

HONORABLE MARIA G. ROSA

New York State Supreme Court
Dutchess County Supreme Court
10 Market Street

Poughkeepsie, New York 12601

David M. Gandin, Principal Court Attorney (845) 431-1752

Rachel V. Mainetti, Secretary (845) 431-1752

Milena Scheib, Part Clerk (845) 431-1754

Fax (845) 431-1726

Part Rules

(10/2/2017 and effective immediately)

These Rules are subject to change.

PRELIMINARY CONFERENCES:

A blank stipulation and order shall be provided to the parties and/or counsel to establish a timetable for discovery within parameters set forth by the Court after determination as to whether a matter should be designated a “standard” or a “complex” case. Except in matrimonial actions, if all parties sign the stipulation and return it to chambers prior to the scheduled conference, such form shall be “so ordered” by the Court and, unless the Court orders otherwise, appearances will not be required at the preliminary conference. Once the stipulation has been “so ordered”, no modifications are permitted except by written consent of the Court.

MATRIMONIAL ACTIONS:

- (a) Parties must be present at the preliminary conference, and all conferences thereafter.
- (b) Prior to or at the preliminary conference in any matrimonial action, each party shall file with chambers and serve copies of the following documents:
 - 1. retainer agreement
 - 2. net worth statement (originals to the court). If the original net worth statement has been submitted with a motion, an additional copy must still be provided.
 - 3. most recent paystub and income tax return
- (c) At the first scheduled pre-trial conference, each party shall submit to the court a statement of Proposed Disposition in accordance with 22 NYCRR §202.16(h).

COMPLIANCE CONFERENCES:

The preliminary conference order shall provide a date and time for the parties to appear at a compliance conference.

- (a) At the compliance conference, the Court will ensure that discovery is proceeding as scheduled. Further compliance conferences may be scheduled, as needed.
- (b) The note of issue shall be filed as soon as discovery is complete.

MOTIONS AND PROPOSED ORDERS:

- (a) Motions are returnable on any day of the week on papers only.
- (b) Original initiating motions should be e-filed or submitted directly to the County Clerk accompanied by an affidavit/affirmation of service and the required fees. Where a motion is brought by Order to Show Cause, the affidavit of service shall be filed with chambers before the return date. For motions, answering papers and reply papers filed electronically, an identical hard copy must be delivered to chambers. Do not submit additional courtesy copies.
- (c) Motion papers submitted to chambers must be accompanied by proof of payment to the County Clerk of all required fees.
- (d) Affirmations, affidavits and memoranda of law must contain numbered pages.
- (e) Citations must be to an official state reporter, if available.
- (f) Motions must be bound together with exhibits. All documents required to decide the application must be attached and tabbed for easy identification. It is not sufficient that documents may be on file with the Clerk of the Court.
- (g) The Court does not accept sur-reply papers or substantive correspondence on motions.
- (h) Motion papers and proposed orders and judgments should be accompanied by a stamped, self-addressed envelope and counsel should provide an additional copy of any order and judgment submitted if counsel wants to receive a copy of the signed order/judgment in the mail.
- (i) Motions will be decided by submission. **PERSONAL APPEARANCES ON THE RETURN DATE ARE NOT REQUIRED UNLESS THE COURT SPECIFICALLY DIRECTS ORAL ARGUMENT. THE MOVING PARTY MUST NOTIFY ALL OTHER PARTIES THAT THERE ARE NO APPEARANCES ON THE RETURN DATE.**
- (j) In lieu of discovery motion practice, this court and its Principal Court Attorney are available to resolve any disputes related to pre-trial discovery. **THEREFORE, UNLESS AUTHORIZED BY THE COURT, NO DISCOVERY MOTION SHALL BE MADE BY ANY PARTY.** Instead, counsel for the aggrieved party, or the aggrieved self-represented party, shall seek a telephone conference with the court's Principal Court Attorney. If the dispute cannot be resolved with his assistance, a conference shall be promptly scheduled.
- (k) **ANY SUMMARY JUDGMENT OR OTHER DISPOSITIVE MOTIONS MUST BE MADE WITHIN 60 DAYS AFTER FILING THE NOTE OF ISSUE. CROSS-MOTIONS FOR SUMMARY JUDGMENT ARE TIMELY AS LONG AS THE ORIGINAL MOTION WAS TIMELY.**
- (l) Counsel shall immediately notify the court when it becomes unnecessary to decide a motion.
- (m) **Motions In Limine:** Any motions seeking to exclude potential evidence shall be made in writing and shall be returnable at least 30 days in advance of trial, absent good cause shown.

- (n) If adjournment of a motion would result in a return date within 30 days of the trial, the adjournment will be denied, absent good cause shown.
- (o) Any proposed order submitted must be accompanied by a copy and a self-addressed stamped envelope and, where notice is required, by an affidavit of service and timely notice of settlement, i.e., where service is by first class mail at least 10 days' notice is required (22 NYCRR §202.48(c) and CPLR §2103(b)(2)).

EXPERT DISCLOSURE:

No later than 30 days after filing a note of issue, the Plaintiff shall serve all other parties with expert disclosure per CPLR § 3101(d). Defendant(s) shall then have 60 days to serve any expert disclosure per CPLR §3101(d).

Any adjournment of the above deadlines, and any amended or supplemental expert disclosure shall be allowed only with leave of the Court. The statutory stay of disclosure (CPLR 3214[d]) upon the service of a dispositive motion under CPLR 3211 shall not apply to the service of expert disclosure. Unless the Court directs otherwise, a party who fails to comply with this rule is precluded from offering the testimony and opinions of the expert for whom a timely response has not been given.

PRE-TRIAL CONFERENCES:

- (a) There shall be one or more pre-trial conferences after the note of issue is filed.
- (b) The Court will explore limitation of issues for trial, including referring certain issues to a referee if appropriate.
- (c) The Court will schedule a date certain for trial of all outstanding issues.
- (d) Counsel should be prepared to discuss settlement and should have full authority from their respective clients.
- (e) At any pre-trial conference held 30 days or fewer before trial, the parties and/or their counsel shall be prepared with trial notebooks and any matter any party believes should be brought to the court's attention regarding trial preparation, including those delineated in the "Notes To Trial Counsel" below. Only the plaintiff shall submit marked pleadings. For jury trials, all parties shall submit a proposed verdict sheet and list of proposed charges. For matrimonial cases, Statements of Proposed Disposition shall be submitted per 22 NYCRR §202.16(h).
- (f) Where the parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations, or accompanied by a person empowered to act on behalf of the party represented, will be permitted to appear at a pre-trial conference.
- (g) Counsel shall advise as to the availability of all witnesses and subpoenaed documents. If you have non-English speaking or deaf witnesses, the court must be notified at the pre-trial conference to allow the clerk time to arrange for the

presence of a New York State certified interpreter, in the event the parties do not provide their own.

VIDEOTAPED EXPERT TESTIMONY:

While the court strives for adherence to scheduled jury selection and commencement dates, the court's trial calendar is such that exact days cannot always be guaranteed. Requests for a continuance or rescheduling due to an expert's unavailability for testimony generally cannot be granted due to the large number of matters pending for trial. Counsel may use videotaping of experts when necessary.

EXPERT TESTIMONY PRECLUSION:

1. Any motion by a party to preclude or limit expert testimony under the expert disclosure part of this order or pursuant to CPLR 3101(d) must be made as soon as practicable.
2. Where a party's summary judgment motion is or will be based in whole or in part upon the granting of a motion to preclude or limit expert testimony, the motion for summary judgment and motion to preclude shall have the same return date.

ADJOURNMENTS:

- (a) Adjournments of scheduled trials and hearings are generally not permitted except as provided in 22 NYCRR §125.1 and in accordance with the procedure set forth therein. Any application for an adjournment of a trial must be made in writing and must be supported by an affirmation of counsel establishing the requisite grounds set forth in 22 NYCRR §125.1.
- (b) Adjournments of motions and conferences may be requested on consent of opposing counsel. After obtaining such consent, the requesting party must fax the adjournment request to (845) 431-1726 to obtain a new date. At least two dates convenient to all consenting parties should be included in the request. A request to adjourn a conference should be faxed to this court at least 24 hours in advance of the scheduled appearance. No more than three adjournments shall be permitted on any matter unless good cause is shown upon written application approved by the Court. WHEN REQUESTING AN ADJOURNMENT OF A CONFERENCE OR MOTION, THE LETTER REQUEST SHALL INCLUDE THE CURRENT DATE OF ANY MOTION RETURNABLE OR ANY CONFERENCE SCHEDULED, AND FAX NUMBERS FOR ALL ATTORNEYS. THE COURT MUST APPROVE ANY ADJOURNMENT.

SETTLED AND DISCONTINUED CASES:

Counsel shall immediately notify the Court of a case disposition, and provide the court with any stipulation of settlement or discontinuance as soon as practicable.

CORRESPONDENCE WITH THE COURT:

Letters to the court should not address substantive issues in the case. No motion papers or exhibits may be faxed to the court without the court's prior consent. No fax in excess of 10 pages may be sent without prior permission of the court.

NOTES TO TRIAL COUNSEL

1. **BIFURCATED TRIALS:** In the Second Department, personal injury trials other than medical malpractice and wrongful death cases are bifurcated. The damages portion commences with the same jury immediately following a liability verdict unless the parties agree otherwise with the court's approval. Counsel should have medical testimony and any other damages witnesses ready to proceed at such time.
- 2: **MOTIONS IN LIMINE:**
See (m) under "MOTIONS"

TRIAL "NOTEBOOKS" and PRE-TRIAL CONFERENCES:

- A. At least 30 days before trial, all counsel and *pro se* parties shall provide the court with the following: (binders or bound notebooks are not required)

In all cases:

A list of all probable trial witnesses;

For Jury Trials:

Requests to charge.

A complete list of requested charges drawn from the Pattern Jury Instructions (PJI). A list of the PJI numbers of all charges requested is sufficient. However, if deviations from or additions to the PJI are requested, the full text of such request must be submitted together with any supporting legal precedent;

Proposed verdict sheet.

In matrimonial cases:

Statements of proposed disposition per 22 NYCRR 202.16(h) are required.

B. At any pre-trial conference counsel shall:

- 1: **Stipulate to undisputed facts and the admissibility of clearly admissible documents and records;**
 - 2: **Alert 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 counsel will rely;**
 - 3: **Alert the Court to any significant or unusual evidentiary objections which counsel believes will be made during the course of the trial;**
 - 4: **Discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial;**
 - 5: **Alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling;**
 - 6: **Alert the Court to any anticipated request for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.**
4. **PRE-MARKED EXHIBITS:** Counsel shall endeavor to have all trial exhibits pre-marked by the court reporter whenever possible, for identification, and shall provide a copy of the resulting Exhibit Sheet to the Court.
5. **JURY SELECTION:** Attorneys shall employ “White’s Method” of selecting the jury panel, unless counsel agree otherwise. In each round, questioning shall be conducted first by plaintiff’s counsel. This part uses *undesignated* alternates. Alternates will be designated at the conclusion of the trial, and following the court’s jury charge.
6. **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 includes both verbal and non-verbal communication, including, without limitation, nods, shrugs and shaking the head. For example, do not even say “hello” or “good morning.”
7. **COURTROOM DEMEANOR:** All remarks should be directed to the Court. Comments should not be made to opposing counsel. If you require a significant discussion with your adversary, such as a possible stipulation, ask for permission to approach the bench so you may have a chance to talk to each other outside the presence of the jury.
8. **EXAMINATION OF WITNESSES:** Counsel shall not approach a witness without permission of the Court. Please allow the witness to complete his/her answer to your question before asking another question. Do not interrupt the witness in the middle of

an answer, unless the answer is totally unresponsive in which event you should seek a ruling from the Court. Direct examination, cross, redirect and re-cross are permitted.

RULES FOR ELECTION LAW CASES

- (1) Orders to Show Cause to validate or invalidate designating or nominating petitions will be made returnable no later than five (5) days after the last day to statutorily commence such proceedings.**
- (2) The calendar call on the return date must be answered by counsel or the litigant(s), (self represented) who shall provide the Part Clerk with their addresses and telephone numbers. Non-lawyer “representatives” of the parties are not permitted to answer the calendar call. Proof of service of the Orders to Show Cause, as well as any interposed Counterclaims or Answers, shall be filed with the Part Clerk at or before the initial appearance.**
- (3) ON OR BEFORE THE RETURN DATE AND TIME:**
 - (A) a written offer of proof in any matter alleging a question of residency of a candidate shall be filed with the court clerk and served on the opposing party;**
 - (B) specifications of objections or bills of particulars not previously served and/or filed with the Board of Elections shall be filed with the court clerk and served on the opposing party;**
 - (C) a complete written offer of proof in all matters alleging fraud including identification of witnesses to be called, their names and addresses, together with the status of each candidate, signatory, notary, expert, subscribing witness, etc. shall be filed with the court clerk and served on all opposing parties.**

FAILURE TO COMPLY WITH SECTION A, B, OR C OF THIS PARAGRAPH SHALL BE DEEMED A WAIVER, AND FURTHER PROOF MAY BE PRECLUDED, EXCEPTING THE TESTIMONY OF A WITNESS THE COURT DETERMINES COULD NOT BE IDENTIFIED BEFORE THE RETURN DATE.

MENTAL HYGIENE LAW ARTICLE 81 PROCEEDINGS:

- (a) All proceedings instituted pursuant to Mental Hygiene Law §81 *et seq.* will generally be returnable on a Thursday morning at a date and time to be determined by the Court.**
- (b) All proposed orders to show cause must conform with the requirements of MHL §81.07.**
- (c) Proposed orders to show cause must contain separate decretal paragraphs for service as provided in MHL §81.07(d)(1) and (2).**
- (d) Court evaluators and appointed attorneys must complete and file each of the following forms:**

1. Notice of Appointment (UCS-830.1)
2. Statement of Approval of Compensation (UCS-830)
3. Certification of Compliance (UCS-830.3)
4. Affirmation of legal services.

FIDUCIARY APPOINTMENTS:

- (a) In order to be eligible for appointments to serve as a referee, court evaluator, guardian ad litem, receiver, attorney for receiver or attorney for an alleged incompetent person, counsel must appear on the Part 36 list promulgated by the Office of Court Administration.
- (b) In order to be eligible for appointment to serve as an attorney for a child, counsel must be a member of the appropriate panel.
- (c) Court evaluators and appointed attorneys must complete and file each of the following forms:
 1. Notice of Appointment (UCS-830.1)
 2. Statement of Approval of Compensation (UCS-830)
 3. Certification of Compliance (UCS-830.3)
 4. Affirmation of legal services.

Please contact chambers with questions concerning any of the above. Thank you.