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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 27th day of November, 2001, the following order was made and entered:

IN RE: AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE FOR FAMILY COURT

On a former day, to-wit, April 19, 2000, the Court adopted the *Rules of Practice and Procedure for Family Law* provisionally on an emergency basis. Thereafter, on the 27th day of September, 2000, the Court adopted *Rules of Practice and Procedure for Family Court*, effective on the 27th day of September, 2000, and vacated the aforesaid provisional rules.

Thereafter, on the 21st day of June, 2001, came the Court and proceeded to provisionally amend *Rule 40 of the Rules of Practice and Procedure for Family Court*, said amendment effective on the 21st day of June, 2001. Thereafter, on the 4th day of October, 2001, came the Court and adopted the aforesaid provisionally-adopted *Rule 40 of the Rules of Practice and Procedure for Family Court*.

Finally, on this day came the Court and proceeded to consider amendments to the *Rules of Practice and Procedure for Family Court*. Upon consideration whereof, the Court is of opinion to and doth hereby adopt the following amended rules on an interim basis, effective on the 1st day of January, 2002. The Court doth hereby approve a period for public comment on these amended interim rules, said comment period to conclude on the 1st day of March, 2002. Deletions are indicated by strike-throughs and additions are indicated by underlining.

“RULES OF PRACTICE AND PROCEDURE FOR FAMILY COURT

GENERAL PROVISIONS.

Rule 1. Scope; conflicts.

These rules shall govern all proceedings in Family Court with the exception of domestic violence civil proceedings unless specifically referenced in these rules. 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 or the family court 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; family court final order refers to an appealable order entered by a family court judge; memorandum of law refers to a brief as in W.Va. Code, §51-2A-11; and 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.

(a) Effective Date. The rules shall take effect on ~~the 27th day of September, 2000~~ the 1st day of January, 2002, and shall govern all Family Court proceedings after this date.

(b) Transfer of Cases to Family Court. Effective January 1, 2002, all family court cases pending before the circuit court, whether on review of recommended order or otherwise, shall be transferred to the jurisdiction of the family court. The circuit clerk shall notify the parties of the transfer by mailing a notice to counsel of record for each party via first-class mail, or, if there is no counsel of record, to the party at the last known address for that party. In those cases where a recommended order has been previously been filed, the family court shall enter a final order as soon as practical after transfer; provided, however, that if the parties have previously filed objections to a recommended order, the family court judge shall consider those objections and rule upon them as part of the family court final order.

Where a circuit court has conducted evidentiary proceedings in a case prior to January 1, 2002, the circuit court may request, by January 31, 2002, pursuant to W.Va. Code § 51-2A-19(b), and taking into account the circumstances of the case, that he or she be appointed as a family court judge in such case.

ADMINISTRATIVE PROVISIONS.

Rule 4. Security.

Upon a family ~~court judge's 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, ~~and 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. ~~Electronic records shall be indexed by the secretary-clerk of the family court, and shall be securely stored by the family court unless stored by the circuit clerk pursuant to the request of a family court judge.~~ 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 cost by chapter 48A, article 4, section 9(e) of the Code.~~ The family ~~court law master~~ shall provide the copy within ten days. The family 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 ~~court judge 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 family court may refuse to permit the

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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, which fee shall not exceed ten cents (\$.10) per page or ten dollars (\$10.00) total. Circuit clerks ~~family law masters, and their staffs, and the staffs of family courts~~ 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, recordings, 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 court judge ~~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 family 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 Chapter 42, 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 court 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.

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(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 court 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 the required parent education fee 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 that 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 (a) ~~(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 support 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 and consolidation.

(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.

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(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.

~~(e) Consolidation of simultaneous proceedings. When two or more family court actions between the same two parties are pending before different family court judges, the court in which the first action was commenced shall order all of the actions transferred to it or any other family court in which such action is pending. The court to which the actions are transferred may order a joint hearing or trial of any or all of the matters in issue in any of the actions; it may order all of the actions consolidated; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.~~

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.

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(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 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) *Family court final orders.* A family court final order shall contain language explicitly informing the parties (1) that it is a final order; (2) that any party aggrieved by the final order may take an appeal either to the circuit court or directly to the supreme court of appeals; (3) that a petition for appeal to the circuit court may be filed by either party within thirty days after entry of the final order; and (4) that in order to appeal directly to the supreme court both parties must file, within fourteen days after entry of the final order, a joint notice of intent to appeal and waiver of right to appeal to circuit court.

(e)(d) *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.

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(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.

Rule 25. Motion for reconsideration of family court order.

Any party may file a motion for reconsideration of a family court order as provided in W.Va. Code, §51-2A-10.

REVIEW OF RECOMMENDED ORDERS APPEALS.

Rule 26. Waiver of appeal to circuit court.

(a) *Filing Notice and Waiver.* If, within fourteen days after entry of a family court final order, both of the parties file, either jointly or separately, a notice of intent to appeal directly to the supreme court of appeals and waiver of the right to appeal to the circuit court, either party aggrieved by a final order of a family court judge may file a petition for appeal to the supreme court of appeals. The notice of intent to appeal and waiver shall be in the same or substantially similar form as that contained in Appendix A.

(b) Effect of Notice and Waiver. If only one party files a notice and waiver, any petition for appeal filed shall be treated as a petition for appeal to the circuit court.

Rule 27. Stay of proceedings pending appeal.

(a) Motion for Stay. Any person desiring to file a petition for appeal from a final order of the family court may file a motion for a stay of proceedings in the family court in which the order was entered. The motion for a stay shall be filed with the circuit clerk and served upon the respondent in accordance with Rule 5 of the Rules of Civil Procedure.

(b) Effect of Stay. Either on its own motion or upon motion by a party, the family court may order a stay of all or part of a final order, for the period of time allowed for filing of a petition for appeal to the circuit court or for any additional period of time pending disposition of the appeal. Provided, however, that an order granting a motion for stay may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending disposition of the appeal.

(c) Application in Circuit Court. If the family court should refuse to grant a stay, or if the relief afforded is not acceptable, the party desiring to file the petition for appeal in the circuit court may file a motion for a stay of the proceedings in the circuit court. The motion for a stay shall be filed with the circuit clerk and served upon the respondent in accordance with Rule 5 of the Rules of Civil Procedure. The circuit court may order a stay of all or part of a final order, for the period of time allowed for filing of a petition for appeal to the circuit court, or for any additional period of time pending disposition of the appeal. Provided, however, that an order granting a motion for stay may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending disposition of the appeal.

(d) Effect of Order Refusing Petition for Appeal. If the circuit court enters an order refusing the petition for appeal, any stay of the family court final order is vacated. A party desiring an additional stay must make an application for stay in the supreme court of appeals as provided in Rule 6 of the Rules of Appellate Procedure.

Rule 28. Petition for appeal to circuit court.

(a) Time for petition. A party aggrieved by a final order of a family court may file a petition for appeal to the circuit court no later than thirty days after the family court final

order was entered in the circuit clerk's office.

(b) *Filing with clerk.* An original and two copies of the petition for appeal shall be filed in the office of the circuit clerk where the final order being appealed was entered. The circuit clerk shall note clearly on each copy the date on which the petition for appeal was filed.

(c) *Form of petition.* The petition for appeal shall be prepared in the same or substantially similar form as that set forth in [Appendix A](#) of these rules. The party filing the petition for appeal may file a memorandum of law in support of the petition for appeal at the time the petition is filed. Except by permission of the circuit court, the petition for appeal, together with the memorandum of law in support, if any, shall not exceed fifty pages, inclusive of any addendum.

(d) *Service of petition.* The petition for appeal and memorandum of law, if any, shall be served in accordance with Rule 5 of the Rules of Civil Procedure.

(e) *Response to petition.* The respondent may file an original and two copies of a response to the petition for appeal with the circuit clerk within fifteen days after the filing of the petition for appeal. Except by permission of the circuit court, the response shall not exceed fifty pages, inclusive of any addendum.

(f) *Cross-petition for appeal.* Within fifteen days after the filing of the petition for appeal, the respondent may file a cross- petition for appeal. The cross-petition may be filed in addition to any response. The cross-petition for appeal shall be prepared in the same or substantially similar form as that set forth in [Appendix A](#) of these rules. The party filing the cross-petition for appeal may file a memorandum of law in support of the cross- petition for appeal at the time the cross-petition is filed. Except by permission of the circuit court, the cross-petition for appeal, together with the memorandum of law in support, if any, shall not exceed fifty pages, inclusive of any addendum.

(g) *Reply to response.* No reply to a response to a petition for appeal shall be filed.

Rule 29. Motions to Dismiss the Appeal.

(a) *By party.* At any time following the filing of a petition for appeal, either party to the appeal may move the circuit court to dismiss the appeal on any of the following grounds: (1) a joint agreement of the parties to the dismissal; (2) failure to properly perfect the appeal; (3) failure to obey and order of the family court or circuit court; (4) lack of an

appealable order; or (5) lack of jurisdiction. Such motion shall be filed with the circuit clerk and served in accordance with Rule 5 of the Rules of Civil Procedure.

(b) *Hearing.* No oral argument shall be held on a motion to dismiss unless requested by the circuit court.

Rule 30. Granting or refusing the appeal.

(a) *Review by circuit court.* As soon as practical after the response to the petition for appeal is filed, if any, the circuit court shall enter an order granting or refusing the petition for appeal.

(b) *Refusal order.* If the petition for appeal is refused, the circuit court shall enter an order refusing the petition for appeal within 60 days from the last day a response to the petition for appeal could have been filed. A refusal order shall explicitly inform the parties that it is a final order disposing of the appeal. Motions for reconsideration of a refusal order, or renewal of a petition for appeal that has been refused, are not permitted.

(c) *Granting order.* If the petition for appeal is granted, the circuit court shall enter an order granting the petition for appeal. If oral argument was requested in writing by either of the parties, or if the circuit court desires oral argument, the granting order shall set forth a date and time for oral argument. The clerk of the circuit court shall immediately serve the granting order upon the parties by mailing a copy to counsel of record for each party via first-class mail, or if there is no counsel of record, to the party at the last known address for that party. Service shall be complete upon mailing.

Rule 31. Extensions of time.

The circuit court may, for good cause shown in a written motion, extend the time prescribed by these rules for doing any act related to the appeal before it, or may permit an act to be done after the expiration of such time. Provided, however, that any extension of time granted by the circuit court may not exceed a period of ten days.

Rule 32. Oral argument on petition for review.

(a) *Scheduling argument.* If requested in writing by either party, or if the circuit court wishes to hold argument without request, the circuit court shall set forth a date and time for oral argument in the granting order as required by Rule 30(c). Any party may request oral argument on a petition for review appeal, 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

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~~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.~~

(b) *Argument.* Counsel for appellant, or appellant unrepresented by counsel, shall be entitled to open and close the argument, and shall be allotted twenty minutes to open and ten minutes to close. Counsel for appellee, or appellee unrepresented by counsel, shall be allotted twenty minutes. A party is not obliged to use all of the time allotted, and the circuit court may terminate argument whenever in its judgment further argument is unnecessary. The family law master court judge shall not be required to attend oral argument. Oral argument proceedings shall not be open to the public.

Rule 33. Final orders decisions.

(a) *Entry of final decision.* The circuit court shall enter a final decision order no later than 35 within 60 days from the last day a response to the petition for appeal could have been filed, or shall enter an order stating just cause why a final decision has not been timely entered, 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 court judge of the entry of a final decision order.

(b) *Contents of final decision.* A final decision may refuse the petition for appeal, may affirm or reverse the family court final order, or may affirm or reverse in part. A circuit court's final decision may be appealed to the supreme court of appeals in the manner set forth in the Rules of Appellate Procedure. A remand order entered pursuant to Rule 31(a) is not a final decision for purposes of appeal.

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 34. Recommitment of cases Remand to family court judge law master.

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(a) ~~*Recommitment Remand orders.*~~ An order ~~recommitting~~ remanding a case to a family ~~law master~~ court judge shall be entered within 60 days from the last day a response to the petition for appeal could have been filed, no later than 50 days after the petition for review filing deadline date set forth in the notice of recommended order. A ~~recommitment remand~~ 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 court judge ~~law master~~ upon remand ~~recommitment~~, including the particular evidence to be taken. At the time a case is ~~recommitted~~ remanded the circuit court shall enter such temporary orders as the circumstances require. All ~~recommitment remand~~ orders shall direct the circuit clerk to provide a copy to the family court judge ~~law master~~.

(b) ~~*Proceedings on remand. recommitment.*~~ All proceedings in cases remanded ~~recommitted~~ to a family court judge ~~law master~~ shall be concluded within 30 days of the date of the remand 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.~~

Rule 35. Motions.

(a) ~~*Content of motions; response; reply.*~~ Unless another form is elsewhere prescribed by these rules, a motion for an order or other relief from the circuit court shall be made by filing a written motion for such order or relief with the circuit clerk, with service upon the other party in accordance with Rule 5 of the Rules of Civil Procedure. The motion shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by a memorandum of law, affidavits or other papers, they shall be served along with the motion. A party may file a response to a motion. A reply to a response to a motion may not be filed.

(b) ~~*Determination of motions for procedural orders.*~~ Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders may be acted upon by the circuit court at any time, without awaiting a response. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action.

(c) ~~*Hearing.*~~ No oral argument shall be held on such motion, unless requested and scheduled by the circuit court.

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 36 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 In the absence of such a waiver,~~ 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 to be necessary for assessing these programs.

MEDIATION.

Rule ~~37~~ 34. 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 ~~38~~ 32. Premediation screening.

(a) *Orders requiring premediation screening.* No later than five days after a hearing or conference at which the court first determines that 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 W.Va. Code, §48-9- 202(b) chapter 48, article 9-11, 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 W.Va. Code, §49-6A- 2 and shall so inform the party being screened prior to the commencement of screening. Other than the abbreviated premediation screening report, no notes or other documents used in premediation screening are part of the record.

(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 W.Va. Code, §48-~~9~~ 11 - 202(b); and set forth the

screeener's recommendations.

Rule 39 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 W.Va. Code, §48-9-44 -202(b), and/or recommends that the screened parties should not be required to mediate, the court shall dispense with mediation; but as provided in section 202(b), the court 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 premediation and mediation procedures and time limits requirements provided in these rules for the conduct of premediation screening and mediation shall apply. 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 40 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 41 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 ~~42~~ 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 W.Va. Code, §4-6A-2.

(c) *Procedure upon conclusion of mediation.* If a mediated agreement is reached, the mediator shall inform the parties that 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 exception 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 ~~43~~ 37. Court's consideration of mediated agreement.

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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~~ W.Va. Code, §§48-13-401-404, 501, and 502. 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 ~~44~~ 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 ~~45~~ 39. Immunity.

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

SPECIAL PROCEEDINGS AND PROCEDURES.

Rule ~~46~~ 40. Appointments of guardians ad litem and attorneys for children.

(a) Appointments. -- As provided by W.Va. Code, ~~§48-11-302, §48-9-302~~ the court may appoint a guardian ad litem to represent a child's best interest, or an attorney to represent a child. Such appointments shall be made independently of any nomination by the parties. The court shall specify the terms of the appointment, including the guardian's or attorney's roles, duties, scope of authority, and method of payment, if any.

(b) Payment.-- Appointed guardians may (a) serve on a voluntary basis without compensation, (b) be paid by a litigant-parent of the child for whom the appointment is made who has the ability to pay, or (c) in some circumstances, be paid by the Supreme

Court of Appeals. The court may appoint any attorney to serve as a guardian ad litem.

Eligibility for Supreme Court payment for court-appointed guardians ad litem or attorneys for children shall be determined by the family court using guidelines established by the Administrative Director of the Court. Payment shall be made from court funds appropriated for that purpose, or from grant funds designated for that purpose, at the rates established for compensation of attorneys pursuant to W. Va. Code, 29-21-1 to 22. The total compensation paid to guardians or attorneys from court or grant funds shall not exceed five hundred dollars (\$500.00) per appointment. Requests for payment shall be made on forms provided by the Administrative Director of the Court. Requests for payment shall be reviewed and approved by order of the court prior to submission to the Administrative Director of the Court for payment.

As circumstances may warrant, at any time during the proceedings, the family court or the circuit court, in its discretion, may tax the costs of the appointment of a guardian ad litem or an attorney for a child or children to either of the parties and require that any compensation previously paid from court funds or grant funds be refunded to the Administrative Director of the Court.

The Administrative Director of the Court shall have the authority to approve and pay compensation in excess of the five hundred dollars (\$500.00) per appointment in exceptional cases and for good cause shown.

Rule ~~47~~ 41. Child abuse and neglect.

(a) *Reports by family ~~court judges law masters~~.* -- If a family ~~court judge law master~~ has reasonable cause to suspect any minor child involved in family court proceedings has been abused or neglected, ~~the that family court judge 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 ~~court 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 ~~court law master~~ shall retain full jurisdiction of proceedings until an abuse or neglect petition is filed. If an abuse or neglect petition is filed and the family court has entered an order regarding the allocation of custodial and decision-making responsibility between the parents, orders of the circuit court shall supercede and take precedence over any order of the family court regarding the allocation of custodial and decision-making responsibility between the parents. If the family court has not entered an order for the allocation of custodial and decision-making responsibility between the parents, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility between the parents and defer to the orders of the circuit court. or the circuit court orders proceedings held in abeyance.

Rule 48 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) *Denial of paternity in specified cases.* -- In cases in which there is no paternity affidavit on record acknowledging the respondent's paternity of the child or in which the child was not conceived or born during the parties' marriage, if there is a denial of paternity in the responsive pleading, an order requiring the parties to submit to genetic blood testing shall be entered. In such cases, any hearing set pursuant to these rules may be continued until genetic blood test results are available. Within five days of the filing with the clerk of the genetic blood testing results an order shall be entered setting the case for a date certain.

~~(e)~~ (d) *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)~~(e) *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)~~(f) *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)~~(g) *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 49 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 court law master. If a petition for modification ~~is filed in 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 court law master shall send a scheduling order to all parties.

Rule 50 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 court law master. After filing the petition with the circuit clerk the filing party shall take or mail to the family court 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 court law master upon receipt of petition.* -- The family court 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 court 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 W.Va.Code, §48-11-106~~, the family court 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 W.Va.Code, §48-11-106~~, the family court law master shall prepare a notice on the required form; and upon receipt of satisfactory proof that 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.

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(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 ~~court 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 ~~court 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 ~~court law master~~ shall enter an order for a judgment by default ~~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 51 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 W.Va. Code, §48-9 44-403. 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 ~~court law master~~. Within five days of receiving the request for hearing the family ~~court 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 52 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 53 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 54 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 55 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 56 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 COURT JUDGES. LAW MASTERS

Rule 57 51. Motions to disqualify.

(a) The procedure for disqualification of family court judges shall be the same as that set forth in T.C.R. 17.

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~~(b) Assignments to hear emergency matters pending a ruling; assignments in the event of disqualification. _ The chief justice of the supreme court of appeals 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. The chief justice of the supreme court of appeals may assign another family court judge, a former family law master or family court judge, circuit judge or senior status circuit judge to hear emergency matters pending a ruling. In the event a disqualification motion is granted the chief justice shall promptly assign another family court judge, a former family law master or family court judge, circuit judge or senior status circuit judge to preside over the case."~~

A True Copy

Attest: //s// Rory L. Perry

Clerk, Supreme Court of Appeals