Amendments to Matrimonial Rules in 2021 and 2022 Effective July 1, 2022
By Joel R. Brandes[1]

Administrative Order 31/21 amended 22 NYCRR 202.16 (k)(3) and 22 NYCRR 202.16-b (2) on January, 19, 2021.

Administrative Order AO/141/22 adopted revisions to 22 NYCRR 202.16 and 202.16-b of the Matrimonial Rules effective July 1, 2022. The Matrimonial Rules were revised to specifically incorporate 22 NYCRR Part 202 which contains many of the recently enacted commercial division rules which are discussed in this commentary. The Administrative Order adopted a revised Preliminary Conference Stipulation/Order-Contested Matrimonial Form ("PC Order") for use in matrimonial matters effective July 1, 2022.

The new rules which are incorporated into the matrimonial rules include the following rules which were added to 22 NYCRR Part 202 effective February 1, 2021: Section 202.8-a; 202.8-b; 202.8-c;202.8-d;202.8-e; 202.8-f and 202.8-g; 202.10; 202.11; 202.20; 202.20-a; 202.20-b; 202.20-c; 202.20-d; 202.20-e; 202.20-f; 202.20-g; 202.20-h; 202.20-I; 202.20-j; 202.23; 202.29; 202.34; 202.37 Added on Dec. 29. 2020, effective February 1, 2021

In addition, they include the following rules which were amended as follows: Section 202.1 Added (f) & (g) on Dec. 29. 2020, effective February 1, 2021; Section 202.5 Amended (a)(1) & added (a)(2) on Dec. 29. 2020, effective February 1, 2021;Section 202.5-a Amended (a) & (b) on Dec. 29. 2020, effective February 1, 2021;Section 202.6 Amended (b) on Jan. 7, 2022, effective February 1, 2022;Section 202.26 Amended on Dec. 29. 2020, effective February 1, 2021; and Section 202.28 Amended (a) & (b) on Dec. 29. 2020, effective February 1, 2021.

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Section 202.1 Application of Part; Waiver; Additional Rules; Application of CPLR; Definitions.

(a) Application. This Part shall be applicable to civil actions and proceedings in the Supreme Court and the County Court.

(b) Waiver. For good cause shown, and in the interests of justice, the court in an action or proceeding may waive compliance with any of the rules in this Part, other than sections 202.2 and 202.3, unless prohibited from doing so by statute or by a rule of the Chief Judge.

(c) Additional rules. Local court rules, not inconsistent with law or with these rules, shall comply with Part 9 of the Rules of the Chief Judge (22 NYCRR Part 9).

(d) Application of CPLR. The provisions of this Part shall be construed consistent with the Civil Practice Law and Rules (CPLR), and matters not covered by these provisions shall be governed by the CPLR.

(e) Definitions.

(1) "Chief Administrator of the Courts" in this Part also includes a designee of the Chief Administrator.

(2) The term "clerk" shall mean the chief clerk or other appropriate clerk of the trial court unless the context otherwise requires.

(3) Unless otherwise defined in this Part, or the context otherwise requires, all terms used in this Part shall have the same meaning as they have in the CPLR.

(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.

(g) It is important that counsel be on time for all scheduled appearances.

Historical Note
Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.

Added (f) & (g) on Dec. 29. 2020, effective February 1, 2021

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.

(b) Submission of Papers to Judge. All papers for signature or consideration of the court shall be presented to the clerk of the trial court in the appropriate courtroom or clerk's office, except that where the clerk is unavailable or the judge so directs, papers may be submitted to the judge and a copy filed with the clerk at the first available opportunity. All papers for any judge that are filed in the clerk's office shall be promptly delivered to the judge by the clerk. The papers shall be clearly addressed to the judge for whom they are intended and prominently show the nature of the papers, the title and index number of the action in which they are filed, the judge's name and the name of the attorney or party submitting them.

(c) Papers filed to commence an action or special proceeding. For purposes of CPLR 304. governing the method of commencing actions and special Proceedings. the term "clerk of the court" shall mean the county clerk. Each county clerk, and each chief clerk of the Supreme Court. shall post prominently in the public areas of his or her office notice that filing of papers in order to commence an action or special proceeding must be with the county clerk. Should the county clerk, as provided by CPLR 304, designate a person or persons other than himself or herself to accept delivery of the papers required to be filed in order to commence an action or special proceeding, the posted notice shall so specify.

(d)(1) In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers

filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator's rule or order of the court:
(i) The paper does not have an index number;
(ii) The summons, complaint, petition, or judgment sought to be filed with the County Clerk contains an "et al" or otherwise does not contain a full caption;
(iii) The paper sought to be filed with the County Clerk is filed in the wrong court;
(iv) The paper is not signed in accordance with section 130-1.1-a of the Rules of the Chief Administrator; or
(v) The paper sought to be filed: (A) is in an action subject to electronic filing pursuant to Rules of the Chief Administrator, (B) is not being filed electronically, and either (C) is not being filed by an unrepresented litigant who is not participating in e-filing, or (D) does not include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of such Rules.

The County Clerk shall require the payment of any applicable statutory fees, or an order of the Court waiving payment of such fees, before accepting a paper for filing.

(2) A County Clerk or chief clerk shall signify a refusal to accept a paper by use of a stamp on the paper indicating the date of the refusal and by providing on the paper the reason for the refusal.

(e) Omission or Redaction of Confidential Personal Information.

(1) Except in a matrimonial action, or a proceeding in surrogate's court, or a proceeding pursuant to article 81 of the mental hygiene law, or as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the parties shall omit or redact confidential personal information in papers submitted to the court for filing. For purposes of this rule, confidential personal information (“CPI”) means:

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 date of an individual's birth, except the year thereof;

iii. the full name of an individual known to be a minor, except the minor's initials; and

iv. 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, except the last four digits or letters thereof..; and

v. any of the documents or testimony in a matrimonial action protected by Domestic Relations Law section 235 or evidence sealed by the court in such an action which are attached as exhibits or referenced in the papers filed in any other civil action. For purposes of this rule, a matrimonial action shall mean: an action to annul a marriage or declare the nullity of a void marriage, an action or agreement for a separation, an action for a divorce, or an action or proceeding for custody, visitation, writ of habeus corpus, child support, maintenance or paternity.

(2) The court **sua sponte** or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to

seal the papers or a portion thereof containing CPI in accordance with the requirement of 22NYCRR §216.1 that any sealing be no broader than necessary to protect the CPI; for good cause permit the inclusion of CPI in papers; order a party to file an unredacted copy under seal for in camera review; or determine that information in a particular action is not confidential. The court shall consider the **pro se** status of any party in granting relief pursuant to this provision.

(3) Where a person submitting a paper to a court for filing believes in good faith that the inclusion of the full confidential personal information described in subparagraphs (i) to (iv) of paragraph (1) of this subdivision is material and necessary to the adjudication of the action or proceeding before the court, he or she may apply to the court for leave to serve and file together with a paper in which such information has been set forth in abbreviated form a confidential affidavit or affirmation setting forth the same information in unabbreviated form, appropriately referenced to the page or pages of the paper at which the abbreviated form appears.

(4) The redaction requirement does not apply to the last four digits of the relevant account numbers, if any, in an action arising out of a consumer credit transaction, as defined in subdivision (f) of section one hundred five of the civil practice law and rules. In the event the defendant appears in such an action and denies responsibility for the identified account, the plaintiff may without leave of court amend his or her pleading to add full account or CPI by (i) submitting such amended paper to the court on written notice to defendant for in camera review or (ii) filing such full account or other CPI under seal in accordance with rules promulgated by the chief administrator of the courts.

Historical Note

Amended (a)(1) & added (a)(2) on Dec. 29. 2020, effective February 1, 2021

Section 202.5-a Filing by Electronic Transmission.

(a) Papers and correspondence by fax. Papers and correspondence filed by fax shall comply with the requirements of section 202.5 except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. Correspondence sent by fax should not be followed by hard copy unless requested.

(b) Papers submitted in digital format. In cases not pending in the court's Filing by Electronic Means System, the court may permit counsel to communicate with the court and each other by e-mail. Papers and correspondence filed by fax shall comply with the requirements of section 202.5 except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. In the court's discretion, counsel may be requested to submit memoranda of law by e-mail or by other electronic means, such as by a computer flash drive, along with an original and courtesy copy.

Historical Note
Sec. filed Oct. 13, 1999; amd. filed Jan. 6, 2003 eff. Jan. 2, 2003. Amended (a)(1).

Amended (a) & (b) on Dec. 29. 2020, effective February 1, 2021

Section 202.6 Request for judicial intervention.

(a) At any time after service of process, a party may file a request for judicial intervention. Except as provided in subdivision (b) of this section, in an action not yet assigned to a judge, the court shall not accept for filing a notice of motion, order to show cause, application for ex parte order, notice of petition, note of issue, notice of medical, dental or podiatric malpractice action, statement of net worth pursuant to section 236 of the Domestic Relations Law or request for a preliminary conference pursuant to section 202.12(a) of this Part, unless such notice or application is accompanied by a request for judicial intervention. Where an application for poor person relief is made, payment of the fee for filing the request for judicial intervention accompanying the application shall be required only upon denial of the application. A request for judicial intervention must be submitted, in duplicate, on a form authorized by the Chief Administrator of the Courts, with proof of service on the other parties to the action (but proof of service is not required where the application is ex parte).

(b) A request for judicial intervention shall be filed, without fee, for any application to a court not filed in an action or proceeding, as well as for a petition for the sale or finance of religious/not-for-profit property, an application for change of name or change of sex designation, a habeas corpus proceeding where the movant is institutionalized, an application under CPLR 3102(e) for court assistance in obtaining disclosure in an action pending in another state, a retention proceeding authorized by article 9 of the Mental Hygiene Law, a proceeding authorized by article 10 of the Mental Hygiene Law, an appeal to a county court of a civil case brought in a court of limited jurisdiction, an application to vacate a judgement on account of bankruptcy, a motion for an order authorizing emergency surgery, or within the City of New York, an uncontested action for a judgment for annulment, divorce or separation commenced pursuant to article 9, 10 or 11 of the Domestic Relations Law, and an application for an extreme risk protection order.

(c) In the counties within the City of New York, when a request for judicial intervention is filed, the clerk shall require submission of a copy of the receipt of purchase of the index number provided by the County Clerk, or a written statement of the County Clerk that an index number was purchased in the action. Unless otherwise authorized by the Chief Administrator, the filing of a request for judicial intervention pursuant to this section shall cause the assignment of the action to a judge pursuant to section 202.3 of this Part. The clerk may require that a self-addressed and stamped envelope accompany the request for judicial intervention.

Historical Note

Amended (b) on Jan. 7, 2022, effective February 1, 2022

Section 202.8-a Motion in General.

(a) Form of Motion Papers. The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Regardless of whether the papers are filed electronically or in hard copy or as working copies, counsel must submit as part of the motion papers copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). 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 shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be translated as required by CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

(b) Proposed orders. When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, pro hac vice admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion.

(c) Adjournment of Motions. Unless the court orders otherwise, no motion may be adjourned on consent more than three times or for a cumulative total of more than 60 days.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.8-b Length of Papers.

(a) 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 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) 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 paragraph (a) above. In the event that the court grants permission for an oversize submission, the certification required by paragraph (b) above shall set forth the number of words in the document and certify compliance with the limit, if any set forth by the court.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.8-c Sur-Reply and Post-Submission Papers.

Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule shall not respond in kind.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.8-d Orders to Show Cause.

Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. See Section 202.8-e. Absent advance permission of the court, reply papers shall not be submitted on orders to show cause.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.8-e Temporary Restraining Orders.

Unless the moving party can demonstrate significant prejudice by reason 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, shall contain, in addition to the other information required by this section, 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. This subdivision shall not be applicable to orders to show cause or motions in special proceedings brought under Article 7 of the Real Property Actions and Proceedings Law, nor to orders to show cause or motions requesting an order of protection under section 240 of the Domestic Relations Law, unless otherwise ordered by the court.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.8-f Oral Argument.

(a) Each court or court part shall adopt a procedure governing request for oral argument of motions, provided that, in the absence of the adoption of such a procedure by a particular court or part, the provisions of paragraph (b) shall apply. The procedure to be adopted shall set forth whether oral argument is required on all motions or whether the court will determine, on a case-by-case basis, whether oral argument will be heard and how counsel shall request argument and, if oral argument is permitted, when counsel shall appear.

(b) Any party may request oral argument of a motion by letter accompanying the motion papers. Notice of the date selected by the court shall be given, if practicable, at least 14 days before the scheduled oral argument. At that time, counsel shall be prepared to argue the motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing.

(c) Oral arguments may be conducted by the court by electronic means.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.8-g Motions for Summary Judgment; Statements of Material Facts.

(a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.10 Appearance at Conferences.

(a) Any party may request to appear at a conference by electronic means. Where feasible and appropriate, the court is encouraged to grant such requests.

(b) Adjournments of conferences shall be granted upon a showing of good cause. An adjournment of a conference will not change any date in any court order, including but not limited to the preliminary conference order, unless otherwise directed by the court.

Historical Note
Added on May 24, 2013.

Amended Dec. 29. 2020, effective February 1, 2021

Section 202.11 Consultation prior to Preliminary and Compliance Conference.

Counsel for all parties shall 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 shall make a good faith effort to reach agreement on these matters in advance of the conference.

Historical Note

Added Dec. 29. 2020, effective February 1, 2021

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.

A request for judicial intervention shall be filed with the court by the plaintiff no later than 45 days from the date of service of the summons and complaint or summons with notice upon the defendant, unless both parties file a notice of no necessity with the court, in which event the request for judicial intervention may be filed no later than 120 days from the date of service of the summons and complaint or summons with notice upon the defendant. Notwithstanding section 202.6(a) of this Part, the court shall accept a request for judicial intervention that is not accompanied by other papers to be filed in court.

(e) Certification of Paper and Obligations of Counsel Appearing Before the Court

(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 NYCRR §202.11 in a good faith effort to· reach agreement on such matters. Notwithstanding NYCRR §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 NYCRR §202.20-b(a)(l) 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 NYCRR §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 NYCRR § 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)(l)(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 NYCRR §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 NYCRR §202.34 regarding pre-marking of exhibits and 22 NYCRR §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 NYCRR §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 request 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 22NYCRR § 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 effective July 1, 2022

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

(1) Applicability. This section shall be applicable to all contested matrimonial actions and proceedings in Supreme Court authorized by subdivision (2) of Part B of section 236 of the Domestic Relations Law.

(2) Unless otherwise expressly provided by any provision of the CPLR or other statute, and in addition to the requirements of 22 NYCRR §202.16 (k) where applicable, the following rules and limitations are required for the submission of papers in all applications (including post judgment applications) for alimony, maintenance, counsel fees, child support, exclusive occupancy, custody and visitation unless said requirements are waived by the judge for good cause shown:

(i) Applications that are deemed an emergency must comply with 22 NYCRR§202.8 (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 NYCRR §202.8(b) as amended.

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

(v) Notwithstanding 22 NYCRR §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 NYCRR §202.16 (b)), retainer agreements (pursuant to Rule 1400.3 of the Joint Rules of the Appellate Division), maintenance guidelines worksheets and/or child support worksheets, or counsel fee billing statements or affirmations or affidavits related to counsel fees (pursuant to Domestic Relations Law §237 and 22 NYCRR §202.16(k)), all of which may include attachments thereto, all exhibits annexed to any motion, cross motion, order to show cause, opposition or reply may not be greater than three (3) inches thick without prior

permission of the court. All such exhibits must contain exhibit tabs.

Amended effective July 1, 2022

Section 202.20 Interrogatories.

Interrogatories are limited to 25 in number, including subparts, unless the court orders otherwise. This limit applies to consolidated actions as well.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-a Privilege Logs.

(a) Meet and Confer. Parties shall meet and confer at the outset of the case, and from time to time thereafter, to discuss the scope of the privilege review, the amount of information to be set out in the privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging requirement, and any other issues pertinent to privilege review, including the entry of an appropriate non-waiver order. To the extent that the collection process and parameters are disclosed to the other parties and those parties do not object, that fact may be relevant to the Court when addressing later discovery disputes.

(b) Court Order. Agreements and protocols agreed upon by parties shall be memorialized in a court order. In the event the parties are unable to enter into an agreement or protocol, the court shall by order provide for the scope of the privilege review, the amount of information to be set out in the privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging, whether any categories of information may be excluded from the logging requirement, and any other issues pertinent to privilege review, including the entry of an appropriate non-waiver order, and the allocation of costs and expenses as between the parties.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-b Limitations on Depositions.

(a) Unless otherwise stipulated to by the parties or ordered by the court:

(1) the number of depositions taken by plaintiffs, or by defendants, or by third-party defendants, shall be limited to 10; and

(2) depositions shall be limited to 7 hours per deponent.

(b) Notwithstanding subsection (a)(1) of this Rule, the propriety of and timing for depositions of non-parties shall be subject to any restrictions imposed by applicable law.

(c) For the purposes of subsection (a)(1) of this Rule, the deposition of an entity through one or more representatives shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf.

(d) For the purposes of this Rule, each deposition of an officer, director, principal or employee of an entity who is also a fact witness, as opposed to an entity representative pursuant to CPLR 3106(d), shall constitute a separate deposition.

(e) For the purposes of subsection (a)(2) of this Rule, the deposition of an entity shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf. Notwithstanding the foregoing, the cumulative presumptive durational limit may be enlarged by agreement of the parties or upon application for leave of Court, which shall be freely granted.

(f) For good cause shown, the court may alter the limits on the number of depositions or the duration of an examination.

(g) Nothing in this Rule shall be construed to alter the right of any party to seek any relief that it deems appropriate under the CPLR or other applicable law.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-c Requests for Documents.

(a) For each document request propounded, the responding party shall, in its Response and Objections served pursuant to CPLR 3122(a) (the "Response"), either:

(1) state that the production is made as requested; or

(2) state with reasonable particularity the grounds for any objection to production.

(b) Each Response shall state: (i) whether the objection(s) interposed pertains to all or part of the request being challenged; (ii) whether any documents or categories of documents are being withheld, and if so, which of the stated objection(s) forms the basis for the responding party's decision to withhold otherwise responsive documents or categories of documents: and (iii) the manner in which the responding party intends to limit the scope of its production.

(c) In each Response, the responding party shall verify, for each individual requests: (i) whether the production of documents in its possession, custody or control and that are responsive to the individual request, as propounded or modified, is complete; or (ii) that there are no documents in its possession, custody or control that are responsive to the individual request as propounded or modified.

(d) Nothing contained herein is intended to conflict with a party's obligation to supplement its disclosure obligations pursuant to CPLR 3101(h).

(e) The parties are encouraged to use the most efficient means to review documents, including electronically stored information ("ESI"), that is consistent with the parties' disclosure obligations under Article 31 of the CPLR and proportional to the needs of the case. Such means may include technology-assisted review, including predictive coding, in appropriate cases. The parties are encouraged to confer, at the outset of discovery and as needed throughout the discovery period, about technology-assisted review mechanisms they intend to use in document review and production.

(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.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-d Depositions of Entities; Identification of Matters.

(a) A notice or subpoena may name as a deponent a corporation, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(b) Notices and subpoenas directed to an entity may enumerate the matters upon which the person is to be examined, and if so enumerated, the matters must be described with reasonable particularity.

(c) If the notice or subpoena to an entity does not identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then no later than ten days prior to the scheduled deposition:

(1) the named entity must designate one or more officers, directors, members or employees, or other individual(s) who consent to testify on its behalf;

(2) such designation must include the identity, description or title of such individual(s); and

(3) if the named entity designates more than one individual, it must set out the matters on which each individual will testify.

(d) If the notice or subpoena to an entity does identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then: (1) pursuant to CPLR 3106(d), the named entity shall produce the individual so designated unless it shall have, no later than ten days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified. If timely notification has been so given, such other individual shall instead be produced;

(2) pursuant to CPLR 3106(d), a notice or subpoena that names a particular officer, director, member, or employee of the entity shall include in the notice or subpoena served upon such entity the identity, description or title of such individual; and

(3) if the named entity, pursuant to subsection (d)(1) of this Rule, cross-designates more than one individual, it must set out the matters on which each individual will testify.

(e) A subpoena must advise a nonparty entity of its duty to make the designations discussed in this Rule.

(f) The individual(s) designated must testify about information known or reasonably available to the entity.

(g) Deposition testimony given pursuant to this Rule shall be usable against the entity on whose behalf the testimony is given to the same extent provided in CPLR 3117(2) and the applicable rules of evidence.

(h) This Rule does not preclude a deposition by any other procedure allowed by the CPLR.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-e Adherence to Discovery Schedule.

(a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party or for other relief pursuant to CPLR 3126.

(b) If a party seeks documents from an adverse party as a condition precedent to a deposition of such 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 such demanded documents at trial.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-f Disclosure Disputes.

(a) To the maximum extent possible, discovery disputes should be resolved through informal procedures, such as conferences, as opposed to motion practice.

(b) 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. Such 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 such discovery motion shall 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 such 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 this paragraph 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 such moving party shall, in an affidavit or affirmation, detail the efforts made by the moving party to obtain such a conference and set forth the responses received.

(c) The failure of counsel to comply with this rule may result in the denial of a discovery motion, without prejudice to renewal once the provisions of this rule have been complied with, or in such motion being held in abeyance until the informal resolution procedures of the court are conducted.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-g Rulings at Disclosure Conferences.

The following procedures shall govern all disclosure conferences conducted by non-judicial personnel.

Prior to the conclusion of the conference, at the request of any party

(1) all resolutions shall be dictated into the record, and either the transcript shall be submitted to the court to be “so ordered,” or the court shall otherwise enter an order incorporating the resolutions reached;

(2) the parties shall prepare a writing setting forth the resolutions reached and submit the writing to the court for approval and signature by the justice presiding; or

(3) prior to the conclusion of the conference, the parties shall prepare an outline of the material terms of any resolution and shall thereafter agree upon and jointly submit to the court within one (1) business day of the conference a stipulated proposed order, memorializing the resolution of their discovery dispute. If the parties are unable to agree upon an appropriate form of proposed order, they shall so advise the court so that the court can direct an alternative course of action.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-h Pre-Trial Memoranda, Exhibit Book and Requests for Jury Instructions.

(a) Counsel shall submit pre-trial memoranda at the pre-trial conference, or such other time as the court may set. Counsel shall comply with CPLR 2103(e). A single memorandum no longer than 25 pages shall be submitted by each side. No memoranda in response shall be submitted.

(b) On the first day of trial or at such other time as the court may set, counsel shall submit an indexed binder or notebook, or the electronic equivalent, of trial exhibits for the court's use. A copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses shall be prepared and submitted. Plaintiff's exhibits shall be numerically tabbed, and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the first day of the trial or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions - Civil, a reference to the PJI number will suffice. Submissions should be by hard copy and electronically, as directed by the court.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-i Direct Testimony by Affidavit.

The court may require that direct testimony of a party's own witness in a non-jury trial or evidentiary hearing shall be submitted in affidavit form, provided, however, (a) that the court may not require the submission of a direct testimony affidavit from a witness who is not under the control of the party offering the testimony and (b) 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.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.20-j Parties and nonparties should adhere to the Electronically Stored Information ("ESI") guidelines set forth in Appendix hereto.

Section V of Appendix A of the Uniform Civil Rules for the Supreme Court and the County Courts is hereby amended as follows:

V. The requesting party shall defray the nonparty's reasonable production expenses in accordance with Rules 3111 and 3122(d) of the CPLR.

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.23 Staggered Court Appearances.

Staggered court appearances are a mechanism to increase efficiency in the courts and to decrease lawyers' time waiting for a matter to be called by the courts. While this rule is intended to streamline the litigation process, it will be ineffectual without the cooperation and participation of litigants. Improving the process of litigation by instituting staggered court appearances, for example, requires not only the promulgation of rules such as this one, but also, and more importantly, the proactive and earnest adherence to such rules by parties and their counsel and the court.

(a) Each court appearance for oral argument on a motion shall be assigned either a set time or a time interval during which the appearance is expected to be held. The assignment of time or time interval, and the length of time allotted to a case is solely in the discretion of the court.

(b) In order for the court to be able to address any and all matters of concern to the court and in order for the court to avoid the appearance of holding ex parte

communications with one or more parties in the case, even those parties who believe that they are not directly involved in the matter before the court must appear at the appointed date and time assigned by the court unless specifically excused by the court.

(c) Since the court is setting aside a specific time or time interval for the case and since there are occasions when the court's electronic or other notification system fails or occasions when a party fails to receive the court-generated notification, each attorney who receives notification of an appearance on a specific date and time is responsible for notifying all other parties by e-mail that the matter is scheduled to be heard on that assigned date and time. All parties are directed to exchange e-mail addresses with each other at the commencement of the case and to keep these e-mail addresses current, in order to facilitate notification by the person(s) receiving the court notification.

(d) Requests for adjournments shall be transmitted in writing to the court and to all parties, in such manner as the court may direct, so as to be received no later than 48 hours before the hearing and shall set forth whether the other parties consent to the adjournment.

Historical Note:

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.26 Settlement and Pretrial Conferences.

(a) Settlement Conference. At the time of certification of the matter as ready for trial or at any time after the discovery cut-off date, the court may schedule a settlement conference which shall be attended by counsel and the parties, who are expected to be fully prepared to discuss the settlement of the matter.

(b) Pre-Trial Conference. Prior to Trial, counsel shall 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 shall be prepared to discuss all matters as to which there is disagreement between the parties and settlement of the matter, and the court may require the parties to prepare a written stipulation of undisputed facts.

(c) Consultation Regarding Expert Testimony. 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 further direct that any agreements reached in this regard shall be reduced to a written stipulation.

Historical Note
Sec. filed Jan. 9, 1986; amd. filed Aug. 4, 1998 eff. Sept. 14, 1998. Amended (g).

Amended (e) on Oct. 1, 2006

Amended on Dec. 29. 2020, effective February 1, 2021

Section 202.28 Discontinuance of Civil Actions and Notice to the Court.

(a) If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the assigned judge or court part by submission of a copy of the stipulation or a letter directed to the clerk of the part along with notice to the chambers of the assigned judge via telephone, or email. This notification shall be made in addition to the filing of a stipulation with the county clerk.

(b) Counsel, including self-represented litigants, are under a continuing obligation to notify the court as promptly as possible in the event that an action is settled, discontinued or otherwise disposed of or if a case or motion has become wholly or partially moot, or if a party has died or filed a petition in bankruptcy. Such notification shall be made to the assigned judge in writing.

Historical Note
Sec. filed Jan. 9, 1986; repealed, new filed April 26, 1993 eff. April 14, 1993.

Amended on May 20,2013

Amended (a) & (b) on Dec. 29. 2020, effective February 1, 2021

Section 202.29 Settlement Conference Before a Justice Other than the Justice Assigned to the Case.

In any civil action or proceeding, should counsel wish to proceed with a settlement conference before a justice or judge other than the justice or judge assigned to the case, counsel may jointly request that the assigned justice or judge grant such a separate settlement conference. The request may be made at any time in the litigation. Such request will be granted in the discretion of the justice or judge assigned to the case upon finding that such a separate settlement conference would be beneficial to the parties and the court and would further the interests of justice. If the request is granted, the assigned justice or judge shall make appropriate arrangements for the designation of a "settlement judge."

Historical Note:

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.34 Pre-Marking of Exhibits

Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. Prior to the

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

Historical Note

Added on Dec. 29. 2020, effective February 1, 2021

Section 202.37 Scheduling Witnesses.

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 be called 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 provided by counsel are advisory and the court may permit further testimony from a witness notwithstanding that the time estimate for such witness has been exceeded.

Added on Dec. 29. 2020, effective February 1, 2021

Appendix A

Appendix B