

APPENDIX A

DCM Models

Intake Parts – An Intake Part provides a centralized location to conduct preliminary conferences. Currently, Bronx, Kings, Nassau, Queens, Suffolk and Westchester Counties employ this strategy. Generally, an Intake Part is staffed by non-judicial personnel, either case management coordinators or court attorneys, who assist in setting a discovery schedule. Within this framework, a number of variations have developed.

In Westchester County, cases are sent to the Intake Part for a preliminary conference prior to being assigned to a Judge. A Judicial Hearing Officer presides over the Part and resolves discovery disputes. At the conclusion of the preliminary conference, the case is randomly assigned to an IAS Judge who will subsequently conduct the compliance hearing and rule on substantive motions. In the Bronx, a Supreme Court Judge is assigned to the Intake Part on a rotational assignment and performs similar duties.

In Kings, Queens, Nassau and Suffolk Counties, cases are randomly assigned to Judges prior to an appearance in the Intake Part. Non-judicial personnel are assigned to the part assist the parties in resolving discovery disputes in the first instance and, if they cannot do so, the matter is referred to the assigned Judge for a ruling.

Whatever the approach, Intake Parts are designed to insure that preliminary conferences are held within 45 days of the filing, reduce appearances by counsel, and provide consistent treatment for discovery disputes.

Centralized Compliance Parts – Most counties that have established an Intake Part to conduct preliminary conferences require that the compliance conference be held before the assigned Judge. Queens and Kings Counties are exceptions to this rule, holding compliance conferences for all cases in a single part. The Judge assigned to the

Compliance Part, assisted by court attorneys and case management coordinators, monitors the progress of discovery and resolves any outstanding issues. As with the Intake Part, appearances by counsel are reduced and cases receive uniform treatment.

Approaches to Early Settlement – A number of programs have developed throughout the State to expedite case disposition and conserve judicial resources. In New York, Erie and Monroe Counties, Neutral Evaluation Programs have been established. Experienced court attorneys evaluate and conference post-Note cases and endeavor to achieve a settlement. Cases are referred to the neutral evaluator by the assigned Judge, who, while always capable of conferencing the case in the first instance, must also allocate his/her time to trials and hearings.

Often, several conferences are required to achieve a successful outcome and the Neutral Evaluation Program provides an opportunity for the litigants to fully explore settlement opportunities without the expenditure of judicial resources. To date, these programs have met with great success. Over the last two years, the neutral evaluators in New York County have settled 3,382 cases. During 2004, the neutral evaluators in Erie County resolved 621 cases.

In Nassau County, the ADR office schedules and conducts neutral evaluation on select post-Note cases. Neutral evaluation is conducted in the courthouse by private volunteer attorneys provided by the Nassau County Bar Association. The panel is composed of both plaintiff and defense counsel, many of whom perform private mediation outside the courts. Approximately 120 cases are referred per term and the settlement rate is approximately 20%.

In Kings County, a post-Note Settlement Conference Part has been established. Here, cases are culled from the IAS inventories approximately 4-6 months after the Note of Issue has been filed. They are then assigned to the Settlement Conference Part for all purposes. The Judge assigned to the Part will attempt to settle the case and will retain

the matter as long as necessary. Failing settlement, the Judge will then resolve any outstanding discovery issues and set a date for trial. Over the last two years, the Judge assigned to this Part has disposed of over 2,424 Notes.

Albany County has retained a dual track system. Cases remain with the IAS Judge until the pre-trial settlement conference. At the pre-trial conference, the parties are afforded an opportunity to settle. If a settlement cannot be reached, a firm future trial date is set in Part 1. Twenty trial-ready cases are calendared in Part 1 each week and Judges rotate through the Part every term. The week before a Judge begins his/her assignment, all cases scheduled for the next term are called in for a settlement conference. Cases that fail to settle retain their trial date, and it is not unusual for an additional settlement conference to be held on that date as well. At a minimum, all post-Note cases in Albany County receive three settlement conferences before trial.

Impact of DCM on Two Counties

While these various approaches display how Administrative Judges have adapted the DCM program to the unique needs of their local jurisdictions, the true impact of DCM can best be illustrated by examining its effect on two jurisdictions that have experienced significant caseload reductions under the program - Nassau and Queens Counties.

Nassau County

Prior to the introduction of DCM, Nassau County, like many downstate jurisdictions, operated on a dual-track system. Upon the filing of an RJI, cases were assigned to an IAS Judge and would remain with that Judge until they were ultimately transferred to the Trial Assignment Part (TAP). Preliminary conferences were conducted

in a centralized location (Part 8A) and these conferences were routinely adjourned. On average, it took a case approximately 28 months after the filing of a Note of Issue to reach TAP, and a case would sometimes receive its first meaningful settlement conference only in TAP.

On January 30, 2000, there were 16,955 pre-Note cases pending, of which 43% were over standards and goals, and 6,973 Notes pending, of which 1,691 (24%) were pending beyond standards and goals.¹ To address this backlog, Nassau County decided to introduce DCM incrementally with four Judges participating the first year and six Judges being added each year thereafter, until all the Judges were involved in the program.

Nassau also makes extensive use of non-judicial personnel to assist Judges in monitoring case progress. Upon the filing of an RJI, a case is randomly assigned to a Judge and letters are generated directing the parties to appear in a centralized location for a preliminary conference. Motions are screened by a Court Attorney/Referee to determine which ones can be resolved at a preliminary conference. After completing the PC order, counsel meet with a Case Management Coordinator who informs them of the assigned Judge's rules and assists in setting a discovery track. The case is also evaluated for possible 325(d) assignment to the District Court. All parties are furnished with a copy of the order which contains the compliance conference date.

Compliance conferences are conducted in the IAS Parts on the date assigned in the PC Order and the case is then scheduled for a certification conference. This is essentially a CPLR §3216 conference, in which the plaintiff is directed to file a Note of Issue within 90 days. Failure to do so results in the action being deemed dismissed. Upon filing of a Note of Issue, the matter is referred for mediation (as described above)

¹ The discussion of Nassau County's caseload includes all cases except Contested Matrimonials and Tax Certiorari.

or set down for a pre-trial conference.

At the pre-trial conference, counsel is given an opportunity to have a settlement conference or schedule a trial date in the Calendar Control Part. Cases currently reach the Calendar Control Part approximately five months after the filing of a Note of Issue. The Calendar Control Judge makes every effort to assign the case back to the original IAS Judge for trial if possible. If that Judge is not available, however, another Judge is assigned so that the trial may proceed without delay.

DCM has had a dramatic effect on the age of Nassau County's pending caseload and the time elapsed between the filing of an RJI to Note of Issue:

**Cases Pending Disposition - Nassau County
Average Age in Days**

	<u>Motor Vehicle</u>	<u>Med Mal</u>	<u>Other Torts</u>
Year 2000	538	764	658
Year 2004	337	608	389

**RJI to Note - Nassau County
Average Days**

	<u>Motor Vehicle</u>	<u>Med Mal</u>	<u>Other Torts</u>
Year 2000	471	822	610
Year 2004	364	687	432

Today, 98% of the preliminary conferences held in Nassau County occur within the 45 days required by Rule 202.19. The pending pre-Note inventory has been reduced by 44% to 9,416 cases and, most remarkably, only 4% of post-note cases, a mere 101 cases, are pending beyond standards and goals.

Queens County

Before DCM, Queens County resembled Nassau in many ways. There was a large pre-Note inventory (22,568 cases) with over 50% of those cases pending beyond standards and goals.² Of their 8,730 Notes of Issue, 16% were beyond standards and goals. Like Nassau, they employed a dual-track system to move cases to trial and a centralized part to conduct preliminary conferences. Preliminary conference procedures were not uniform however, with many Judges utilizing individualized forms and procedures.

With the advent of DCM, Queens was faced with a number of challenges: eliminating a sizeable pre-Note backlog, designing a system to track new cases, and providing sufficient judicial resources to dispose of an ever increasing number of trial ready cases. Their approach was to first ascertain the true extent of their existing inventory by conducting status conferences on all pending pre-Note cases. Active cases were then monitored to insure that discovery was complete and Notes of Issue filed.

New cases continued to be scheduled in the centralized preliminary conference part. Forms were standardized and a Special Referee was assigned to the part to assist in resolving discovery disputes and track assignment. Initially, compliance conferences were scheduled before the IAS Judge. Within a year, it became apparent that requiring all Judges to conduct these conferences was depleting the County's limited trial resources,³ so a centralized compliance conference part was established as well.

Currently, a designated Judge presides over all compliance conferences in the

² The discussion of Queens County's caseload includes all cases except Contested Matrimonials, City Cases and Tax Certiorari.

³ Queens presently has 20 trial judges and 9,538 Notes pending. This figure includes City cases.

County. He is assisted by Case Management Coordinators and a Special Referee who try to resolve any issues that are raised at the conference in the first instance. Cases remain in the compliance part until a Note of Issue is filed, at which time they wait to be scheduled in the Trial Readiness Part. Notes reach the Trial Readiness Part approximately 12 months after filing.

The centralization of pre-Note case management functions has been extremely successful in Queens. As in Nassau, dramatic reductions have occurred in the average age of their pending caseload and the time from RJI to Note.

Cases Pending Disposition - Queens County

Average Age in Days

	<u>Motor Vehicle</u>	<u>Med Mal</u>	<u>Other Torts</u>
Year 2000	612	925	850
Year 2004	376	679	491

RJI to Note Queens County

Average Days

	<u>Motor Vehicle</u>	<u>Med Mal</u>	<u>Other Torts</u>
Year 2000	530	1009	754
Year 2004	385	683	494

The Centralized Compliance Part has been extremely effective in ensuring that cases move from RJI to note within the prescribed discovery guidelines. Today, only 16% of all standard cases pending are over standards and goals, 7% of all complex cases, and only 416 expedited cases (23% of the total) have not proceeded to Note in a timely manner.

APPENDIX B

RULES OF THE JUSTICES OF THE COMMERCIAL DIVISION

All of the following Rules are applicable in the Commercial Parts of the Supreme Court. Rules that have been adopted by an individual Justice are identified as such.

Preamble

The advent of the Commercial Division in New York State has met with great success and acceptance based up the certainty and reliability of the Commercial Division to meet the needs of commercial litigants by addressing their matters promptly and fairly. To better meet those needs, the Justices of the Commercial Division hereby promulgate these rules to assure consistency in the handling of commercial matters wherever they are litigated in the State of New York.

I - General Rules

Rule 1. Appearances by Counsel with Knowledge and Authority. Counsel who appear in the Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. Failure to comply with this rule will be regarded as a default and dealt with appropriately. See Rule 12. It is important that counsel be on time for all scheduled appearances.

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by submission of a copy of the stipulation or a letter directed to the Clerk of the Part along with notice to Chambers via telephone or e-mail. Filing a stipulation of discontinuance with the County Clerk does not suffice.

Rule 3. Alternate Dispute Resolution (ADR). At any stage of the matter, the Court may direct or counsel may seek the appointment of a mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation.

Rule 4(a) Papers and Correspondence by Fax. Commercial Division Justices do not accept papers by fax unless indicated otherwise by the Justice in advance in a particular case. Letters sent by fax should not be followed by hard copy unless requested.

(b) Papers submitted by e-mail. The Court may permit counsel to communicate with the Court and each other by e-mail. In the Court's discretion, counsel may be requested to submit memoranda of law by e-mail or on a "floppy disk" along with an original and courtesy copy.

Rule 5. Information on Cases. Information on future court appearances can be found at the court system's future appearance site (www.nycourts.gov/ecourts). Decisions can be found on the Commercial Division's Home Page of the Unified Court System's Internet Website: www.courts.state.ny.us/comdiv or in the New York Law Journal. The Clerk of the Part in question can also provide information about scheduling in the Part (trials, conferences, and arguments on motions). Where circumstances require exceptional notice, it will be furnished directly by Chambers. In Nassau County, counsel who wish to receive a copy of a decision may submit a stamped, self-addressed envelope with their motion papers (not separately).

Rule 6. Form of Papers. Motion papers shall comply with Part 130 of the Rules of the Chief Administrator, be double-spaced and contain print no smaller than twelve-point, on 8 1/2 x 11 inch paper, bearing margins no smaller than one inch. CPLR 2101; 22 NYCRR 202.5(a). The print size of footnotes shall be no smaller than nine-point.

II - Conferences

Rule 7. Preliminary Conferences; Requests. A preliminary conference will be held within 45 days of assignment of the case to a Commercial Division Justice, or as soon thereafter as is practicable under the circumstances. Except for good cause shown, no Preliminary Conference shall be adjourned more than once or for more than 30 days. Where a Request for Judicial Intervention is accompanied by a dispositive motion, the preliminary conference shall take place within 30 days following the decision of such motion (if not rendered moot) or at such earlier date as scheduled by the Justice presiding. Requests for preliminary conferences in unassigned cases should be filed in the Clerk's Office. In assigned cases, counsel should contact the Clerk of the Part if the court itself does not direct a conference in a decision or otherwise. Notice of the Preliminary Conference date will be sent by the Court at least five (5) days prior thereto.

Rule 8. Consultation Among Counsel and with their Clients Prior to Preliminary and Compliance Conferences.

(a) Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery and any other issues to be discussed at the conference; and (iii) the use of Alternate Dispute Resolution to resolve all or some issues in the litigation. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

(b) Prior to the Preliminary Conference, counsel shall confer with regard to anticipated electronic discovery issues. Such issues shall be addressed at the Preliminary Conference and shall include but not be limited to (1) implementation of a data preservation plan; (2) identification of relevant data; (3) anticipated cost of data recovery and proposed initial allocation of such cost; (4) disclosure of the programs and manner in which the data is maintained; (5) identification of computer system(s) utilized; (6) identification of the individual(s) responsible for data preservation; (7) confidentiality and privilege issues; and (8) designation of experts.

Rule 9. Familiarity with Outstanding Motions. Counsel must be prepared to discuss any motions that have been submitted and are outstanding at conference appearances.

Rule 10. Submission of Information. At the preliminary conference, counsel shall be prepared to furnish the court with the following: (i) a complete caption, including the index number; (ii) the name, address, telephone, e-mail address and fax numbers of all counsel; (iii) the dates the action was commenced and issue joined; (iv) a statement as to what motions, if any, are pending and before whom; and (v) copies of any decisions previously rendered in the case.

Rule 11. Discovery

- (a) The preliminary conference will result in the issuance by the court of a Preliminary Conference Order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as (i) directions for submission to the Alternative Dispute Resolution Program; (ii) a schedule of limited-issue discovery in aid of early dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure. Unless otherwise

ordered, dispositive motions shall be made within 45 days of the filing of the Note of Issue.

- (b) The order will also contain a comprehensive disclosure schedule, including dates for the completion of impleader and discovery, motion practice, a compliance conference if needed, a date for filing the note of issue, and a date for a pre-trial conference and a trial date.
- (c) The Preliminary Conference Order shall provide for a limitation of interrogatories and other discovery as may be necessary to the circumstances of the case.
- (d) The continuation or stay of discovery during the pendency of a dispositive motion made prior to the completion of discovery shall be addressed with the court upon scheduling such motion pursuant to Rule 24 herein.

Rule 12. Non-Appearance at a Conference. The failure of counsel to appear for a conference may result in an order directing dismissal, the striking of an answer and an inquest or direction for judgment, or other appropriate sanction. 22 N.Y.C.R.R. 130-2.1 and 202.27.

Rule 13. Adherence to Discovery Schedule.

(a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. No extensions of such deadlines shall be allowed except upon a showing of good cause. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party pursuant to CPLR 3126.

(b) If a party seeks documents as a condition precedent to a deposition and the documents are not produced by the date fixed, the party seeking disclosure may ask the Court to preclude the non-producing party from introducing such demanded documents at trial.

Rule 14. Disclosure Disputes.

(a) Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure. See 22 N.Y.C.R.R. 202.7. Except as provided in Rule 24 hereof, if counsel are unable to resolve a disclosure dispute in this

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fashion, the aggrieved party shall contact the Court to arrange a conference as soon as practicable to avoid exceeding the discovery cutoff date. Counsel should request a conference by telephone if that would be more convenient and efficient than an appearance in court.

(b) In the event counsel are able to resolve their discovery disputes in variance with the Preliminary Conference Order, without affecting the discovery cutoff date, there shall be no need to involve the Court. However, if that is not possible, the Court should be notified promptly to address scheduling issues.

Rule 15. Adjournments of Conferences. Adjournments on consent are permitted for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the Preliminary Conference Order. Adjournment of a dispositive motion or conference may only be done by the Court.

III - Motions

Rule 16.

(a) **Form of Motion Papers.** So as to facilitate the framing of a decision and order, the movant shall specify, clearly and comprehensively, in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should use tabs when submitting papers containing exhibits. Copies must be legible. If a document to be annexed to an affidavit or affirmation is very voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated [CPLR 2101(b)]. Whenever reliance is placed upon a decision or other authority not readily available to this court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

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

(c) **Adjournment of Motions.** Dispositive motions may only be adjourned with the Court's consent. Non-dispositive motions may be adjourned on consent

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no more than three times for a total of no more than 60 days unless permitted by the Court.

Rule 17. Length of Papers. Unless otherwise permitted by the court for good cause prior to the submission of the motion, briefs or memoranda of law are limited to 25 pages each. Reply memoranda shall be no more than 15 pages and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief. Affidavits and affirmations are limited to 25 pages each.

Rule 18. Sur-Reply and Post-Submission Papers. Counsel are reminded that the CPLR does not provide for sur-reply papers however denominated. Nor is the presentation of papers or letters to the court after submission or argument of a motion permitted. Absent express permission in advance, such materials shall not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule should not respond in kind.

Rule 19. Orders to Show Cause. Motions should be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional remedies), a stay is required or a statute mandates so proceeding. See Rule 20. Absent permission, reply papers should not be submitted on orders to show cause.

Rule 19-a. Statements of Material Facts on Motion for Summary Judgment.

- (a) Upon any motion for summary judgment, other than motions made pursuant to CPLR 3213, there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for denial of the motion.
- (b) The papers opposing a motion for summary judgment, other than motions made pursuant to CPLR 3213, shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.
- (c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

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

Rule 20. Temporary Restraining Orders. Absent extraordinary circumstances, a temporary restraining order will not be issued unless the applicant has given notice to the opposing parties sufficient to permit them an opportunity, if so inclined, to appear and contest the application.

Rule 21. Courtesy Copies. Courtesy copies should not be submitted unless requested or as herein provided. However, courtesy copies of all motion papers and proposed orders shall be submitted in cases in the court's "Filing by Electronic Means" System.

Rule 22. Oral Argument.

(a) Either party may request oral argument on the face of their papers or in an accompanying letter. The Court will determine whether oral argument will be heard and, if so, counsel and the parties shall appear on the date selected by the Court for oral argument except, the Justices listed in subparagraph (b) require counsel to appear for oral argument and conference on the return date of all motions. At that time, counsel shall be prepared to argue the Motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing.

(b) The following Justices require appearances and oral argument for all motions: Hon. Herman Cahn; Hon. Carolyn Demarest; Hon. Bernard Fried; Hon. Helen Freedman; Hon. Richard Lowe, Hon. Karla Moskowitz; Hon. Charles Ramos; Hon. Thomas Stander (except reargument motions)

Rule 23. 60 Day Rule. If sixty days have elapsed after a motion has been finally submitted or oral argument held, whichever was later, and no decision has been issued by the court, counsel for the movant shall send the court a letter alerting it to this fact with copies to all parties to the motion.

Rule 24. Advance Notice of Motions

(a) Prior to the making or filing of any post-RJI motions (i.e. after the assignment of the matter to a Commercial Division Justice), counsel for the moving party shall advise the Court in writing (no more than two [2] pages) on notice to opposing counsel outlining the issue(s) in dispute and requesting a

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telephone conference. If a cross-motion is contemplated, a like letter notice shall be forwarded to the Court and counsel. Such correspondence shall not be considered by the Court in reaching its decision. This rule shall not apply to motions to be relieved as counsel, for pro hac vice admission or for reargument.

(b) Upon review of the motion notice letter, the Court will schedule a telephone conference with counsel. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(c) If the matter can be resolved during the telephone conference, an order consistent with such resolution may be issued and telefaxed to counsel or counsel will be directed to forward a letter confirming the resolution to be "so ordered". At the discretion of the court, such conferences may be held on the record.

(d) If the matter cannot be resolved, the parties will set a briefing schedule for the motion which shall be approved by the Court. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(e) On the face of all post-RJI notices of motion(s) and orders to show cause, there shall be a statement that there has been compliance with this rule.

(f) Where a motion must be made within a certain time pursuant to the CPLR, such as reargument motions, the forwarding of a motion notice letter, as provided in subparagraph (b) here, within the prescribed time, shall be deemed the timely making of the motion. However, this subparagraph shall not be construed to extend any jurisdictional limitations period.

(g) Nothing here shall be construed to bar counsel from making any motion deemed appropriate to best represent a party's rights. However, in order to permit the Court the opportunity to resolve issues before motion practice ensues and to control its calendar, in the context of the discovery and trial schedule, pre-motion conferences in accordance herewith must be held. The failure of counsel to comply with this Rule may result in the motion being marked off the calendar until the Court has an opportunity to conference the matter.

IV - Trials

Rule 25. Trial Schedule. Counsel will be expected to be ready to proceed either to select a jury or to begin presentation of proof on the scheduled date. Once a trial date is set, counsel are immediately to determine the availability of witnesses. If, for any reason, counsel are not prepared to proceed on the scheduled date, the court is to be notified within ten days of the date on which counsel are given the trial date or, in extraordinary circumstances, as soon as reasonably practicable. Failure of counsel to provide such notification will be deemed a waiver of any application to adjourn the trial because of the unavailability of a witness. Witnesses are to be scheduled so that all trial time is completely utilized. Trials will commence each court day promptly at 9:30 A.M. and will proceed on a day-to-day basis from 9:30 A.M. to 4:30 P.M., on such days as the Court directs. Failure of counsel to attend the trial at the time scheduled will constitute a waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel's absence. There shall be no adjournment of a trial except for good cause shown. With respect to Commercial Division trials scheduled more than 60 days in advance, the actual engagement of trial counsel in another matter will not be recognized as an acceptable basis for an adjournment of the trial. 22 N.Y.C.R.R. 125.1(g).

Rule 26. Estimated Length of Trial. At least ten days prior to trial or such other time as the court may set, the parties, after considering the testimony of, and, if necessary, consulting with their witnesses, shall furnish the court with a realistic estimate of the length of the trial.

Rule 27. Motions in Limine. The parties shall make all motions in limine returnable not later than 10 days prior to the scheduled pre-trial conference date. Unless otherwise ordered by the court in advance, the moving and opposition papers, if any, on such motions shall be no longer than 10 pages per issue and 5 pages per issue in opposition. These papers shall comply with the limitations as to print size and margins set forth in Rule 16(a) above.

Rule 28. Pre-Marking of Exhibits. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. At the pre-trial conference date, each side shall then mark its exhibits to which no objection has been made. All exhibits not consented to shall be marked for identification only (ID). At least ten days prior to trial or such other time as the court may set, each party shall submit to the court and other counsel a list of the exhibits reflecting "in EV." or "ID only". If the trial exhibits are exceptionally voluminous, counsel shall consult the Clerk of the Part for guidance. The Court will rule upon the objections to the contested exhibits at the earliest possible time after consultation with counsel. Exhibits not

previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked. This rule shall be coordinated with Rule 31(b).

Rule 29. Identification of Deposition Testimony. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read questions and answers that are irrelevant to the point for which the testimony is offered. Each party shall prepare a list of testimony to be offered by it as to which objection has not been made and, identified separately and clearly, a list of testimony as to which objection has been made. At least ten days prior to trial or such other time as the court may set, each party shall submit its list to the court and other counsel, together with a copy of the portions of testimony as to which objection has been made. The Court will rule upon the objections at the earliest possible time after consultation with counsel.

Rule 30. Pretrial Conference. The court will set a pretrial conference. Prior to the conference, counsel shall confer in a good faith effort to identify matters not in contention, resolve all disputed questions without need for court intervention, and settle the case. At the conference, counsel shall be prepared to discuss all matters as to which there is disagreement between the parties, including those identified in Rules 27-29, and the possibility of settlement. At or before the conference, the Court may require the parties to prepare a written stipulation of undisputed facts.

Rule 31. Pre-Trial Memoranda, Exhibit Book, and Requests for Jury Instructions

(a) Counsel shall submit pre-trial memoranda at the pre-trial conference, or such other time as the Court may set. Counsel shall comply with CPLR 2103(e). A single memorandum no longer than 25 pages, with print size and margins as set forth in Rule 16 above, shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference, counsel shall submit an indexed binder or notebook of trial exhibits for the Court's use. A copy for each attorney on trial and the originals in a like binder or notebook for the witnesses shall be prepared and submitted. Plaintiff's exhibits shall be numerically tabbed and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date, provide the Court with case-specific requests to charge. Where the

requested charge is from the New York Pattern Jury Instructions - Civil, a reference to the PJI number will suffice. Counsel shall also submit proposed jury interrogatories. Submissions should be by hard copy and disk or e-mail attachment in WordPerfect 10 format as directed by the Court.

Rule 32. Scheduling of Witnesses. At the pre-trial conference, each party shall identify in writing for the court and the other parties the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony.

Rule 33. Preclusion. Except for good cause shown, no party shall present the testimony of a witness, portions of deposition testimony, or exhibits that were not identified as provided in Rules 28, 29, 31 and 32 hereof and not identified during the course of disclosure in response to a relevant discovery demand of a party or an order of the court.

APPENDIX A

Guidelines For Assignment of Cases to the Commercial Parts

In general, the Commercial Division Parts of the Supreme Court, entertain complex commercial and business disputes in which a party seeks equitable relief and/or money damages totaling a sum as may be appropriate for each court. Due to caseload considerations, the Justices are empowered to transfer out of the Commercial Division cases which, in their judgment, do not fall within this category notwithstanding that a party has described the case as "commercial" on its RJI. Consistent with these guidelines, actions and proceedings which are designated to be eligible for assignment to the Commercial Division shall be reviewed by a Commercial Division Justice to determine whether the matter shall be assigned to or retained in the Commercial Division. The principles set out below will guide the exercise of this authority. Parties should adhere to these principles when designating a case type on the RJI. (See Paragraph [d] for documentation which should accompany the RJI).

(a) The monetary threshold of the Commercial Division, exclusive of interest, costs, disbursements and counsel fees, is established as follows:

1.	New York County	\$100,000.00
2.	Monroe County	\$25,000.00
3.	Westchester County	\$100,000.00
4.	Nassau County	\$75,000.00
5.	Suffolk County	\$25,000.00
6.	Albany County	\$25,000.00
7.	Erie County	\$25,000.00
8.	Kings County	\$50,000.00

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(b) Actions in which the principal claims involve the following will be retained in the Commercial Division provided that the money threshold is met, except as indicated:

- (1) Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation arising out of business dealings (e.g., sales of assets or securities, corporate restructuring, partnership, shareholder, joint venture, and other business agreements, trade secrets and restrictive covenants and employment agreements which are not principally claims for discriminatory practices);
- (2) Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual coop units);
- (3) Transactions involving commercial real property, including *Yellowstone* injunctions and excluding actions for the payment of rent only;
- (4) Shareholder derivative actions – without consideration of the monetary threshold;
- (5) Commercial class actions – without consideration of the monetary threshold;
- (6) Commercial bank and financial institution transactions;
- (7) Internal affairs of business organizations or liability to third parties or officials thereof;
- (8) Malpractice by accountants or actuaries;
- (9) Environmental insurance coverage litigation (except Westchester County);
- (10) Commercial insurance coverage litigation (e.g. Directors and Officers and/or Errors and Omissions coverage);
- (11) Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures – without consideration of the monetary threshold; and

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- (12) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Art. 75 involving any of the foregoing enumerated commercial issues – without consideration for the monetary threshold.

(c) The following will be transferred out of or not retained in the Commercial Division even if the monetary threshold is met:

- (1) Suits to collect professional fees;
- (2) Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;
- (3) Residential real estate disputes, including landlord-tenant matters and commercial real estate disputes involving the payment of rent only;
- (4) Proceedings to enforce a judgment regardless of the nature of the underlying case;
- (5) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies;
- (6) Attorney malpractice actions; and
- (7) Real property foreclosures (New York County).

(d) The determination as to whether a case should be retained in a Commercial Part will be made as soon as a matter is assigned to a Justice. In the discretion of the Commercial Division Justice assigned, if a matter does not fall within these guidelines for Commercial Division adjudication, it shall be transferred to a non-commercial part. For this purpose and as an aid to the Court in determining a case's Commercial Division eligibility, counsel shall annex a brief signed statement justifying the Commercial Division designation together with a copy of the pleadings to any submission accompanying an RJI. Retained cases will remain in the Commercial Part. Counsel who submit a statement justifying Commercial Division designation of special proceedings pursuant hereto shall check the "Other Commercial" box on their RJI; not the "Special Proceedings" box.

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- (e) An order of transfer issued by a Justice of a Commercial Part is an administrative matter. A party claiming to have been aggrieved by such an order may seek review by letter application (two pages maximum, with a copy to all parties) to the Administrative Judge within five (5) days of receipt of the designation of the case to a non-commercial part. Any such application that is not made promptly after the issuance of the transfer order will be denied as untimely. The order of the Administrative Judge is final and subject to no further review or appeal.

- (f) If a case is assigned to a non-commercial part because the filing attorney did not designate the case as "Commercial", any other party to the action may apply for a transfer of the case into the Commercial Division. An application based upon the criteria herein set forth shall be made to the Administrative Judge by letter application (no more than two pages, double spaced) copied to all counsel. Any such application shall be presented promptly after the original assignment is made but prior to the first appearance of counsel in the assigned part or submission of the initial motion triggering the Court's involvement. A Justice may also direct a transfer of a case in the Commercial Division on the ground that it is related to one then pending in the Commercial Division. The Administrative Judge must approve all transfers in the Commercial Division. The determination and order of the Administrative Judge shall be final and not subject to further review or appeal.

APPENDIX C

NEW YORK STATE BAR ASSOCIATION

Commercial and Federal Litigation Section

The Commercial Division of the New York State Supreme Court formally began operations in 1995 with the overall objective of creating a forum in which business disputes can be resolved more efficiently and at reduced cost. As we approach the tenth anniversary of the Commercial Division, the NYSBA looks to its members, who practice commercial litigation, for insight, guidance, and constructive criticism which we can pass on to the Office of Court Administration, the Administrative Judges, and the Commercial Division Justices.

From the results, we will develop a more extensive survey which will focus more closely on those areas that have been successful and those that need improvement. This is a significant opportunity for the bar to participate in the development of commercial litigation practice and, therefore, we urge you to take the time to complete this preliminary questionnaire.

1. In what County(ies) do you practice? _____
2. What percentage of your practice involves commercial litigation? _____.
3. Are you familiar with the rules and guidelines established for the Commercial Division ___?

If yes, do you consider them to be clear and comprehensible?

Yes ___
For the most part ___
No, not really ___
No, not at all ___

4. If you have a choice between commencing a commercial action in New York State court (the Commercial Division) or Federal court, which would you choose (circle) and list the top 3 reasons why.

A. _____
B. _____
C. _____

5. Please answer the following questions using a scale from 1-5, with 1 being the most positive response and 5 being the most negative.

Are motions decided expeditiously? ___
Do cases proceed from Note of Issue to trial expeditiously? ___
Do you find case conferencing helpful? ___
Are discovery disputes resolved fairly and effectively? ___
Do you think Commercial Division Justices should
be more active in monitoring the progress of cases? ___

6. Identify areas where you believe the Commercial Division has been successful.

7. Are there any substantive areas of commercial law with which you believe the Commercial Division Justices should be more familiar?

Please forward your response to:

New York State Bar Association
One Elk Street
Albany, New York 12207-1002
Attn: Lisa Bataille, Esq.
Fax: (518) 487-5579

THANK YOU FOR YOUR PARTICIPATION.

APPENDIX D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 50-L

-----X

Plaintiff,	Index No.
-against-	PROPOSED PARENTING PLAN
Defendant.	

-----X

This Plan is: Proposed by Plaintiff. Proposed by Defendant.

1. **INFORMATION ABOUT THE CHILD[REN]:**

Full Name	Date of Birth	Gender
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. **PARENTING TIME SCHEDULE:**

2.1 **Weekday and Weekend Schedule.**

Our child[ren] will be in the care of _____ (list days of
week and times): _____
(name of parent)

Our child[ren] will be in the care of _____ (list days
of week and times): _____

2.2 Summer Schedule.

Choose One:

The schedule described above in Section 2.1 will continue throughout the summer *except that* _____

OR

The schedule for time with our child[ren] will be different during the summer than it is in the winter (describe below):

Our child[ren] will be in the care of _____ (list
days of the week and times): _____

AND

Our child[ren] will be in care of _____ (list days
of the week and times): _____

2.3 Holiday Schedule.

The following holiday schedule will take priority over the regular weekday, weekend, and summer schedules discussed above. If a holiday is not

specified as even, odd or every year with one parent, then our child[ren] will remain with the parent they are normally scheduled to be with.

Check One or Both:

When parents are using an alternating weekend plan and the holiday schedule would result in one parent having the child[ren] for three weekends in a row, the alternating weekend pattern will restart, so neither parent will go without having the child[ren] for more than two weekends in a row.

If a parent has our child[ren] on a weekend with an unspecified holiday or non-school day attached, they shall have our child[ren] for the holiday or non-school day.

Fill in the blanks below with the parent's name to indicate where the child[ren] will be for the holidays. Provide beginning and ending times.

<u>Holidays</u>	<u>Even Years</u>	<u>Odd Years</u>	<u>Every Year</u>	<u>Beginning/Ending Times</u>
Mother's Day	_____	_____	_____	_____
Father's Day	_____	_____	_____	_____
Thanksgiving	_____	_____	_____	<i>For Thanksgiving, Christmas Eve, Christmas, New Year's Eve, and New Year's, PROVIDE ADDITIONAL DETAILS BELOW in SECTIONS 2.4 and 2.5</i>
Christmas Eve	_____	_____	_____	
Christmas	_____	_____	_____	
New Year's Eve	_____	_____	_____	
New Year's	_____	_____	_____	_____
Martin Luther King Day	_____	_____	_____	_____
President's Day	_____	_____	_____	_____
Easter	_____	_____	_____	_____
Memorial Day	_____	_____	_____	_____
Fourth of July	_____	_____	_____	_____

Labor Day	_____	_____	_____	_____
Halloween	_____	_____	_____	_____
Veteran's Day	_____	_____	_____	_____
Other:	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

2.4 Thanksgiving. Details for sharing time with the child[ren] during this holiday are: _____

2.5 Winter Break (Christmas, New Year's, and School Vacation).

Choose One:

Our child[ren] will be in the care of each parent according to the schedule described in Section 2.1.

OR

Our child[ren] will spend half of Winter Break with each parent on a schedule that is consistent with the alternating holidays described above.

OR

Other: Details for sharing time with the child[ren] during Christmas Eve, Christmas Day, New Year's Eve and New Year's Day and school vacation are:

2.6 Spring Break.

Choose One:

Our child[ren] will be in the care of each parent according to the schedule described in Section 2.1.

OR

Our child[ren] will alternate spending spring break with each parent (indicate which parent).

With _____ in even years.

With _____ in odd years.

OR

Our child[ren] will spend half of spring break with each parent (provide details): _____

2.7 Child[ren]'s Birthdays.

Choose One:

Our child[ren] will be in the care of each parent according to the schedule described in Sections 2.1 and 2.2.

OR

Our child[ren]'s birthdays will be planned so that both parents participate in the birthday celebration.

OR

Our child[ren] will celebrate birthdays according to the following plan (indicate which parent has the child[ren], and any other important details.):

2.8 Other Holiday and Vacations. Details for sharing time with the child[ren] during other holidays or vacation are: _____

2.9 Number of Overnights.

Our schedule for sharing time with our child[ren] results in our child[ren] spending _____ overnights in the home of _____ (*name of one parent*) and _____ overnights in the home of _____ (*name of other parent*).

2.10 Primary Residence (Optional).

We agree that our child[ren] shall primarily reside with _____ (*name of one parent*).

We agree that neither residence shall be considered the "primary" residence."

2.11 Alternate Care (Optional).

We choose not to specify arrangements for alternate care.

Our arrangements for alternate care are: _____

2.12 Temporary Changes to the Schedule.

Any schedule for sharing time with our child[ren] may be changed as long as both parents agree to the changes ahead of time in writing **OR** verbally (choose one).

Activities scheduled during the other parent's time must be coordinated with the other parent.

Makeup and Missed Parenting Time: Only substantial medical reasons will be considered sufficient for postponement of parenting time. If a child is ill and unable to spend time with a parent, a makeup parenting time will be scheduled. If a parent fails to have the child[ren] during their scheduled parenting time for any other reason, there will be no makeup of parenting time unless the parties agree otherwise in writing.

2.13 Permanent Changes to the Schedule.

We understand that, once the judge signs the final judgment in our case and approves this Parenting Plan, any changes that we do not agree on can be made only by applying to the court and proving that there has been a "change in circumstance."

Before applying to the court, we understand that we can agree to try to resolve our dispute through mediation or other means. (See Section 10).

3. **DECISION-MAKING:**

3.1 Day-to-Day Decisions.

Each parent will make day-to-day decisions regarding the care and control of our child[ren] during the time they are caring for our child[ren]. This includes any emergency decisions affecting the health or safety of our child[ren].

3.2. Major Decisions.

Major decisions include, but are not limited to, decisions about our child[ren]'s education, non-emergency healthcare, religious training, and extracurricular activities, including summer camp and the need for tutoring.

Choose One:

_____ (*parent's name*) shall have sole decision-making authority on major decisions about our child[ren]. This arrangement is known by the courts as **Sole Custody**,

OR

Both parents will share in the responsibility for making major decisions about our child[ren]. This arrangement is known by the courts as **Joint Custody**.

AND (Choose One).

_____ (Parent's name) shall always consult with the other parent prior to making major decisions.

_____ (Parent's name) shall have the option to consult with the other parent prior to making major decisions.

OR

Other - - Describe how major decisions will be handled; including dividing the responsibility for major decisions between the parents according to each parent's strengths/weaknesses:

4. INFORMATION SHARING:

Unless there is court order stating otherwise:

Both parents are entitled to important information regarding our child[ren] including but not limited to, our child[ren]'s current address and telephone number, education, medical, governmental agency, psychological and law enforcement records.

Information about our child[ren]'s progress in school and any school activity is equally available to both parents. Both parents are encouraged to consult with school staff concerning our child[ren]'s welfare and education.

Both parents will immediately notify each other regarding any emergency circumstances or substantial changes in the health of our child[ren].

Both parents will provide each other with contact numbers and addresses and will notify each other of any change in that information within 72 hours

of such a change. If either parent takes our child[ren] from their usual place of residence, they will provide the other parent with an emergency contact phone number.

5. RELOCATION OF A PARENT:

5.1 Neither parent shall relocate outside his/her immediate vicinity without the prior permission of the other parent or an order of the court.

5.2 Other: _____

6. PARENT-CHILD COMMUNICATION:

Choose One:

Both parents and child[ren] shall have the right to communicate by telephone, in writing or by e-mail during reasonable hours without interference or monitoring by the other parent.

OR

Procedures for telephone, written or e-mail access (describe how access will work): _____

7. EXCHANGE OF OUR CHILD[REN]:

7.1 Choose One:

Both parents will share equally in the responsibility of exchanging our child[ren] from one parent to the other while parents continue to reside in the same locale.

OR

Additional sheets are attached.

10. SIGNATURES:

Your signature below indicates that you have read and agree with what has been decided and written in this document.

If both parents sign this document, it is called a **Stipulated Parenting Plan**.

If only one parent signs this document, it is called a **Proposed Parenting Plan**.

Petitioner:

Respondent Co-Petitioner
(Check One)

Signature Date

Signature Date

(Notarization is not required, but you may choose to have your signatures notarized.)

SUBSCRIBED AND SWORN to before
me this ____ day of _____,
20____, by _____.

SUBSCRIBED AND SWORN to before
me this ____ day of _____,
20____, by _____.

Notary Public/Court Clerk for State
of _____
My commission expires: _____

Notary Public/Court Clerk for State
of _____
My commission expires: _____

APPENDIX E

PART 36 OF THE RULES OF THE CHIEF JUDGE

22 N.Y.C.R.R. § 36

APPOINTMENT OF GUARDIANS, GUARDIANS AD LITEM, COURT EVALUATORS, ATTORNEYS FOR INCAPACITATED PERSONS, RECEIVERS, PERSONS DESIGNATED TO PERFORM SERVICES FOR A RECEIVER, AND REFEREES

§ 36.0 Preamble

Public trust in the judicial process demands that appointments by judges be fair, impartial and beyond reproach. Accordingly, these rules are intended to ensure that appointees are selected on the basis of merit, without favoritism, nepotism, politics or other factors unrelated to the qualifications of the appointee or the requirements of the case.

The rules cannot be written in a way that foresees every situation in which they should be applied. Therefore, the appointment of trained and competent persons, and the avoidance of factors unrelated to the merit of the appointments or the value of the work performed are the fundamental objectives that should guide all appointments made, and orders issued, pursuant to this Part.

§ 36.1 Application

(a) Except as set forth in subdivision (b), this Part shall apply to the following appointments made by any judge or justice of the Unified Court System:

- (1) guardians;
- (2) guardians ad litem, including guardians ad litem appointed to investigate and report to the court on particular issues, and their counsel and assistants;
- (3) law guardians who are not paid from public funds, in those judicial departments where their appointments are authorized;
- (4) court evaluators;
- (5) attorneys for alleged incapacitated persons;
- (6) court examiners;
- (7) supplemental needs trustees;
- (8) receivers;
- (9) referees (other than special masters and those otherwise performing judicial functions in a quasi-judicial capacity);
- (10) the following persons or entities performing services for guardians or receivers:
 - (i) counsel

- (ii) accountants
- (iii) auctioneers
- (iv) appraisers
- (v) property managers
- (vi) real estate brokers

(b) Except for sections 36.2(c)(6) and 36.2(c)(7), this Part shall not apply to:

(1) appointments of law guardians pursuant to section 243 of the Family Court Act, guardians ad litem pursuant to section 403-a of the Surrogate's Court Procedure Act, or the Mental Hygiene Legal Service;

(2) the appointment of, or the appointment of any persons or entities performing services for, any of the following:

(i) a guardian who is a relative of (A) the subject of the guardianship proceeding or (B) the beneficiary of a proceeding to create a supplemental needs trust; a person or entity nominated as guardian by the subject of the proceeding or proposed as guardian by a party to the proceeding; a supplemental needs trustee nominated by the beneficiary of a supplemental needs trust or proposed by a proponent of the trust; or a person or entity having a legally recognized duty or interest with respect to the subject of the proceeding;

(ii) a guardian ad litem nominated by an infant of 14 years of age or over;

(iii) a nonprofit institution performing property management or personal needs services, or acting as court evaluator;

(iv) a bank or trust company as a depository for funds or as a supplemental needs trustee;

(v) a public administrator or public official vested with the powers of an administrator;

(vi) a person or institution whose appointment is required by law;

(vii) a physician whose appointment as a guardian ad litem is necessary where emergency medical or surgical procedures are required.

(3) an appointment other than above without compensation, except that the appointee must file a notice of appointment pursuant to section 36.4(a) of this Part.

§ 36.2 Appointments

(a) Appointments by the judge. All appointments of the persons or entities set forth in section 36.1, including those persons or entities set forth in section 36.1(a)(10) who perform services for guardians or receivers, shall be made by the judge authorized by law to make the appointment. In making appointments of persons or entities to perform services for guardians or receivers, the appointing judge may consider the recommendation of the guardian or receiver.

(b) Use of lists.

(1) All appointments pursuant to this Part shall be made by the appointing judge from the appropriate list of applicants established by the Chief Administrator of the Courts pursuant to section 36.3 of this Part.

(2) An appointing judge may appoint a person or entity not on the appropriate list of applicants upon a finding of good cause, which shall be set forth in writing and shall be filed with the fiduciary clerk at the time of the making of the appointment. The appointing judge shall send a copy of such writing to the Chief Administrator. A judge may not appoint a person or entity that has been removed from a list pursuant to section 36.3(e).

(3) Appointments made from outside the lists shall remain subject to all of the requirements and limitations set forth in this Part, except that the appointing judge may waive any education and training requirements where completion of these requirements would be impractical.

(c) Disqualifications from appointment.

(1) No person shall be appointed who is a judge or housing judge of the Unified Court System of the State of New York, or who is a relative of, or related by marriage to, a judge or housing judge of the Unified Court System within the sixth degree of relationship.

(2) No person serving as a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator shall be appointed in actions or proceedings in a court in a county where he or she serves on a judicial hearing officer panel for such court.

(3) No person shall be appointed who is a full-time or part-time employee of the Unified Court System. No person who is the spouse, sibling, parent or child of an employee who holds a position at salary grade JG24 or above, or its equivalent, shall be appointed by a court within the judicial district where the employee is employed or, with respect to an employee with statewide responsibilities, by any court in the state.

(4) (i) No person who is the chair or executive director, or their equivalent, of a state or county political party, or the spouse, sibling, parent or child of that official, shall be appointed while that official serves in that position and for a period of two years after that official no longer holds that position. This prohibition shall apply to the members, associates, counsel and employees of any law firms or entities while the official is associated with that firm or entity.

(ii) No person who has served as a campaign chair, coordinator, manager, treasurer or finance chair for a candidate for judicial office, or the spouse, sibling, parent or child of that person, or anyone associated with the law firm of that person, shall be appointed by the judge for whom that service was performed for a period of two years following the judicial election. If the candidate is a sitting judge, the disqualifications shall apply as well from the time the person assumes any of the above roles during the campaign for judicial office.

(5) No former judge or housing judge of the Unified Court System, or the spouse, sibling, parent or child of such judge, shall be appointed, within two years from the date the judge left judicial office, by a court within the jurisdiction where the judge served. Jurisdiction is defined as follows:

(i) The jurisdiction of a judge of the Court of Appeals shall be statewide.

(ii) The jurisdiction of a justice of an Appellate Division shall be the judicial department within which the justice served.

(iii) The jurisdiction of a justice of the Supreme Court and a judge of the Court of Claims shall be the principal judicial district within which the justice or judge served.

(iv) With respect to all other judges, the jurisdiction shall be the principal county within which the judge served.

(6) No attorney who has been disbarred or suspended from the practice of law shall be appointed during the period of disbarment or suspension.

(7) No person convicted of a felony, or for five years following the date of sentencing after conviction of a misdemeanor (unless otherwise waived by the Chief Administrator upon application), shall be appointed unless that person receives a certificate of relief from disabilities.

(8) No receiver or guardian shall be appointed as his or her own counsel, and no person associated with a law firm of that receiver or guardian shall be appointed as counsel to that receiver or guardian, unless there is a compelling reason to do so.

(9) No attorney for an alleged incapacitated person shall be appointed as guardian to that person, or as counsel to the guardian of that person.

(10) No person serving as a court evaluator shall be appointed as guardian for the incapacitated person except under extenuating circumstances that are set forth in writing and filed with the fiduciary clerk at the time of the appointment.

(d) Limitations on appointments based upon compensation.

(1) No person or entity shall be eligible to receive more than one appointment within a calendar year for which the compensation anticipated to be awarded to the appointee in any calendar year exceeds the sum of \$ 15,000.

(2) If a person or entity has been awarded more than an aggregate of \$ 50,000 in compensation by all courts during any calendar year, the person or entity shall not be eligible for compensated appointments by any court during the next calendar year.

(3) For purposes of this Part, the term "compensation" shall mean awards by a court of fees, commissions, allowances or other compensation, excluding costs and disbursements.

(4) These limitations shall not apply where the appointment is necessary to maintain continuity of representation of or service to the same person or entity in further or subsequent proceedings.

§ 36.3 Procedure for appointment

(a) Application for appointment. The Chief Administrator shall provide for the application by persons or entities seeking appointments pursuant to this Part on such forms as shall be promulgated by the Chief Administrator. The forms shall contain such information as is necessary to establish that the applicant meets the qualifications for the

appointments covered by this Part and to apprise the appointing judge of the applicant's background.

(b) Qualifications for appointment. The Chief Administrator shall establish requirements of education and training for placement on the list of available applicants. These requirements shall consist, as appropriate, of substantive issues pertaining to each category of appointment -- including applicable law, procedures, and ethics -- as well as explications of the rules and procedures implementing the process established by this Part. Education and training courses and programs shall meet the requirements of these rules only if certified by the Chief Administrator. Attorney participants in these education and training courses and programs may be eligible for continuing legal education credit in accordance with the requirements of the Continuing Legal Education Board.

(c) Establishment of lists. The Chief Administrator shall establish separate lists of qualified applicants for each category of appointment, and shall make available such information as will enable the appointing judge to be apprised of the background of each applicant. The Chief Administrator may establish more than one list for the same appointment category where appropriate to apprise the appointing judge of applicants who have substantial experience in that category. Pursuant to section 81.32(b) of the Mental Hygiene Law, the Presiding Justice of the appropriate Appellate Division shall designate the qualified applicants on the lists of court examiners established by the Chief Administrator.

(d) Reregistration. The Chief Administrator shall establish a procedure requiring that each person or entity on a list reregister every two years in order to remain on the list.

(e) Removal from list. The Chief Administrator may remove any person or entity from any list for unsatisfactory performance or any conduct incompatible with appointment from that list, or if disqualified from appointment pursuant to this Part. A person or entity may not be removed except upon receipt of a written statement of reasons for the removal and an opportunity to provide an explanation and to submit facts in opposition to the removal.

§ 36.4 Procedure after appointment

(a) Notice of appointment and certification of compliance.

(1) Every person or entity appointed pursuant to this Part shall file with the fiduciary clerk of the court from which the appointment is made, within 30 days of the making of the appointment, (i) a notice of appointment and (ii) a certification of compliance with this Part, on such form as promulgated by the Chief Administrator. Copies of this form shall be made available at the office of the fiduciary clerk and shall be transmitted by that clerk to the appointee immediately after the making of the

appointment by the appointing judge. An appointee who accepts an appointment without compensation need not complete the certification of compliance portion of the form.

(2) The notice of appointment shall contain the date of the appointment and the nature of the appointment.

(3) The certification of compliance shall include: (i) a statement that the appointment is in compliance with sections 36.2(c) and (d); and(ii) a list of all appointments received, or for which compensation has been awarded, during the current calendar year and the year immediately preceding the current calendar year, which shall contain (A) the name of the judge who made each appointment, (B) the compensation awarded, and(C) where compensation remains to be awarded, (i) the compensation anticipated to be awarded and (ii) separate identification of those appointments for which compensation of \$ 15,000 or more is anticipated to be awarded during any calendar year. The list shall include the appointment for which the filing is made.

(4) A person or entity who is required to complete the certification of compliance, but who is unable to certify that the appointment is in compliance with this Part, shall immediately so inform the appointing judge.

(b) Approval of compensation.

(1) Upon seeking approval of compensation of more than \$ 500, an appointee must file with the fiduciary clerk, on such form as is promulgated by the Chief Administrator, a statement of approval of compensation, which shall contain a confirmation to be signed by the fiduciary clerk that the appointee has filed the notice of appointment and certification of compliance.

(2) A judge shall not approve compensation of more than \$ 500, and no compensation shall be awarded, unless the appointee has filed the notice of appointment and certification of compliance form required by this Part and the fiduciary clerk has confirmed to the appointing judge the filing of that form.

(3) Each approval of compensation of \$ 5,000 or more to appointees pursuant to this section shall be accompanied by a statement, in writing, of the reasons therefor by the judge. The judge shall file a copy of the order approving compensation and the statement with the fiduciary clerk at the time of the signing of the order.

(4) Compensation to appointees shall not exceed the fair value of services rendered. Appointees who serve as counsel to a guardian or receiver shall not be compensated as counsel for services that should have been performed by the guardian or receiver.

(c) Reporting of compensation received by law firms. A law firm whose members, associates and employees have had a total of \$ 50,000 or more in compensation approved in a single calendar year for appointments made pursuant to this Part shall report such amounts on a form promulgated by the Chief Administrator.

(d) Exception. The procedure set forth in this section shall not apply to the appointment of a referee to sell real property and a referee to compute whose compensation for such appointments is not anticipated to exceed \$ 550.

§ 36.5 Publication of appointments

(a) All forms filed pursuant to section 36.4 shall be public records.

(b) The Chief Administrator shall arrange for the periodic publication of the names of all persons and entities appointed by each appointing judge, and the compensation approved for each appointee.

APPENDIX F

Proposal

AN ACT to amend the real property actions and proceedings law and the civil practice law and rules to eliminate abuses in residential mortgage foreclosure procedures

The People of the State of New York, represented in Senate and Assembly, do

enact as follows:

Section 1. A new section 1320 of the real property actions and proceedings law shall be created which shall read as follows:

§1320. Special Summons Requirement in Private Residence Cases

In an action to foreclose a mortgage on a residential property containing not more

than three units, in addition to the usual requirements applicable to a summons in the court, there shall accompany the summons a notice in boldface in the following form:

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME

If you do not respond to this summons by filing an answer with the court and serving a copy on the bank/mortgagor who filed this foreclosure proceeding against you, a default judgment may be entered and you can lose your home.

Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.

Sending a payment to your mortgage company will not stop this foreclosure action.

YOU MUST RESPOND BY FILING AN ANSWER WITH THE COURT AND SERVING A COPY ON THE PLAINTIFF (BANK/MORTGAGOR)

§2. Subdivision (g)(3) of section 3215 of the CPLR, as amended by Chapter 100

of the laws of 1994, is amended to read as follows:

3. (i) When a default judgment based upon nonappearance is sought against a natural person in an action based upon nonpayment of a contractual obligation an affidavit shall be submitted that additional notice has been given by or on behalf of the plaintiff at least twenty days before the entry of such judgment, by mailing a copy of the summons by first-class mail to the defendant at his place of residence in an envelope bearing the legend "personal and confidential" and not indicating on the outside of the envelope that the communication is from an attorney or concerns an alleged debt. In the event such mailing is returned as undeliverable by the post office before the entry of a default judgment, or if the place of residence of the defendant is unknown, a copy of the summons shall then be mailed in the same manner to the defendant at the defendant's place of employment if known; if neither the place of residence nor the place of employment of the defendant is known, then the mailing shall be to the defendant at his last known residence.

(ii) The additional notice may be mailed simultaneously with or after service of the summons on the defendant. An affidavit of mailing pursuant to this

paragraph shall be executed by the person mailing the notice and shall be filed with the judgment. Where there has been compliance with the requirements of this paragraph,

failure of the defendant to receive the additional notice shall not preclude the entry of default judgment.

(iii) This requirement shall not apply to cases in the small claims part of any court, or to any summary proceeding to recover possession of real property, or to actions affecting title to real property, except residential mortgage foreclosure actions.

§3. This act shall take effect immediately.