

SUPREME COURT - NASSAU COUNTY - IAS PART 28
PART RULES & PROCEDURES

(effective January 11th, 2016)

Justice: Hon. Sharon M.J. Gianelli
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Please Note: We appreciate your cooperation, as we strive to operate fairly and efficiently for the benefit of all.

These rules are in addition to the provisions of the CPLR, the Uniform Rules for New York State Trial Court and the Local Rules of Court. Failure to comply with these rules or orders of this Court may result in preclusion and/or sanctions.

I. COURT PERSONNEL

The Court functions with the aid and support of the courtroom and chambers personnel. The Court and the personnel assigned to the Court will treat counsel, litigants and other persons present with dignity and courtesy which is indispensable to the proper administration of justice. The Court expects the Court personnel to be treated in like manner.

II. COURT APPEARANCES

- A. All Court appearances, including preliminary, compliance, certification, motion, and status conferences shall be scheduled for 9:30 a.m., unless otherwise directed by the Court.
- B. **All parties and attorneys are required to appear for every appearance, except as set forth below for motions**, unless otherwise directed by the Court.
- C. Attorneys and Pro Se litigants shall notify the Part Clerk when they arrive in the courtroom. If counsel also has a case in another part, counsel shall notify the Part Clerk and provide a contact phone number. If the appearance in Part 28 is for a hearing or trial, counsel is expected to be ready to proceed at 9:30 AM, unless directed otherwise by the Court.
- D. All conferences will be held in the order in which **all** attorneys and parties have checked in, except as directed by the Court, in the case of an emergency application.
- E. If there are any new submitted or pending motion(s) at the time of the conference/trial, the Law Secretary and/or Judge must be so informed of same.
- F. Conferences may be conducted via telephone appearance if a request is made and granted by the Court.

III. ADJOURNMENTS

A. Adjournment Requests

- 1. All requests for adjournments must be made in writing utilizing the Part 28 Adjournment Request Form and must be in full compliance with the Part Rules.

B. Motions and Compliance Conferences:

1. **Applications to adjourn conferences or motions on consent must be received by Chambers via fax of the Adjournment Request Form by 3:00 PM on the business day prior to the conference date or return date of the motion.** All attorneys, clients and Attorney for the Child shall be notified of all adjournment requests and must consent prior to said application.

If the application is based on counsel's actual engagement on another matter, an Affirmation of Actual Engagement, in conformity with 22 NYCRR Section 125, must accompany the application.

2. Adjournment requests that are not made via the "Adjournment Request Form" and are simply left on the Chamber's voicemail or made to the Part Clerk's phone shall be disregarded as non-compliant with Part Rules, absent exigent circumstances.
3. **No adjournments will be granted without the approval of the Court.** If all parties do not consent to the adjournment, an application for a conference call shall be made by the movant, and all counsel are to participate in the call. Otherwise, the application must be made in court on the scheduled adjourn date. Except for applications made in court, upon approval of the adjournment, a confirming letter must be received by the Secretary via Fax by 4:00 PM on the date the adjournment is granted, **or the adjournment request will be considered withdrawn, and the currently scheduled adjourn date will remain in place.**

C. Preliminary Conference:

1. Requests to adjourn the Preliminary Conference will **not** be granted, absent a compelling reason for same. Counsel are directed to review the provisions of 22 NYCRR §202.16(f) concerning conferences. The Preliminary Conference Form **must** be filled out by counsel **prior** to the Preliminary Conference date.

2. In addition to scheduling a Certification Conference as part of the Preliminary Conference Order, the Court may direct that a pre-trial conference also be held in which event, the rules concerning pretrial conferences, as set forth below, shall be applicable.

IV. MOTIONS

A. Application for a Stay or Temporary Restraining Order:

1. Any Order to Show Cause seeking **any** injunctive relief, including a stay or TRO, must be made in accordance with 22 NYCRR 202.7(f). The moving party shall advise the Court as soon as practicable of counsel's intent to make such application.
2. Requests to continue or vacate a stay or TRO beyond the return date of the motion shall be made at a conference with all parties present. Failure to apply for such extension shall result in the automatic vacatur of the stay or TRO, unless the Order to Show Cause provides otherwise.
3. An "Emergency" Order to Show Cause requires a special affidavit based upon personal knowledge and an affirmation explaining in detail the nature of the emergency. In addition, the movant shall be prepared to appear in Court as soon as practicable to make a record, if the Court requires same.

B. Before Filing a Motion:

1. Counsel seeking to file a motion is urged but not required to communicate with the Court in writing and arrange for a conference call to be held with his/her adversary and the Court to discuss the issues involved and the possible resolutions thereof in lieu of filing a motion. The Attorney for the Child, if any, shall also be notified and included in such conference calls. Counsel fully familiar with the matter and with authority to bind the client should be available to participate in the conference.

2. If the matter cannot be resolved in lieu of motion, the Court will set a briefing schedule for the motion.
3. This rule does not apply to applications for counsel to be relieved.

C. Submission of the Motion:

1. Unless settled by the return date, all motions shall be marked **submitted** on the return date, except if otherwise directed by the Court.
2. Appearances of all counsel and parties are **not** required on motion return dates, unless counsel requests a conference and same is granted, or otherwise as ordered by the Court.
3. **All motions seeking *pendente lite* relief must include a completed temporary maintenance guidelines worksheet utilizing each party's gross income for the most recent tax year after FICA/Medicare taxes have been deducted.**
4. All exhibits **must** be clearly tabbed. Motions not consistent with this rule will be rejected and returned to counsel.
5. Except for good cause shown, no affidavit or affirmation shall exceed **twenty (20) pages** (double spaced) in length. Affidavits and/or affirmations in excess of the above limits will be returned to counsel to be made compliant with the above limit.
6. Motions are to be served and filed in conformity with CPLR §2214.
7. **No sur-reply, affidavit, affirmation, memorandum of law, or letter will be accepted or considered by the Court without leave of the Court.**
8. Upon request, the Court will determine, after submission, whether oral argument is warranted. Upon such determination, counsel for all parties will be contacted and advised of the new adjourned date for purposes of oral argument.

9. Any motion seeking an award of counsel fees must be supported by a detailed affirmation of services.

D. Interim Partial or Full Settlement:

If all or part of a submitted motion is settled, counsel shall forward the original stipulation of settlement to the Court within fifteen (15) days of the submission date. Such stipulation shall be accompanied by a letter setting forth the date the motion was submitted, what aspects of the motion have been settled, and what issues remain to be decided. If the motion is resolved in its entirety, the movant shall indicate same. If the motion is resolved, in whole or in part, on the record, counsel shall obtain such transcript so that same can be "so ordered", unless the Court otherwise directs.

V. COMMUNICATION WITH CHAMBERS

- A. All *ex parte* written communications will be disregarded.
- B. *Ex parte* telephone communications on substantive issues are not permitted.
- C. Copies of correspondence between counsel shall **not** be sent to the Court. Such copies shall be disregarded and will **not** be placed in the Court's file.
- D. An out of Court settlement will not be recognized or accepted unless counsel submits a letter to the Court, along with the first page and signature pages of the fully executed settlement agreement/stipulation, on notice to all counsel including the Attorney for the Children, if applicable.

VI. TRIAL RULES: APPLICABLE TO ALL TRIAL AND HEARINGS

- A. All hearings/trials shall commence at 9:30 AM unless otherwise directed by the Court. All counsel and parties shall be prepared to begin at 9:30 AM.

- B. A Note of Issue and Certificate of Readiness must be filed within sixty [60] days after certification, unless otherwise instructed by the Court. A Statement of Proposed Disposition shall be filed with proof of service along with the Note of Issue. 22 NYCRR §202.16(h). The opposing party shall serve and file a Statement of Proposed Disposition within twenty (20) days thereafter, unless otherwise directed by the Court.

Failure to comply may result in the imposition of sanctions, which may include preclusion or dismissal of the action.

After a matter has been certified as trial-ready, the Court may set a date for a Pre-Trial Conference. Pre-Trial Conferences will be scheduled approximately 30 days prior to the trial date. The parties, as well as counsel with knowledge of the case, **must** attend.

There will be no adjournments without the Court's consent. At the Pre-Trial Conference, the Court shall provide for the submission or scheduling of the following, to the extent not previously ordered:

1. *In limine* applications, which must be on notice to all parties, and returnable at least two [2] days prior to the first day of trial.
2. Annotated Statements of Proposed Disposition, in which all of the criteria listed in the statute are provided, and counsel's position stated as to each such criteria for both equitable distribution and maintenance issues shall be submitted.
3. Exhibits: Counsel for the parties shall consult prior to the Trial and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection, if possible. On the first day of trial, each side shall begin to mark its exhibits into evidence as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the Part Clerk for guidance. The Court will rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded, which are to be used solely for credibility or rebuttal, need not be pre-marked.

4. A list of proposed witnesses must be submitted to the Court at least 1 business day prior to the first day of trial, together with the order in which they will testify, as well as their testimony. **A proposed witness list of any experts expected to testify at trial must also be submitted to the court at least 3 business days prior to the first day of trial, together with the scope and estimated length of their testimony.**
5. Marked pleadings, to be submitted before opening statements, must be submitted on the first day of trial.
6. Net worth statements MUST BE updated and sworn to within sixty [60] days of the first day of trial.
7. Parties are encouraged to stipulate to facts and/or exhibits.
8. If deposition transcripts are to be utilized, a copy of the witness' deposition transcript should be available to the Court. 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 the questions and answers that are irrelevant to the point for which the deposition testimony is offered. Each party shall prepare a list of deposition testimony to be offered to which no objection has been made and a separate list of deposition testimony as to which objections have been made. At least one [1] day prior to trial, or such other time as the Court may set, each party shall submit its list(s) to the Court and all counsel. The Court will rule upon the objections at the earliest reasonable time, after consultation with counsel.
9. Valuations: **In the event there are any valuations of a business interest or increased earning capacity, a cash flow chart shall be submitted by each side,** listing counsel's proposal for payment thereof, as well as any other payments claimed due (such as payor's obligations for maintenance, child support, income taxes, etc.).

10. A list of issues to be determined by the Court, including any pretrial motion issues referred to the trial by the Court shall be submitted by the parties at least one [1] day prior to Trial.
11. Both sides shall have available at least **four [4] copies of all exhibits ([5] if there is an Attorney for the Child)** which are expected to be introduced into evidence.
12. Both sides shall have available at least **four [4] copies of all deposition transcripts and prior statements ([5] if there is an Attorney for the Child)** , which are expected to be read into the record or utilized on cross-examination at the trial.
13. Both sides shall have available at least four **[4] copies, ([5] if there is an Attorney for the Child)** of any and all of the following:
 - a) relevant orders issued by another court, such as final orders of custody, support, or temporary or permanent order of protection issued by the Family and/or Criminal Courts;
 - b) any order of this Court that referred issues raised in motion practice to the trial of the action;
 - c) any relevant “so-ordered” stipulation of this Court, as well as transcripts of stipulations read into the record in open court during the pendency of the action; and
 - d) any properly executed and acknowledged stipulation or agreement relating to material issues in this action.
14. Counsel are urged to stipulate that any issue relating to an award of counsel and expert fees be resolved by the Court, without testimony, upon the submission of affirmations and other appropriate documentation from counsel.
15. On the date the trial is scheduled, counsel are expected to be prepared to stipulate in writing to any and all relevant material facts that are not and should not be in dispute, to discuss

settlement of all unresolved issues, and to have complied with each of the trial rules set forth herein.

16. All trials and hearings shall continue **day-to-day** until completed, unless otherwise directed by the Court. All parties must be prepared at the outset to set aside the required number of days necessary to complete the trial.
17. **On the day before the scheduled trial, counsel are directed to contact the Part Clerk or Chambers to confirm the Court's availability.**
18. Proposed Judgment and Findings of Fact and Conclusions of Law are to be submitted within sixty [60] days after the Court renders its decision. The submission of the Divorce Packet will NOT be adjourned unless expressly permitted by the Court for good cause shown.
19. Closing Arguments/Summations: It shall be determined by the Court (on the first day of trial), in consultation with counsel, whether oral closing arguments will be made, or if a trial memorandum will be submitted.

If oral arguments will be made, said arguments will **not** exceed thirty [30] minutes and **will be scheduled to begin immediately after the trial has concluded**. Counsel for the defendant shall give their closing first, followed immediately by Attorney for the Child, if any, then by counsel for the plaintiff.

If a trial memo will be submitted, it shall be submitted by the close of summation, or, if no summation, by the time both sides have rested.

If a trial memorandum is required, said memorandum shall be submitted by both sides, as well as the Attorney for the Child simultaneously, said submission date to be determined by the Court after consultation with all counsel.

The right to submit a trial memorandum shall be deemed waived if not timely submitted to the Court.

Trial memoranda shall be marked as Court Exhibits and shall be part of the record. Responses to the trial memoranda are prohibited and will not be considered, without permission of the Court.

Hon. Sharon M.J. Gianelli, J.S.C.
ADJOURNMENT REQUEST FORM - IAS Part 28

THIS FORM IS REQUIRED FOR ALL ADJOURNMENT REQUESTS
ALL REQUESTS MUST BE ON CONSENT OF ALL PARTIES,
INCLUDING THE ATTORNEY FOR THE CHILD (IF APPLICABLE).

Case Name: _____ Index No.: _____/_____

Currently-Scheduled Adjourn Date: _____

Requested Adjourn Dates (Please provide 3):

1) _____ 2) _____ 3) _____

Purpose of Appearance:

P.C. _____ COMPLIANCE _____ CERTIFICATION _____
PRE-TRIAL _____ HEARING _____ TRIAL _____ MOTION _____

Reason for Request (Affirmation of Actual Engagement attached, if applicable):

CONTACT INFORMATION

Party Requesting Adjournment (circle one): PLAINTIFF / DEFENDANT

Attorney Contacting Court: _____

Phone: (_____) _____ - _____

Fax: (_____) _____ - _____

Do you have the consent of your adversary and, if applicable, the
Attorney for the Child(ren)? (circle one) YES / NO

***NOTE: ALL REQUESTS MUST BE RECEIVED BY THE SECRETARY VIA FAX AT
(516) 493-3462, BEFORE 3:00 PM OF THE PRIOR BUSINESS DAY.**

A confirming letter, in full compliance with this Part's Rules, must be received by the
Secretary via Fax before **4:00 PM** on the date the adjournment is granted *OR the
adjournment request will be considered withdrawn, and the currently scheduled
adjourn date will remain on the Court's calendar.*