

INDIVIDUAL PART RULES OF
JANET C. MALONE

Justice of the Supreme Court
20 County Center
Carmel, New York 10512
Room 401

Part Clerk:

Geraldine Cillo
gcillo@nycourts.gov
T. 845. 208.7852
F: 845.208.7869

Chamber Staff:

Meredith Gabay, Esq.
Law Clerk
mgabay@nycourts.gov

T. 845.208.7828
F. 845.431.1934

Samantha Banton, Esq.
Assistant Law Clerk
sbanton@nycourts.gov

TABLE OF CONTENTS

I.	COMMUNICATIONS WITH THE COURT	3
II.	ELECTRONIC FILING PROTOCOL AND RULES	3
III.	CALENDAR CALL & CONFERENCES.....	4-7
IV.	MOTIONS/ORDERS TO SHOW CAUSE/ TEMPORARY RESTRAINING ORDERS.....	7-9
V.	JUDGMENTS, DECISIONS AND ORDERS	9
VI.	FORECLOSURE ACTIONS	9-11
VII.	MATRIMONIAL ACTIONS	12-14
VIII.	TRIALS AND HEARINGS	14-15
IX.	SETTLED AND DISCONTINUED CASES	15
X.	SUBSTITUTION/ DISCHARGE OF ATTORNEYS	16
XI.	CIVILITY & COURT ROOM ETIQUETTE	16

I. Communications with the Court

- A. **Correspondence:** All correspondence to the Court must be by fax and include the case title and Index Number of the action on notice to the opposing party and/or attorney. Correspondence between counsel and/or self-represented parties shall not be copied to the Court.
- B. **Telephone Calls:** Except as set forth herein, telephone calls to Chambers should only be in the case of situations requiring an immediate response that cannot otherwise be obtained by correspondence.
- C. **Fax Transmissions:** Unless authorized by the Court, facsimiles inclusive of the cover page are not to exceed six (6) pages and legal papers of any kind will not be accepted by fax transmission.
- D. **Electronic Mail:** To avoid your E-mail going into a Spam or Junk folder, there shall be no E-Mails sent to Chambers without prior Court permission, and if such permission is granted, the E-Mail must be sent on notice to the opposing party and/or attorney. Under no circumstances shall any party and/or attorney copy any third parties on any E-Mail communication to the Court without express permission of the Court.

II. Electronic Filing Protocol and Rules

- A. **E-Filing Protocols:** Counsel and self-represented litigants shall familiarize themselves with the statewide E-Filing Rules (§§202.5-b and 202.5bb of the Uniform Rules for the New York State Trial Courts, available at www.nycourts.gov/efile) and the Putnam County and Supreme Court E-Filing Protocols available at: http://www.nycourts.gov/courts/9jd/putnam/putnam_e-file/putnam_efile_protocol.pdf

All legal submissions to the Court except documents subject to the opt-out provisions of §202.5-bb of the Uniform Rules for the New York State Trial Courts, or documents subject to E-filing in which consent is being withheld must be electronically filed through the New York State Courts E-Filing System (NYSCEF).

- B. **Working Copies:** Counsel and self-represented litigants **MUST** provide working copies of all legal papers, which require judicial action (e.g., Orders to Show Cause, motions, notice of settlement, ex parte applications and proposed orders) to the Court. The working copy of a motion must include all documents filed in support of the motion, including exhibits WITH external tabs. *See also*, Rule IV (A)(5) below.

CHAMBERS SHALL RECEIVE ALL WORKING COPIES WITHIN 48 HOURS OF BEING E-FILED. All working copies must be submitted to the Putnam County and Supreme Court Clerk's Office and **MUST** include a copy of the NYSCEF Confirmation Notice; otherwise such papers will be rejected.

III. Calendar Call & Conferences

- A. **General Rules:** The Court's calendar will be called at 9:30 a.m. daily. Counsel and self-represented parties are expected to appear for all Court appearances on time. If counsel or a party is unable to appear on time due to unforeseen circumstances he/she must contact opposing counsel and/or opposing party and advise the Park Clerk or Court's staff by telephone as soon as possible. Tardy arrivals without prior notification will not be tolerated.
- B. **Who Must Appear:**
1. **Generally:** Only counsel or self-represented parties who are fully familiar with a case and authorized to enter into binding agreements on all aspects of the case are to appear for conferences. To the extent this rule is repeatedly violated, the Court may have to limit appearances by *per diem* counsel.
 2. **Non-Matrimonial Actions:** Represented parties need not appear for conferences unless directed to do so by the Court. Where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant as well as the name, claim number and phone number of the adjuster assigned to the matter. In a proper case, the Court may direct that the claims adjuster shall appear for a conference.
 3. **Matrimonial Actions:** Counsel must appear with their clients for all conferences unless the Court excuses such appearance.
- C. **Special Accommodations:** If any party needs special accommodations (e.g. assisted listening device(s); accommodations under the Americans with Disabilities Act) counsel or the self-represented party shall notify the Part Clerk so that timely arrangements can be made.
- D. **Interpreters:** In the event a sign or spoken language interpreter is required at any stage of the litigation, counsel or the self-represented party shall notify the Part Clerk so that timely arrangements can be made.
- E. **Preliminary Conference:** The Court will schedule a Preliminary Conference within forty-five (45) days after a Request for Judicial Intervention (RJI) has been filed on a matter. The Part Clerk will forward to the party filing the RJI a letter or email setting forth the date on which the Preliminary Conference will be conducted. The party who files the RJI shall advise all other parties of the Preliminary Conference date in writing.

Counsel are generally referred to 22 NYCRR §202.12(c) concerning the conduct of the Preliminary Conference and the matters to be considered. Counsel in medical, dental, and podiatric malpractice actions are referred to 22 NYCRR §202.56(b) and counsel in matrimonial actions are referred to 22 NYCRR §202.16 and DRL §236(B)(4) for other specific requirements in such cases.

If the proposed Preliminary Conference Order is received three (3) days in advance of the scheduled Preliminary Conference, the parties need not appear on the date of the Preliminary Conference. The next court appearance would be for a Compliance Conference

scheduled by the Court. However, all parties shall appear on the Preliminary Conference date if there is a scheduling issue that needs to be resolved by the Court.

The parties are **NOT** to make any motion concerning discovery without having first attempted to resolve the issue. **Parties who have a discovery dispute are NOT to wait until the Compliance Conference to bring such dispute or complaint about non-disclosure to the Court's attention.** Rather, counsel or a self-represented litigant who believes that discovery is not being conducted in accordance with the Preliminary Conference or other Court Order is to discuss, in good faith, as required by Court Rule §202.7, the claimed noncompliance with the counsel or self-represented litigant who is claimed not to be complying with the Court Order.

The parties or attorneys are **NOT** to copy the Court on correspondence between counsel or a party concerning discovery issues unless specifically requested to do so by the Court. **EXCEPTION:** Where an Order of Protection prohibits self-represented parties from communicating, the protected or prohibited party who believes that discovery is not being complied with shall contact the Assistant Law Clerk in writing without having first attempted to communicate with the opposing party, but shall copy the other party with the correspondence to the Court. Further, the Court does not permit litigation by way of letter correspondence to the Court or by way of being copied with letter correspondence from one attorney or party to another, and will not be addressed by the Court.

- F. **Compliance Conference:** The Court will conduct a Compliance Conference after the date by which disclosure was to be completed as directed at the Preliminary Conference. At the Compliance Conference, the Court will ensure that discovery proceeded as scheduled. The Court may conduct a settlement conference at this time. Counsel are to be fully familiar with the action as well as all settlement discussions that have previously taken place so that meaningful discussions can be held.
- G. **Settlement Conference:** The Court may conduct a Settlement Conference approximately thirty (30) days after the Compliance Conference. On or before the date of the Settlement Conference, counsel or self-represented parties must provide the Court and opposing counsel or the self-represented with the following:
1. Marked pleadings in accordance with CPLR §4012, including copies of any exhibits incorporated by reference in the pleadings;
 2. A copy of all Bills of Particulars (including Supplemental and/or Amended Bills of Particulars);
 3. A copy of all medical narrative reports exchanged by the parties;
 4. A copy of all expert disclosures served pursuant to CPLR §3101(d);
 5. A list of probable trial witnesses; and
 6. A copy of all prior Decisions or Orders on motions issued in the case.

H. **Pre-Trial Conference:** A Pre-Trial Conference with all counsel and self-represented parties will be conducted before the commencement of jury selection or of the non-jury trial.

On or before the Pre-Trial Conference, counsel and self-represented parties must provide the Court and opposing counsel or self-represented party with the following, if not previously provided:

1. Marked pleadings in accordance with CPLR §4012, including copies of any exhibits incorporated by reference in the pleadings;
2. A copy of all Bills of Particulars (including Supplemental and/or Amended Bills of Particulars);
3. A copy of all medical narrative reports exchanged by the parties;
4. A copy of all expert disclosures served pursuant to CPLR §3101(d);
5. A list of probable trial witnesses; and
6. A copy of all prior Decisions or Orders on motions issued in the case;
7. Memoranda of law concerning any procedural, evidentiary, or other legal issue, which the parties anticipate the Court will need to determine.
8. **Requests to Charge.** A complete list of requested jury charges, are drawn from the Pattern Jury Instructions (PJI) of the then current year. Requests to charge must be submitted in writing and by email in Word Perfect format to the Court's Law Clerk or Assistant Law Clerk. Where the requested charge comes directly from the PJI, only the PJI title, section number, and page number need to be provided. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted, together with any supporting legal authority.
9. **Proposed Verdict Sheet.** A proposed Verdict Sheet, jointly prepared by all parties, typewritten and in final form for presentation to the jury shall be submitted. If an agreement cannot be reached between and among the parties as to the questions to be posed to the jury prior to the Pre-Trial Conference, each party will present a proposed verdict sheet, which will be served upon all the parties. Proposed Verdict Sheets must be submitted in writing and by email in Word Perfect format to the Court's Law Clerk or Assistant Law Clerk.
10. **Written motions *in limine* must be made returnable on the day of the Pre-Trial Conference.** Such motions must be made on no less than seven (7) days' notice to opposing counsel and/or self-represented parties. To the extent possible, it is the Court's intention to decide such motions prior to commencement of jury selection.

- I. **Adjournment of Conferences:** A request to adjourn a conference must be made in writing, by fax, to the Part Clerk at least twenty-four (24) hours in advance of a scheduled conference. All applications for adjournments must set forth: 1) reason why an adjournment is necessary; 2) whether the opposing party(ies) consent(s) or object(s) to the application and 3) the length of the adjournment sought or, if on consent, a date all parties are available. All such communications must be copied to all counsel and self-represented parties. The letter request and response, if any, are NOT to be used to advocate a position on the substantive dispute and shall address only the reason that consent for the requested adjournment is being declined. The parties should not assume that the request for adjournment has been granted unless specifically advised by the Court. **Please do not request an adjournment from the Court without first speaking to opposing counsel or the other party.**

IV. **Motions/Orders to Show Cause/Temporary Restraining Orders**

A. **General Rules**

1. Parties may move by Notice of Motion or Order to Show Cause, depending on the exigency of the relief sought. **All motions and cross motions in matrimonial actions shall be made by Order to Show Cause.** Proposed Orders to Show Cause submitted for consideration to the Court must include a fax number or email address to permit a confirmed copy of the signed Order to be sent to the movant.
2. Written applications by Notice of Motion (or Notice of Petition as the case may be) must be returnable on any Friday.
3. Absent express permission obtained in advance from the Court, briefs/memoranda of law, affirmations and affidavits are limited to **15 pages** each. Papers, which exceed these limitations, may not be considered by the Court without notice to the offending party or may be rejected by the Court. Motion papers are limited to Moving Papers, Opposing Papers, and Reply. **SUR-REPLY PAPERS ARE NOT PERMITTED UNLESS EXPRESSLY AUTHORIZED BY THE COURT FOR GOOD CAUSE. See, CPLR R 2214.**
4. There will be no oral argument required on any motion or Order to Show Cause unless directed by the Court. Parties seeking oral argument of a motion or Order to Show Cause may request that oral argument be heard by stating "Oral Argument Requested" above the Index Number on the first page of the papers submitted. It is the responsibility of that person to inform all other attorneys of the date and time set. A request for oral argument should not be construed as an automatic grant of same.
5. Except by permission of the Court, all motion papers, Orders to Show Cause, and Memoranda of Law, must be typewritten (minimum 12-point type), double-spaced, securely bound and entirely legible. All exhibits must be legible and labeled with

external tab markings. Plaintiffs shall designate exhibits by number; defendants shall designate exhibits by letter. Exhibit lettering or numbering should not begin anew for subsequent papers submitted by the same party.

6. Citations to legal authority must be to the official citations.
7. Deposition/Examination Before Trial transcripts included as exhibits must be single, front-faced pages only. Parties are requested not to submit manuscripts.
8. Unless there are extremely unusual circumstances in which significant prejudice (set forth in detail in a supporting affidavit/affirmation) will result, opposing counsel are to be advised by telephone or fax at least 24 hours in advance of the date and time that any Order to Show Cause, which includes a request for a Temporary Restraining Order or Interim Relief is being presented to the Court. In a true emergency or for good cause shown, the Court, in its discretion may dispense with the 24-hour notice requirement. If there has been no appearance by opposing counsel, the adverse party is to be provided with notice of the intention to submit an Order to Show Cause as provided by 22 NYCRR §202.7(f) and is to be advised that he/she has the right to be heard on the application. The Court's staff is to be advised by telephone that a party intends to submit an Order to Show Cause for signature before counsel presents him/herself at the Court's Part or Chambers with the papers. The Court's staff may request that the presenting party fax a copy of the papers which are going to be submitted for signature prior to counsel appearing.

B. Summary Judgment Motions

Summary Judgment motions must be made within sixty (60) days of the filing of the Note of Issue. In the event that a Summary Judgment motion is made prior to completion of discovery, the making of the motion is not to be deemed to be a stay of discovery. The parties are to continue to abide by any Order or Notice pertaining to discovery unless otherwise directed by the Court.

C. Adjournments of Motions

A request to adjourn a motion must be made in writing and transmitted to Chambers by fax prior to the return date of the motion, copied to all counsel and self-represented parties. All applications for adjournments must set forth: 1) the reason why an adjournment is necessary; 2) whether the opposing party (ies) consent(s) or object(s) to the application; and 3) the length of the adjournment sought. No more than three (3) adjournments of any motion or cross-motion will be permitted. The total period of time that a motion may be adjourned shall not exceed sixty (60) days without good cause.

D. Discovery Related Motions

In lieu of discovery motion practice, it is the policy of the Court to make itself and its staff available to resolve disputes related to pretrial discovery. Therefore, no discovery motion is to be

made by any party unless authorized or directed by the Court. Instead, counsel should abide by the procedures set forth in Section III (E) above to resolve discovery disputes.

V. **Judgments, Decisions, and Orders**

Where the Court issues a Bench Decision and a party desires a written Decision and Order, the party shall submit a proposed Order to the Court together with the transcript of the proceedings at which the Bench Decision was rendered. Proposed Orders or judgments are not to be submitted by fax.

Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will be returned unsigned unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR § 202.48 has been included.

All papers, which are submitted for signature by the Court, shall be identified on the signature page so that the document being signed by the Court can be identified. Example: Jones v. Jones, Index #/year, Type of Document (Judgment of Divorce, etc.).

VI. **Foreclosure Actions**

All motions in foreclosure actions must include a proposed order, which disposes of the motion or application for the Court's signature. In addition to the general provisions included in such orders, the movant shall submit additional provisions as set forth below.

- A. **Order of Reference:** All proposed Orders of Reference submitted to the Court must be appropriately titled so as to reflect the nature of the relief sought and contain the following paragraphs:

ORDERED, that the Referee is entitled to a fee for \$250.00 for the computation report; \$250.00 for any sale that is canceled on less than 24 hours' notice to the Referee; \$250.00 for any third party closing and \$500.00 upon the sale; and it is further

ORDERED, that the Referee is prohibited from accepting or retaining any funds for himself/herself or paying funds to himself/herself, without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including but not limited to, Section 36.2(c) ("Disqualification from appointment), and Section 36.2(d) ("Limitations on appointments based on compensation"); and it is further

ORDERED, that the Referee shall complete and submit the computation report within thirty (30) days of the date of the Order of Reference; and it is further

ORDERED, that Plaintiff shall make application for Judgment of Foreclosure and Sale no later than ninety (90) days of the date of this Order, unless the Court for good cause shown grants extension; it is further

ORDERED, that this matter is scheduled for a conference at 9:30 a.m. on _____, 20____. The purpose of this conference is to determine whether the referee has completed and submitted the computation report and whether Plaintiff has filed an application for Judgment of Foreclosure and Sale. Appearances by the parties and appointed Referee are required unless: (1) the Referee has completed and submitted the computation report and (2) Plaintiff has filed an application for Judgment of Foreclosure and Sale.

ORDERED, that Plaintiff shall serve a copy of this Order with notice of entry on the owner of the equity of redemption, any tenants named in this action, and any and all other parties or persons entitled to service or notice, including the Referee appointed herein.

B. Substitution of Referee: Requests to substitute a Referee shall be made by letter to the Court, NOT by formal motion.

C. Judgment of Foreclosure and Sale: All proposed Judgments of Foreclosure and Sale submitted to the Court shall include:

1. That the foreclosure sale shall occur at the Putnam County Courthouse, 20 County Center, Carmel, NY 10512;
2. That the Referee, upon receiving the proceeds of the sale, shall deposit said proceeds in the Referee's name as Referee in an IOLA account maintained for legal clients;
3. That a description of the said mortgaged premises is annexed hereto as Schedule A and made a part hereof.

Additional Provisions in Judgments of Foreclosure and Sale:

The proposed Judgment of Foreclosure and Sale submitted to the Court must contain the following paragraphs:

ORDERED, that the Referee is entitled to a fee of \$250.00 for any sale that is canceled on less than 24 hours' notice to the Referee; \$250.00 for any third party closing and \$500.00 upon the sale; and it is further

ORDERED, that the Referee shall make a Report of Sale showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were made, and shall file the Report of Sale with the County Clerk of the County of Putnam within thirty (30) days after completing the sale and executing the proper conveyance to the purchaser; and it is further

ORDERED, that the Referee shall deposit the surplus moneys, if any, with the Commissioner of Finance of the County of Putnam within five (5) days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only on an order of this Court signed by a Justice of this Court; and it is further

ORDERED, that Plaintiff's counsel furnish the Foreclosure Action Surplus Monies Form to the appointed Referee prior to the foreclosure sale date; and it is further

ORDERED, that within thirty (30) days of the foreclosure sale, the referee shall complete the Foreclosure Action Surplus Monies Form, file the completed Form with the Putnam County Clerk's Office, and send a copy of the completed Form directly to the Chambers of the undersigned. A fillable version of this Form can be found on the Court's website at: <http://www.nycourts.gov/FORMS/SurplusMoniesFormFillable.pdf>; and it is further

ORDERED, that this matter is scheduled for a conference at 9:30 a.m. on _____, 20____. The purpose of this conference is to determine whether the foreclosure sale has occurred as ordered, the outcome of such sale and to make such further orders as the Court deems necessary. Appearances by the parties and appointed referee are required unless: (1) a Report of Sale and a completed Foreclosure Action Surplus Monies Form has been filed and received by the undersigned one week prior to this date, or (2) the referee notifies the Court in writing one week prior to this date that the sale is not going to occur prior to this date and requests a new date based upon when he/she believes the sale will occur.

ORDERED, that Plaintiff shall serve a copy of this Order with notice of entry on the owner of the equity of redemption, any tenants named in this action, and any and all other parties or persons entitled to service or notice, including the Referee appointed herein.

D. Omnibus Motions

In the case of a true default (no answer or Notice of Appearance) counsel may file an Omnibus motion for Order of Reference and Judgment of Foreclosure and Sale.

E. Bankruptcy Proceedings and/or Loss Mitigation

Counsel have an ongoing obligation to advise the Court of any bankruptcy proceedings. If a defendant(s) in a foreclosure action is involved in a bankruptcy proceeding, Counsel must advise the Court immediately, by submitting the most recent PACER Report, along with any orders, to Chambers, by fax.

Please be advised that there will be no stays of foreclosure actions involved in loss mitigation. If the parties in a foreclosure proceeding are involved in loss mitigation, Counsel is to submit proof of the loss mitigation, along with a status letter to Chambers, by fax, detailing the circumstances and length of time that such case is subject to loss mitigation.

VII. Matrimonial Actions

A. Preliminary Conferences: Counsel are to inform their clients of the automatic orders created by DRL § 236(B)(2)(b) and must be familiar, and comply, with the provisions of 22 NYCRR § 202.16. Prior to the Preliminary Conference, the parties are required to file and exchange those documents set forth in 22 NYCRR § 202.16(f)(1), including Net Worth Statements, pay stubs, W-2 statements, tax returns, and statements of accounts. In the event either party fails to comply with this provision of the Part Rules, the Court may adjourn the conference and assess costs and fees against the party who failed to comply. If both sides fail to comply, the Court may deem such noncompliance to be a withdrawal of the request for a conference and cancel same, requiring payment of a second fee, or the Court may treat the failure as a default under Court Rule § 202.27(c) authorizing the Court to strike pleadings or impose other sanctions.

The Court expects the parties to agree upon grounds if the action has been brought under DRL § 170(7). In the event that the action is predicated on DRL § 170(7) and defendant wishes to contest grounds, trial of that issue will be held on the date scheduled for the preliminary conference or as soon as thereafter as the Court's schedule allows.

Counsel must have a substantive conference before the date set for the preliminary conference, either in person or telephonically, to determine the issues to be litigated. The scope of discovery shall be discussed so that the Court can determine if the requested items are necessary and/or to set dates for compliance with the demands.

Upon receipt of a request for a Preliminary Conference in a Matrimonial Action, the Part Clerk will, along with a letter advising of the date of the Preliminary Conference, mail a "Pendente Lite Stipulation and Order" and "STATUTORY CALCULATION FOR GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE PURSUANT TO DOMESTIC RELATIONS LAW § 236 Part B (5-a) (c)" to be completed by counsel and/or the parties and for use by the Court at the Preliminary Conference.

B. Motions: As noted above in Rule IV (A)(1), all motions in matrimonial actions **MUST** be made by Order to Show Cause. Both parties and counsel must appear on the return date of any motion brought.

Any *pendente lite* motion, which does not include a statement of net worth and calculations showing the manner in which the amount of any pendente lite support sought has been calculated, will be denied.

C. Trials: In all matrimonial actions in which a trial has been scheduled, no later than two (2) weeks prior to trial, the Court is to be provided with: (a) statements of proposed disposition as required by 22 NYCRR § 202.16(h); (b) updated Net Worth Statements

(with the latest available supporting documents, such as income tax returns, W-2's, brokerage and retirement plan statements); and (c) any forensic reports, appraisals or evaluations conducted in the matter. Failure to submit the required items may result in the Court determining the issues in favor of the party who complied with the Court Rules.

Unless the parties obtain an extension of time from the Court, at the Pre-Trial Conference, counsel must submit to the Court the following documents:

- a) Marked pleadings;
- b) A fully executed stipulation of relevant facts that are not in dispute. The Court expects that no matter how contentious the case, there will be at least some facts that are not in dispute (e.g., the date of marriage, the names and birth dates of children, the location of any residential real estate and the approximate date of acquisition, approximate cost, and the approximate balance on any mortgage);
- c) An exhibit list and pre-marked exhibits. The reporter will only mark those items that are received in evidence. Copies of all exhibits intended to be offered must be presented to the Court in a ringed notebook with a table of contents, with the plaintiff's exhibits numbered and the defendant's exhibits lettered in the order in which they are generally intended to be used with external tabs separating each exhibit. Counsel is to exchange their notebooks with proposed exhibits at least seven (7) business days prior to the Pre-Trial Conference. Failure to timely submit an exhibit list and proposed exhibits may result in preclusion. Counsel must either stipulate to the admission of the exhibits to be offered by the adverse parties or state the ground of any objection to admission of any such exhibit. Counsel must be prepared to argue to the Court at the time of the Pre-Trial Conference the admissibility of any exhibits to which objection is taken. Counsel are advised that the failure to include an exhibit in the exhibit list and exhibit exchange provided for herein may result in preclusion of that exhibit.
- d) A list of witnesses, including the address of each witness, the time anticipated for the witness' direct examination, and the general subject matter of his or her testimony. The failure to identify a witness may result in the preclusion of the witness' testimony.
- e) A joint statement of proposed disposition. To the extent that the parties disagree on any item, the plaintiff's position should be set out first, followed by the defendant's position.
- f) OCA Certified Child Support Worksheets(s) if applicable;
- g) Updated Statements of Net Worth.

All matrimonial trials and hearings will proceed day-to-day until conclusion. Counsel and/or the self-represented parties shall, to the extent not restricted by an order of protection, meet and confer in good faith to identify exhibits, which will be stipulated into evidence.

D. Child Custody/Access Forensic Evaluator: In any case in which a neutral forensic evaluator has been appointed by the Court to assist in custody or access determinations, the reports of evaluators appointed by the Court are **confidential**. The report(s) shall not be copied or disclosed to any person except as permitted by an order of this Court. Any attorney who wishes to receive a copy of the report must first sign an Order that may be obtained from the Assistant Law Clerk. A party (client) may review the report, but may not possess a copy of the report. Self-represented litigants may make arrangements directly with the Part Clerk to review the report at the Courthouse. No device, capable of recording or photographing is permitted in the room where the self-represented litigant is reviewing the report. Handwritten notes may be taken. If any party seeks to retain an expert other than the neutral forensic evaluator appointed by the Court, counsel might apply to the Court for permission to have the proposed expert receive a copy of the report. The expert will be required to sign a confidentiality agreement prior to receipt of the report. Any counsel or party who violates these restrictions is subject to sanctions.

VIII. Trials and Hearings

A. **Trial and Hearing Dates:** Scheduled trial and hearing dates will be adhered to except for the most extraordinary good cause shown. *See, 22 NYCRR Part 125*. Clients, fact witnesses, experts of all kinds (including physicians) are to be timely advised of the date set for trial by the Court within a reasonable period of time of the setting of such date to avoid last minute claims of unavailability. The parties and their attorneys are encouraged to videotape, in accordance with the applicable rules and statutes, the trial testimony of any witness who may not be available for trial

The Court will respect counsel's actual scheduled or anticipated vacation plans when setting a trial date. Counsel should not schedule a vacation which conflicts with a scheduled trial date after the Court has set the trial date. *See, Part Rule 12*

B. **Subpoenas:** Counsel are referred to CPLR §§ 2306 and 2307 for guidance as to subpoenas directed to municipal entities such as libraries, municipal corporations and their departments and bureaus. The Court's issuance of a subpoena to such entities does not constitute a ruling as to the admissibility of the subpoenaed records. Counsel are also reminded that they are designated agents for service of subpoenas on their clients under CPLR § 2303-a.

All subpoenas seeking the production of medical (or other) records subject to the HIPPA Rules shall attach a duly executed authorization permitting the release of such records.

- C. **Personal Injury/Bifurcation:** Trials of personal injury actions, except those involving claims of wrongful death, or medical/dental malpractice, will be bifurcated in accordance with 22 NYCRR § 202.42.
- D. **Jury Selection:** Juries will be selected using “White’s Rules.” (*See*, 22 NYCRR § 202.33). Jurors will be designated; alternate jurors will be non-designated unless the parties otherwise agree on the record prior to the commencement of jury selection that the alternates will also be designated.
- E. **Jury Contact:** Counsel are not to read from any pleading, part of a pleading, or other document during jury selection, nor may counsel refer to any specific amount of money being sought. Counsel are not to discuss any aspect of the law with the jury. Instruction on the law is for the Court alone.

In jury trials, the parties and their attorneys are to stand (if physically able) whenever the jury enters or leaves the courtroom. Non-party witnesses are not to be in the courtroom during the trial except when the witness is testifying.

- F. **Reading of Exhibits:** If counsel intends to use/read from any anticipated exhibit or item of demonstrative evidence during Opening Statements, counsel is to advise the Court of such intention prior to commencement of jury selection.
- G. **Objections:** Objections to questions at trial are to be limited to the objecting party standing (if physically able) and stating “Objection” and no more than one word or two words as to the basis for the objection. Speaking Objections are not to be made. If the Court requires further explanation for the Objection, the Court will ask for further explanation or invite counsel to approach at side bar.
- H. **Use of CD/DVD:** Any party intending to use a CD or DVD at trial is to submit a copy of the CD or DVD (or other audio/visual recording) and transcript of the proceedings, if applicable, to the Court at least 2 weeks prior to the scheduled trial date in order to allow the Court to rule on admissibility of the CD or DVD (or other audio/visual recording) and any Objections to the CD or DVR.

IX. Settled and Discontinued Cases

Counsel must notify the Court by fax of the settlement or withdrawal of any action or proceeding immediately upon such settlement or withdrawal. Please be advised that all Index Numbers must be closed out with a signed Stipulation of Discontinuance or by motion, which shall be filed with the County Clerk so that the matter may be marked disposed.

X. Substitution/Discharge of Attorneys

Except in cases when another attorney on consent replaces an attorney, the Court on a motion brought by Order to Show Cause pursuant to CPLR § 321 must approve any change or withdrawal of counsel.

XI. Civility and Court Room Etiquette

The Court expects that the Judge, her Staff, the Part Clerk, the Court Reporter, the Court Officers and all attorneys and parties will be treated respectfully. All attorneys and parties should dress appropriately to conduct business with the Court.

THESE RULES ARE SUBJECT TO REVISION WITHOUT PRIOR NOTICE.

THANK YOU IN ADVANCE FOR YOUR COOPERATION AND COURTESY.

Effective May 21, 2018