (a) & (b) on Dec. 29. 2020, effective Feb. 1, 2021; 22 N.Y.C.R.R. § 202.6, Amended (b) on Jan. 7, 2022, effective Feb. 1, 2022; 22 N.Y.C.R.R. § 202.26 , Amended on Dec. 29. 2020, effective Feb. 1, 2021; and 22 N.Y.C.R.R. § 202.28, Amended (a) & (b) on Dec. 29. 2020, effective Feb. 1, 2021.

   The Administrative Order also adopted a revised Preliminary Conference Stipulation/Order-Contested Matrimonial Form (PC Order) for use in matrimonial matters effective July 1, 2022.
2. 22 N.Y.C.R.R. § 202.16(b), effective July 1, 2022.
3. 22 N.Y.C.R.R. § 202.16(e), effective July 1, 2022. This appears to be a typographical error. There is no rule 130.21. It probably should be rule 130-2.1 (Section 130-2.1. Costs; sanctions)
4. This appears to duplicate 22 N.Y.C.R.R. § 202.1(f). It provides: (f) Counsel who appear before the court must be familiar with the case with regard to which they appear and be fully prepared and authorized to discuss and resolve the issues which are scheduled to be the subject of the appearance. Failure to comply with this rule may be treated as a default for purposes of Rule 202.27 and/or may be treated as a failure to appear for purposes of Rule 130.2.1.
5. 22 N.Y.C.R.R. § 202.11 requires counsel for all parties to consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery, including discovery of electronically stored information, and any other issues to be discussed at the conference, (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel must make a good faith effort to reach agreement on these matters in advance of the conference.
6. 22 N.Y.C.R.R. § 202.16(f), effective July 1, 2022.
7. 22 N.Y.C.R.R. § 202.16(f)(1-b)(1), effective July 1, 2022.
8. 22 N.Y.C.R.R. § 202.16(f)(1-b)(2), effective July 1, 2022.
9. 22 N.Y.C.R.R. § 202.16(f)(1-b)(2)(ii).
10. 22 N.Y.C.R.R. § 202.16(f)(1-b)(2)(ii).
11. This repeated sentence is a typographical error.
12. 22 N.Y.C.R.R. § 202.16(f)(4), effective July 1, 2022.
13. This provision appears to duplicate portions of 22 N.Y.C.R.R. § 202.11 (*see* n. 5, *supra*).
14. 22 N.Y.C.R.R. § 202.16(f)(4), effective July 1, 2022.
15. *Id.*
16. 22 N.Y.C.R.R. § 202.20-c(f) provides: Absent good cause, a party may not use at trial or otherwise any document which was not produced in response to a request for such document or category of document, which request was not objected to or, if objected to, such objection was overruled by the court.
17. 22 N.Y.C.R.R. § 202.16(f)(1-b), effective July 1, 2022.
18. *Id.*
19. 22 N.Y.C.R.R. § 202.20-e, Adherence to Discovery Schedule, provides that parties must strictly comply with discovery obligations by the dates set forth in all case scheduling orders. If a party seeks documents from an adverse party as a condition precedent to a deposition of the party and the documents are not produced by the date fixed, the party seeking disclosure may ask the court to preclude the non-producing party from introducing the demanded documents at trial.
20. 22 N.Y.C.R.R. § 202.20-f, Disclosure Disputes, provides that to the maximum extent possible, discovery disputes should be resolved through informal procedures, such as conferences, as opposed to motion practice. Absent exigent circumstances, prior to contacting the court regarding a disclosure dispute, counsel must first consult with one another in a good faith effort to resolve all disputes about disclosure. The consultation must take place by an in-person or telephonic conference. In the event that a discovery dispute cannot be resolved other than through motion practice, each discovery motion must be supported by an affidavit or affirmation from counsel attesting to counsel having conducted an in-person or telephonic conference, setting forth the date and time of the conference, persons participating, and the length of time of the conference. The unreasonable failure or refusal of counsel to participate in a conference requested by another party may relieve the requesting party of the obligation to comply with 22 N.Y.C.R.R. § 202.20-f(b) and may be addressed by the imposition of sanctions pursuant to Part 130. If the moving party was unable to conduct a conference due to the unreasonable failure or refusal of an adverse party to participate, then the moving party must, in an affidavit or affirmation, detail the efforts made by the moving party to obtain a conference and set forth the responses received. The failure of counsel to comply with 22 N.Y.C.R.R. § 202.20-f may result in the denial of a discovery motion, without prejudice to renewal once the provisions of 22 N.Y.C.R.R. § 202.20-f have been complied with, or may result in the motion being held in abeyance until the informal resolution procedures of the court are conducted.
21. CPLR 3131.
22. CPLR 3117.
23. *Kaye v. Kaye*, 102 A.D.2d 682, 692, 478 N.Y.S.2d 324 (2d Dep't 1984).
24. Citing (*see Myers v. Myers*, 108 Misc 2d 553; Scheinkman, 1981 Practice Commentary, McKinney's Cons Laws of NY, Book 14, Domestic Relations Law, C236B:6; Brandes, Disclosure Requirements Under Equitable Distribution, NYLJ, June 21, 1983, p 1, col 2).
25. 109 A.D.2d 697, 487 N.Y.S.2d 326 (1st Dep't 1985).
26. 209 A.D.2d 399, 618 N.Y.S.2d 442 (2d Dep't 1994).
27. 110 A.D.2d 526, 487 N.Y.S.2d 756 (1st Dep't 1985).
28. CPLR 3124.
29. N.Y. Const., art. VI, § 30.
30. *See, e.g.*, *Riglander v. Star Co.*, 98 App.Div. 101, 90 N.Y.S. 772, affd. 181 N.Y. 531, 73 N.E. 1131.
31. *Cohn v. Borchard Affiliations*, 25 N.Y.2d 237, 303 N.Y.S.2d 633 (1969).

32. *A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1, 511 N.Y.S.2d 216 (1986).

33. *People v. Ramos*, 85 N.Y.2d 678, 651 N.E.2d 895, 628 N.Y.S.2d 27 (1995); *see also, Gormerly v. McGlynn*, 84 N.Y. 284, 1881 WL 12807 (1881); *Moot v. Moot*, 214 N.Y. 204, 108 N.E. 424 (1915).

34. CPLR 3120(a).

35. CPLR 3120(1).

36. CPLR 3122(a)(1).

37. *Anonymous v. High School for Envtl. Studies*, 32 A.D.3d 353, 358–59, 820 N.Y.S.2d 573 (1st Dep't 2006).

38. *Khatskevich v. Victor*, 184 A.D.3d 504, 124 N.Y.S.3d 178 (1st Dep't 2020).

39. *Recine v. City of New York*, 156 A.D.3d 836, 65 N.Y.S.3d 788 (2d Dep't 2017).

40. *See Ehrlich v. Ehrlich*, 74 A.D.2d 519, 425 N.Y.S.2d 11 (1st Dep't 1980).

41. 189 A.D.3d 749, 137 N.Y.S.3d 120, (2d Dep't 2020).

42. *Stepping Stones Associates, L.P. v. Scialdone*, 148 A.D.3d 855, 50 N.Y.S.3d 76 (2d Dep't 2017).

43. CPLR 3122(a)(1).

44. CPLR 3126. For example, in *Douek v. Douek*, 148 A.D.2d 166, 48 N.Y.S.3d 614 (2d Dep't 2017) the Appellate Divison held that the Supreme Court did not improvidently exercise its discretion in granting that the plaintiff's motion pursuant to CPLR 3126 to preclude the defendant from offering financial evidence at trial due to her willful violation of discovery orders and her failure to comply with the plaintiff's discovery requests. In *Casey v. Casey*, 39 A.D.3d 579, 835 N.Y.S.2d 277 (2d Dep't 2007) the Appellate Division held that Supreme Court providently struck the defendant's answer for failure to comply with court ordered discovery and precluded the defendant from presenting evidence or testimony at trial relating to financial issues. It found that the defendant engaged in a pattern of conduct over a period of time which evidenced an intent to willfully and contumaciously obstruct and delay the progress of disclosure.

45. 22 N.Y.C.R.R. § 202.20-c(f) provides: Absent good cause, a party may not use at trial or otherwise any document which was not produced in response to a request for such document or category of document, which request was not objected to or, if objected to, such objection was overruled by the court.

46. 22 N.Y.C.R.R. § 202.16(f)(1-b), effective July 1, 2022.

47. CPLR 3122(a)(1).

48. 22 N.Y.C.R.R. § 202.16(f)(1-b), effective July 1, 2022.

49. *People v. Ramos*, 85 N.Y.2d 678, 651 N.E.2d 895, 628 N.Y.S.2d 27 (1995); *see also, Gormerly v. McGlynn*, 84 N.Y. 284, 1881 WL 12807 (1881); *Moot v. Moot*, 214 N.Y. 204, 108 N.E. 424 (1915).

50. 22 N.Y.C.R.R. § 202.26, titled Settlement and Pretrial Conference, provides that at the time of certification of the matter as ready for trial or at any time after the discovery cutoff date, the court may schedule a settlement conference which must be attended by counsel and the parties. They are expected to be fully prepared to discuss the settlement of the matter. Prior to trial, counsel must confer in a good faith effort to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. Where a pre-trial conference is scheduled, or otherwise prior to the commencement of opening statements, counsel must be prepared to discuss all matters as to which there is disagreement between the parties and settlement of the matter. The court may require the parties to prepare a written stipulation of undisputed facts. The court may direct that prior, or during, trial, counsel for the parties consult in good faith to identify those aspects of their respective experts' anticipated testimony that are not in dispute. The court may direct that any agreements reached be reduced to a written stipulation.

51. 22 N.Y.C.R.R. § 202.16(g)(3), effective July 1, 2022.

52. *Id.*

53. *See* https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/Ex%20A%20-%20Appendix%20A.pdf (last accessed June 16, 2022).

54. 22 N.Y.C.R.R. § 202.16(g)(6), effective July 1, 2022.

55. *Id.*

56. *Id.*

57. *Id.*

58. 22 N.Y.C.R.R. § 202.34 as amended effective July 1, 2022.

59. *Id.*

60. *Id.*

61. 22 N.Y.C.R.R. § 202.16(m), effective July 1, 2022.

62. 22 N.Y.C.R.R. § 202.16(n), effective July 1, 2022.

63. *Id.*

64. Section 202.18 Testimony of court-appointed expert witness in matrimonial action or proceeding**.**

> In any action or proceeding tried without a jury to which section 237 of the Domestic Relations Law applies, the court may appoint a psychiatrist, psychologist, social worker or other appropriate expert to give testimony with respect to custody or visitation, and may appoint an accountant, appraiser, actuary or other appropriate expert to give testimony with respect to equitable distribution or a distributive award. In the First and Second Judicial Departments, appointments shall be made as appropriate from a panel of mental health professionals pursuant to 22 N.Y.C.R.R. Parts 623 and 680. The cost of such expert witness shall be paid by a party or parties as the court shall direct.

65. 22 N.Y.C.R.R. § 202.16(n), effective July 1, 2022.

66. *See* 22 N.Y.C.R.R. § 202.16(a).

67. 22 N.Y.C.R.R. § 202.20-i effective Feb. 1, 2021.

68. *People v. Romero*, 78 N.Y.2d 355, 575 N.Y.S.2d 802 (1991); *People v. Edwards*, 47 N.Y.2d 493, 419 N.Y.S.2d 45 (1979); *People v. Caviness*, 38 N.Y.2d 227, 379 N.Y.S.2d 695 (1975); § 7:11. Hearsay, Bench Book for Trial Judges-New York § 7:11.

69. *People v. Caviness*, 38 N.Y.2d 227, 379 N.Y.S.2d 695, 342 N.E.2d 496 (1975); *see also* Prince, Richardson on Evidence, 11th Edition (Farrell), § 8–101.

70. Citing (*People v. Brensic*, 70 N.Y.2d 9, 14, *citing People v. Nieves*, 67 N.Y.2d 125*,* 131*; see also, People v. Brown*, 80 N.Y.2d 729, 734–35 [present sense impressions]; *People v. Brown*, 70 N.Y.2d 513, 518–19 [excited utterances]).

71. *Nucci ex rel. Nucci v. Proper*, 95 N.Y.2d 597, 602, 721 N.Y.S.2d 593, 595, 744 N.E.2d 128, 130 (2001) citing, among other things, Prince, Richardson on Evidence § 8–107, at 504–05 [Farrell 11th ed. 1995]).

72. *Sadowsky v. Chat Noir, Inc.*, 64 A.D.2d 697, 407 N.Y.S.2d 562 (2d Dep't 1978); Prince, Richardson on Evidence, 11th Edition (Farrell), § 8–103.

73. *Viles v. Viles*, 14 N.Y.2d 365, 251 N.Y.S.2d 672 (1964).

74. *Schwartz v. Schwartz*, 186 A.D.3d 1742, 132 N.Y.S.3d 34 (2d Dep't 2020); *Kerley v. Kerley*, 131 A.D.3d 1124, 17 N.Y.S.3d 150 (2d Dep't 2015).

75. *Linenschmidt v. Linenschmidt*, 163 A.D.3d 949, 82 N.Y.S.3d 474 (2d Dep't 2018).

76. *Hass & Gottlieb v. Sook Hi Lee*, 55 A.D.3d 433, 866 N.Y.S.2d 72 (1st Dep't 2008).

77. 22 N.Y.C.R.R. § 202.16(O), effective July 1, 2022.

78. Administrative Order AO/141/22.

79. 22 N.Y.C.R.R. § 202.16-b(2)(i) effective July 1, 2022.

80. 22 N.Y.C.R.R. § 202.16-b(2)(ii) effective July 1, 2022.

81. The deleted provisions provided as follows:

> [(iii) All orders to show cause and motions or cross motions shall be submitted on one-sided copy except as otherwise provided in 22 N.Y.C.R.R. § 202.S(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.]
>
> [(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.]

82. 22 N.Y.C.R.R. § 202.16-b(2)(iii) effective July 1, 2022.

> Section 202.8-b Length of Papers**.**
>
> (a) Where prepared by use of a computer, unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7.000 words each: (ii) reply affidavits, affirmations, and memoranda shall be no more than 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief.
>
> (b) For purposes of paragraph (a) above, the word count shall exclude the caption, table of contents, table of authorities, and signature block.
>
> (c) Every brief, memorandum, affirmation, and affidavit which was prepared by use of a computer shall include on a page attached to the end of the applicable document, a certification 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.
>
> (d) Where typewritten or handwritten, affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 20 pages each; and reply affidavits, affirmations, and memoranda shall be limited to 10 pages each and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief.
>
> (e) Where a party opposing a motion makes a cross-motion, the affidavits, affirmations, briefs, or memoranda submitted by that party shall be limited to 7,000 words each when prepared by use of a computer or to 20 pages each when typewritten or handwritten. Where a cross-motion is made, reply affidavits, affirmations, briefs or memoranda of the party who made the principal motion shall be limited to 4,200 words when prepared by use of a computer or to 10 pages when typewritten or handwritten.
>
> (f) 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 above. In the event that the court grants permission for an oversize submission, the certification required by paragraph (c) above shall set forth the number of words in the document and certify compliance with the limit, if any set forth by the court.

83. 22 N.Y.C.R.R. § 202.16-b(2)(iv) effective July 1, 2022.

> Section 202.5 Papers filed in court. (a)(1) The party filing the first paper in an action, upon payment of the proper fee, shall obtain from the county clerk an index number, which shall be affixed to the paper. The party causing the first paper to be filed shall communicate in writing the county clerk's index number forthwith to all other parties to the action. Thereafter such number shall appear on the outside cover and first page to the right of the caption of every paper tendered for filing in the action. Each such cover and first page also shall contain an indication of the county of venue and a brief description of the nature of the paper and, where the case has been assigned to an individual judge, shall contain the name of the assigned judge to the right of the caption. In addition to complying with the provisions of CPLR 2101, every paper filed in court shall have annexed thereto appropriate proof of service on all parties where required, and if typewritten, shall have at least double space between each line, except for quotations and the names and addresses of attorneys appearing in the action, and shall have at least one-inch margins. In addition, every paper filed in court, other than an exhibit or printed form, shall contain writing on one side only, except that papers that are fastened on the side may contain writing on both sides, and shall 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 shall be no smaller than 10 point. Papers that are stapled or bound securely shall not be rejected for filing simply because they are not bound with a backer of any kind.
>
> (2) Unless otherwise directed by the court, each electronically-submitted memorandum of law, affidavit and affirmation, exceeding 4500 words, which was prepared with the use of a computer software program, shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.

84. 22 N.Y.C.R.R. § 202.16-b(2)(v) effective July 1, 2022.

85. 22 N.Y.C.R.R. § 202.16-b(2)(vi) effective July 1, 2022.

86. 22 N.Y.C.R.R. § 202.16-b(3) effective July 1, 2022.