

Rules of Practice and Procedure for Family Law

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STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 19th day of April, 2000, the following order was made and ordered:

IN RE: RULES OF PRACTICE AND PROCEDURE FOR FAMILY LAW

This day came Barbara Baxter, Director of the Family Law System for the Supreme Court of Appeals of West Virginia, and presented to the Court amendments to the RULES OF PRACTICE AND PROCEDURE FOR FAMILY LAW.

Upon consideration whereof, the Court is of opinion to and doth hereby provisionally adopt as proposed the aforesaid rules on an emergency basis. It is further directed that a period for public comment begin this date and conclude on the 19th day of June, 2000, with comments to be filed with Barbara Baxter, Director of the Family Law System, East Wing, Room 100, State Capitol, Charleston, West Virginia 25305. Deletions are indicated by strike-throughs and additions are indicated by underscoring.

"Rules of Practice and Procedure for Family Law

GENERAL PROVISIONS.

Rule 1. Scope and purpose of rules.

(a) Scope. - These rules shall govern the procedures

in proceedings in Family Court before family law masters and circuit judges pursuant to chapters 48 and 48A of the Code of West Virginia, in contempt proceedings pursuant to chapter 51, article 2A, section 11, and in habeas corpus proceedings involving issues of child custody instituted pursuant to chapter 53, article 4, section 1 et seq. [§ 53-4-1 et seq.] sections 1-13 of the Code of West Virginia.

(b) Purpose. – They These Rules shall be construed to expedite and simplify the determination of such proceedings, and to permit the full and effective participation of all litigants, whether represented by counsel, or self-represented.

Rule 2. Applicability of other rules.

The following rules shall apply to proceedings within the scope of the Rules of Practice for Family Law: the Rules of Civil Procedure, as provided in Rule 81(a)(2) of those rules; the Rules of Evidence; Rule 16.02(b) and Rule 16.06 on Time Standards of the Trial Court Rules; and in the event any of these rules conflict with the Rules of Practice for Family Law, or with the Code, the Rules of Practice for Family Law and the Code shall apply.

Rule 2. Applicability of rules.

Administrative, procedural, and evidentiary rules promulgated by the supreme court of appeals shall apply to all proceedings within the scope of these rules, except to the extent that they conflict with these rules or with the provisions of chapters 48 and 48A of the Code of West Virginia.

Rule 3. Terminology.

Unless otherwise indicated: "the Code" refers to the Code of West Virginia; any reference to a rule without identification of a set of rules, e.g., "Rule 6," refers to a rule of the West Virginia Rules of Practice and Procedure for Family Law; any reference to a set of rules, such as the "Rules of Civil Procedure," refers to the West Virginia rules of that title; "supreme court of appeals" refers to the West Virginia Supreme Court of Appeals; "approved" or "required"

refers to a form, fee scale, order, set of procedures, or other such matter promulgated, approved, or required by the supreme court of appeals; "case information statement" refers to a case information statement for domestic relations cases; "service," "served," or "service of process," or any variation refers to service as provided by the Rules of Civil Procedure; "all parties," means all self-represented parties and all counsel of record; "child support enforcement agency" refers to the state agency charged with child support enforcement; "local child support enforcement office" refers to the appropriate local office of the child support enforcement agency.

Rule 4. Effective date.

The rules shall take effect on the 19th day of April, 2000, 1st day of October 1993 . They shall govern all proceedings, petitions, or motions brought after such date and all proceedings then pending.

JURISDICTION

~~**Rule 4. General jurisdiction.**~~

~~In addition to matters that may be heard under the grant of general jurisdiction set out in chapter 48, article 2 and chapter 48A, article 4, sections 6 and 9 of the Code of West Virginia, family law masters and circuit judges may hear, in cases pending before them, motions for modification, temporary relief, discovery, and other preliminary matters arising from their domestic relations jurisdiction and from the procedures contained in these rules. A family law master may grant temporary relief without further approval of a circuit judge.~~

~~**Rule 5. When circuit court retains jurisdiction.**~~

~~In accordance with the provisions of chapter 48A, article 4, section 6, the circuit court shall retain jurisdiction of and hear actions for divorce, annulment, or separate maintenance which do not involve issues of child custody or child support and in which, at the time of filing the action, the parties filed a signed, written property settlement~~

~~agreement.~~

~~**Rule 6. Authority to accept waivers.**~~

~~A family law master or circuit judge may accept a written waiver of the right to petition for review of a recommended order, the appointment of a committee for a convict, the application of the Soldier's and Sailor's Civil Relief Act, or other rights as provided by law.~~

~~**Rule 7. Restriction on final hearing.**~~

~~Circuit judges and family law masters are not authorized to conduct a final hearing in an action for divorce or annulment prior to expiration of the time in which the defendant is required to file an answer under Rule 12 of the West Virginia Rules of Civil Procedure.~~

ADMINISTRATIVE PROVISIONS.

~~**Rule 5. Rule 39. Security.**~~

~~Prior to or during any hearing, the In accordance with the provisions of chapter 48A, article 4, section 10(d) of the Code, the family law master may request the sheriff to assign a deputy as a bailiff for any family court proceeding in accordance with the provisions of chapter 48A, article 4, section 10(d) of the Code of West Virginia. Except for authorized court personnel, bailiffs assigned to the family court, or other persons expressly authorized by the circuit court, no person shall carry, or knowingly permit another person to carry any weapon to a proceeding held before a family law master court.~~

Rule 6. Setting the docket.

The docket of the family court shall be set by the family law master, provided however, the family law master may request that the circuit clerk schedule family court hearings

on certain dates designated by the family law master. The family law master shall designate dates for hearings involving the child support enforcement agency. The family law master shall regularly provide time on the family court docket for expedited hearings and other urgent matters. When a family law master conducts hearings in a circuit or magistrate courtroom, the family law master shall coordinate the hearing dates and times with the appropriate circuit or magistrate court.

Rule 10. Setting the docket.

~~(a) Publication of Calendar. The family law master shall publish a monthly calendar of available hearing dates for each county in which the master regularly conducts hearings. The calendar shall include designated dates for expedited hearing of motions involving the child advocate office, temporary alimony, child support, child custody and visitation, domestic violence, and other urgent or uncontested matters. When a family law master conducts hearings in a circuit courtroom, the family law master shall coordinate the designated dates with the circuit judge.~~

~~(b) Procedure for Local Docket Setting. The family law master shall establish procedures for setting hearings on the docket and shall specify whether the circuit clerk or the office of the family law master shall schedule hearings. A circuit judge shall establish designated hearing dates in those matters pending before him or her.~~

~~(c) Placing Proceedings Upon the Calendar Upon Request of a Party. After a responsive pleading has been served and before a hearing with a family law master or circuit judge has been scheduled, the party seeking such hearing shall confirm or attempt to confirm a hearing date with the opposing party or demonstrate cause for waiving the requirement. The moving party shall serve a notice of the hearing and of the issues to be raised at the hearing on the opposing party.~~

Rule 7. Records, transcripts, fees, costs, and forms.

(a) All records filed in the office of circuit clerk.
— All case files, evidence, and recordings of proceedings shall be filed in and stored by the office of the circuit clerk.

(b) Recordings of proceedings. - Proceedings in family court shall be recorded electronically on tapes or other electronic recording media. Proceedings in no more than one case shall be taken on one tape or individual electronic recording. A party may obtain a duplicate copy of a recording by filing a written request identifying the style of the action and the date of the hearing. Within ten (10) days after receiving such request, and upon payment to the circuit clerk's office of the fee specified in chapter 48A, article 4, section 9(e) of the Code, the family law master's office staff shall provide the duplicate recording. The family law master or judge may refuse to provide that part of any recording which includes the testimony of a child. No persons except a family law master or a member of his or her staff, a circuit clerk or a member of his or her staff, or a circuit judge or a member of his or her staff shall have access to the original recording of any hearing.

(c) Transcripts. - A party may have a transcript of a hearing before a family law master prepared by an independent court reporter or transcription service. However, the family law master or judge may refuse to permit the transcription of any testimony by a child. The costs of such transcriptions shall be borne by the party having the transcript prepared. Every transcript shall be verified by the reporter or transcriber as a true and accurate reproduction of the proceedings and shall be filed with the circuit clerk. The reporter or transcriber shall also state whether the transcript includes all or only part of the record of the proceedings. Notice of the filing of any transcript shall be provided to an opposing party. When the parties are unable to agree as to the accuracy of a transcript, the family law master or judge may resolve the matter.

(d) Fees. - All fees and monies to be collected, including, but not limited to: filing fees, costs, and any other fees required by statute or rule shall be paid to and collected by the circuit clerk's office.

(e) Pauper's affidavit. - Affidavits made in accordance with the provisions of chapter 59, article 2, section 1 of the Code shall be filed in the circuit clerk's office. Upon the filing of a completed and proper affidavit, the prepayment of fees and costs shall be waived, and the circuit clerk and all other officers of the court shall issue and serve all process and perform all duties required by law.

(f) Review of pauper's affidavit. - When the information set forth in the affidavit or the evidence

submitted in the action reveals the person filing the affidavit is financially able to pay fees and costs, the court or the family law master shall order the person to pay the fees and costs in the action.

(g) Taxation of fees and costs. - At the conclusion of a case in which a prevailing party or parties have been determined to be financially unable to pay fees or costs, those fees and costs which have been waived may be taxed by the court against a losing party or parties who are financially able to pay.

(h) Forms. - All forms required by the supreme court of appeals for use in proceedings subject to these rules shall be available to litigants in every circuit clerk's office and every family law master office.

Rule 8. ~~Rule 39.~~ Confidentiality of court files.

(a) General provisions. - All orders in proceedings governed by these rules are public records and shall be entered in the civil order books by the circuit clerk. Information disclosed pursuant to chapter 48, article 2, section 33 of the Code of West Virginia is All pleadings, exhibits, electronic recordings of proceedings, transcripts, or other documents contained in the court file are confidential and shall not be available for public inspection, but the entire file shall be available for inspection, unless expressly ordered otherwise, by the parties and their attorneys of record without an order of a circuit judge or family law master, unless the court expressly prohibits such inspection. A family law master or judge may open and inspect the entire contents of the court file in any case pending before their court. When sensitive information has been disclosed in a hearing, pleading, or otherwise, a family law master or judge the court may, upon motion of a party, or sua sponte, order such information sealed in the court file. Sealed court files shall be opened only by order of a circuit judge or family law master.

(b) Orders permitting examination or copying of file contents. - Upon motion, for good cause shown, a circuit judge or family law master may enter an order permitting a person who is not a party to examine and/or copy documents from a court file. Such orders shall set forth specific findings which demonstrate why the interests of justice necessitate the examination or copying, and shall specify the

particular documents to be examined or copied and the arrangements under which such examination or copying shall take place.

Rule 9. Exhibits.

By order, the court may make special provisions for the secure custody and disposition of exhibits, including, but not limited to controlled substances, weapons, ammunition and pornography. Such orders shall provide specific instructions for custody and disposition, which may include, but not be limited to, delivery to law enforcement officials.

Rule 10. Unofficial recording of proceedings.

Proceedings in family court are not open to the public. Unless prior permission is granted by the court, no person shall be permitted to make photographs, video recordings, sound recordings, or other forms of electronic recordings of proceedings, or make sound or video broadcasts or other electronic transmissions of proceedings, and unless prior permission is granted by the court, such activities are not permitted in areas immediately adjacent to the courtroom. With prior approval of the court, photographs, video recordings, sound recordings, or other forms of electronic recordings may be made of official ceremonial proceedings in the courtroom, and sound or video broadcasts or other electronic transmissions may be made of such ceremonial proceedings.

Rule 11. Quarterly activity reports by family law masters.

Beginning the first day of January, two thousand, each family law master shall file a quarterly activity report with the supreme court of appeals. The report shall be made on the required form, and shall include, but may not be limited to, the number of cases heard before the family law master, the date the case was heard, the date the case was filed, and the number and types of hearings held before the family law master in each case.

Rule 12. Family law master and magistrate court time keeping and reporting.

Family law master staff, magistrates, magistrate assistants and magistrate court clerks shall, in accord with standards and procedures approved by the supreme court of appeals, monthly provide to the supreme court administrative office a report to be used by the supreme court of appeals to obtain reimbursement from the federal child support enforcement agency for reimbursable work performed by family law masters and family law master staff, magistrates, magistrate assistants, and magistrate court clerks.

PREHEARING PROCEDURES.

Rule 13. Commencement of actions.

(a) Commencement of actions. – A domestic relations proceeding shall be commenced by filing a verified petition with the circuit clerk's office. The petition shall be accompanied by three copies of a completed case information statement, and a completed copy of the required financial statement. In cases which may involve issues of spousal support, child support, allocation of custodial responsibility, visitation, or paternity, the financial statement shall be accompanied by the information required by subsection (d) of this rule, and by a completed application for child support enforcement services pursuant to the Social Security Act, Title 42, Chapter 7, Subchapter IV, Part D of the United States Code, hereafter referred to as "Section IV-D," and in such cases, except on motion for temporary relief, no hearing shall be conducted until a completed Section IV-D application has been filed. At the time of the filing of the petition, the circuit clerk shall collect the filing fee as directed by chapter 59, article 1, section 11 of the Code, shall collect from all petitioners with a minor child(ren) subject to the action the fee for parent education specified in chapter 48, article 11, section 104(c) of the Code, and shall provide to such petitioners the required form and instructions for registering for parent education classes. At the time of the filing of the petition commencing the action, the circuit clerk may collect from the petitioner the parent education fees required to be paid by both the petitioner and the respondent. The petitioner may pay, but shall not be

required to pay the respondent's parent education fee. Within five days of the filing of the petition, the circuit clerk shall send to the family law master office a copy of the petitioner's case information statement.

(b) Service on respondent. - The circuit clerk shall institute service on the respondent, and shall cause the following items to be served with the petition: a copy of the petitioner's financial statement and any accompanying information filed pursuant to subsection (d) of this rule; a copy of any application filed by the petitioner for child support enforcement services pursuant to Section IV-D of the Social Security Act; if the respondent is the parent of a child(ren) subject to the action, the required form and instructions for registering for parent education classes. In cases which may involve issues of spousal support, child support, allocation of custodial responsibility, visitation, or paternity, the circuit clerk shall also serve with the petition an application for child support enforcement services pursuant to Section IV-D of the Social Security Act. This application shall be served on the respondent in such cases even if the petitioner has completed and filed such an application with the petition.

(c) Respondent's answer. - The respondent's answer shall be filed within the time required by Rule 6 of the Rules of Civil Procedure, and shall be accompanied by three copies of a completed case information statement, and a completed copy of the required financial statement. In cases which may involve issues of spousal support, child support, allocation of custodial responsibility, visitation, or paternity, the required financial statement shall be accompanied by the information required by subsection (d) of this rule, and by an application for child support enforcement services pursuant to Section IV-D of the Social Security Act, and in such cases, except on motion for temporary relief, no hearing shall be conducted until a completed Section IV-D application has been filed. Upon receipt of the respondent's verified answer and all required information, the circuit clerk shall assess respondents with a minor child(ren), subject to the action, the parent education fee required by chapter 48, article 11, section 104(c) of the Code. Within five (5) days of the receipt of the verified answer, the circuit clerk shall send to the family law master office a copy of the respondent's case information statement.

(d) Additional financial information required in proceedings involving issues of spousal or child support. -

In proceedings in which spousal support or child support may be an issue, the petitioner and respondent shall file the following information with the required financial statement.

(1) A copy of the party's most recent wage or salary stub showing gross pay, deductions for taxes and other items, and net pay, for a normal pay period, and for the year-to-date;

(2) A copy of the party's complete income tax returns for the two years immediately preceding the hearing date, and a copy of federal Forms W-2 for those years, and for any year for which the Form W-2 is available, even if a tax return has not yet been filed for that year;

(3) A copy of any financial statement for a party who is self-employed;

(4) A copy of any invoices, receipts, etc., showing the cost of any extraordinary medical expenses, child care, and other special needs of the child(ren).

(5) A copy of any other document necessary for the calculation of child or spousal support.

(e) Nondisclosure of information. - Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information in required document filings, the court may order that such information need not be disclosed.

(f) Failure to file required financial information; sanctions. - The failure to file, or the untimely filing of any financial information required by this rule shall not be grounds for a continuance. In the event of a party's failure to file, or the untimely filing of such information, the court may impose one or more of the following sanctions:

(1) the court may accept the financial statement and other financial records of the other party as accurate;

(2) the court may refuse to grant requested relief to a party who has not filed, or not timely filed, some or all of the required documents or information.

(3) the court may impose any of the applicable sanctions provided by chapter 48, article 2, section 33(f)(2) of the Code.

(g) Application for child support enforcement services. - If a party completes an application for child support enforcement agency services, the circuit clerk shall, within five days, send a copy of that application and the party's case information statement to the local child support enforcement office.

(h) Effect of service on designated child support

enforcement agency. - Service on the child support enforcement agency shall not constitute service on or notice to any other party.

Rule 14. Pleadings and motions.

(a) All pleadings filed in office of circuit clerk. - All pleadings shall be filed in the office of the circuit clerk.

(b) Style and caption of pleadings. - As of October 1, 1999, all pleadings shall be styled as directed by chapter 51, article 2A, section 1, and chapter 48, article 2, section 4a of the Code.

(c) Form of pleadings. - The form of all pleadings shall comply with the applicable requirements of the Rules of Civil Procedure, and shall be verified as provided by Rule 81(a)(2), of these rules, and chapter 48, article 2, section 10 of the Code.

(d) Proposed parenting plans. - Proposed parenting plans are pleadings.

(e) Nondisclosure of information in pleadings. - Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information in a pleading, the court may order that such information need not be disclosed.

Rule 8. Form of pleadings and motions.

The West Virginia Rules of Civil Procedure relating to pleadings, motions, and answers shall be applicable in proceedings within the scope of these rules, subject to the provisions of Rule 81 of the West Virginia Rules of Civil Procedure. Every petition and answer filed in the office of circuit clerk shall be accompanied by three copies of a completed civil case information statement for domestic relations cases in the form prescribed by the Supreme Court of Appeals.

Rule 15. ~~Rule 11.~~ Discovery.

Notwithstanding Subject to the limitations stated in Rule

~~81(a)(2) of the Rules of Civil Procedure, the following discovery is available; as the interest of justice requires, discovery pursuant to Rules 26 through 37 of the Rules of Civil Procedure may be allowed by the court upon receipt of a written motion demonstrating a particularized need.~~

~~(a) Disclosure of Assets and Liabilities. In a proceeding for divorce, each party shall provide the information required to be disclosed by chapter 48, article 2, section 33 of the Code of West Virginia. The information shall be served on the opposing party and filed with the clerk of the circuit court within forty (40) days after service of process. If a final hearing is held within the forty-day period, the information shall be served and filed no less than five (5) days prior to the hearing.~~

~~(b) Financial Disclosure for Determination of Child Support and/or Alimony. In any action in which the issue of child support or alimony is raised, each party shall, not later than three (3) days prior to a hearing on such issue, provide the opposing party and file with the circuit clerk a verified financial disclosure form for child support and alimony which shall include the following documents and information:~~

~~(1) A copy of the party's most recent wage or salary stub stating the gross pay, deductions for taxes and other items itemized, and net pay, both for a normal pay period and for year-to-date earnings;~~

~~(2) A copy of the party's income tax returns for the two years immediately preceding the hearing date and Forms W-2 for those years and for any year for which tax returns have not yet been filed;~~

~~(3) A copy of any financial statement for a party who is self-employed;~~

~~(4) A copy of any invoices, receipts, etc., showing the cost of any extraordinary medical expenses, child care, and other special needs of the child;~~

~~(5) A copy of any other document reflecting any other item to be used in the calculation.~~

Rule 16. Filing and service of documents by facsimile transmission.

~~(a) Filing by facsimile transmission. - A party may file any document other than a petition by facsimile transmission to any circuit clerk's office having a facsimile~~

machine. The circuit clerk shall accept the document as filed if the filing and the document comply with all applicable rules and statutes.

(b) Service by facsimile transmission. - Service of any document in a domestic relations proceeding, other than original process, may be made by facsimile transmission in accord with the provisions of these rules and other applicable rules and statutes. Service by facsimile transmission is complete upon receipt of the entire document by the receiving facsimile machine.

(c) Proof of service by facsimile transmission. - Proof of service by facsimile transmission shall be made by affidavit of the person making service, or by certificate of service by an attorney. A copy of the sender's facsimile machine transmission record shall be attached to the affidavit or certificate.

TEMPORARY RELIEF.

Rule 17. Motions for temporary relief.

A motion for temporary relief shall be served on all parties unless ex parte relief is sought and is permitted by chapter 48, article 2, sections 13(e) and (f) of the Code. Any motion for temporary relief relating to the allocation of custodial or decision making responsibility of minor children shall be accompanied by a proposed temporary parenting plan.

Rule 18. Temporary orders.

(a) General provisions. - A family law master may grant temporary relief without further approval of a circuit judge. A temporary order shall remain in effect unless modified by a subsequent order of the family law master or circuit judge. The scope of a temporary order is controlled by chapter 48, article 2, section 13(q) of the Code. A temporary order is not subject to a petition for review or appeal.

(b) Orders on temporary child support relief. - At the conclusion of every hearing in which child support or medical support is established or modified, the family law master or

judge shall enter a temporary child support order using the required form order. The order shall be recorded by the circuit clerk on the day of the hearing, or by the next judicial day, and a certified copy of the order shall be sent that day or by the next judicial day to the parties and the local office of the child support enforcement agency. Any subsequent temporary order shall incorporate the child support and medical support set forth in the initial child support order, unless otherwise ordered by the court.

(c) Application for child support enforcement services.

- A completed application for Section IV-D child support enforcement services shall be incorporated by reference and attached to every order for temporary spousal or child support. The order for temporary spousal or child support shall direct the circuit clerk to forward a certified copy of the order to the local office of the child support enforcement agency.

~~Rule 18. Temporary orders.~~

~~(a) Temporary Child Support Orders. At the conclusion of every hearing in which child support or medical support is established or modified, the family law master or circuit judge shall enter a temporary child support order using the form order promulgated by the supreme court. This order shall be recorded by the circuit clerk on the day of the hearing or by the next judicial day, and a certified copy of the order shall be sent that day or by the next judicial day to the parties and the child support enforcement division. Any subsequent temporary order shall incorporate the child support and medical support set forth in the initial temporary child support order, unless otherwise ordered by the master or judge.~~

~~(b) Scope and Duration. A temporary order shall remain in effect unless modified by a subsequent order of the family law master or circuit judge. The scope of a temporary order is controlled by chapter 48, article 2, section 13 of the Code of West Virginia. In accordance with chapter 48, article 2, section 13(g) of the Code of West Virginia, a temporary order is not subject to a petition for review or appeal. Except for good cause shown, any petition to modify a temporary order shall comply with the procedures contained in Rule 29.~~

Rule 19. Conduct of hearings on motions for temporary relief.

(a) Presentation of evidence by proffer in hearings on temporary relief. – Unless the court determines on its own motion there are compelling reasons for conducting a full evidentiary hearing, or grants a motion for a full evidentiary hearing as provided in this rule, all hearings on motions for temporary relief shall be conducted by the parties presenting their evidence by proffer. When evidence is presented by proffer, the parties shall be physically present, and may be placed under oath to confirm or modify the evidence proffered in their behalf. Each party shall be given an opportunity to proffer rebuttal evidence.

(b) Motions for a full evidentiary hearing on temporary relief; requirements. – A party may move for a full evidentiary hearing to be held on a motion for temporary relief. Motions for a full evidentiary hearing shall state good cause for a full evidentiary hearing, shall be filed with the circuit clerk, sent to the court, and served on all parties not less than 14 days prior to the hearing which is the subject of the motion, however, for good cause shown, and after making a finding no party will be prejudiced, the court may shorten this time period.

(c) Court's action on motions for a full evidentiary hearing on temporary relief; factors considered. – Upon receipt of a motion for a full evidentiary hearing, the court may grant or deny the motion without a hearing, or may hold a hearing no less than seven days prior to the date of the hearing on temporary relief. In ruling on the motion for a full evidentiary hearing, the court shall consider, among other factors, whether the nonmoving party will have sufficient time to properly prepare for a full evidentiary hearing. The court shall expeditiously rule on the motion, enter an order memorializing the ruling, and direct the circuit clerk to send certified copies of the order to all parties.

(d) Limitations on full evidentiary hearing on temporary relief. – In the event the court grants a motion for a full evidentiary hearing, or determines on its own motion there is good cause for holding such a hearing, the court may limit the amount of time allotted for presentation of evidence, limit the number of witnesses, or confine the testimony to certain issues.

~~Rule 14. Hearing on motions for temporary relief.~~

~~At hearings on motions for temporary relief, the parties shall present their evidence by proffer rather than by a full evidentiary hearing unless (a) a party makes a written request for an evidentiary hearing, stating good cause for not proceeding by proffer, seven (7) days before the temporary hearing, or (b) after hearing the proffer, the family law master or the circuit judge determines that there are compelling reasons for conducting an evidentiary hearing on some or all of the issues raised. When evidence is received by proffer, the parties shall be physically present during the proffer. They may be placed under oath to confirm or modify the evidence proffered in their behalf. Each party shall be given an opportunity to proffer any rebuttal evidence. In the event that a party makes a timely written request for an evidentiary hearing or the family law master or the circuit judge determines that there is good cause for taking testimony, the family law master or the circuit judge may, at his or her discretion, limit the amount of time allotted for presentation of each side's evidence, the number of witnesses each side may present, or the testimony to certain issues.~~

Rule 20. Retroactivity of orders.

A family law master or circuit court granting relief in the form of spousal support alimony or child support shall, except for good cause shown, make such award of alimony or child support retroactive to the date of service of the motion for relief upon the opposing party.

Rule 21. Attorney fees and costs.

When it appears that a party has incurred unnecessary expenses in a proceeding for temporary relief because the opposing party has raised unfounded claims or defenses, the family law master may recommend and the circuit court may grant an award of attorney fees and costs to the innocent party in accordance with the provisions of chapter 48, article 2, section 13 of the Code of West Virginia.

HEARINGS.

Rule 22. ~~Rule 16.~~ Testimony of children.

(a) *Restrictions on testimony of children.* - The West Virginia Rules of Evidence and the ~~West Virginia~~ Rules of Civil Procedure shall apply to ~~determine determinations of~~ the competency of children to testify ~~before a family law master or circuit judge~~ in proceedings under governed by these rules, ~~but special recognition.~~ Special weight shall be given to any potential psychological harm to a child witness, ~~and~~ The the testimony of a child of tender years ~~should~~ shall not be taken unless it is more probative on the point for which it is offered than any other evidence ~~which~~ the proponent can procure through other reasonable means.

(b) *Motions to take the testimony of children.* - A party who seeks to offer the testimony of a child under the age of ~~fourteen (14) years~~ must file a written motion ~~to that effect.~~ The motion shall be filed with the circuit clerk, and served on all parties and the court scheduled to hear the proceeding not less than 20 days before the hearing in which the moving party desires to take the testimony of the child.

(c) *Hearings on motions to take the testimony of children.* - Upon receipt of a motion to take the testimony of a child, the court shall forthwith set a hearing and notify all parties. The hearing shall be held no later than ten days prior to the hearing at which the moving party desires to take the testimony of the child, and the court shall rule on the motion no later than five days prior to the hearing in which such testimony is to be offered.

(d) ~~(c)~~ *Procedure for taking the testimony of children.* - When a child has been ordered to testify, the circuit judge or family law master may permit such procedures as the circuit judge or family law master deems necessary to protect the child, including but not limited to:

(1) ~~Permitting the child to testify outside the presence of the parties, but in the presence of their attorneys;~~

(2) ~~Permitting the child to testify outside the presence of the attorneys. When attorneys are not present during in camera interviews of a child, the circuit judge or family law master shall allow the attorneys to review the record of the testimony before the evidentiary hearing resumes;~~

(3) ~~Permitting the parties or their attorneys to submit questions in advance of the interview for the family law master or circuit judge to ask the child;~~

(4) ~~Requiring the parties or their attorneys, when~~

~~present during the interview, to be seated in an unobtrusive manner; and~~

~~(5) Making such other physical alterations to the hearing room as may be deemed necessary.~~

~~(d) Sealing of Child's Testimony. After the attorneys have reviewed the record, the child's testimony shall be sealed and shall not be opened by the parties or their attorneys except by order of the family law master or circuit judge for good cause shown.~~

The testimony of a child shall be taken in accord with the procedures provided in Rules 8(b) and 9 of the Rules of Procedure for Child Abuse and Neglect Proceedings.

(e) Guardian ad litem. - The court may appoint a guardian ad litem to assist the court in determining whether to take a child's testimony, and may appoint a guardian ad litem to protect the child's interests in connection with the taking of the child's testimony.

Rule 23. Rule 15. Negotiations.

When all parties are represented by attorneys, the attorneys shall confer in good faith toward settlement of the issues in dispute not later than ~~seven (7)~~ five (5) days prior to ~~any temporary hearing and again not later than seven (7) days prior to the final hearing~~ any hearing or conference. All attorneys shall be prepared at such hearings and conferences to certify that they have ~~attempted~~ conferred as required by this rule in an attempt to settle the action or its disputed issues.

Rule 24. Hearings scheduled at the request of a party.

A party may request a hearing which has not been scheduled pursuant to a court entered scheduling order. To make such a request, the party shall file with the circuit clerk and send to the family law master office and the opposing party, a written motion setting forth the issues to be addressed at the requested hearing, the relief sought, and unless the motion requests an ex parte hearing pursuant to chapter 48, article 2, section 13(e) of the Code, the efforts the party has made to obtain the cooperation of the other parties in scheduling the hearing. At the discretion of the family law master, the requesting party may obtain from the

family law master office a date for the requested hearing, or the family law master office may assign a date for the hearing. The hearing shall be scheduled within 90 days of the date the hearing was requested. The family law master shall send to all parties a scheduling order pursuant to these rules setting the date for the hearing. Notice of ex parte motions shall be made in accord with chapter 48, article 2, section 13(e) and (f) of the Code. Except in the case of ex parte motions, the family law master may cancel any hearing requested by a party if it is apparent, from the motion or otherwise, the requesting party did not make a good faith attempt to set the hearing date in cooperation with all parties.

Rule 25. Hearings conducted telephonically, or by other electronic methods.

Upon the court's motion, or upon the request of a party, the court may conduct any hearing, including an evidentiary hearing, telephonically, or by other electronic methods, and may permit any witness residing in this state or in another state or country to testify or be deposed telephonically, or by other electronic methods. All such hearings or depositions shall be electronically recorded.

~~Rule 13. Hearing by conference call.~~

~~A family law master or circuit judge may, sua sponte or upon request of a party, conduct any nonevidentiary hearing or conference by telephonic means. A family law master or circuit judge may conduct an evidentiary hearing by telephonic means only upon the agreement of the parties and only when the family law master or circuit judge orders electronic recording of such hearing.~~

Rule 26. ~~Rule 12.~~ Continuances and scheduling conflicts.

(a) *Form and filing of motion for continuance.* - Any motion for continuance shall be in writing and shall concisely state the grounds ~~therefore~~. The motion shall be filed with

the circuit clerk and served on all the parties who have appeared and on the court scheduled to hear the proceeding not less than seven (7) days before the hearing which the moving party desires continued.

(b) Action on ~~continuance~~ the motion. - No continuance shall be granted except for good cause shown. The failure of a client to adhere to financial arrangements with an attorney does not constitute good cause for a continuance. The ~~granting or denying~~ grant or denial of a motion for continuance rests within the sound discretion of the ~~family law master or judge~~ court to whom the motion is addressed. The court may deny the motion on the ground it was not timely filed. If the motion was timely filed, the court may grant or deny the continuance on the face of the motion, or hold a hearing on the motion, which shall be held prior to the date of the hearing for which a continuance is sought. Any order granting a continuance shall set the continued proceeding for specify a future date certain upon which the proceeding continued will be held. within the time period required by these rules.

(c) Sanctions. - Costs, expenses, and attorney's fees may be assessed against the moving party if good cause is not shown for a continuance, if the motion is filed late, or if the party has moved to continue any hearing more than once.

(d) Motion for continuance based on scheduling conflict.
- If a motion for a continuance is based solely on a scheduling conflict, the attorney with the conflict shall follow the procedure specified in subsections (e) and (f) of this rule. If the procedure is unsuccessful in resolving the conflict, then the motion for continuance may proceed pursuant to these Rules and the attorney shall certify in writing he or she has attempted to resolve the scheduling conflict pursuant to subsections (e) and (f) of this rule.

(e) Resolution of scheduling conflicts; duty of attorney with conflict. - Upon learning of a conflict with a family court proceeding, the attorney with the conflict shall immediately give written notice to all parties, and to the courts involved, and in the notice shall propose a resolution of the conflict. Ex parte communication with the courts may be made only if the attorney learned of the conflict too late to permit the use of written notice.

(f) Resolution of scheduling conflicts; action by courts involved. - Pursuant to Rule 5 on Scheduling Conflicts of the Trial Court Rules, and the provisions of these rules, the

courts involved shall promptly confer, resolve the conflict, and notify counsel of the resolution. Courts may voluntarily yield a favorable scheduling position. Courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

~~Rule 12. Continuances.~~

~~(a) Form and Filing. Any motion for continuance shall be in writing and shall concisely state the grounds therefor. The motion shall be filed with the circuit clerk not less than seven (7) days before the hearing which the moving party desires continued. Copies of the motion shall be served on all parties who have appeared and on the family law master or circuit judge who is scheduled to hear the proceeding.~~

~~(b) Action on Continuance. No continuance shall be granted except for good cause shown. The failure of a client to adhere to financial arrangements with an attorney does not constitute good cause for a continuance. The granting or denying of a motion for continuance rests within the sound discretion of the family law master or circuit judge to whom the motion is addressed. Costs, expenses, and attorney's fees may be assessed if good cause is not shown for a continuance or if the motion is filed late. Any order granting a continuance shall specify a future date upon which the proceeding continued will be held.~~

Rule 27. Limitation on presentation of evidence by proffer.

With the sole exception of hearings on temporary relief, no hearing shall be conducted by the presentation of evidence by proffer.

Rule 28. Final hearings. Rule 7. Restriction on final hearings.

(a) Restriction on time for final hearing. - A Circuit judges and family law masters are not authorized to conduct a final hearing in an action for divorce or annulment shall not be conducted in any action in family court prior to expiration of the time in which the defendant respondent is required to file an answer under pursuant to Rule 12 of the Rules of Civil Procedure.

(b) Conversion of hearing to final hearing. - By

written agreement of all parties, any scheduled hearing before the family law master may be converted to a final hearing if sufficient evidence is presented at the hearing to sustain the cause of action and resolve all issues.

ORDERS.

Rule 29. Orders; general provisions.

(a) Timeliness. – Except as provided by subsection (b) of this rule, the court shall enter an order other than a scheduling order within 20 days of the conclusion of every hearing and the case management hearing/conference. In proceedings in which both parties are self-represented, the family law master or circuit judge shall prepare all orders and findings of fact.

(b) Preparation of orders and findings by attorneys. – In proceedings in which one or both parties are represented by attorneys, the court may assign one or more attorneys to prepare an order or proposed findings of fact. The court shall prepare all scheduling orders. An attorney assigned to prepare an order or proposed findings shall deliver the order or findings to the court no later than ten days after the conclusion of the hearing giving rise to the order or findings. If the order is not a final recommended order, the attorney shall, within the same time period, send all parties copies of the order or findings, together with a notice letter which informs the recipients they have five days from the date of the letter to send written objections to the court and all parties. If no objections are received, the court shall enter the order and findings no later than three days following the conclusion of the objection period. If objections are received, the court shall consider the objections, may hold a hearing thereon, and in any event, shall enter an order and findings no later than ten days after the receipt of the objections.

(c) Sanctions against attorneys for untimely preparation of orders. – If an attorney(s) assigned to prepare an order or proposed findings fails to prepare the order or findings in a timely manner, or otherwise fails to comply with the provisions of this rule, the family law master or circuit judge may direct one or more attorneys for other parties to prepare the order or findings, and require the attorney

initially assigned to prepare the order or findings to pay the reasonable attorney fees.

(d) Application for child support enforcement services.

- A completed application for Section IV-D child support enforcement services shall be incorporated by reference and attached to every order for temporary or permanent alimony or child support. The order for temporary or permanent alimony or child support shall direct the circuit clerk to forward a certified copy of the order to the local office of the designated state child support enforcement agency.

Rule 30. Scheduling orders.

(a) When scheduling orders are required. - The court shall enter and send to the parties an initial scheduling order no later than 20 days after the date the court receives the petitioner's civil case information statement. No later than five days after any hearing or conference held in a case, the court shall enter and send to the parties a scheduling order complying with the requirements of this rule. The court may enter and send a scheduling order at any other time, as the requirements of the case necessitate.

(b) Initial scheduling orders. - In addition to complying with all applicable requirements of subsection (c) of this rule, initial scheduling orders shall set a case management conference/hearing for a date and time certain no later than 35 days from the date of the order, and shall notify the parties whether the case management conference/hearing will be conducted by the court as a hearing, or by the case coordinator as a conference.

(c) Contents of scheduling orders. - In addition to complying with the requirements of this rule, any scheduling order may also address any other matter the court determines necessary for the expeditious conduct of the proceedings. All scheduling orders entered subsequent to the initial scheduling order shall set a date certain for the next hearing / conference in the case, which date shall be no later than 90 days from the date of that scheduling order. Any scheduling order entered after a case has been pending for more than 90 days shall include a date certain for a final hearing in the case, which date shall be within 60 days of the date of the hearing set by that scheduling order. Any scheduling order may establish the date for any other conference or hearing in the case. All scheduling orders shall notify the parties any

hearing or conference may be converted to a final hearing as provided by these rules. All scheduling orders shall include, when applicable, dates for: (1) submission of a statement of the issues in the case, (2) completion of all financial disclosures, (3) submission of any separation agreements, (4) submission of witness and exhibit lists, (5) completion of any discovery or investigation authorized by the court, including reports of any investigations, appraisals, tests, or evaluations to be offered into evidence, (6) submission of estimates of time necessary for subsequent hearings. If there are children involved in the case, any scheduling order shall also include dates for completion of parenting classes and for the submission of proposed temporary and permanent parenting plans, if such matters have not been completed.

(d) Sanctions for noncompliance with scheduling orders.

– If a party or attorney fails to comply with a scheduling order, or fails to attend a scheduled hearing/conference, or is substantially unprepared to participate in a scheduled hearing/conference, or fails to participate in good faith, the court may make any of the orders or impose any of the sanctions provided by Rule 16 of the Rules of Civil Procedure.

Rule 31. Rule 21. Recommended orders of family law masters.

~~(a) Preparation and time for filing. — The preparation of the family law master's recommended order is controlled by chapter 48A, article 4, section 13 of the Code of West Virginia. The scope of the relief that may be granted in the recommended order is controlled by chapter 48, article 2, and chapter 48A, article 4 of the Code of West Virginia. One or more of the attorneys for the parties may be asked to prepare a proposed recommended order within seven (7) days after the close of the final evidentiary hearing. The recommended order shall be filed in the office of the circuit clerk within ten (10) days following the close of the evidence.~~

~~(b) Form. — A recommended order shall be accompanied by a written notice as set out in chapter 48A, article 4, section 14 of the Code of West Virginia. The signatures of the parties or their attorneys shall not be required on the recommended order. Findings of fact and conclusions of law shall be separately stated, but need not be stated in separate documents unless a party so moves or the court finds that a need for confidentiality exists as to some or all of the~~

issues, in which event those issues shall be stated in a separate document and sealed. When a pension is to be distributed between the parties by a qualified domestic relations order, ~~such the distribution~~ order shall be separate from the final divorce order.

~~(c) Service of recommended order. — The notice of recommended order and a copy of the recommended order shall be served on all parties who have appeared or on their attorneys of record. Service on the child advocate shall not constitute service of notice upon a party other than the State of West Virginia.~~

Rule 32. Agreed orders, agreements, consent arrangements.

Agreed orders, agreements, and consent arrangements shall be reduced to writing and signed by counsel and by any self-represented parties, and shall be incorporated into a court order. Agreements reached on the date of the hearing, if not in writing, shall be dictated into the record at the hearing, in the presence of all parties and counsel. Before adopting any agreement which includes child support provisions, the court shall review the agreement in a hearing. All other agreements may be approved by the court and incorporated into an order with or without a hearing. Agreements reached by mediation or some other method of non-judicial dispute resolution pursuant to chapter 48, article 11, section 202 of the Code are governed by the applicable provisions of these rules.

REVIEW OF RECOMMENDED ORDERS

Rule 33. Petitions for review.

(a) Time for filing. — The ten day period for filing a petition for review under chapter 48A, article 4, section 17 of the Code shall commence on the date the parties are served with the notice and recommended order. When service is had by first-class mail, three days shall be added to the time period, as provided by Rule 6(e) of the Rules of Civil Procedure.

(b) Extension of time for filing. — Prior to the expiration of the ten day period for filing a petition for

review, a party seeking review may file a notice of extension of time with the circuit clerk. Upon filing of the notice, an additional ten days shall be allowed in which to file a petition for review. The party filing the notice shall at the time of filing send copies of the notice to all parties, the family law master who prepared the recommended order, and the circuit judge to whom the recommended order has been sent for review. Only one ten day extension may be allowed.

~~**Rule 22. Time for filing petition for review.**~~

~~The ten-day period for filing a petition for review under chapter 48A, article 4, section 17 of the Code of West Virginia shall commence on the date on which the parties are served with the notice and recommended order. When service is had by first-class mail, three (3) days shall be added to the time period, as provided by Rule 6(e) of the West Virginia Rules of Civil Procedure.~~

~~**Rule 23. Extension of time to file petition for review.**~~

~~A party seeking review of a recommended order may, prior to the expiration of the ten-day period for filing a petition for review, file with the circuit clerk a notice for extension of time. Upon such filing, an additional ten (10) days shall be granted in which to file a petition for review. Only one ten-day extension may be granted. A copy of a request for an extension shall be served upon all parties.~~

~~**Rule 34. Relief pending review.**~~

When a party has filed a petition for review of a recommended order, any party may request the family law master or circuit judge to enter a temporary order providing the relief awarded in the recommended order, and the family law master or circuit judge may enter such temporary order if he or she deems such relief or order to be fair and equitable. Temporary orders concerning child or spousal support shall be sent by the family law master or judge to the local child support enforcement office.

~~**Rule 24. Relief pending review.**~~

~~When a petition for review is presented to the circuit~~

~~court, the family law master or the circuit court shall, sua sponte, or upon the request of a party, enter an order providing temporary relief during the pendency of the review proceedings in accordance with chapter 48A, article 4, section 16(b) of the Code of West Virginia.~~

Rule 35. Oral argument on petition for review.

(a) Upon request of a party. — Any party may seek oral argument on a petition for review, or the circuit court may hold argument without such a request. A request for oral argument shall be in writing, and shall be filed with the circuit court and served on all parties prior to the expiration of the period provided for filing the petition and the answer. The decision to grant a request for oral argument rests with the discretion of the circuit court.

(b) Time provided for oral argument. — Orders ruling on requests for oral argument shall be entered within ten days of conclusion of the time provided to file a petition and answer. Oral argument shall be concluded no later than 20 days from the conclusion of the time provided to file a petition and answer. The family law master shall not be required to attend oral argument.

Rule 27. Hearing.

~~(a) Upon request of a party. — A party may seek oral argument before the circuit court by requesting a hearing in the petition for review or in the answer or the cross-petition for review. When such a request is granted, an order shall be entered by the circuit court within ten (10) days from the date of the request scheduling a hearing. The family law master shall not be required to attend such hearing. The petition shall be deemed submitted for decision at the close of the hearing.~~

~~(b) When hearing unnecessary. — When no request for a hearing is made in the petition for review or responsive pleading, the right of a party to a hearing is deemed waived unless the circuit judge finds good cause for a hearing. When a request for a hearing is properly made, the circuit judge, after considering the petition for review and the responsive pleadings, may determine that such hearing is unnecessary and shall proceed to review the recommended order in accordance with the provisions of chapter 48, article 4, section 20 of the Code of West Virginia. If no order scheduling a hearing~~

~~is entered by the circuit court within ten (10) days of the request, the petition shall be deemed submitted for decision.~~

Rule 36. Time for entering final order.

Unless there is an insufficient record for review, or the circuit judge recommits proceedings to the family law master, or the circuit judge holds an oral argument on the petition for review, the circuit judge shall rule on a petition for review within 30 days of the date the petition was filed. If no timely petition is filed and the period to petition has expired, or the right to petition has been waived, the circuit judge shall enter a final order within ten days of the expiration of that period. If a case has been recommitted to the family law master, the circuit court shall enter a final order within ten days of the date the family law master resubmits the case to the circuit court following recommitment. If the circuit court grants an oral argument on the petition for review, a final order shall be entered within 30 days of the conclusion of oral argument. All final orders shall include a provision directing the circuit clerk to provide the family law master with a copy of the final order.

~~Rule 28. Time for filing final order.~~

~~If a petition for review or request for an extension is not filed or is waived, the circuit judge shall enter a final order within ten (10) days of the expiration of the period for filing a petition or request for extension. When a petition for review has been filed in a timely manner, the circuit judge shall rule on such petition within thirty (30) days of the date on which the petition was submitted for decision. The circuit judge shall order the circuit clerk to send a copy of a final order which substantially changes the recommended order to the family law master.~~

Rule 37. Insufficient record for review.

If portions of the recording of proceedings before a family law master are inaudible or otherwise unavailable, and those portions of the recording are essential to the resolution of a petition for review, the reviewing circuit judge may recommit the proceeding with an order which particularly identifies the unavailable portions of the

recording and the evidence to be taken by the family law master. The circuit judge shall recommit the case to the family law master within ten days of the date the circuit judge received the petition for review. In lieu of recommitment, the circuit judge may rule on the petition after replacing the unavailable evidence by one of the two following methods: (1) Taking evidence to replace the unavailable evidence. (2) Accepting from any self-represented party or attorney of record a proposed statement of pertinent facts, which statement shall include the self-represented party's or attorney's certification the facts stated are faithfully and accurately presented to the best of that person's ability. Such statements shall be sent to all other parties. Parties may object to proposed statements of facts, and shall file such objections with the circuit court and sent such objections to all other parties within ten days of the date of service of the statement of proposed facts upon them. If the circuit judge elects to rule on the petition in lieu of recommitment, he or she shall rule on the petition within 30 days of the date the petition for review was filed.

~~Rule 26. Insufficient record for review.~~

~~When a circuit judge finds that the family law master failed to consider necessary evidence, or portions of the audio tape taken at the family law master's hearing are inaudible and the inaudible portions are essential to the resolution of the petition for review, the circuit judge may:~~

- ~~(1) Proceed to take evidence on the matter;~~
- ~~(2) Recommit the recommended order to the family law master with instructions indicating the circuit judge's opinion;~~
- ~~(3) Take a statement of the facts prepared by the attorney with a certificate of accuracy attached, in accordance with Rule 4A(c) of the West Virginia Rules of Appellate Procedure, for making an evidentiary record; or~~
- ~~(4) In lieu of the evidence, use a statement of evidence which has been approved by the family law master in accordance with Rule 80(e) of the West Virginia Rules of Civil Procedure.~~

~~An order recommitting a matter to the family law master shall be entered within ten (10) days of the expiration of the~~

~~time for filing pleadings or briefs or the waiver thereof and shall instruct the family law master as to the proceedings on recommitment. The circuit clerk shall forthwith furnish a copy of the recommitment order to the family law master, who shall retry the matter within twenty (20) days.~~

Rule 38. Reccommitment of cases to family law master.

(a) Reccommitment orders. - An order recommitting a case to the family law master shall be entered within ten days of the date the circuit judge received the petition for review. The recommitment order shall describe with particularity the actions to be taken by the family law master upon recommitment, and the judge shall direct the circuit clerk to send a copy of the order to the family law master, self-represented parties, and counsel of record.

(b) Time for concluding recommitment proceedings. - Proceedings recommitment to a family law master shall be concluded within twenty days of the date the family law master receives the order of recommitment, except in cases recommitment due to an insufficient record, which shall be concluded within 30 days.

PARENT EDUCATION

Rule 39. Parent education; mandatory attendance; sanctions.

(a) Mandatory attendance. - In family court proceedings with minor children who are subject to the proceedings, the child(ren)'s parents shall be required to complete an approved course of parent education, and shall file with the circuit clerk a certificate showing completion of the course. Provided, however, for good cause shown, the court may waive this requirement on a case by case basis if the court places on the record a finding that attendance is not necessary, and states the specific reasons for the finding. Excepting such waivers, parent education shall be completed by both parents prior to any mediation or other non-judicial dispute resolution undertaken to achieve agreement on a parenting plan, or in the event mediation is not required, parent education shall be completed by both parties prior to the final hearing. The family law master may halt proceedings in a case at any point if one or both parents have failed to

timely complete parent education. If the family law master halts proceedings for this reason, he/she shall immediately enter a scheduling order setting the next hearing as required by these rules, and as a part of that order shall require the parent(s) to complete parent education by a date certain prior to the next hearing. For good cause shown, and if the interests of justice require it, the court may conduct interlocutory proceedings in a case despite the failure of one or both parties to timely complete an approved course of parent education.

(b) Sanctions. - If either parent fails to complete an approved course of parent education as required by these rules, the court may hold that parent in contempt, or may impose any of the sanctions provided by these rules, or by Rule 37 of the Rules of Civil Procedure.

Rule 40. Parent education; course content.

All parent education courses offered pursuant to the provisions of chapter 48 of the Code shall be approved by the supreme court of appeals, and shall educate and instruct parents about the following matters: (1) how to prepare a parenting plan; (2) mediation and other nonjudicial methods available to assist parents in achieving agreement on a parenting plan; (3) the negative effects on children of divorce and family dissolution, and the ways in which parents can lessen those negative effects; (4) the negative effects on children of domestic abuse; and (5) resources available for dealing with domestic abuse.

Rule 41. Parent education; requirements for reporting information.

All court personnel and providers of parent education shall provide to the supreme court of appeals such information as the court determines necessary for assessing parent education programs.

MEDIATION.

Rule 42. Mediator panels, training and qualifications.

Each family court shall establish a panel of mediators who shall meet the qualifications and training requirements established by the supreme court of appeals. Each mediator listed on a panel of mediators shall indicate to the court if, and under what terms, he or she will provide mediation without cost to the parties. Each member of a family court's panel of mediators shall be subject to approval by the supreme court of appeals.

Rule 43. Premediation screening.

(a) Orders requiring premediation screening. - No later than five days after a hearing or conference at which the court first determines the parties have not agreed on a parenting plan, the court shall order both parties to complete a premediation screening process for the purposes set forth in chapter 48, article 11, section 202(b) of the Code. The order shall require the parties to undergo premediation screening within ten days of the date of the order, shall inform the parties of the dates, times, and places at which premediation screening will be held, and shall require the parties to meet separately and privately with the screener.

(b) Premediation screening procedures. - All premediation screening shall employ the standardized premediation screening forms required by the supreme court of appeals, and shall be conducted by individuals who meet the qualifications and training requirements established by the supreme court of appeals. Premediation screening may be conducted by family court personnel who have completed the premediation screening training required by the supreme court of appeals for such personnel. Persons conducting premediation screening may report suspected child abuse or neglect as provided by chapter 49, article 6A, section 2 of the Code. Prior to the commencement of the screening process, the screener shall inform the party undergoing screening that the screener may report suspected child abuse or neglect as permitted by the statute.

(c) Report of premediation screening. - No later than five days from the date premediation screening is concluded, the person conducting the screening shall send a copy of the abbreviated premediation screening report to the court which ordered the screening. The report shall be made on the form required by the supreme court of appeals, shall identify the existence of any of the factors listed in chapter 48, article

11, section 202(b) of the Code, and shall set forth the screener's recommendations to the court. A copy of the report shall be made a part of the case file.

Rule 44. Procedure following receipt of abbreviated premediation screening report.

(a) Parties assigned to mediation. - Within five days of receipt of the abbreviated premediation screening report, if the court determines there are no impediments to face to face mediation, the court shall enter and send to the parties an order assigning the parties to a mediator. The assignment order shall set the mediation fees in accord with the approved sliding scale; require the parties to contact the mediator and arrange for mediation to begin no later than 30 days from the date of the order; set the next hearing within 60 days of the date of the order; and require all mediation, including any mediation subsequent to the initial mediation session, to be completed before that hearing. Along with the assignment order, each party shall be provided with a copy of the mediation process document approved by the supreme court of appeals, and the order shall notify the parties they are required to read the document, or have it read to them, sign the acknowledgment, and bring the acknowledged document to the first mediation session.

(b) Parties screened out of mediation. - If the premediation screening reveals the existence of any of the factors listed in chapter 48, article 11, section 202(b) of the Code, the court may dispense with mediation, or as provided in section 202(b), consider alternatives which may aid the parties in establishing a parenting plan. Provided, however, the court shall not order the parties to participate in any alternative which is not conveniently available, and affordable in light of the parties' financial resources. If the court orders the parties participation in any such alternative it shall follow the procedures and time requirements provided in these rules for the conduct of premediation screening and mediation. If the court determines to dispense with mediation, an order to that effect shall be entered and sent to the parties within five days of the date the court received the abbreviated premediation screening report. The order shall inform the parties they have been screened out of mediation, and shall set a date for the next

hearing.

Rule 45. Mediation fees.

Mediation services shall be ordered at an hourly cost that is reasonable in light of the financial circumstances of the parties. Fees shall be set according to the approved sliding scale. The court may apportion the costs of mediation between the parties based on their abilities to pay. No mediator may charge a fee for court ordered mediation greater than the fee provided by the approved sliding scale.

Rule 46. Procedure for mediator disqualification.

(a) In general. - All mediators shall be subject to Canon 3 of the Code of Judicial Conduct regarding disqualification. Any party may move to disqualify a mediator for good cause. The court shall rule on the motion within ten days of the date the motion was made.

(b) Procedure upon disqualification. - In the event a mediator is disqualified, within five days of the decision to disqualify, the court shall enter and send to the parties an order which disqualifies that mediator, and assigns another mediator in the manner provided by Rule 23.

Rule 47. Mediation procedures.

(a) Participation. - No party may be compelled to mediate or involuntarily consent to a mediated agreement which is against the party's judgment or best interests. All parties involved in mediation shall be prepared to negotiate openly and knowledgeably in a mutual effort to reach a fair and reasonable settlement. Counsel may attend mediation.

(b) Procedure prior to the commencement of mediation. - If a party arrives at the first mediation session and has not read the mediation process document, or had it read to them, the mediator shall read the document to that party and require him/her to sign an acknowledgment to that effect. Prior to the commencement of mediation, the mediator shall inform the parties the mediator may report suspected child abuse or neglect as permitted by the provisions of chapter 49, article 6A, section 2 of the Code.

(c) Procedure upon conclusion of mediation. - If the parties reach a mediated agreement, the mediator shall inform

them the agreement has no binding legal effect until it is adopted by court order, and that they may withdraw from the agreement at any time prior to the court's adoption of the agreement. The mediator shall reduce any mediated agreement to writing on the required form, shall prepare a written report of the mediation on the required form, and within five days of the conclusion of mediation, shall send these documents to the court. A copy of the mediator's report and any mediated agreement shall be made a part of the case file.

(d) Confidentiality. - All mediation proceedings, including premediation screening, are confidential settlement negotiations subject to the provisions of Rule 408 of the Rules of Evidence. All persons involved in premediation screening and mediation shall preserve the confidentiality of negotiations, of all written materials utilized in the processes, of all information obtained in the processes, and of all agreements, and with the exceptions of the abbreviated premediation screening report and any mediated agreement, shall keep such matters confidential from the court. No premediation screener or mediator may be subpoenaed, called to testify, or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the dispute mediated.

Rule 48. Court's consideration of mediated agreement.

At the first hearing held after the court's receipt of a mediated agreement, the court shall review the agreement, and may conduct an evidentiary hearing to determine if the agreement is knowing and voluntary, and in the best interests of the parties' child(ren). In connection with the court's review of the mediated agreement, the court shall cause the child support formula to be calculated based on the allocation of custodial responsibility in the parenting plan contained in the mediated agreement, and by way of comparison, shall cause the child support formula to be calculated based on sole custody by one parent. If, after being informed on the record of the mediated agreement's child support implications, the parties assent to the agreement on the record, and if the court determines there is no impediment to the validity of the agreement, the court shall incorporate the mediated agreement into an order, and shall inform the parties that upon entry of the order, the agreement shall become a binding agreement. At the conclusion of this hearing, unless it is conducted as a final hearing, the court shall enter a scheduling order as

required by these rules.

Rule 49. Prohibition of dual relationships in mediation and parent education.

No individual may serve in the same case in more than one of the following roles: parent educator, attorney, guardian ad litem, screener, mediator and/or custody investigator. Provided, however, an organization may provide more than one type of service in the same case if the services are provided by different individuals, the organization has established written procedures to prohibit and prevent the exchange of information between such individuals, and the court approves of these procedures. However, notwithstanding the establishment of such procedures, or the court's approval of the procedures, no organization may provide more than one type of service in the same case if the arrangement violates the code of ethics, conduct, or professional responsibility of the organization or the individuals providing the services.

Rule 50. Immunity.

A person assigned as a mediator or premediation screener shall have immunity in the same manner and to the same extent as a circuit court judge.

Rule 51. Requirements for reporting information.

All court personnel and all persons providing premediation screening or mediation shall provide to the supreme court of appeals such information as the court determines necessary to evaluate premediation screening and mediation conducted pursuant to these rules.

SPECIAL PROCEEDINGS AND PROCEDURES.

Rule 52. Appointments of guardians ad litem and attorneys for children.

As provided by chapter 48, article 11, section 302 of the Code, the court may appoint a guardian ad litem to represent a

child's best interests, and may appoint a lawyer to represent a child. Any such appointment shall be made independently of any nomination by the parties or counsel.

Rule 53. Child abuse and neglect.

(a) Investigations of child abuse and neglect. - If a family law master has reasonable cause to suspect one or both of the parties have abused or neglected any minor child of the parties, the family law master shall immediately refer the matter to the circuit judge. If the circuit judge has reasonable cause to suspect such abuse or neglect has occurred, she / he shall immediately order the designated state child protective services agency to fully investigate the matter and provide a written report of the investigation to the circuit judge and family law master within 30 days of the date of the order. If the circuit judge believes the report establishes probable cause to believe abuse or neglect has occurred, he / she shall order the agency to file a petition within ten days pursuant to chapter 49, article 6, section 1 of the Code, and shall order that pending the circuit court's entry of a final order on the petition, proceedings before the family law master shall be held in abeyance as to any issues concerning abuse and neglect, or the allocation of custodial or decision making responsibility, or visitation relating to any of the parties' minor children subject to the proceedings. Until the entry of the circuit court order requiring an abuse and neglect petition to be filed, the family law master shall retain jurisdiction over all issues in the proceeding.

(b) Obligations to report abuse and neglect. - In addition to taking the actions required by subsection (a) of this rule, when a family law master, family law master staff person, or circuit judge has reasonable cause to suspect a child has been abused or neglected, the family law master, family law master staff person, or circuit judge shall report the abuse or neglect immediately as required by the provisions of chapter 49, article 6A, section 2 of the Code.

Rule 34. Family violence.

(a) Temporary Orders. - When a party who has a valid family protective order files a motion for temporary relief

~~pursuant to chapter 48, article 2, section 13 of the Code of West Virginia, the motion shall also constitute a petition to extend the family protective order. The family law master or circuit judge may grant that extension and shall, in addition to the relief available in chapter 48, article 2, section 13 of the Code of West Virginia, award the moving party the relief provided in chapter 48, article 2A of the Code of West Virginia in order to insure the safety and protection of the party. The order shall clearly state that a violation of the order may be a misdemeanor under chapter 48, article 2A, section 10d of the Code of West Virginia, subjecting the respondent to fine and incarceration. A temporary order entered by the family law master or circuit judge pursuant to these provisions shall remain in effect until the entry of a final order by a circuit judge. The entry of a procedural order, including a scheduling order, by a circuit judge or family law master in a proceeding under these rules shall not supersede or preclude the entry of a valid family protective order by a magistrate.~~

~~(b) Allegations of Abuse and Neglect. When there are allegations that either one or both of the parties have abused or neglected the other party or any child of the parties, the family law master or circuit judge may, sua sponte or on motion of either party, order an investigation or home study of one or both of the parties. The family law master or circuit judge may apportion the costs of the home study or home studies, or order the department of health and human resources or other social service agency to perform the investigation. When a family law master or circuit judge finds that a child has been neglected or abused, the family law master or circuit judge shall report the abuse in accordance with the provisions of chapter 49, article 6A, section 2 of the Code of West Virginia.~~

Rule 54. Paternity.

(a) Commencement of action. - A paternity action shall be instituted by filing and serving a petition in the manner provided by these rules. If the action has not been instituted by the child support enforcement agency, within five days of filing, the circuit clerk shall serve the petition on the local child support enforcement office.

(b) Case management conference / hearing. - Upon receipt of the petition and accompanying materials, the court shall set a case management conference/hearing within 50 days

of the date the petition was filed. If paternity is not admitted prior to or during the case management conference/hearing, the court shall order that within a stated time period the parties and the subject child shall undergo genetic blood testing as provided by chapter 48A, article 6, section 3 of the Code. Within three days of the conclusion of the case management conference/hearing, the court shall enter a scheduling order setting a final paternity hearing within 70 days. The hearing may be continued if genetic blood test results have been required and will not be available by the final paternity hearing date.

(c) *Actions required by respondent.* - If genetic blood tests do not exclude the respondent, or if the respondent admits paternity, the respondent shall provide complete financial statements for all years subsequent to the birth of the child, up to a maximum of three years preceding the filing of the paternity petition. These statements shall be made on the required forms, and shall be filed with the circuit clerk and sent to all other parties no later than 14 days before the final hearing. If the respondent has not previously attended parenting classes, the respondent shall attend the next available class, and shall present proof of satisfactory attendance at the final hearing.

(d) *Appointment of guardian ad litem.* - A guardian ad litem shall be appointed for the child if paternity is contested, and: (1) there is a paternity affidavit on record acknowledging the respondent's paternity of the child, or (2), the child was conceived during the parties' marriage.

~~Rule 35. Paternity.~~

~~Proceedings to establish paternity are governed by the provisions of chapter 48A, article 6 of the Code of West Virginia.~~

Rule 55. Petitions for modification.

Leave of court shall not be required for filing a petition for modification. A petition for modification shall be in writing, shall specify facts which demonstrate good cause for relief, and shall be filed with the circuit clerk and shall be sent to all parties. If the petition for modification reopens a closed case, the petition shall be

filed with the circuit clerk together with three copies of a case information statement, and shall be served on all parties. If a petition reopens a closed case, within five days of filing of the petition, the circuit clerk shall send to the family law master office copies of the petition and case information statement. Within five days of receipt of the petition, the family law master office shall send a scheduling order to all self-represented parties and all counsel of record.

Rule 29. Modification of final order.

~~At any time, the circuit judge, upon motion of either of the parties, may modify a final order entered pursuant to chapter 48, article 2, section 15 of the Code of West Virginia. A motion for modification shall be in writing, shall specify facts which demonstrate good cause for relief, and shall be accompanied by an affidavit supporting the motion and a notice of hearing. The notice of hearing shall specify the date, time, and place of hearing. Unless otherwise directed by the circuit judge, the hearing shall be conducted by the family law master. The motion and the notice shall be served at least twenty (20) days before the evidentiary hearing. The opposing party may file a written response. Service of a motion for modification of a final order may be effected as provided in Rule 4 of the West Virginia Rules of Civil Procedure. Under appropriate circumstances, modification of an award of alimony or child support may be made retroactive to the date of service of the motion for modification upon the opposing party.~~

Rule 56. Expedited modification of child support.

(a) Filing procedure. - An expedited modification petition, any supporting documents, and a case information statement shall be filed with the circuit clerk. The circuit clerk shall collect the filing fee, provide the filing party with a certified copy of the current child support order and the child support calculations accompanying that order, and within five days of filing shall send a copy of the case information statement to the family law master's office. After filing the petition in the circuit clerk's office, the filing party shall take or mail to the family law master's office a certified copy of the petition, any supporting

documents, and a certified copy of the current child support order together with the child support calculations accompanying that order.

(b) Actions by family law master upon receipt of petition. – The family law master's office shall review the petition and any supporting documents, and shall tentatively recalculate the amount of support by application of current child support guidelines. The family law master shall summarily deny the petition unless the tentative recalculation of support results in a change of at least 15%. If the tentative recalculation results in a support change of at least 15%, but the circumstances set forth in the petition fail to meet the other expedited modification requirements established in chapter 48A, article 1B, section 11 of the Code, the family law master may treat the petition as a non-expedited petition for modification. If the petition for expedited modification meets all of the requirements established in chapter 48A, article 1B, section 11 of the Code, a family law master office staff person shall prepare a notice on the required form. Upon receipt of satisfactory proof the fee for service by certified mail has been paid or waived, the family law master's office shall serve copies of the notice, the petition, and any supporting documents on the other parent and the local child support enforcement office, by certified mail, return receipt requested, in the manner provided by Rule 4 of the Rules of Civil Procedure.

(c) Time allowed to request a hearing. – A party receiving notice has 14 days from the date of the certified mailing to provide the family law master's office with a written request for hearing.

(d) Hearing requested; preparation of scheduling order. – If a timely request for a hearing is received, within five days the family law master's office shall send all parties a scheduling order as required by these rules.

(e) No hearing requested; preparation of default order. – If the family law master's office does not receive a timely request for a hearing, the family law master shall prepare a recommended default order setting child support at the recalculated amount, and shall send all parties a copy of the recommended order and a notice as required by these rules stating any party has ten days to file written objections to the entry of the recommended order.

Rule 57. Relocation of a parent.

A parent with responsibilities under a court ordered parenting plan who changes or intends to change residence for more than 90 days shall provide the other parent with notice as required by chapter 48, article 11, section 403 of the Code. If the party receiving notice desires a hearing, he/she shall immediately file a written request for a hearing with the circuit clerk and send a copy of the request to the family law master. Within five days of receiving the request for hearing, the family law master shall send the parties a scheduling order setting a relocation hearing. Either party may request an expedited hearing, which shall have priority over all matters not designated by rule or statute as priority matters.

Rule 58. Contempt.

(a) Procedure for filing petition. - The petitioner shall file the petition with the circuit clerk, and shall provide the family law master's office with a copy of the petition and any supporting documents filed with it, and a certified copy of the court order allegedly violated.

(b) Dismissal of petition. - If the petition does not establish a prima facie case of contempt, the family law master shall enter an order of dismissal within five days of receiving the petition. The order shall direct the circuit clerk to provide the parties with certified copies of the dismissal order.

(c) Notice of hearing / rule to show cause. - If the petition establishes a prima facie case of contempt, the family law master shall issue a notice of contempt hearing / rule to show cause. The rule and notice shall be issued within five days of receiving the petition, shall set a contempt hearing for a date certain within 50 days of the date the petition was filed, shall direct the circuit clerk to provide all parties with certified copies of the notice/rule, and may require the parties to file with the court by a time certain such information as the court deems necessary.

(d) Contempt jurisdiction of family law masters. - Family law masters shall have jurisdiction to hold a party in indirect civil, direct civil, or direct criminal contempt without further approval of a circuit judge, and shall have the authority to order appropriate fines, incarceration, and sanctions.

(e) Indirect criminal contempt proceedings precluded in

family court. - If a family law master determines a proceeding before the family court involves a possible indirect criminal contempt, he/she shall halt the proceeding immediately, and forthwith refer the matter to the circuit court.

~~Rule 37. Contempt.~~

~~The provisions of chapter 48, article 2, section 22 of the Code of West Virginia shall apply to contempt proceedings for failure to comply with orders of a family law master or circuit judge. Contempt committed in the presence of a family law master is governed by chapter 48A, article 4, section 10 of the Code of West Virginia. Proceedings for contempt brought by the child advocate office to enforce support orders are controlled by chapter 48A, article 5, section 5 of the Code of West Virginia. Contempt proceedings for violation of family violence protective orders are governed by chapter 48, article 2A, section 10a of the Code of West Virginia.~~

Rule 59. Bifurcation.

The court family law master and the circuit judge shall not bifurcate order bifurcation in a divorce proceeding unless: (a) there is a compelling reason to grant the divorce prior to resolving issues related to alimony, child support and distribution of property; (b) ~~neither~~ no party will be prejudiced by the bifurcation; and (c) a temporary order has been entered granting alimony spousal support, child support and any other necessary relief. In the event a case is bifurcated, the final order shall be entered not later than eighteen months following the bifurcation within six months of the filing of the divorce petition.

Rule 60. ~~Rule 6.~~ Authority to accept waivers.

A family law master or circuit judge may accept a written waiver or an oral waiver made on the record of the right to petition for review of a recommended order, the appointment of a committee for a convict, or the application of the Soldier's and Sailor's Civil Relief Act, ~~or other rights as provided by law.~~

Rule 61. Obtaining confidential records for use in family

court proceedings.

Records deemed confidential by statute or court decision may not be obtained by subpoena, but may be obtained as allowed by law by circuit court order upon full compliance with the statutory or decisional requirements for obtaining such records. Confidential records which may not be obtained except in accordance with statutory or decisional requirements include, but are not limited to, confidential records of: the West Virginia Department of Health and Human Resources, the Office of Social Services, the Office of Economic Services and the designated state child support enforcement agency; West Virginia juvenile court proceedings; mental health and counseling records, substance abuse records, domestic violence shelter records, education records, and medical records.

Rule 62. Pro-se Self-represented litigants.

(a) General provisions relating to self-represented litigants. – The circuit judge, family law master, and circuit clerk shall permit self represented parties to file pro-se pleadings prepared without the assistance of counsel, and shall permit the filing of, including legible handwritten pleadings. Upon request by any person, the circuit clerk shall provide to pro-se self-represented litigants all forms approved by the supreme court of appeals for use in domestic relations cases. A duplication fee may be charged by the circuit clerk unless the party requesting the forms is determined to be eligible for a waiver of fees and costs. Neither The staff of the circuit clerk's office nor and the staff of the family law master's office shall not be required or permitted to give legal advice or assist the parties in preparing the forms. When litigants appear without counsel, orders in a proceeding under these rules shall be prepared by the family law master or judge hearing the case.

(b) Provisions relating to self-represented litigants' disclosure of identifying information; nondisclosure in certain circumstances . – Self-represented litigants shall write on all pleadings their complete name, current address, and a telephone number at which they can be reached during normal business hours. Provided, however, such information shall not be required of litigants who have obtained relief pursuant to chapter 48, article 2A, sections 1-14 of the Code, and upon a finding, which may be made ex parte, that the

health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information in pleadings or required document filings, the court may order that such information need not be disclosed.

Rule 63. Withdrawal of attorney.

A family law master may hear motions to withdraw as attorney of record, or for substitution of attorney . ~~Once~~ After an attorney has made an appearance on behalf of a party, that attorney shall continue to represent the party until a ~~final~~ an order is entered relieving the attorney from further representation. An attorney fired by his or her client shall promptly inform the court of the termination of the attorney-client relationship, and upon a finding the relationship has been properly terminated, the court shall enter an order relieving the attorney from further representation.

DISQUALIFICATION OF FAMILY LAW MASTERS.

Rule 64. Motions to disqualify family law masters.

(a) Form of motion. – Any party may file a written motion to disqualify a family law master. The motion shall be verified, and shall state facts and reasons supporting the disqualification. The motion shall be filed with the circuit clerk and served on all the parties no later than 21 days before the next scheduled hearing.

(b) Duties of family law master in response to disqualification motion. – Upon the filing of a disqualification motion, the family law master shall immediately halt all proceedings in the case, and forward a copy of the motion to the circuit judge, along with the family law master's written response stating whether good cause exists for voluntary disqualification.

(c) Emergency proceedings pending circuit court's consideration of motion. – While a disqualification motion is pending, any matters of an emergency nature in the case shall be heard by the circuit court.

(d) Circuit court rulings; time to rule. – The circuit court shall rule on disqualification motions within ten days of receiving the motion. The circuit court may consider an

untimely motion for disqualification. If a motion for disqualification is not timely filed, or is not in conformance with the requirements of this rule as to form and content, such delay or nonconformance may be a factor in deciding whether the motion should be granted. Circuit court rulings on motions to disqualify family law masters are interlocutory rulings, and are not subject to appeal.

Rule 65. Voluntary disqualification.

A family law master who believes he / she may be disqualified from hearing a matter shall send the circuit court a written request for voluntary disqualification. The filing of a disqualification motion, in and of itself, shall not constitute grounds for voluntary disqualification. The circuit judge shall rule on such requests within ten days of receipt.

Rule 66. Conduct of proceedings following disqualification.

In the event a family law master is disqualified, the circuit judge may hear the matter, or may assign the matter to another circuit judge in the same judicial circuit, or to another family law master in the same family court circuit. Such assignments may be made pursuant to a standing administrative order of the circuit court. If another family law master is not available in the same family court circuit the circuit judge may request that the chief justice of the supreme court of appeals appoint a special family law master to hear the matter.

~~Rule 40. Form of motion.~~

~~A party to any proceeding governed by these rules may file a written motion for disqualification of a family law master. The motion shall be verified, shall state facts and reasons supporting the disqualification, and shall be accompanied by a certificate, signed by the attorney of record or a party who appears pro se, stating that it is made in good faith and that there is evidence to support disqualification. The motion shall be filed no later than twenty-one (21) days in advance of any scheduled hearing, except for good cause shown.~~

~~**Rule 41. Duties in response to disqualification motion.**~~

~~Upon the filing of a disqualification motion, the family law master shall forward a copy of the motion and of any relevant evidence and shall notify the circuit judge in writing whether good cause exists for voluntary recusal. The circuit judge may grant or deny the disqualification motion or hold an evidentiary hearing to resolve the issues raised. Until the issue of disqualification is decided, the family law master shall proceed no further in the proceeding.~~

~~**Rule 42. Voluntary recusal.**~~

~~All requests by the family law master for voluntary recusal shall be reviewed by the circuit judge, who shall determine whether good cause exists. The filing of a disqualification motion shall not be, in and of itself, grounds for disqualification.~~

~~**Rule 43. Assignment or appointment of special family law master.**~~

~~When a family law master is recused or disqualified, another family law master in the same region who is not disqualified or recused shall hear the proceeding. If another family law master is not available in the same region to hear the proceeding, the circuit judge may hear it, assign it to another circuit judge within the circuit, or, with approval of the chief justice, appoint a special family law master to hear the proceeding.~~

~~**Rule 44. Time requirements.**~~

~~The circuit judge shall rule on motions not requiring additional evidentiary hearing within seven (7) days of receipt of the motion. When an evidentiary hearing is necessary, it shall be scheduled within fourteen (14) days of the receipt of the motion by the circuit judge. When a motion to disqualify is filed less than twenty-one (21) days before a scheduled hearing, the family law master shall hold an immediate hearing on the motion and shall immediately thereafter make a ruling. When the findings do not support disqualification, the family law master may proceed to hear the proceeding pending review by the circuit judge. When the findings support disqualification, the family law master shall~~

~~take no further action until the matter is reviewed by the circuit judge.~~

~~**Rule 45. Emergency matters while disqualification motion is pending.**~~

~~Until the issue of disqualification of a family law master is decided and until a special family law master is appointed, all matters of an emergency nature, including injunctions, shall be heard by the circuit judge.~~

~~**Rule 46. Availability of other remedies.**~~

~~Except for rulings on disqualification decided by the family law master, all rulings and orders relating to the recusal or disqualification of a family law master shall be considered interlocutory in nature and not subject to appeal.~~

~~**FAMILY COURT CIRCUITS LAW MASTER REGIONS.**~~

~~**Rule 67. Family court circuits.**~~

~~(a) Effective date. - Effective October 1, 1999, the family court circuits shall be realigned and case load reallocated in accordance with the provisions of this rule.~~

~~(b) Circuit 1. - Two full time law masters shall serve the counties of Brooke, Hancock and Ohio.~~

~~(c) Circuit 2. - One full time law master shall serve the counties of Marshall, Wetzel and Tyler.~~

~~(d) Circuit 3. - Two full time law masters shall serve the counties of Pleasants, Wood, Wirt, Ritchie, Doddridge.~~

~~(e) Circuit 4. - One full time law master shall serve the counties of Jackson, Roane, Calhoun and Gilmer.~~

~~(f) Circuit 5. - One full time law master shall serve the counties of Mason and Putnam.~~

~~(g) Circuit 6. - Two full time law masters shall serve the county of Cabell.~~

~~(h) Circuit 7. - One full time law master shall serve the county of Wayne.~~

~~(i) Circuit 8. - One full time law master shall serve the county of Mingo.~~

(j) Circuit 9. - One full time law master shall serve the county of Logan.

(k) Circuit 10. - One full time law master shall serve the counties of Lincoln and Boone.

(l) Circuit 11. - Four full time law masters shall serve the county of Kanawha.

(m) Circuit 12. - Two full time law masters shall serve the counties of McDowell and Mercer.

(n) Circuit 13. - Two full time law masters shall serve the counties of Raleigh and Wyoming.

(o) Circuit 14. - One full time law master shall serve the counties of Fayette and Summers.

(p) Circuit 15. - One full time law master shall serve the counties of Greenbrier, Monroe and Pocahontas.

(q) Circuit 16. - One full time law master shall serve the counties of Clay, Nicholas and Webster.

(r) Circuit 17. - One full time law master shall serve the counties of Braxton, Lewis and Upshur.

(s) Circuit 18. - One full time law master shall serve the county of Harrison.

(t) Circuit 19. - One full time law master shall serve the county of Marion.

(u) Circuit 20. - One full time law master shall serve the county of Monongalia.

(v) Circuit 21. - One full time law master shall serve the counties of Barbour, Preston and Taylor.

(w) Circuit 22. - One full time law master shall serve the counties of Grant, Tucker, and Randolph.

(x) Circuit 23. - One full time law master shall serve the counties of Mineral, Hampshire, Hardy and Pendleton.

(y) Circuit 24. - Two full time law masters shall serve the counties of Berkeley, Jefferson and Morgan.

~~Rule 47. Family law master regions.~~

~~(a) Effective Date. Effective July 1, 1994, the family law master regions shall be realigned and caseload reallocated in accordance with the provisions of this rule.~~

~~(b) Region 1. One full-time master shall serve the counties of Ohio, Brooke, and Hancock, and the second full-~~

~~time master shall serve the counties of Marshall, Wetzel, and Tyler, and assist with part of the caseload in the county of Ohio.~~

~~(c) Region 2. One full-time master shall serve the county of Wood, and one part-time master shall serve the counties of Pleasants, Ritchie, Doddridge, and Wirt, and assist with part of the caseload in the county of Wood.~~

~~(d) Region 3. One part-time master shall serve the counties of Jackson, Roane, and Calhoun.~~

~~(e) Region 4. One full-time master shall serve the counties of Mason and Putnam.~~

~~(f) Region 5. Three part-time masters shall serve the county of Kanawha.~~

~~(g) Region 6. One full-time master shall serve the county of Cabell, and one part-time master shall serve the county of Wayne, and assist with approximately twenty percent of the caseload in the county of Cabell.~~

~~(h) Region 7. One full-time master shall serve the counties of Mingo and Logan, and one part-time master shall serve the counties of Boone and Lincoln, and assist with approximately fifteen percent of the caseload in the counties of Mingo and Logan.~~

~~(i) Region 8. One full-time master shall serve the counties of Summers and Mercer, and one part-time master shall serve the county of McDowell and assist with approximately twenty-five percent of the caseload in the county of Mercer.~~

~~(j) Region 9. One full-time master shall serve the counties of Wyoming and Raleigh and another full-time master shall serve the county of Fayette and approximately twenty-five percent of the caseload in the county of Raleigh.~~

~~(k) Region 10. One part-time master shall serve the counties of Greenbrier, Monroe, and Pocahontas.~~

~~(l) Region 11. One full-time master shall serve the counties of Nicholas, Braxton, Webster, Clay, and Gilmer.~~

~~(m) Region 12. One full-time master shall serve the counties of Randolph, Lewis, Upshur, and Tucker.~~

~~(n) Region 13. One part-time master shall serve the county of Harrison.~~

~~(o) Region 14. One full-time master shall serve the counties of Marion, Barbour, and Taylor.~~

~~(p) Region 15. One full-time master shall serve the counties of Monongalia and Preston.~~

~~(q) Region 16. One part-time master shall serve the counties of Grant, Mineral, Hampshire, Hardy, and Pendleton.~~

~~(r) Region 17. One full-time master shall serve the counties of Jefferson and Berkeley and one part-time master~~

~~shall serve the county of Morgan and assist with a portion of
the caseload in the county of Berkeley.”~~

A True Copy

Attest: _____
Deborah L. McHenry, Clerk
Supreme Court of Appeals

