

INDIVIDUAL PART RULES OF JUSTICE WILLIAM J. GIACOMO

The following Part Rules are effective as of **January 7, 2015** in all proceedings assigned to Justice Giacomo:

I. GENERAL RULES

A. Compliance Conferences: Please note this Part no longer conducts compliance conferences. See Westchester Supreme Court Differentiated Case Management Protocol Part Rules effective September 14, 2009. Please contact Carolyn Carpenito, Room 800, at 914-824-5344 or ComplianceWestchester@nycourts.gov

B. Settlement Conferences: Please note this Part no longer conducts settlement conferences. See Westchester Supreme Court Differentiated Case Management Protocol Part Rules effective September 14, 2009. Please contact Frances Schiel-Doyle, Room 1600, at SettlementConferenceWestchester@nycourts.gov

C. Appearances by Counsel with Knowledge and Authority: All counsel who appear before the Court must be familiar with the case and be fully authorized to enter into agreements as to both substantive and procedural matters on behalf of their clients. Attorneys appearing of counsel to the attorneys of record and self-represented parties shall be held to the same requirements. Failure to comply with this rule may be regarded as a default and dealt with appropriately. All counsel and self-represented parties must be on time for all scheduled appearances.

D. Settlements and Discontinuances: If an action is settled, discontinued or disposed of in any other manner by the parties, counsel shall immediately inform the Court by letter and by filing a Stipulation of Discontinuance or Stipulation of Settlement with the Part Clerk. The Court shall not mark any matter as settled unless it has received a copy of a Stipulation of Discontinuance or Stipulation of Settlement, the original of which has been filed with the County Clerk. THE FAILURE TO PROVIDE THIS COURT WITH A COPY OF THE STIPULATION OF DISCONTINUANCE OR STIPULATION OF SETTLEMENT WILL RESULT IN THE IMPOSITION OF SANCTIONS.

E. Papers by Fax: **The Court does not accept papers of any kind by fax transmission unless otherwise requested by the Court in advance in a particular case.** Copies of letters confirming this Court's approval of an adjournment of a motion or a conference may be sent to the Court by fax at its chambers. However, the original of all correspondence must be mailed to the Part Clerk. Any authorized fax transmission directed to the Part Clerk shall be faxed **only** to the telephone number: (212) 401-9090. All faxes shall be limited to 5 pages.

F. Conduct of Parties and Counsel: It is expected that all parties and counsel shall conduct themselves appropriately in all in-court and out-of-court proceedings and in their

communications with each other and the Court. **PERSONAL ATTACKS UPON PARTIES OR COUNSEL SHALL NOT BE TOLERATED AND SHALL RESULT IN THE IMPOSITION OF SANCTIONS AS DETERMINED BY THE COURT TO BE WARRANTED UNDER THE PARTICULAR CIRCUMSTANCES.**

G. Ex Parte Communications: Ex parte communications are strictly prohibited except upon the consent of all counsel, or with respect to scheduling matters or the presentation of orders to show cause for signature.

H. Communications with Represented Parties: Counsel are directed to inform their clients that under no circumstances shall any member of the Court's staff engage in any conversation or exchange any communication with a represented party. If a represented party communicates with any member of the Court's staff, all counsel shall be informed of the communication and, if it is in writing, shall be sent a copy of that writing.

II. MOTION PRACTICE RULES

A. Motion Calendar and Appearances: All motions/proceedings brought on by notice of motion or notice of petition shall be made returnable before the Court on any Monday the Court is in session at 9:30 A.M. **There will be a Motion Calendar called by the Court.** The purpose of the Motion Calendar call is to achieve an easy and efficient means for attorneys to submit and the Court to collect all opposition, cross-moving and reply papers in connection with motions on the calendar. During the Motion Calendar call, commencing at 9:30 A.M., all motions returnable that day will be "called" for the submission of these papers. These papers may be submitted by mail or in person and must be received by the Court by Thursday, the week prior to the Monday "call" or must be handed up at this "call". If opposition, cross-moving and reply papers are not submitted before or at the submission "call," the opportunity to do so will be lost (unless an adjournment is arranged and court permission is obtained).

To the extent possible, motions will be decided "on the papers." If argument is directed, it will take place on an announced date shortly after the day of submission. Counsel for the movant need not appear to "take a default" on any motion or for any other reason. Motions will be submitted, not marked off, in the absence of the movant. Opposing counsel similarly need not appear in person in order to avoid suffering a default. Delivery of papers by mail, service or a clerk will suffice.

B. Applications, Adjournments, Submission of Late Papers: To protect movants against the submission of late opposition papers or cross-motions, the Court will *sua sponte* adjourn for one week cases in which appropriate time has not been given. Parties seeking an adjournment must follow the direction delineated below in order to adjourn a motion. **Unless the Part Clerk, the Court's Secretary or the Court's Law Clerk has conveyed the Court's approval of an adjournment, no motion shall be considered to have been adjourned.**

C. Adjournments by Stipulation: A party seeking an adjournment must contact all other parties in an effort to obtain consent and demonstrate that it was done. No more than three adjournments for a total of no more than 60 days are allowed except with the permission of the Court (Rule 202.8(e)(1) of the Uniform Rules for the Trial Courts), given by means of a so-ordered stipulation. **Unless the Part Clerk, the Court's Secretary or the Court's Law Clerk has conveyed the Court's approval of an adjournment, no motion shall be considered to have been adjourned.**

D. Adjournments by Affidavit/Affirmation of Consent: If **the Court** and all parties consent to an adjournment as allowed by these rules but a written stipulation cannot be obtained in time for submission, the applicant for the adjournment on consent may submit an affidavit or affirmation reciting that such consent was obtained. That document must state the reason for the adjournment request, how consent was obtained from all parties, when it was obtained, and the name of each attorney who gave oral consent. The affidavit/affirmation must be received by the Court before the date on which the request for adjournment is made or application may be made by counsel at the Motion Calendar call.

E. Applications for Adjournment Not on Consent: If consent was not obtained from all parties prior to the return date, any party making an application for adjournment at the Motion Calendar must appear at the Motion Calendar call and put on the record before the Court the reason for the requested adjournment and a description of the efforts made to obtain such consent, including the date when a contact was initiated or attempted, the means used, and the person contacted (if consent was refused) or for whom a message was left (if no contact was made). Furthermore, an applicant must, by phone, fax, e-mail, or mail transmitted with adequate lead time, advise all parties who have not consented that an application will be made at the Motion Calendar call. Applications for adjournments that are not properly supported will not be entertained. If there is no compliance, the Part Clerk will mark the motion submitted.

F. Orders to Show Cause: Orders to show cause submitted for signature shall be presented to the office of the calendar clerk, after the payment of any required fee at the County Clerk's Office. If the order to show cause is signed by the Court, a copy of it shall be sent by fax to counsel for the moving party. If appearances are required on the return date of the motion, the Court shall so indicate in the order to show cause. Otherwise, no appearances shall be required and no oral argument shall be heard on the return date of the motion.

G. Requests for Temporary Restraining Orders: When an order to show cause is to be presented to the Court which seeks a temporary restraining order, counsel for the moving party must first communicate by telephone or fax transmission with counsel for all adverse parties, and with any unrepresented adverse parties, to advise such counsel or parties that a request for a temporary restraining order shall be made to the Court and that such counsel or parties have the right to be heard on the application. A conference on the request for a temporary restraining order shall be conducted by the Court at 9:30 a.m. at

a date and time set by the Court. Following the conference, either by way of a bench decision or a written decision, the Court shall render its determination only on the request for a temporary restraining order. No request for a temporary restraining order shall be considered without a conference unless the moving party demonstrates to the Court that conducting such a conference will clearly cause the moving party irreparable injury.

H. Communications Regarding Motions: All communications regarding motions, including requests for adjournments and questions concerning the status of motions, shall be directed to the Part Clerk. Only in the absence of the Part Clerk shall any communication regarding a motion be directed to the Law Clerk or the Court's Secretary.

I. No Stay of Discovery: There shall be **no stay of pretrial discovery** resulting from the filing of a motion made pursuant to CPLR 3211 or 3212 unless otherwise ordered by the Court.

J. Form of Papers: Except with the express permission of the Court, all motion papers submitted to the Court, including Orders to Show Cause, must be typewritten and all exhibits must be labeled with tab markings and entirely legible. Motion papers and all correspondence must indicate the index number assigned to the action. Courtesy copies of papers shall **not** be submitted to Chambers.

K. Papers Required on Particular Motions:

1. Dispositive Motions: On any motion seeking summary judgment, dismissal of a complaint, cross-claim or counterclaim, or the striking of a pleading, copies of all pleadings filed as of the date of filing of the motion must be provided to the Court by the moving party. The failure to comply with this requirement shall result in the denial of the motion unless the pleadings are provided to the Court by another party.

2. Motions for Leave to Renew or Reargue: On any motion seeking leave to renew or reargue a prior motion, the moving party shall submit copies of all papers submitted on the prior motion. The failure to comply with this requirement shall result in the denial of the motion unless the papers on the prior motion are submitted to the Court by another party.

3. Motions for Leave to Amend, Supplement or Correct Pleadings: On any motion for leave to amend, supplement or correct a pleading, in addition to the proposed amended, supplemental or corrected pleading, the moving party shall submit copies of all pleadings filed as of the date of the motion. The failure to comply with this requirement shall result in the denial of the motion unless copies of the prior pleadings are submitted to the Court by another party.

4. Motions for Injunctive Relief: When an order to show cause is to be presented to the Court which seeks a temporary restraining order or a preliminary injunction, copies of the summons and complaint commencing the underlying action must be provided to the Court by the moving party. No order to show cause seeking such relief will be considered by the

Court if the moving party fails to comply with this requirement.

5. Default Motions: On any motion for a default judgment, proof must be presented that a military-status investigation of all defendants who are persons has been conducted after the time for each such defendant to appear or answer, as applicable, has transpired. In addition, to be sufficient, the military-status investigation must include, at a minimum, a search conducted through the Department of Defense, which may be performed through that agency's internet site, www.dmdc.osd.mil/scra/owa/home

L. Discovery Motions: Please note this Part no longer conducts compliance conferences or handles discovery motions. Those matters are handled in the Compliance Part, room 800. See Westchester Supreme Court Differentiated Case Management Protocol Par Rules effective September 14, 2009.

M. Reply Papers: Counsel and self-represented parties shall not set forth factual claims or legal arguments in reply papers which were not set forth in the papers initiating the motion or cross-motion. New factual claims and legal arguments which are not directly in response to factual claims or legal arguments offered in opposition to a motion or cross-motion shall not be considered by the Court in its determination of a motion or cross-motion.

N. Sur-reply and Post-Submission Papers: Counsel and the parties are reminded that the CPLR does not provide for the submission of sur-reply papers, however denominated, or the presentation of papers or letters to the Court after the return date of a motion. Nor is motion practice by correspondence permitted. Absent express permission obtained in advance from the Court, such materials shall be filed with the County Clerk unread. Any opposing counsel and self-represented party who receives a copy of such materials submitted in violation of this rule shall not respond in kind.

O. Length of Papers: Absent express permission obtained in advance from the Court, which shall be granted only upon a showing of good cause, briefs or memoranda of law shall be limited to 30 pages each, and affirmations and affidavits shall be limited to 25 pages each. Papers submitted to the Court in violation of this rule may not be considered by the Court in deciding the motion, without prior notice to the party who submitted the papers.

P. Settled Motions: In the event that the parties settle a motion or part of a motion in advance of the motion return date, they shall immediately inform the Court in writing. Any failure to inform the Court of a settlement which results in the needless expenditure of court resources in the issuance of a decision on a motion will result in the imposition of sanctions against counsel for all parties to the action and any self-represented parties.

Q. Motion Decisions and Orders:

1. Written Decisions: In most instances, a written Decision and Order will be issued by the Court following the submission of the motion. The Decision and Order, with supporting papers, will be filed in the Westchester County Clerk's Office by the Court. A copy of the Decision and Order shall be sent to all counsel and self-represented parties that have submitted a self addressed, stamped envelope after filing with the County Clerk.

2. Bench Decisions: In certain instances, such as part of the calling of the unopposed motion calendar, the Court will render a decision from the bench. Any party seeking a written order shall submit to the Court a proposed order supported by a copy of the transcript of the proceeding at which the bench decision was rendered. The signed order will be filed in the Westchester County Clerk's Office by the Court.

R. E-Filing Rules and Protocol

All parties should familiarize themselves with the statewide [E-Filing Rules](#) (Uniform Rule §§ 202.5-b and 202.5-bb – available at www.nycourts.gov/efile) and the [Westchester County E-Filing Protocol](#) available at- <http://www.courts.state.ny.us/courts/9jd/efile/WestchesterCountyJointProtocols.pdf>

General questions about e-filing should be addressed to the E-Filing Resource Center at 646-386-3033 or efile@nycourts.gov

Specific questions relating to local procedures should be addressed to **the Civil Calendar Office (914) 824-5300**.

1. Electronic Filing

All actions required to be filed electronically are to be filed through the New York State Courts E-Filing system (NYSCEF). All submissions to the Court, including proposed orders, proposed judgments, and letters, must be electronically filed.

2. Working Copies

A court may require the submission of “working copies” of electronically filed documents. See Uniform Rule § 202.5-b(d)(4).

This Part requires working copies for:

- motion submissions
- proposed orders to show cause
- proposed orders/judgments
- stipulations
- transcripts
- letters

Working copies shall be either left in the basket outside of Chambers on the 13th floor of the Courthouse or in the basket outside of Courtroom 1603 on the 16th floor of the Courthouse. All working copies submitted to this Part must include a copy of the NYSCEF Confirmation Notice firmly fastened as the front cover page of the submission and comply with other requirements set forth in the Westchester County Protocol. Working copies without the Confirmation Notice will not be accepted.

Working copies are to be delivered no later than noon on the first business day following the electronic filing of the document on the NYSCEF site. **The failure to provide working copies of a motion will result in dismissal of that motion. The failure to provide working copies of opposition papers will result in the granting of a motion as unopposed.**

3. Hard Copy Submissions

This Part will reject any hard copy submissions in e-filed cases unless those submissions bear the Notice of Hard Copy Submission – E-Filed Case required by Uniform Rule § 202.5-b(d)(1). The form is available at www.nycourts.gov/efile

4. Scheduling

Counsel/parties should address questions about scheduling appearances on the motion, if any, or adjourning appearances to the Part Clerk, Sally Raniolo, at 914-824-5349.

III. TRIAL PRACTICE RULES

The following Trial Practice Rules shall be complied with in all trials and hearings assigned to Justice Giacomo:

A. Trial Preparation: Prior to the commencement of the trial or hearing, counsel shall ascertain the availability of all witnesses and subpoenaed documents. Plaintiff's counsel shall request that the Part Clerk requisition the County Clerk file in the case to the courtroom as soon as possible after the assignment of the case to this Court. In addition, counsel for any party or any self-represented party who has issued subpoenas for the production of records shall request that the Part Clerk requisition all subpoenaed documents from the file room.

B. Interpreters and Special Services: Upon reporting to the Court for a trial or a hearing, counsel and any self-represented party shall **immediately** advise the Part Clerk if the services of a foreign language interpreter are required for any party or witness, or if any special services are required for any party or witness who is hearing-impaired or who suffers from any other disability. Similarly, the Part Clerk shall be **immediately** informed if there is a need for an easel, blackboard, shadow box, television or any other trial aid.

C. Pleadings and Submissions Due Immediately Upon Appearance: Immediately upon being assigned to this Court for a trial or hearing, counsel for each party, including the Law Guardian, if any, and any self-represented party, shall report to the Part Clerk, or in her absence, the Law Clerk. At that time, counsel for each party and each self-represented party shall submit the following to the Court:

1. A statement of the estimated length of trial.
2. Marked pleadings and all bills of particulars.
3. A list of all witnesses who may be called at trial, including any known, potential rebuttal witnesses.
4. A list of all exhibits the party expects to use at trial, indicating whether such exhibits are stipulated for admission into evidence or are marked only for identification.
5. A written stipulation governing all facts that are not in dispute.
6. In all matrimonial actions, an updated net worth statement and a statement of proposed disposition.

7. A copy of any statutory provisions in effect at the time the cause of action arose, upon which any party to the action relies.

8. All expert witness reports relevant to the issues.

9. All reports, transcripts of examinations before trial and written statements which may be used either to refresh a witness' recollection or for cross-examination.

D. Marking of Exhibits: After filing the above-listed submissions with the Court, counsel shall meet with the assigned Official Stenographer to pre-mark all exhibits for identification. Any exhibits whose admission is agreed to by the parties shall be pre-marked for admission.

E. Conference: Immediately prior to the commencement of the trial, the Court shall conduct a brief conference with all counsel and self-represented parties, to discuss preliminary matters. At this conference, all counsel and self-represented parties shall be prepared to:

1. Advise the Court as to all anticipated disputed issues of law and fact, and provide the Court with citations to all statutory and common-law authority upon which they will rely.

2. Stipulate to undisputed facts and the admission of clearly-admissible documents, records and other exhibits.

3. Alert the Court to any anticipated in limine motions or evidentiary objections which they believe will be made during the trial.

4. Provide the Court with a copy of all prior decisions and orders which may be relevant to any in limine applications or objections.

5. Discuss scheduling, as well as the number of witnesses to be called at trial, any anticipated problems regarding the attendance at trial of any party, attorney or witnesses, and any other practical problems which the Court should consider in scheduling.

6. Alert the Court as to any anticipated requests for a jury instruction relating to missing witnesses or evidence.

7. Alert the Court as to any anticipated request pursuant to CPLR Article 16 for apportionment as to an allegedly culpable non-party.

8. Supply a proposed verdict sheet and request to charge.

F. Copies of Transcripts: If any part of a transcript of an examination before trial or other recorded proceeding will be read as evidence-in-chief, the proponent of the transcript shall provide a complete copy of it to the Court and all other counsel or self-represented parties, well in advance of the time that it shall be read, with citations to the page and line numbers for all portions to be read, so that all objections may be addressed by the Court prior to the proposed reading.

G. Copies of Exhibits: Upon the admission of an exhibit at trial, the proponent of the exhibit shall provide a complete copy of it to the Court.

H. Addressing the Court: Any counsel or self-represented party who is raising an objection, presenting an argument or otherwise addressing the Court, shall stand while doing so, or shall not be recognized by the Court. All objections shall be made by stating the word "objection", together with up to three more words identifying the generic ground for objection, such as "hearsay", "bolstering", "leading" or "asked and answered". If it is believed that argument on an objection is necessary, any counsel or self-represented party may ask permission to approach the bench. Keep in mind that any counsel or self-represented party will be given the opportunity to make a full record of his or her position.

I. Courtroom Behavior: All remarks shall be directed to the Court. Comments shall not be made to opposing counsel or self-represented parties. **PERSONAL ATTACKS UPON PARTIES OR COUNSEL SHALL NOT BE TOLERATED AND SHALL RESULT IN THE IMPOSITION OF SANCTIONS AS DETERMINED BY THE COURT TO BE WARRANTED UNDER THE PARTICULAR CIRCUMSTANCES.** Do not attempt to "talk over" an adversary; only one person shall speak at a time. Simple requests, *e.g.*, a request for a document or an exhibit, shall be accomplished in a manner which does not disrupt the proceedings or an adversary. Ask for permission to approach the bench if a significant discussion with an adversary is required, such as a proposed stipulation. There shall be no "grandstanding" in the presence of the jury, *e.g.*, making demands, offers or statements that should properly be made outside of the presence of the jury.

J. Use of Exhibits: Do not show anything, including an exhibit or proposed exhibit, to a witness without first showing it to all opposing counsel and self-represented parties. If any counsel or self-represented party believes that this procedure will compromise his or her trial strategy, he or she shall first request a pre-offer ruling outside of the presence of the jury.

K. Summation Exhibits: Any counsel or self-represented party who intends during summation to use any type of demonstrative exhibit not marked into evidence must advise the Court and all other counsel and self-represented parties of that intention at the pre-charge conference. Failure to comply with this rule shall result in an order precluding the use of such exhibit during summation.

L. Examination of Witnesses: Do not approach a witness without permission of the Court. The questioning counsel or self-represented party shall allow the witness to complete his or her answer to a question before asking another question. Do not interrupt a witness in the middle of an answer unless it is totally unresponsive, in which event a ruling from the Court shall be requested.

M. Jury Charges: In all jury trials, a complete list of requests to charge shall be submitted to the Court immediately preceding the commencement of trial, with copies to be provided to all other counsel and self-represented parties. If a requested charge is drawn from the current Pattern Jury Instructions (PJI), only the PJI number need be submitted. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted in writing, together with any supporting legal precedents. In addition such proposals shall be submitted on a computer disc in a format convertible to Word Perfect or emailed to the Court's law clerk at tmontele@nycourts.gov . At the final charging conference, if marshaling of the evidence is required as to a particular jury charge, counsel and all self-represented parties shall provide the Court with the proposed facts which they believe should be presented to the jury.

N. Verdict Sheet: At the commencement of the trial, counsel for the parties and any self-represented parties shall jointly prepare a verdict sheet. If agreement cannot be reached, each party shall present a proposed verdict sheet which shall be served upon all other parties. The verdict sheet shall be in a final, typewritten form which may be given to the jury. In addition the proposed verdict sheet(s) shall be submitted on a computer disc in a format convertible Word Perfect or emailed to the Court's law clerk at tmontele@nycourts.gov

O. Post-trial submissions: Unless otherwise directed by the Court, in accordance with the schedule set by the Court at the conclusion of a bench-trial or hearing, the parties shall jointly submit a trial transcript, and each party shall prepare and submit a post-trial memorandum. In all matrimonial actions, each party shall also submit proposed Findings of Facts and Conclusions of Law and a proposed Judgment of Divorce. Factual arguments set forth in the memorandum shall be supported by citations to the trial transcript, and legal arguments shall be supported by citations to relevant statutes or case law. In their post-trial submissions following a trial of equitable distribution issues, the parties shall identify each item of property as either separate or marital, and shall state the value of each item of property. They shall also identify all of the parties' outstanding debts as either separate or marital, and shall state the amount of each debt. All assertions as to the separate or marital status of each item of property and each outstanding debt, and the value of each item of property and the amount of each debt, shall be supported by citations to the trial transcript.

P. Check-in: At the start of each day of trial, all counsel and self-represented parties shall check in with the Part Clerk so that she will be aware of your presence.

Q. Food and Drinks: Absent permission of the Court obtained in advance, no counsel or party shall bring any beverage or food into the Courtroom. Water may be requested from the Clerk or a Court Officer during the trial, in which event only a cup of water as provided shall be permitted on the counsel table or the podium.

R. No Communication with Jurors: In order to maintain the appearance of total impartiality, once the jury has been selected no one is to communicate in any form at any time with any juror. This prohibition includes both verbal and non-verbal communication, including, without limitation, nods, shrugs and shaking the head. Do not even say “hello” or “good morning”.

Justice Giacomo’s Staff

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