SUPREME COURT - NASSAU COUNTY - IAS PART 34
PART RULES & PROCEDURES (revised 6/28/13)

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These rules are in addition to the Uniform Rules for New York State Trial Court and the Local Rules of Court. Failure to comply with any rules or orders of this Court may result in preclusion and/or sanctions without further notice.

I. ADJOURNMENTS

A. Motions and Compliance Conferences:

1. Applications to adjourn conferences or motions on consent must be received by Chambers via (facsimile / electronic mail) by **2:00pm** on the business day prior to the conference date or return date of the motion.

   Applications MUST be made using the Request for Adjournment Form attached hereto. The Request for Adjournment Form is to be filled out **completely**. Incomplete forms or forms received after **2:00pm** on the business day prior to the conference date or return date shall be summarily denied, unless the Court is advised of extraordinary circumstances, which will be taken into consideration.

   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 Request for Adjournment Form.

   All attorneys, clients and Attorneys for the Child(ren) shall be notified of all adjournment requests prior to said request.

2. Letters confirming adjournments shall state that the Court has adjourned the conference or motion on consent of the parties to the specified date, and shall contain the full names of both parties, the index number, a notation indicating the current date the matter is on the Court's calendar, and that all parties have been simultaneously copied.

3. Adjournment requests that are left on the Chamber's voice mail shall be disregarded, absent extraordinary circumstances.

4. Adjournments of motions and conferences may be granted if there is **consent of all parties and prior approval of the Court.** No adjournments will be granted without the approval of the Court. If all parties do not consent to the adjournment, an application shall be made by conference call, with all counsel, **no later than 3:00pm** on the day preceding the scheduled conference or the motion. No requests for an adjournment will be entertained without all parties participating in the conference call. Except for applications made in court, upon approval of the adjournment, a letter must immediately be submitted by (fax/email) to Chambers confirming same with a copy to all counsel appearing in the matter.

B. Preliminary Conference:

1. Adjournments of 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 at the time of the Certification Conference in which event, the rules concerning pretrial conferences, as hereinafter set forth, shall be applicable.

3. Discovery deadlines, Certification deadlines, and Note of Issue deadlines, will be strictly enforced. Deadlines may not be extended, absent prior approval by the Court.

II. MOTIONS

A. Pre-Motion Rules:

1. Except in an emergency situation or where an affirmation is presented demonstrating there will be significant prejudice to the moving party by

giving prior notice, prior to making any motion, the moving party is required to serve a written notice to the opposing party of the intention to make the motion and the relief that will be sought in the motion, and offer to make a good faith attempt to resolve the matter.

2. The non-moving party is required to respond in writing to the moving party, setting forth consents and/or objections to the relief requested, within 48 business hours of receipt of the written notice from the moving party.

3. The movant shall submit to the Court as part of their motion papers proof of compliance with the prior above mentioned notification requirement, which will include copies of both counsel's letters.

B. Submission of the Motion:

1. All motions shall be marked "submitted" on the return date.

2. Appearances of all counsel and parties **are** required on all motion return dates, unless counsel requests a conference, and said request is granted by the Court.

3. All exhibits must be clearly tabbed. Motions not consistent with this rule will be rejected and returned to counsel.

4. Except for good cause shown, no affidavit or affirmation upon a motion or in response or reply 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.

5. Motions are to be served and filed in conformity with CPLR §2214.

6. No sur-reply, affidavit, affirmation, memorandum of law, or letter will be accepted or considered by the Court without leave of the Court.

7. 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.

8. 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.

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

affirmation of services.

10. Counsel are required to provide the Court with SELF-ADDRESSED STAMPED ENVELOPES with the submitted papers in order to facilitate delivery of the Court's decision.

C. 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 to the foregoing, the movant should be prepared to appear in Court and to make a record before the Court, if the Court requires the same.

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. 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.

III. COURT APPEARANCES

A. All Court appearances, including preliminary, compliance, motion and status conferences shall be scheduled for either 9:30am, 10:30am, 11:30am, 2:30pm, or 3:30pm and any other time the Court may deem appropriate.

B. Attorneys and Pro Se litigants must alert the Court Officer or Court Clerk of their presence and complete a sign-in sheet. If counsel must also appear before another judge, counsel must advise the Part Clerk or Court Officer where counsel can be

reached. All counsel and litigants are directed to appear for Preliminary Conferences.

C. All parties and attorneys are required to appear for every appearance.

D. Conferences may be conducted via telephone conference appearance if a request is granted by the Court.

E. If there are any outstanding motion(s) (submitted or pending) at the time of the conference/trial, the Law Clerk and/or Judge must be so informed of same that day. The submission date must be provided by counsel. Copies of such motions should be available to the Court at the time of such conference.

F. All counsel are encouraged to be prompt for their scheduled appearance in order to avoid unnecessary delay of the calling of their matter.

IV. COMMUNICATION WITH CHAMBERS

A. In all communications with chambers by letter, the title of the action, full names of the parties, date matter is next on the Court's calendar, and index number shall be set forth, with copies simultaneously delivered to all counsel. *Ex parte* written communications will be disregarded.

B. 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.

C. No out of Court settlement will be recognized or accepted unless counsel submits a letter, on notice to opposing counsel, and, if applicable, the Attorney for the Child(ren), submitting the executed settlement agreement/stipulation or certifying that such agreement/stipulation has, in fact, been executed.

D. The Court will not accept *ex parte* telephone communications on substantive issues.

V. SANCTIONS

The Court will not consider a sanctions application unless the moving party first seeks withdrawal or discontinuation of the offending act or action, or demands required or necessary action which is refused. Proof of such request must be made a part of the sanctions application.

VI. TRIAL RULES: APPLICABLE TO ALL TRIAL AND HEARINGS

A. A Note of Issue and Certificate of Readiness are to be filed within thirty [30] 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 schedule for submission prior to trial as follows:

1. *In limine* applications must be on notice to all parties, returnable at least ten [10] days prior to the first scheduled trial date.

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: Trial notebooks are **not** required. However, 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 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 clerk of the part 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, including experts, for the Court's information must be submitted at least 5 business days prior to trial, together with the order in which they will testify and the estimated length of their testimony.

5. Marked pleadings, to be submitted before opening statements, must be submitted at least five [5] business days prior to trial.

6. Net worth statements MUST BE updated and sworn to within thirty [30] days of the trial date.

7. Parties are encouraged to stipulate to facts and/or exhibits.

8. If deposition transcripts are to be utilized, a copy of the witnesses' 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 ten [10] days prior to trial, or such other time as the Court may set, each party shall submit its list(s) to the Court and other counsel. The Court will rule upon the objections at the earliest possible time, after consultation with counsel.

9. 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 five [5] days prior to Trial.

10. Both sides shall have available at least four [4] copies of all exhibits, which are expected to be introduced into evidence.

11. Both sides shall have available at least four [4] copies of all deposition transcripts and prior statements, which are expected to be read into the record or utilized on cross examination at the trial.

12. Both sides shall have available at least four [4] copies 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.

13. 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.

14. Counsel are required to stipulate in writing to any and all relevant material facts that are not and should not be in dispute.

15. On the date the trial is scheduled, counsel are expected to be prepared to discuss settlement of all unresolved issues and to have complied with each of the trial rules set forth herein.

16. **On the day before the scheduled trial, counsel are directed to contact the Part Clerk or Chambers to confirm the Court's availability.**

17. All trials and hearings shall continue **day-to-day** until completed, subject to the Court's availability.

18. Objections should be stated without argument, except to simply state the ground therefore, (e.g., hearsay, relevance, etc.) If further argument is appropriate, it will be invited by the Court.

19. Proposed Judgment and Findings of Fact and Conclusions of Law are to be submitted within sixty [60] days after the Court renders its decision.

20. Closing Arguments/Summations: It shall be determined by the Court (on the first trial day), in consultation with counsel, whether oral closing arguments will be made, or if a post 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 counsel for the child(ren), if any, then by counsel for the plaintiff.

    If a post trial memorandum is required, said memorandum shall be submitted by both sides, as well as the attorney for the child(ren) simultaneously, said submission date to be determined by Court after consultation with all counsel. The right to submit a post trial memorandum shall be deemed waived if not timely submitted to the Court. Said post trial memorandums shall contain the following clearly delineated sections:

    a) a chronological procedural history of the action, including copies of all relevant orders, written stipulations, and transcripts of stipulations placed on the record;
    b) a recitation of the issues to be determined;
    c) an in depth summary of the testimony of each witness;
    d) a summary of the findings of any expert report received in evidence;
    e) a summary of the exhibits in evidence;
    f) a detailed recitation of counsel's contentions as to the testimony and exhibits in evidence; and
    g) applicable law.

Post trial memorandums will be marked as Court Exhibits and shall be part of the record.

A copy of each side's, and if applicable, the child's and/or children's post trial brief shall be served on all other parties, simultaneous with such filing with the Court. Responses to the post trial memorandums are prohibited and will not be considered. The Court is to be provided with the original of each post trial memorandum. The post trial memorandums shall have a table of contents. Failure to provide such table of contents will result in the Court not considering such post trial memorandum.