

SUPREME COURT - NASSAU COUNTY
IAS PART 33 - PART RULES & PROCEDURES
(REVISED 1/9/2017)

Justice: HON. EDMUND M. DANE
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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 the Court may result in preclusion and/or sanctions without further notice.

I. ADJOURNMENTS

A. Motions and Status Conferences:

1. Any and all applications to adjourn any scheduled date with this Court, including, but not limited to conferences, motions, or submissions of papers, must be ON CONSENT of the opposing party and the Attorney for the Child(ren), if one is assigned, and such requests must be made using the REQUEST FOR ADJOURNMENT FORM, which must be received by Chambers via facsimile **by 2:00 p.m.** on the business day prior to the scheduled date. All applications for adjournments **MUST** be made using the Request for Adjournment Form which can be obtained through chambers or through the OCA website. Letter requests will be disregarded.

The Request for Adjournment Form is to be filled out **completely**. Incomplete forms or forms received after **2:00 p.m.** on the business day prior to the 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 N.Y.C.R.R. Part 125, must accompany the Request for Adjournment Form. If the application is granted, a letter confirming same shall be faxed to Chambers and copied to the opposing party and the Attorney for the Child(ren), if one is assigned.

2. Letters confirming adjournments shall state that the Court has adjourned the scheduled date on consent of the parties to the specified date, and shall contain the full names of both parties, the index number as well as a notation indicating the current date the matter is on the Court's calendar, and that all parties have been copied.
3. Adjournment requests which are left on the Chamber's voice-mail shall be disregarded.

B. Preliminary Conference:

1. Adjournments of the Preliminary Conference will not be granted absent a compelling reason for same. Counsel is directed to review the provisions of 22 N.Y.C.R.R. § 202.16(f) concerning conferences.
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 enforced. Deadlines may not be extended without prior approval of the Court, and failure to comply with such deadlines may result in sanctions.
4. The Preliminary Conference Order, must be filled out as thoroughly as possible PRIOR to the Preliminary Conference. You may obtain a blank Preliminary Conference Order at:
<http://www.nycourts.gov/courts/10jd/nassau/mat-forms.shtml>.

II. MOTIONS

A. Pre-Motion Conferences:

1. Prior to making or filing any motions, brought by Notice of Motion or Order to Show Cause, including applications to be relieved, counsel for the

moving party MUST arrange for a CONFERENCE CALL to be held with his/her adversary and the Court to discuss the issues involved and the possible resolution thereof. The Attorney for the Child(ren) shall also be notified and included in such conference calls. Counsel fully familiar with the matter and with authority to bind their clients MUST be available to participate in the conference call.

2. If the matter can be resolved during the conference call, an order consistent with such resolution may be issued.

B. Submission of Motions

1. Appearances of all **Counsel and parties** are required on all motion return dates unless specifically waived by the Court.

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.

2. All papers shall be securely and neatly fastened, and all exhibits must be clearly tabbed; a) papers will be considered properly bound if secured by Heavy Duty Staples, ACCO Clips or Mechanical Binding; b) papers greater than 2" thick must be split into multiple volumes and secured by Heavy Duty Staples, ACCO Clips or Mechanical Binding and clearly marked with a copy of the Order or Notice of Motion on each and a label (e.g. 1 of 3, 2 of 3, 3 of 3); and c) if using ACCO fasteners (3 1/2" capacity), limit the documents to no larger than 2" thick. If using small ACCO fasteners (2" capacity), limit the document size to 1" thickness. Do Not attempt to tape the clip in place. Papers secured by Binder Clips and/or rubber bands will not be accepted. Motions not consistent with this rule **WILL BE REJECTED** and returned to counsel.

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.

3. Motions are to be served and filed in conformity with C.P.L.R. §2214. All motions must be organized in such a manner so that each branch of the motion stated in the Notice of Motion or Order To Show Cause is preceded by a number or letter. Said number/letter designation shall be used in the supporting affirmations and affidavits and shall correspond to the number/letter used for each branch as set forth in the Notice of Motion or Order To Show Cause.
4. No affidavit, affirmation, memorandum of law or letter in sur-reply will be accepted or considered without leave of the Court.
5. 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. Any motion seeking an award of **counsel fees** must be supported by a detailed affirmation of services.
6. 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 temporary restraining order (TRO), must be made in accordance with 22 N.Y.C.R.R. 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 on the return date of the motion. 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 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 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, unless otherwise specified or directed by the Court, shall be scheduled for 9:30 a.m. Please be prompt so as to avoid any unnecessary delays of the calling of the matter.
- B. **All parties** and counsel shall appear at **each and every** scheduled Court date (including preliminary, status and compliance conferences), unless otherwise directed by the Court.
- C. Attorneys and “Pro Se” litigants must alert the Court Officer or Court Clerk of their presence and **legibly** complete a sign-in sheet. The sign-in sheet shall be COMPLETELY filled out by all parties and/or their counsel. Your matter WILL NOT BE CALLED until the sign-in sheet is COMPLETE.

If counsel must also appear before another Judge, counsel must advise the Part Clerk or Court Officer where counsel can be reached.

- D. All conferences will be held in the order in which **ALL** attorneys have checked in with the Part Clerk and completed the sign-in sheet.

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

IV. COMMUNICATION WITH CHAMBERS

- A. In all communications with chambers by letter, the title of the action, full names of the parties, the date on which the matter is scheduled on the Court's calendar, and the index number shall be set forth, with copies simultaneously delivered to all counsel. *Ex parte* communications will be disregarded and discarded.
- B. Copies of correspondence between counsel shall not be sent to the Court. Such copies shall be discarded.
- C. The Court will not accept telefax submissions of papers, other than correspondence in conformance with these Part Rules, without prior permission.
- D. 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.
- E. The Court shall not accept or participate in any form of *ex parte* 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, 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

- A. A Note of Issue and Certificate of Readiness MUST 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 N.Y.C.R.R. § 202.16 (h). Neither side may prosecute a motion involving discovery issues once the case has been certified for trial without leave of the Court.
- B. **Pre-Trial Conference:** After a matter has been certified as ready for trial, 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, which shall not be adjourned without the prior consent of the Court. Counsel with knowledge of the case and the parties must attend.
- C. **On the day before the scheduled trial, counsel are directed to contact the Part Clerk or Chambers to confirm the Court's availability.**

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

- D. **Items Due Two (2) Weeks Prior to the Commencement of Trial:**
1. **Maintenance and Equitable Distribution Worksheets:** At least two (2) weeks prior to the scheduled date of trial, both sides must exchange and submit to this Part, fully completed worksheets regarding the statutory criteria relating to maintenance and equitable distribution sworn to by each party. The Court will expect the accuracy of said worksheets to be testified to at trial, and the worksheets to be received in evidence and utilized by counsel to facilitate the fact finding process and achieve an expeditious completion of the trial. Said worksheets are available in the Courtroom.
 2. **Statements of Proposed Disposition:** 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.

E. **Items Due Five (5) Days Prior to the Commencement of Trial:**

1. ***In limine* Motions:** *In limine* applications must be on notice to all parties, returnable at least five (5) days prior to the first scheduled trial date.
2. ***Pendente Lite* Arrears:** An accounting of any claimed *pendente lite* arrears supported by backup documentation shall be exchanged by both sides and submitted to this Part.
3. **Exhibits:** A list of all exhibits for each party indicating whether such exhibits are stipulated to be in evidence or marked for identification. As to those exhibits marked for identification, the Court will address their admissibility *in limine* or during the trial, as may be appropriate. Both sides shall have available at least four (4) copies of all exhibits (five [5] copies if there is an Attorney for the Child[ren]), which are expected to be introduced into evidence.
4. **Proposed Witness(es) List:** A list of proposed witnesses, the order in which they will testify and the estimated length of their testimony.

Expert Witnesses: Documentation in compliance with C.P.L.R. §3101(d) shall be provided to the Court and exchanged between the parties with regard to any expert, other than a court-appointed neutral expert, that a party intends to call at trial.

5. **Evaluations:** In the event there are any evaluations of income producing assets subject to equitable distribution, (business interest, professional practice, enhanced earning capacity, license or degree, etc. involved in the case), then a "cash flow" chart shall be exchanged between the parties and submitted by each side, setting forth counsel's proposal for apportioning the income stream produced by the asset for the payment of a distributive award as well as other obligations such as maintenance, child support, income taxes, interest on payments etc.
6. **Updated Statements of Net Worth:** The parties shall exchange updated Net Worth Affidavits, sworn to within 30 days prior to the date of trial.
7. **Use of Deposition Testimony/Transcripts:** 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 any 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 to which objection has been made. At least five (5) days prior to trial or such time as the Court may set, each party shall submit its list(s) to the Court and opposing counsel and Attorney for the Child(ren), if one is appointed, together with a copy of the portions of the deposition testimony as to which objection has been made. The Court will rule upon the objection at the earliest possible time after consultation with counsel.

F. Items Due Two (2) Days Prior to the Commencement of Trial:

1. **Trial Notebooks:** Parties shall submit **trial notebooks two (2) days prior to trial** with all listed exhibits separately and consecutively tabbed [numbers for Plaintiff and letters for Defendant], with the original documents for the witnesses and a copy for the Court. At the conclusion of the trial all exhibits not received into evidence will be removed from notebooks and returned to counsel.
2. **Stipulated Facts:** Counsel are required to stipulate in writing to any and all relevant material facts that are not and should not be in dispute.

G. On the First Day of Trial:

1. 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
2. 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. If it appears during the course of the trial that no bonafide attempt was undertaken to secure such stipulation, the Court will may recess and delay the trial until there is compliance.
3. All trial exhibits, whether stipulated or contested on admissibility, should be **pre-marked by the Court Reporter on the morning of the first day of trial.**
4. Both sides shall have available at least four (4) copies (five [5] copies if there is an Attorney for the Child[ren]) of all deposition transcripts and prior statements which are expected to be read into

the record or utilized on cross examination at the trial.

5. **Objections:** Objections during trial should be stated without argument except to simply state the ground therefor, e.g., hearsay, relevance, etc. If further argument is appropriate, it will be invited by the Court.
6. On the first scheduled date of trial, both sides must exchange or, provide copies to the Attorney for the Child(ren), if there is one, and submit to this Part the following:
 - a. Marked pleadings, including pleadings from any proceedings transferred from another court and consolidated with the matrimonial action, such as family offense proceedings transferred from the Family Court (C.P.L.R. 4012;
 - b. Copies of life insurance policies and medical and dental policies of insurance in effect as of the date of the commencement of the action and as of the present date;
 - c. A list of issues to be determined by the Court including any pretrial motion issues referred to the trial by the Court;
 - e. Copies of any and all of the following:
 - (a) relevant orders issued by another court, such as final orders of custody or temporary or permanent orders of protection issued by the Family Court;
 - (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.

H. **Closing Arguments/Summations and Memoranda of Law:**

1. **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.

2. **Post Trial Memoranda of Law:** If a post trial memorandum is required, said memorandum shall be submitted by both sides, as well as the Attorney for the Child(ren), if there is one, 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. 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.

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.

VII. Proposed Judgment and Findings of Fact and Conclusions of Law: shall 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, and in full compliance with this Part's Rules and Procedures.