

Suggested Protocols for Matrimonial Actions-Planning
for In Court Operations May 27, 2020

Hon. Jeffrey Sunshine, Statewide Coordinating Judge for Matrimonial Cases

Unless a personal appearance in court is authorized conferences are to occur via skype or telephone.

Encouragement and Exploration of ADR Alternatives

If party must personally appear because of inability to appear virtually or by telephone-separate location in courthouse that party can appear from virtually should be identified and set aside with virtual access.

Virtual appearance protocol (Exhibit A) to be adopted.

Each jurisdiction shall designate a matrimonial case virtual appearance clerk, the judge's secretary, or other staff member who will coordinate the appearance including sending out skype notice with telephone number alternative for self-represented litigants.

Court authorizes filing of documents with virtual or scanned signatures and notices or orders to county clerks to accept non original signatures on documents signed by attorneys or parties.

A record be available virtually or in court when necessary and when Judge determines a record need be made or a self-represented litigant appears.

When attorneys appear in Courtrooms, client's appearance should be waived as often as possible and they should have the right to listen to proceeding over court speaker phone or lawyers cell phone on speaker setting.

Need for Court Interpreter Services made known in advance, subject to local jurisdiction protocols.

Preliminary Conference-Time slot Specified

Uniform P.C. Forms can be filled out in Omni Form from the Court web site. See:

<https://www.nycourts.gov/LegacyPDFS/forms/matrimonial/PreliminaryConferenceOrderFillable.pdf>

Last page to be modified to allow each side to sign separately and file consent.

Requirement pursuant to 22 NYCRR 202.16(f) that litigants be present at the P.C. interpreted that appearance by video or telephone shall constitute an appearance.

Unless necessary or ordered by the Court in advanced all preliminary conferences to be held virtually and no in court appearance necessary.

Encourage the use of Interrogatories in lieu of depositions

Where necessary, virtual depositions to be utilized

Encourage production of records of assets to be provide by online access from clients' accounts instead of subpoenas and direct requests from agencies

Compliance Conference -Time slot specified

Appearances by both litigants and counsel virtually unless in court appearance necessary and approved by the court.

In Court or Virtual Court reporter available for record if necessary and self-represented litigants

Judge should issue a compliance conference order and a new date for follow up or directing the filing of a note of issue

Sample Kings County Order Attached (Exhibit B)

Pre-Trial Conference- Time Slot Specified

All proposed statements of disposition submitted prior to Conference

Motions in limine to narrow issues submitted and agreed statement of facts as to issues not in dispute to be submitted and agreed to order to reduce trial time

Pre- Marking Conference- Time Slot Specified

Held with part clerk or court's law clerk (depending on local custom and practice) one week prior to trial virtually or by telephone.

All proposed exhibits submitted electronically through NYSCEF, EDDS or a PDF in a non -NYSCEF County on a date 7 days prior to Pre marking Conference and marked into evidence on consent (subject to court approval) or marked for Identification and presentation at trial except documents that a party wishes to use for impeachment purposes at trial.

Model Spread sheet for pretrial identification of assets. (Exhibit C)

Trial or Hearings or Oral arguments in Court held in Court only with Prior Approval

Litigants do not sit next to counsel. First or Second should be row reserved for litigants behind their counsel at a minimum of six feet behind counsel.

Unless Plexi Glass divide- the witness should not sit next to the Judge unless six feet distance.

Uniform protocol related to masks in courtrooms during trials.

Copies of Pre- Marked Documents to be presented to witness to be in front of witness at commencement of a hearing.

Court reporter should be six feet from Judge, Witness and counsel.

Court security staff should be notified in advance of any prior security concerns related to the matrimonial action or existing order of protection

Preferred method- Litigant who does not have access to virtual proceeding must appear in separate courtroom with virtual equipment while others appear via skype from remote locations.

In- camera Interviews

Are to be held in large conference rooms, in sealed courtrooms, or virtually in the Attorney for the Child's office or other secured location where confidentiality can be assured and where social distancing can occur.

Coordination of In Court Proceedings-Physical Courtroom

Where multiple matrimonial parts are in the same location in a courthouse in court hearings and trials must be coordinated to assure that the public hallway outside courtrooms are not crowded or overwhelmed with multiple parts working at the same time.

Referees: Often conduct hearings in small offices where social distancing is not possible and arrangements need to be made to accommodate appropriate social distance.

Conferencing in chambers and robing rooms should be curtailed unless proper social distancing is available. The alternative should be considered to conference in the Courtroom.

Requests to approach- should consider social distancing requirements for both the Judge, Law Clerks and attorneys.

Utilization of in limine applications heard virtually on the record prior to any trial or hearing

Trials and Hearings

Return to day to day trials and Hearing where practicable to resolve matters expeditiously. Preference being virtual hearings.

With the assistance of the Matrimonial Practice Advisory and Rules Committee we plan on developing a protocol for virtual trials and hearings.

Reduce the need to handle papers and documents during trial by use of evidence virtually submitted to the Court and limiting the need for a paper documents to be exchanged.

Those jurisdictions that utilize the practice of on the record allocutions and inquests should consider doing so virtually or on submission of documents and a written sworn affidavit.

Forensic Reports and other Confidential Reports

Many Courts in different parts of the State adopt different protocols for review of forensic reports. See *Sonbuchner v. Sonbuchner*, 96 A.D.3d 566, 947 N.Y.S.2d 80 (First Department 2012) and *Raymond v. Raymond*, 174 A.D.3d 625, 107 N.Y.S.3d 433 (Second Department 2019). If confidentiality releases (Exhibit D) have been signed by counsel forensic reports can be sent confidentially by utilizing the following “@secure” in the subject before the name or initials of the case. For self-represented litigants’ access to the report should be in the courthouse by appointment only.

Chambers Equipment:

Appropriate staff that will be conducting settlement conferences should be provided with cameras and scanners (if needed) for chambers and Referee desktop computers.

Suggested Language for Orders in appropriate jurisdiction

The attorneys shall file a consent to NYSCEF through the EDDS process to convert to e- filing. Self-represented litigants may also, if they so desire, utilize NYSCEF. Instructions on using NYSCEF and EDDS are available at nycourts.gov.

EXHIBIT A

Suggested Protocol for Virtual Oral Arguments in Matrimonial Proceedings
Hon. Jeffrey Sunshine

- (1) Everyone identify themselves after case called in.
- (2) Everyone identify how they are appearing (by phone or skype).
- (3) Everyone identify themselves each time they speak in order to be seen on Skype. (Skype will often not show a person's photo even if they are logged in unless they are speaking).
- (4) No recording allowed except court reporter.
- (5) Where practicable when you are not speaking phone or Skype must be muted.
- (6) When anyone speaks, including the Judge, identify themselves each time.
- (7) Counsel and litigants may NOT interrupt each other or talk over each other.
- (8) Judge articulates on the record before the argument begins the motions sequence and the papers being considered and confirms with counsel or litigants on the record. If appropriate ADR alternatives discussed.
- (9) Appointments in advance for oral arguments with strict limited time period.
- (10) Plaintiff or movant goes first.
- (11) If court reporter has a question or cannot hear - the Court Reporter shall interrupt, and EVERYONE must stop speaking.
- (12) Children are not to overhear the proceedings. If this is not possible due to safety concerns, the litigant or their attorney must notify the court.
- (13) If litigant is represented by counsel-counsel speaks on behalf of the litigant.

EXHIBIT B

At an IAS Matrimonial Part ___ of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the ___ day of _____, 202 .

P R E S E N T:

HON. _____,
Justice.

-----X

Plaintiff,

-against-

Defendant.

-----X

Index No.:
UNIFORM KINGS COUNTY COMPLIANCE ORDER - MATRIMONIAL
In Court
Pursuant to adjournment request

NOTICE: NO DEVIATION FROM THIS ORDER IS PERMITTED WITHOUT WRITTEN CONSENT OF THE COURT. FAILURE TO ABIDE BY THIS ORDER MAY RESULT IN PRECLUSION, CONTEMPT OR FINANCIAL SANCTIONS UP TO \$10,000.00 PURSUANT TO 22 NYCRR 130-1.2.

IT IS ORDERED (pursuant to 22 NYCRR 202.16): On Consent After Argument

I Additional appraiser order signed: (Real Estate/Pension/Business) and to be sent to appraiser via fax and e-mail within three (3) days of this order.

I Discovery & Inspection from Plaintiff to Defendant via e-mail/mail.

Notices by _____, and response returnable on _____.

Discovery and Inspection from Defendant to Plaintiff via e-mail/mail.

Notices by _____, and response returnable on _____.

I Following items to be provided from _____ to _____ via _____, by _____.

A) By PLAINTIFF:

1. _____
2. _____
3. _____
4. _____

A) By DEFENDANT:

- 1. _____
- 2. _____
- 3. _____
- 4. _____

I C) Any necessary subpoenas to be filed by Plaintiff or Defendant by _____

D) Other _____

I Deposition of PLAINTIFF on _____ at _____

Deposition of DEFENDANT on _____ at _____

Deposition of NON-PARTY on _____ at _____

Depositions shall continue day to day until completed.

IV All discovery is completed.

See Addendum.

V Note of Issue to be filed on or before _____ with a copy to be filed on 10th Floor Matrimonial Clerks Office by Plaintiff Defendant

Pre-Trial Conference on _____ at _____. [FINAL]

Trial Dates are: _____.

Sanction Hearing Date _____. [The Court entering a date for a sanctions hearing constitutes notice that sanctions may be issued on the adjourn date pursuant to 22 NYCRR 130-1.2].

Dated:

ENTER,

Receipt Acknowledged:

Plaintiff's Counsel

Defendant's Counsel

Plaintiff

Defendant

EXHIBIT C

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

X

Plaintiff,

Index No.:

- against -

Defendant.

AFFIRMATION OF COUNSEL
REGARDING FORENSIC
REPORTS

X

, an attorney admitted to practice in the State of New York, affirms
the following to be true under penalties of perjury:

1. I am a member of the _____, attorneys for _____ in
this action. I make this affirmation in connection with the report of the forensic evaluator, Dr.

_____, and specifically to affirm my understanding and agreement to abide by the Court's directions
accompanying the provision of a copy of the report to counsel, as follows:

(a) I and the other persons affiliated with my firm will see to it that no copies of the report are
made by us or by anyone else without the court's explicit direction.

(b) While our copy of the report may be shown to our client, no copy will be given to the client,
nor will the client be permitted to make a copy or to leave the premises of our office with our copy.

2. In the event that counsel is substituted, incoming counsel shall not be given the said
report(s) unless and until counsel shall execute a copy of this Stipulation/Order agreeing to bound thereby
nunc pro tunc. If incoming counsel fails or refuses to execute a copy of this Stipulation/Order, outgoing
counsel shall return his/her copy of the said report(s) to the Court forthwith.

3. Upon the termination of this matter, for any reason, the undersigned and/or their successors
shall return their copy of the said report(s) to the Court forthwith.

Dated: _____, 2019

Print Name:
Attorneys for the:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS PART 5

X

INDEX NO.

Plaintiff ,

**AFFIDAVIT OF
PARTY REGARDING
FORENSIC REPORTS**

-against-

Present:

Defendant.

HON.

X

I, _____, being duly sworn, deposes and says:

1. I am the plaintiff/defendant in the above captioned action.

2. I make this affidavit in connection with the report of the forensic evaluator, Dr.

_____, and specifically swear my understanding and agreement to abide by the Court's directions accompanying the provision of a copy of the report to my counsel, as follows:

(a) I understand that my counsel will allow me to read the report but that no copies will be distributed to me.

(b) I understand that I am not permitted to make a copy of the report or leave my attorney's office with their copy.

3. In the event that my attorney ceases to represent me in this matter, and is substituted by new counsel, they will notify the Court immediately and not release the forensic report until an affidavit is executed agreeing to the terms herein.

4. I understand that if I act contrary to the representations made in this affidavit, I may be subject to a contempt finding by the Court.

Plaintiff/Defendant's Signature

(Please print name)

Sworn to before me this _____ day of _____, 2019

Notary Public