

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 27th day of September, 2000, the following order was made and entered:

IN RE: RULES OF PRACTICE AND PROCEDURE FOR FAMILY COURT.

On a former day, to-wit, April 19, 2000, 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. On that day the Court provisionally adopted as proposed the aforesaid rules on an emergency basis, and directed a period for public comment to conclude on the 19th day of June, 2000.

The period for public comment having concluded, on this day came the Honorable Alan D. Moats, chairperson of the Committee to Revise the Rules of Practice and Procedure for Family Law, and presented to the Court proposed **Rules of Practice and Procedure for Family Court.**

Upon consideration whereof, the Court is of opinion to and doth hereby adopt the proposed **Rules of Practice and Procedure for Family Court**, said rules effective

this date. It is further ordered that the provisional rules adopted on the 19th day of April, 2000, be, and they hereby are, vacated.

## "RULES OF PRACTICE AND PROCEDURE FOR FAMILY COURT"

### GENERAL PROVISIONS.

#### **Rule 1. Scope; conflicts.**

These rules shall govern proceedings in Family Court. If these rules conflict with other rules or statutes, these rules shall apply.

#### **Rule 2. 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 Court; any reference to a set of rules, e.g., the "Rules of Civil Procedure," refers to the West Virginia rules of that title; "supreme court of appeals" refers to the Supreme Court of Appeals of West Virginia; "court" refers to the circuit court and the family law master; "approved" or "required" refers to a form, fee scale, order, or procedure 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," refers to service of process pursuant to the Rules of Civil Procedure; "party" indicates a self-represented party, a represented party, and/or the attorney for a party, as appropriate to the particular usage; "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; the use of the plural indicates the singular if appropriate, and the use of the singular indicates the plural if appropriate.

**Rule 3. Effective date.**

The rules shall take effect on the 27th day of September, 2000, and shall govern all Family Court proceedings after this date.

**ADMINISTRATIVE PROVISIONS.**

**Rule 4. Security.**

Upon a family law master's request the sheriff shall provide a bailiff for any family court proceeding. Except for such bailiffs, or persons authorized by order of the circuit court, no person shall carry or permit another person to carry any weapon to a family court proceeding or upon any premises of family court. These premises shall include, but are not limited to courtrooms, offices, and associated public areas such as conference rooms, waiting rooms, hallways, and parking areas.

**Rule 5. Records; transcripts; fees; costs; forms.**

(a) *Records filed with the circuit clerk.* - All case files, evidence, and recordings of proceedings shall be filed with and stored by the circuit clerk.

(b) *Recordings of proceedings.* - Proceedings in family court shall be recorded electronically on tapes or other electronic recording media. A party may obtain a copy of a recording of the proceedings in his/her case by filing with the circuit clerk a written request identifying the style of the action and the date of the hearing, and paying the amount required by chapter 48A, article 4, section 9(e) of the Code. The family law master shall provide the copy within ten days. The court may refuse to provide a copy of any part of a recording which includes the testimony of a child. No person except a circuit clerk, a family law master, a circuit judge, or a member of their staffs shall have access to an original recording.

(c) *Transcripts.* - A party may have a transcript of a hearing prepared by an independent court reporter or

transcription service. The court may refuse to permit the transcription of any testimony by a child. The costs of such transcriptions shall be paid by the party for whom the transcript is prepared. The transcriber shall verify the transcript as a true and accurate record, and shall state whether the transcript includes all or part of the proceeding. The party for whom the transcript is prepared shall give notice of the transcript's preparation to all other parties, and may file a copy of the transcript with the circuit clerk. When the parties are unable to agree as to the accuracy of a transcript, the court may resolve the matter.

(d) *Fees and costs.* – All fees and costs shall be paid to and collected by the circuit clerk.

(e) *Taxation of costs, fees, and attorney fees.* – Costs and fees, including attorney fees, may be taxed against a party who is financially able to pay.

(f) *Forms.* – All forms approved or required by the supreme court of appeals shall be available in every circuit clerk's office. The circuit clerk may charge a duplication fee for such forms. Circuit clerks, family law masters, and their staffs shall not be required or permitted to provide legal advice regarding such forms, or any other matter.

#### **Rule 6. Court files; confidentiality; access.**

(a) *General provisions.* – All orders are public records. All pleadings, exhibits, transcripts, or other documents contained in a court file are confidential, and shall not be available for public inspection; but unless the file is sealed pursuant to this rule or access is otherwise prohibited by order, any document in the file shall be available for inspection and copying without an order by the parties, attorneys of record, guardians ad litem, and any person with standing to modify or enforce a support order. A family law master or circuit judge may open and inspect the entire contents of the court file in any case pending before his/her court. When sensitive information has been disclosed in a hearing, pleading, or document filing, the court may order such information sealed in the court file. Sealed court files shall be opened only by order.

(b) *Orders permitting examination or copying of file contents.* – Upon written motion, for good cause shown, the court may enter an order permitting a person who is not permitted access to a court file under section (a) of this rule to examine and/or copy documents in a file. Such orders shall set forth specific findings which demonstrate why the interests of justice necessitate the examination and/or

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

**Rule 7. Exhibits.**

By order, the court may make special provisions for the secure custody and disposition of any exhibit. Such orders shall provide specific instructions for custody and disposition.

**Rule 8. Unofficial recording of proceedings.**

Family court proceedings 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 any other form of recording of proceedings, or any sound, video, or other form of transmission or broadcast 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, other forms of recordings, and sound, video, or other forms of transmissions or broadcasts may be made of ceremonial proceedings in the courtroom.

**PREHEARING PROCEDURES.**

**Rule 9. Commencement of actions.**

(a) *Commencement of actions.* – A domestic relations proceeding shall be commenced by filing a verified petition with the circuit clerk. The petition shall be accompanied by three copies of a completed case information statement. In cases which may involve spousal support, child support, allocation of custodial responsibility, visitation, or paternity, the petition shall be accompanied 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 a "Section IV-D application." Within five days of the filing of a petition the circuit clerk shall send the family law master a copy of the case information statement.

(b) *Service on respondent.* – The circuit clerk shall forthwith issue a summons to be served as directed by the petitioner. If the respondent is the parent of minor children

subject to the action, a parent education notice shall be served with the summons.

(c) *Respondent's answer.* – The respondent shall serve his/her answer within the time required by Rule 12 of the Rules of Civil Procedure. In cases which may involve spousal support, child support, allocation of custodial responsibility, visitation, or paternity the answer shall be accompanied by a completed Section IV-D application. The respondent shall file his/her answer with the circuit clerk within a reasonable time after service; and shall file with the answer all documents served on the opposing party, and three copies of a completed case information statement. Within five days of the filing of the answer the circuit clerk shall send the family law master a copy of the case information statement.

(d) *Payment of parent education fees.* – All parents with minor children subject to the action shall pay to the circuit clerk a parent education fee as provided by chapter 48, article 11, section 104(c) of the Code.

(e) *Requirements relating to Section IV-D applications for child support enforcement services.* – In all cases in which a Section IV-D application is filed with a petition or answer, within five days of the filing the circuit clerk shall send a copy of the application and the filing party's case information statement to the local child support enforcement office.

#### **Rule 10. Pleadings.**

(a) *All pleadings filed in office of the circuit clerk.* – All pleadings shall be filed in the office of the circuit clerk. The filing of pleadings prepared without the assistance of counsel, including legible handwritten pleadings, shall be permitted.

(b) *Identifying information required; circumstances in which identifying information may be withheld.* – All pleadings, forms, and document filings shall include the name, address, and telephone number of counsel; or if the party is self-represented, the party's name, address, and a telephone number at which he/she can be reached during normal business hours. Upon the filing of an affidavit asserting the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, or upon a finding by the court, which may be made ex parte, that such a risk may exist, such information shall be withheld from all persons except court personnel.

(c) *Proposed parenting plans.* – Parenting plans proposed

by the parties are pleadings.

(d) *Effect of service on child support enforcement agency.* – Service on the child support enforcement agency shall not constitute service on or notice to any other party.

#### **Rule 11. Discovery.**

As the interest of justice requires, discovery pursuant to Rules 26 through 37 of the Rules of Civil Procedure may be ordered by the court at any time, or may be allowed by the court upon motion demonstrating a particular need.

#### **Rule 12. Financial disclosure.**

(a) *Required financial information on motions for temporary relief.* – The petitioner and respondent shall file completed financial statements with the circuit clerk no later than five days prior to the initial hearing. In cases which may involve spousal support, child support, allocation of custodial responsibility, visitation, or paternity, 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) Copies of the party's complete income tax returns for the two years immediately preceding the date the petition was filed, together with copies of the federal Form W-2 for those years; and a copy of the Form W-2 for the most recent year for which that form is available, even if a tax return has not yet been filed for that year;

(3) For a self-employed party, a copy of a current financial statement showing gross income, expenses, and net income;

(4) Copies of any invoices or receipts showing the cost of any extraordinary medical expenses for the party or the children, of any child care expenses, and of any expenses necessitated by the special needs of the children.

(b) *Failure to file required financial information; sanctions.* – The failure to file or untimely filing of any required financial information shall not be grounds for a continuance. If a party fails to file or untimely files any required financial information, the court may refuse to grant requested relief to that party, and/or may accept the financial information of the other party as accurate.

**Rule 13. Filing and service by facsimile transmission.**

Pleadings and other documents may be filed and served by facsimile transmission pursuant to Trial Court Rule 12.02(b)-(f), 12.03(b)-(p), and 12.04.

**TEMPORARY RELIEF.**

**Rule 14. Temporary relief motions.**

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

**Rule 15. Temporary orders.**

A family law master may grant temporary relief without approval of a circuit judge. At the conclusion of every hearing in which temporary support is granted or modified the court shall enter an order by the next business day, which order shall not be subject to a petition for review or appeal.

**Rule 16. Presentation of evidence by proffer.**

Unless otherwise ordered by the court, all temporary relief hearings shall be conducted by the presentation of evidence by proffer. When evidence is presented by proffer the parties shall be present, or may participate as provided by Rule 18, and may be placed under oath to confirm or modify the evidence proffered in their behalf. Parties shall be given an opportunity to proffer rebuttal evidence.

**HEARINGS.**

**Rule 17. Testimony of children.**

(a) *Procedures for taking the testimony of children.* -

Rules 8 and 9 of the Rules of Procedure for Child Abuse and Neglect Proceedings shall govern the taking of testimony of children.

(b) *Motion to offer the testimony of a child.* – A motion to offer the testimony of a child under the age of 14 shall be in writing; and shall be filed with the circuit clerk, provided to the court, and served on all parties not less than 20 days before the hearing. The court shall rule on the motion no later than five days prior to the hearing.

**Rule 18. Telephonic and videoconference hearings.**

The court may conduct any hearing, including an evidentiary hearing, telephonically or by videoconference, and may permit any witness to testify or be deposed by such methods. In telephonically conducted proceedings the official record shall be made in the manner prescribed by the court. Videoconference proceedings shall be conducted in accordance with the requirements established by the supreme court of appeals.

**Rule 19. Continuances and scheduling conflicts.**

(a) *Requirements for motion for continuance.* – A motion for a continuance shall be in writing and shall concisely state the grounds. The motion shall be filed with the circuit clerk, and provided to the court and served on all parties not less than seven days before the hearing.

(b) *Action on the motion.* – No continuance shall be granted except for good cause shown, and absent exigent circumstances no motion for a continuance shall be granted unless all parties have been accorded an opportunity to respond. The failure of a client to adhere to financial arrangements with an attorney does not constitute good cause for a continuance. The grant or denial of a motion for a continuance rests with the sound discretion of the court. An order granting a continuance shall set the continued proceeding for a date certain.

(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) *Resolution of scheduling conflicts.* – Scheduling conflicts shall be resolved pursuant to Rule 5 of the Trial Court Rules.

**Rule 20. Presentation of evidence by proffer; limitation.**

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

**Rule 21. Final hearings.**

(a) *Conversion of hearing to final hearing.* – By agreement of all parties placed on the record, any hearing may be converted to a final hearing if sufficient evidence is presented to sustain the cause of action and resolve all issues.

(b) *Restriction on time for final hearing.* – Except for good cause shown and placed on the record, a final hearing shall not be conducted prior to expiration of the time in which the respondent is required to serve an answer.

**ORDERS.**

**Rule 22. Orders; general provisions.**

(a) *Requirements for timeliness and content.* – All orders shall be promptly entered, and shall contain a provision directing the circuit clerk to provide certified copies to all parties.

(b) *Preparation of orders and findings.* – In proceedings in which both parties are self-represented, the court shall prepare all orders and findings of fact. 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. 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. Except for final recommended orders, within the same time period the attorney shall send all parties copies of the order or findings together with a notice which informs the recipients that they have five days 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 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 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 court may direct one or more attorneys for other parties to prepare the order or findings; and may require the attorney initially assigned to prepare the order or findings to pay the reasonable attorney fees.

**Rule 23. Retroactivity of child support and spousal support orders.**

Except for good cause shown, orders granting relief in the form of spousal support or child support shall make such relief retroactive to the date of service of the motion for relief.

**Rule 24. Scheduling orders.**

(a) *Initial scheduling orders.* – An initial scheduling order shall be entered within 90 days after the filing of the initial pleading. The order shall set a case management conference/hearing for a date and time certain, and shall notify the parties whether this proceeding will be conducted by the court as a hearing, or by a case coordinator as a conference.

(b) *Subsequent scheduling orders.* – A scheduling order shall be entered no later than five days after any hearing or conference. Such orders shall contain a notice that any hearing may be converted to a final hearing, and shall include dates for the submission and/or completion of any of the following matters which have not been submitted or completed at the time the order is entered: statements of the issues; financial disclosures; separation agreements; witness and exhibit lists; discovery, investigations, appraisals, tests, or evaluations; estimates of time necessary for hearings; proposed temporary and permanent parenting plans; parenting classes.

(c) *Sanctions for noncompliance with scheduling orders.* – If a party or attorney fails to comply with a scheduling order, fails to attend a scheduled hearing/conference, 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.

**REVIEW OF RECOMMENDED ORDERS.**

**Rule 25. Extension of time to file petition for review.**

Any party shall be allowed one ten day extension of the time for filing a petition for review. To obtain an extension a party shall file a notice of extension with the circuit clerk prior to the expiration of the time provided for filing the petition, serve copies on all parties, and send copies to the family law master and presiding circuit judge.

**Rule 26. Oral argument on petition for review.**

Any party may request oral argument on a petition for review, or the circuit court may hold argument without a request. A request for oral argument shall be in writing; and shall be filed with the circuit clerk, provided to the circuit court and family law master, and served on all parties no later than 15 days after the date the notice and recommended order was served on the requesting party. Rulings on requests for oral argument rest with the discretion of the circuit court. The family law master shall not be required to attend oral argument.

**Rule 27. Final orders.**

The circuit court shall enter a final order no later than 35 days after the petition for review filing deadline date set forth in the notice of recommended order, or no later than 50 days after that date if the circuit court takes additional evidence or holds oral argument. The circuit clerk shall notify the family law master of the entry of a final order.

**Rule 28. Insufficient record for review.**

If essential portions of the recording of proceedings before a family law master are inaudible or unavailable, the circuit court may recommit the case to the family law master; may take evidence; and/or may accept from any party a proposed statement of the pertinent facts presented below. Such statements shall include the maker's certification the facts are accurately presented to the best of that person's knowledge and belief, and shall be served on all parties. Any party may object to a proposed statement of facts by filing written objections with the circuit court within ten days of the date of service of the statement upon them.

**Rule 29. Recommitment of cases to family law master.**

(a) *Recommitment orders.* – An order recommitting a case to a family law master shall be entered no later than 50 days after the petition for review filing deadline date set forth in the notice of recommended order. A recommitment order shall particularly identify any inaudible or unavailable portions of the recording of proceedings; shall particularly identify any inadequacies in the evidentiary record; and shall indicate the specific actions to be taken by the family law master upon recommitment, including the particular evidence to be taken. At the time a case is recommitted the circuit court shall enter such temporary orders as the circumstances require. All recommitment orders shall direct the circuit clerk to provide a copy to the family law master.

(b) *Proceedings on recommitment.* – All proceedings in cases recommitted to a family law master shall be concluded within 30 days of the date of the order of recommitment; and within 50 days the family law master shall present to the circuit court a recommended order, findings of fact, and conclusions of law.

#### **PARENT EDUCATION.**

##### **Rule 30. Parent education; course content; mandatory attendance; information reporting.**

(a) *Course content.* – All parent education courses shall be subject to approval 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 non-judicial 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; (5) resources available for dealing with domestic abuse.

(b) *Mandatory attendance.* – In proceedings involving minor children the parents shall be required to complete parent education, and shall file with the circuit clerk a certificate of completion. For good cause shown, parent education may be waived if the court places on the record a finding 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. If mediation or other non-judicial dispute resolution is not required, parent

education shall be completed by both parents prior to the final hearing. If one or both parents have failed to timely complete parent education, the court may halt proceedings, and in such circumstances shall enter a scheduling order setting the next hearing for a date certain and requiring the parents to complete parent education prior to that hearing. For good cause shown the court may conduct proceedings despite the failure of one or both parents to timely complete parent education.

(c) *Information reporting.* – All court personnel and providers of parent education shall provide the supreme court of appeals such information as the court determines necessary for assessing these programs.

## **MEDIATION.**

### **Rule 31. Mediator panels; training and qualifications; information reporting.**

(a) *Panels; training and qualifications.* – Each family court shall establish a panel of mediators meeting the qualifications and training requirements established by the supreme court of appeals. All panel members shall be subject to approval by the supreme court of appeals.

(b) *Information reporting.* – All court personnel and all persons providing premediation screening or mediation shall provide the supreme court of appeals such information as the court determines necessary for assessing these programs.

### **Rule 32. 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 14 days of the date of the order; inform the parties of the dates, times, and places at which premediation screening will be held; and require the parties to meet separately and privately with a screener.

(b) *Premediation screening procedures.* – All premediation screening shall employ the required premediation screening forms; and shall be conducted by individuals, who may be

family court personnel, meeting the qualifications and training requirements established by the supreme court of appeals. Screeners may report suspected child abuse or neglect as provided by chapter 49, article 6A, section 2 of the Code, and shall so inform the party being screened prior to the commencement of screening.

(c) *Report of premediation screening.* – No later than five days after the conclusion of premediation screening the screener shall send a copy of the abbreviated premediation screening report to the court. The report shall be made on the required form; identify the existence of any of the elements listed in chapter 48, article 11, section 202(b) of the Code; and set forth the screener's recommendations.

**Rule 33. Procedure following receipt of abbreviated premediation screening report.**

(a) *Parties assigned to mediation.* – Within five days of receiving the abbreviated premediation screening report the court shall enter an order assigning a mediator to parties recommended for mediation. The assignment order shall set the mediation fees in accord with the approved sliding scale; require the mediator to contact the parties and arrange for mediation to begin by a date certain; set the next hearing for a date certain; require all mediation to be completed before that date; direct that each party be provided a copy of the approved mediation process document; and notify the parties they are required to read that 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 abbreviated premediation screening report reveals the existence of any of the elements listed in chapter 48, article 11, section 202(b) of the Code, and/or recommends the screened parties should not be required to mediate, the court shall dispense with mediation; but as provided in section 202(b), may consider alternatives which may aid the parties in establishing a parenting plan. The court shall not order the parties to participate in any alternative which is not conveniently available and affordable to the parties. 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 dispenses with mediation, within five days a scheduling order shall be entered and sent to the parties informing them they have been screened out of

mediation, and setting a date certain for the next hearing.

**Rule 34. Mediation fees.**

Mediation services shall be ordered at hourly fees which are affordable to the parties and consistent with 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 35. Procedure for mediator disqualification.**

All mediators shall be subject to Canon 3 of the Code of Judicial Conduct regarding disqualification. Any party may file a written motion to disqualify a mediator for good cause. The court shall rule on the motion within ten days of the date the motion was filed. If the motion is granted, the court shall enter an order within five days which assigns another mediator.

**Rule 36. Mediation procedures.**

(a) *General provisions.* – All parties shall be prepared to negotiate. Counsel may attend mediation. No party shall be compelled to consent to a mediated agreement.

(b) *Procedure prior to the commencement of mediation.* – If a party arrives at the first mediation session without having read the mediation process document, or having had it read to him/her, 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 provided by chapter 49, article 6A, section 2 of the Code.

(c) *Procedure upon conclusion of mediation.* – If a mediated agreement is reached, the mediator shall inform the parties the agreement has no binding legal effect until it is adopted by court order, and that either party may withdraw from the agreement prior to the court's adoption of the agreement. Within five days of the conclusion of mediation, the mediator shall reduce any mediated agreement to writing on the required form; prepare a Mediation Outcome Report on the required form; file the agreement with the circuit clerk; send copies of the agreement to the parties; and send a copy of the report to the court.

(d) *Confidentiality.* – All mediation proceedings,

including premediation screening, are confidential settlement negotiations subject to Rule 25.12 of the Trial Court Rules. 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, the Mediation Outcome 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 37. Court's consideration of mediated agreement.**

Upon receipt of a mediated agreement the court shall review the agreement to determine if it is knowing, voluntary, and in the best interests of the parties' children. 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 in accordance with chapter 48A, article 1B, sections 6 and 7 of the Code. After being informed on the record of the mediated agreement's child support implications, if 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 in an order.

**Rule 38. 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, custody investigator. An organization may provide more than one of these services in the same case if the services are provided by different individuals, the organization has established written procedures to prohibit the exchange of information between such individuals, and the court approves of these procedures; however, no organization may provide more than one of these

services 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 39. Immunity.**

Mediators and premediation screeners shall have immunity in the same manner and to the same extent as a circuit court judge.

**SPECIAL PROCEEDINGS AND PROCEDURES.**

**Rule 40. 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 and an attorney for a child. Such appointments shall be made independently of any nomination by the parties.

**Rule 41. Child abuse and neglect.**

(a) *Reports by family law masters.* – If a family law master has reasonable cause to suspect any minor child involved in family court proceedings has been abused or neglected, the family law master shall immediately report to the state child protective services agency and the circuit court.

(b) *Reports of investigations of child abuse and neglect.* – The state child protective services agency shall promptly provide the family law master and the circuit court copies of any report of any investigation regarding the abuse or neglect of any minor child involved in family court proceedings.

(c) *Jurisdiction of proceedings.* – The family law master shall retain full jurisdiction of proceedings until an abuse or neglect petition is filed, or the circuit court orders proceedings held in abeyance.

**Rule 42. 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 was not instituted by the child support enforcement agency, within five days of filing the circuit clerk shall send a copy of the case information statement to the local child support enforcement

office.

(b) *Case management conference/hearing.* – Upon receipt of the petitioner's case information statement the court shall set a case management conference/hearing for a date certain. If paternity is not admitted prior to or during the case management conference/hearing, the court shall order the parties and the subject child to undergo genetic blood testing within a stated time period. Within three days of the conclusion of the case management conference/hearing the court shall enter a scheduling order setting a final paternity hearing for a date certain.

(c) *Actions required by respondent.* – If genetic blood tests do not exclude the respondent, or if the respondent admits paternity, the respondent shall provide a completed financial statement for all years subsequent to the birth of the child, up to a maximum of three years preceding the filing of the paternity petition; and shall provide the information required by Rule 12(a)(1)-(3). Financial statements and other required information shall be filed with the circuit clerk and sent to all parties no later than 14 days before the final hearing. If the respondent fails to provide or timely provide the required information the court may impose the sanctions provided by Rule 12(b).

(d) *Paternity established by default.* – If the respondent has been properly served and has failed to appear, answer, or otherwise defend within the time required, paternity shall be established by default.

(e) *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 or born during the parties' marriage.

(f) *Parent education required.* – If a determination of paternity is made, each parent or custodian shall be ordered to complete parent education by a date certain and file a certificate of completion with the circuit clerk.

#### **Rule 43. Petitions for modification.**

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

the petition shall be filed with three copies of a case information statement, and served on all parties. Within five days of receipt of a petition for modification the family law master shall send a scheduling order to all parties.

**Rule 44. Expedited modification of child support.**

(a) *Filing procedure.* – An expedited modification petition, any supporting documents, a completed section IV-D application, 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 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. After filing the petition with the circuit clerk the filing party shall take or mail to the family law master office a copy of the petition, any supporting documents, and a 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 shall review the petition and any supporting documents, and 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 results in a support 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 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 in chapter 48A, article 1B, section 11 of the Code, the family law master shall prepare a notice on the required form; and upon receipt of satisfactory proof the fee for service by certified mail has been paid or waived, 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.

(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 with a written request for a hearing.

(d) *Hearing requested; preparation of scheduling order.* –

Within five days of receiving a timely request for a hearing the family law master shall enter a scheduling order setting a hearing for a date and time certain.

(e) *No hearing requested; preparation of default order.* – If no party makes a timely request for a hearing, the family law master shall prepare a recommended default order setting child support at the recalculated amount.

(f) *Fees for certified mail service.* – Fees for certified mail service required by this rule shall be paid to the circuit clerk, and the circuit clerk shall pay all such fees into the Family Court Fund.

#### **Rule 45. 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 file with the circuit clerk and provide to the other parent a notice of relocation which complies with the requirements of chapter 48, article 11, section 403 of the Code. Either parent may request a hearing on the relocation by filing a written request with the circuit clerk and sending 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 matters not designated by rule or statute as expedited matters.

#### **Rule 46. Bifurcation.**

The court shall not bifurcate a divorce proceeding unless there is a compelling reason to grant the divorce prior to resolving issues related to spousal support, child support, and distribution of property; no party will be prejudiced by the bifurcation; and a temporary order has been entered granting spousal support, child support and any other necessary relief. If a case is bifurcated, the final order shall be entered within six months of the entry of the bifurcation order.

#### **Rule 47. Authority to accept waivers.**

The court 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.

**Rule 48. Agreements.**

Agreements between parties shall be reduced to writing, signed by all parties, and incorporated in an order. Agreements reached on the date of a hearing, if not in writing, shall be dictated into the record at the hearing in the presence of all parties. The court shall hold a hearing to review all agreements with child support provisions.

**Rule 49. Obtaining confidential records.**

Unless the person who is the subject of confidential records waives confidentiality in writing, such records may not be obtained by subpoena; but only by court order and upon full compliance with statutory and case law requirements. Such records include, but are not limited to: confidential medical and educational records; and confidential records of the West Virginia Department of Health and Human Resources; the Office of Social Services; the Office of Economic Services; the child support enforcement agency; West Virginia juvenile court proceedings; mental health treatment and counseling; substance abuse treatment; and domestic violence shelters.

**Rule 50. Withdrawal and substitution of counsel.**

(a) *Withdrawal of counsel.* – Rule 4.03(b) of the Trial Court Rules shall govern the withdrawal of counsel. Family law masters shall have authority to enter withdrawal orders without approval of a circuit judge.

(b) *Substitution of counsel.* – Rule 4.04 of the Trial Court Rules shall govern the substitution of counsel by stipulation.

**DISQUALIFICATION OF FAMILY LAW MASTERS.**

**Rule 51. Motions to disqualify.**

(a) *Requirements for motion.* – Any party may move to disqualify a family law master. The motion shall be in writing, be verified, and state facts and reasons supporting the disqualification. The motion shall be filed with the circuit clerk, and provided to the family law master and served on all 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 shall promptly send the presiding circuit judge a copy of the motion and 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 presiding circuit judge.

(d) *Circuit court rulings.* – The presiding circuit judge shall rule on disqualification motions within ten days of receiving the motion. Rulings on disqualification motions rest with the discretion of the presiding circuit judge, and are interlocutory rulings not subject to appeal.

**Rule 52. Voluntary disqualification.**

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

**Rule 53. Conduct of proceedings following disqualification.**

In the event a family law master is disqualified, the presiding circuit judge may hear the matter, or may assign the matter 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 presiding circuit judge may request that the chief justice of the supreme court of appeals appoint a special family law master to hear the matter."

A True Copy

Attest:           //s// Rory L. Perry, II            
Clerk, Supreme Court of Appeals