

SUPREME COURT - NASSAU COUNTY
IAS PART 26 – PART RULES & PROCEDURES

Justice: **HON. MARGARET C. REILLY**
Law Secretary: **DEBRA S. KELLER, ESQ.**
Secretary: **LORI MUSCARELLA**

Phone: (516) **493-3286**
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I COURT APPEARANCES:

A. Preliminary Conferences:

1. Civil Actions (Non-Matrimonial):

Preliminary Conferences shall be addressed to the DCM Clerk's office and not to Chambers. Counsel shall appear for Preliminary Conferences. Preliminary Conferences *via* the telephone shall not be accepted.

2. Matrimonial Actions:

a) Preliminary Conferences shall be scheduled by Chambers within forty-five (45) days of the RJJ (Request for Judicial Intervention) 22NYCRR §202.16. The Court shall notify the parties of the scheduled date, pursuant to a Preliminary Conference Order.

b) Appearance: Appearance at the Preliminary Conference is mandatory for all parties and counsel (22 NYCRR §202.16 [f]). Failure to appear for a Preliminary Conference or any subsequent conference, unless excused by the Court, may result in costs or sanctions being imposed against the defaulting party.

c) Net Worth Affidavits: Pursuant to 22 NYCRR §202.16 (f) (1) as amended effective May 2001, the parties are required ten (10) days prior to the conference date, to exchange net worth affidavits, counsels' retainer statements, all paycheck stubs for the current calendar year, the last paycheck stub for the immediate preceding calendar year, all W-2 wage and tax statements, State and Federal income tax returns for the past three (3) years, and financial account statements.

B. All Other Conferences: Conferences shall be scheduled for 9:30 a.m., 10:00 a.m., 10:30 a.m. and 11:00 a.m.

C. Counsel must check in with the Court Officer or Court Clerk. If counsel must appear before another Judge, they must advise the Part Clerk or Court Officer where they can be reached and note it on the sign-in sheet.

D. Cases will be conferenced in the order in which **all** counsel are checked in.

II ADJOURNMENTS:

A. Preliminary Conference:

1. Civil Actions (Non-Matrimonial): Preliminary Conference adjournments must be addressed to the DCM Clerk's Office and not to Chambers.
2. Matrimonial Actions: All Preliminary Conferences must be conducted within forty-five (45) days of the filing of the RJJ (Request for Judicial Intervention), 22 NYCRR §202.16 (f). No adjournments will be granted beyond that time period except for **good cause** shown.

B. All Other Conferences and/or Motions:

1. Adjournments of conferences and/or motions may be granted if there is written consent of all parties, the attorney for the child(ren), **and prior approval of the Court**. If all parties do not consent to the adjournment, application shall be made by counsel or unrepresented litigant in Court, on the day of the conference or the motion.
2. Applications on consent shall be made using the attached Request for Adjournment Form. The Request for Adjournment Form shall be filled out completely.
3. Applications to adjourn conferences and/or motions must be received by Chambers *via* fax by 2:00 p.m. on the day prior to the return date of motion or date of conference.
4. Chambers shall contact counsel if the application to adjourn is approved.
5. Adjournments requested because of engagement of counsel on trial must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR Part 125, and all parties, as well as attorney for the child(ren), must be advised of the engagement.
6. Adjournment requests which are left on the Chamber's voice mail shall be disregarded.

III MOTIONS:

A. Civil Actions (Non-Matrimonial):

1. All motions shall be calendared on Thursdays.
2. Submission of civil motions/orders to show cause require appearance of all counsel and unrepresented parties, unless otherwise waived by the Court.
3. Failure to appear at a calendar call may result in a denial of any motion made by the non-appearing party and/or the granting of any motion on default.
4. All exhibits must be clearly tabbed; motions not consistent with this rule will be rejected and returned.
5. No sur-reply affidavit, affirmation, memorandum of law or letter will be accepted or considered by the Court, without leave of the Court.

6. All submissions shall be fully and securely bound and shall have a litigation back attached thereto.
7. Counsel are requested to provide the Court with **SELF ADDRESSED STAMPED ENVELOPES** with the submitted papers in order to facilitate delivery of the Court's decision.

B. Matrimonial Actions:

1. All motions shall be calendared on a Tuesday or a Wednesday.
2. Court submission of motions/orders to show cause require appearance of all counsel and parties, unless otherwise waived by the Court.
3. Failure to appear at a calendar call may result in a denial of any motion made by the non-appearing party and/or the granting of any motion on default.
4. Prior to making a motion/order to show cause for *pendente lite* relief and/or an application with a temporary restraining order (TRO), counsel shall attempt to resolve issues with opposing counsel. In an attempt to resolve disputed issues, counsel may request a conference with the Court. Proof of such attempt shall be made part of the motion/order to show cause. If either party is unrepresented, an attempt to resolve issues prior to making motion/order to show cause/TRO shall not be required.
5. All motions/orders to show cause for *Pendente Lite* relief shall include a monthly breakdown of expenses and calculation worksheet for child support and/or maintenance.
6. If the motion/order to show cause involves a custody or visitation issue, the moving papers shall identify the previously appointed Attorney for the Child(ren) and all papers must be served on said attorney.
7. If unique or novel issues of law are presented, counsel should submit memoranda of law in support of their respective position.
8. An application for post Judgment relief shall be by formal motion/order to show cause.
9. Service of orders to show cause for post Judgment relief shall not provide for service on the opposing party's prior counsel unless the supporting papers state that said attorney has authority to accept such service. Service for a post Judgment motion/order to show cause shall be pursuant to CPLR §308(1).
10. All exhibits must be clearly tabbed; motions not consistent with this rule will be rejected and returned.
11. No sur-reply affidavit, affirmation, memorandum of law or letter will be accepted or considered by the Court, without leave of the Court.

12. All submissions shall be fully and securely bound and shall have a litigation back attached thereto.
13. 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.
14. Counsel are requested to provide the Court with **SELF ADDRESSED STAMPED ENVELOPES** with the submitted papers in order to facilitate delivery of the Court's decision.

C. Settled or Withdrawn Motions:

The Court is to be advised immediately, in writing, of the settlement or withdrawal of any motion or any portion of any motion *sub judice*, and/or the settlement of any underlying case with motions *sub judice*. The failure to do so is sanctionable.

IV. TRIAL RULES:

A. All Trials Conducted on a Daily Basis:

Trials will be conducted on a continual daily basis until conclusion. As such, no adjournments or delays during trial will be accepted, unless exigent circumstances exist.

B. Civil Actions:

1. **Motions in limine:** On the first appearance in the Part for trial, any party intending to make a motion *in limine* shall submit a brief written affirmation setting forth the nature of the application and any supporting statutory or case law. The party shall furnish the Court an original and two copies and provide counsel for all parties with a copy. There shall be a separate affirmation for each motion *in limine*.

2. **Pre-Marked Exhibits:** On the first appearance in the Part for trial, each party shall furnish the Court and all other parties with a preliminary list of exhibits which it is his or her intent to offer in evidence. The exhibits shall be pre-marked for identification or, upon consent, into evidence. During opening statements, any party may refer to any pre-marked exhibit which has been admitted into evidence on consent.

3. **Expert Witnesses:** On the first appearance in the Part for trial and if not otherwise pre-marked, each party shall, with respect to each expert witness that party intends to call, submit a list identifying with specificity any record, report, photograph, film, computer animation, x-ray, CT scan, MRI, EMG study or similar item or items to which an expert witness is expected to make reference as supporting, in whole or in part, the opinion he or she will offer. Where the exhibit is a many paged document, such as a hospital record, office record or voluminous (more than 10 pages) business record, counsel shall identify, by way of tabs, post-its, page numbering or similar device, the

particular page or pages to which reference will be made.

4. **Requests to Charge:** On the first appearance in the Part for trial, each party shall supply the Court with preliminary requests to charge. Charges from the Pattern Jury Instructions may be identified by number without necessity of reproduction, unless a modification of the standard charge is requested, in which case, the modification is to be highlighted. Each party shall supply an original and three (3) copies to the Court and furnish every other party with a copy. The preliminary requests may be supplemented, modified or edited as the trial progresses.

5. **Malpractice “Departures”:** In cases involving claims of professional negligence, on the next trial session after a party rests or such other time as the Court may direct, the parties shall furnish the Court and counsel for all parties with a list of the departures from the standards of good and accepted practice which that party asserts were testified to by its expert witness or witnesses. Where the testimony has been transcribed, page references will be required.

6. **Interpreters:** On the first appearance in the Part for trial, any party who intends to call a witness who will require the assistance of an interpreter shall notify the Court Clerk in the Part and specify the language (including dialect, where appropriate).

7. **Equipment:** On the first appearance in the Part for trial, any party who intends to rely upon the Court to supply equipment for utilizing a video tape recording, an audio tape recording, demonstrative evidence, or the like, shall notify the Court Clerk in the Part.

C. Matrimonial Actions:

1. **Note of Issue:** A Note of Issue with Certificate of Readiness shall be filed prior to a request for a trial date.

2. **Statement of Proposed Disposition:** Statements of proposed disposition shall be filed pursuant to 22 NYCRR §202.16(h).

3. **Confirmation of Trial Date:** One day prior to any scheduled trial, counsel must call Chambers to confirm trial readiness status. Failure to be ready to proceed on a scheduled trial date may result in a dismissal.

4. **Outstanding Hearings:** On the first appearance in the Part for a trial, counsel shall inform the Court of any Hearings to be conducted at time of Trial (ie: Contempt/Attorney Fees).

5. **Pre-Marked Exhibits:** On the first appearance in the Part for trial, each party shall furnish the Court and all other parties with a preliminary list of exhibits which it is his or her intent to offer in evidence. The exhibits shall be pre-marked for identification or, upon consent, into evidence. During opening statements, any party may refer to any pre-marked exhibit which has been admitted into evidence on consent.

6. **Interpreters:** On the first appearance in the Part for trial, any party who

intends to call a witness who will require the assistance of an interpreter shall notify the Court Clerk in the Part and specify the language (including dialect, where appropriate).

7. **Post Trial Memorandum:** Counsel shall submit a post-trial Memorandum. Legal arguments are to be supported by relevant case law and contain proper legal citations.

V. COMMUNICATION WITH CHAMBERS:

- A. In all written communications with chambers, the title of the action, full names of the parties and index number shall be set forth, with copies simultaneously delivered to all counsel and/or parties if they are unrepresented.
- B. Copies of correspondence between counsel shall **not** be sent to the Court. Such copies will be disregarded and not placed in the Court's file.
- C. The Court will not accept telefax communications and/or telephone communications *ex parte* on substantive issues. All telephone communications shall first be made to the courtroom.

VI. SANCTIONS:

The Court will not consider a sanction 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 sanction application.

VII. MISCELLANEOUS:

- A. If there are any outstanding motions (submitted or pending) at the time of the conference/trial, the Court shall be so informed of same that day. Copies of such motions should be available to the Court at the time of such conference.
- B. **Attorneys of Record:** Counsel who have appeared in the matter are to make all appearances until they are relieved by the Court or a Consent to Change Attorneys has been filed with the Court.
- C. **Staff:** The Court functions through the aid and assistance of the courtroom and Chambers staff. They are expected to treat counsel, litigants and others in a civil and professional manner; as well, they are to be treated in a civil and professional manner.
- D. **Settlements:** With respect to actions which have been settled or otherwise discontinued, counsel shall comply with 22 NYCRR §202.28 or sanctions may be imposed. Counsel are reminded of their obligations under §202.28 of the Uniform Rules for Trial Courts, to file a stipulation or statement of discontinuance with the part of court to which the matter has been assigned within twenty (20) days of the discontinuance. If a discontinued action is on a trial calendar, a copy of the stipulation or statement shall also be filed with the Court Clerk of the Trial Part.

E. Appointment of Neutral Expert Witnesses in Matrimonial Actions:

1. On its own initiative or on consent of the parties, the Court may appoint a neutral expert witness. The Court, in its discretion, shall make a direction as to which part[ies] shall advance the expert witness' fee for production of the report and for testifying, subject to reallocation by the Court upon application of either party.
 - (a) Where the parties stipulate to the appointment of a neutral expert, they may elect to be bound by the expert's opinion.
 - (b) The expert reports shall be submitted under oath by the expert who shall be present and available for cross-examination (22 NYCRR §202.16[g]).
 - (c) Counsel are reminded that, pursuant to 22 NYCRR §202.16 (g)(2), all expert reports are to be exchanged and filed with the Court sixty (60) days before the date set for trial. Reply reports, if any, shall be exchanged and filed with the Court no later than thirty (30) days before said date. It is counsel's obligation, to ensure that expert witnesses are available to testify on the trial date. Failure to have experts or their reports available on the trial date may result in the preclusion of the expert's testimony and report.

HON. MARGARET C. REILLY, J.S.C.
REQUEST FOR ADJOURNMENT FORM - Part 26

THIS FORM MUST BE FILLED OUT COMPLETELY
INCOMPLETE FORMS WILL BE DISREGARDED

Case Name: _____ Index # _____

RJI Date: _____ Date Issue Joined: _____ Date PC Held: _____

Date on Calendar: _____ Last Court Appearance: _____

Req'd Adj. Dates (At Least 3): 1) _____ 2) _____ 3) _____

ALL REQUESTS MUST BE ON CONSENT AND ALL REQUESTED ADJOURN
DATES MUST BE CONFIRMED WITH YOUR ADVERSARY AND ATTORNEY FOR
THE CHILD, IF APPLICABLE, PRIOR TO MAKING THE REQUEST.

Nature of Conference: _____

If Motion, Nature of Relief Sought: _____

Reason for Adjournment (Affirmation of Actual Engagement must be attached if applicable):

Discovery Completed (Y/N): ___ Was N/I Filed? ___ Date N/I to be filed: _____

Have all parties consented to adjournment? (Y/N): ___

Contact Info:

Attorney contacting Court and who attorney represents: _____

Person Making Request: _____ Phone # _____
Fax # _____

Adversary's Name: _____ Phone # _____
Fax # _____

ALL REQUESTS MUST BE RECEIVED VIA FAX (516) 493-3386 **BEFORE 2:00 P.M.**
OF THE BUSINESS DAY PRIOR TO THE CONFERENCE OR MOTION RETURN DATE

PLEASE FAX CONFIRMING LETTER OF DATE OF ADJOURNMENT