

INDIVIDUAL PART RULES FOR JUSTICE SAM D. WALKER

Supreme Court, Westchester County
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601
Chambers: (914) 824-5427
Part Clerk: (914) 824-5331

The following Part Rules are effective as of July 1, 2009 in all proceedings assigned to Justice Walker:

I. GENERAL RULES

- a. Scheduling Matters: All scheduling matters must be directed to the Part Clerk in legible writing (including case name, index number, date of next appearance, and the post office and e-mail addresses, and phone and fax numbers of all counsel), faxed to (914) 995-5078 only. Adjournments are not granted unless: (1) there is an affirmation of prior engagement in full compliance with 22 NYCRR 125.1; (2) a divorce packet has been submitted to the court; or (3) there are exceptional circumstances. Adjournment requests made less than **3 Court days** before a scheduled appearance will not be considered absent exceptional circumstances.
 - i. Adjournment Requests: All requests for adjournments must state (1) the reason for the adjournment and (2) whether the consent of all parties and counsel has been obtained, and, if not, the basis for such objection. Stipulations of adjournment between counsel will not automatically adjourn the matter. Adjournments must be confirmed by the Court, or all scheduled dates remain in place. Even if an appearance is adjourned by the Court, the motion schedule will remain unless otherwise adjusted by the Court. The party requesting the adjournment is responsible for notifying all parties of the status of the adjournment.
- b. 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 on behalf of their clients as to both substantive and procedural matters. Attorneys appearing of counsel to the attorneys of record and parties appearing pro se shall be held to the same requirements.

- c. Courtesy Copies: Courtesy copies of Notices of Appearance, Consents to Change Attorney, Notices of Discontinuance and Complaints stamped “Filed with the County Clerk” shall be sent to the Part Clerk.
- d. Preliminary Conference Order: Prior to appearing before the Court for a preliminary conference, the parties are required to complete a Preliminary Conference Order. Parties will be expected to abide by the provisions of the Preliminary Conference Order. Failure to do so may result in sanctions.
- e. Settlements and Discontinuances: If an action is settled, discontinued, or otherwise disposed, counsel shall immediately provide written confirmation of the settlement to the Clerk of the Part. Counsel shall also advise the Court if there are any outstanding motions or scheduled conferences, hearings, or trial dates. As soon as is practicable, counsel shall provide the Court with a fully executed stipulation or other document evidencing the disposition. The failure to abide by these requirements may result in the imposition of sanctions. Note that unless all papers necessary to obtain a divorce have been submitted to the Court prior to the scheduled date, all parties and counsel must appear. 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.
- f. So-Ordered Transcripts: The Court shall be provided with an original and two copies of transcripts to be so-ordered as well as a self-addressed, stamped envelope. The original will be filed with the Westchester County Clerk’s Office, one copy will be retained for the Court’s file and the second copy will be returned to counsel.
- g. Papers by Fax: The Court does not accept any pleadings, motions, or briefs by fax transmission unless otherwise indicated by the Court in advance in a particular case. Copies of letters confirming an adjournment of a motion or a conference may be sent to the Court by fax to the Part Clerk. However, the original must be mailed to chambers. Any authorized fax shall not exceed six pages in length.
- h. Conduct of Parties and Counsel: It is expected that all parties and counsel shall conduct themselves in an appropriate manner 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.

- i. 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.

- j. Communications with Represented Parties: Under no circumstances may parties represented by counsel contact the Court. Counsel are directed to inform their clients that under no circumstances will 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. **Counsel must be discharged and a Consent to Change Attorney filed, or a motion to be relieved must have been granted before counsel is relieved.**

- k. Correspondence: All submissions to the Court of any kind (letter, motion, Order to Show Cause, proposed Order or Judgment, etc.) must contain counsel's address, fax number, phone number, and e-mail address, as well as the index number and date of next appearance. The Court does not accept e-mails without prior permission, and any e-mails received without such permission will not be considered. Copies of papers that must be filed in original form with the Clerk of the Court, such as judgments, motions, opposition papers, and replies, will not be accepted via fax. Faxed documents will not be signed by the Court.

- l. Judgment of Divorce: Two copies of all proposed Orders, Judgments of Divorce and Findings of Fact must be submitted for the Court's own use, in addition to any copies that counsel wants returned. Papers will not be processed without these copies. Additionally, a self-addressed, stamped envelope must be included with the submission. All Findings of Fact and Judgments must comply with 22 NYCRR § 202.50.
 - I. All counter-orders and counter-judgments must be submitted with a cover letter and a "red-lined" copy highlighting the language which differs from that of the originally submitted order or judgment. See NYCRR §202.48.

- II. All proposed orders or other documents for the Judge's signature must include a signature line with the "Honorable Sam D. Walker, J.S.C." pre-printed.
- III. Judgment documents must be submitted within 60 days of the date an action is marked settled or a decision is rendered, unless otherwise directed by the Court. Failure to submit judgment documents within 60 days (absent permission of the Court) will result in the action being deemed abandoned pursuant to 22 NYCRR § 202.48 and may be subject to a conditional order of dismissal establishing a date on which the action will be dismissed as abandoned unless the papers are received.
- IV. Proposed judgment documents that are rejected as improper or incomplete must be resubmitted to the Court within 30 days of notice of the rejection. If corrected documents are not submitted by that date, the action may be deemed abandoned.
- V. Within the submission of documents for a Judgment of Divorce must be the following:
 - 1. Summons (if applicable, with Notice)
 - 2. Complaint or Amended Complaint)
 - 3. Answer (if applicable)
 - 4. Part 130 Certification
 - 5. Certificate of Dissolution of Marriage
 - 6. DRL §177 statements from both parties
 - 7. Affidavit of Service for Judgment and Findings
 - 8. Judgment of Divorce
 - 9. Findings of Fact and Conclusions of Law
 - 10. If there was an Inquest, the following:
 - a. The transcript
 - b. Stipulation of Settlement (if applicable)
 - 11. If no Inquest, the following:
 - a. Plaintiff's Affidavit
 - b. Defendant's Affidavit
 - c. Statement of Removal of Barriers
 - 12. If there are unemancipated children of the marriage:
 - a. State Registry Form or Support Collection Unit information sheet
 - b. UCS-111
 - c. Qualified Medical Child Support Order

- B. Discovery Status Letters: Thirty (30) days before the date set by the Court for the trial readiness conference in the action, counsel for plaintiff and defendant shall each send a letter to the Court

informing the Court whether pretrial discovery is proceeding as scheduled in the preliminary conference order, and if not, what problems exist which might prevent the timely completion of all pretrial discovery. Should any discovery problems arise, counsel are encouraged to call Chambers at (914) 824-5427 in an effort to avoid costly motion practice.

- C. Discovery Referees: If any party believes that the assistance of a referee to supervise pretrial discovery would be helpful, he or she may make an application to the Court, in writing and on notice, for the appointment of a discovery referee, and the Court shall take the request under advisement. In the event such an application is made, any party may provide the Court with suggested names of referees, which the Court shall also consider.

VI. CONFERENCES

- A. Attendance of Parties and Counsel: All counsel and parties shall attend all conferences unless such appearances are waived by the Court in advance. Any questions concerning the waiver of appearances shall be directed to the Part Clerk.
- B. Non-Appearance at a Conference: The failure to appear for a conference by counsel or a party appearing in the action *pro se* may, without notice, be considered a default, and as permitted by 22 NYCRR § 202.27 may result in an order directing dismissal of the complaint, striking of the answer, entry of a default judgment, an inquest, an award of costs or counsel fees, or other appropriate sanction.
- C. Preliminary Conference: The preliminary conference will be held in accordance with, and attorneys must be prepared to comply with 22 NYCRR 202.16(f). In additions, attorneys must be prepared to advise the Court as to any outstanding motions and any other issues they expect to require the Court's involvement. The parties will be expected to comply with DRL § 236-B(4).
- D. Trial Readiness Conference: It is expected that all pretrial discovery shall be completed by the parties prior to the date scheduled for the Trial Readiness Conference and that the action shall be in a posture so that it may be certified as trial ready. At the Trial Readiness Conference no arguments will be entertained concerning discovery disputes, absent good cause. At the

conclusion of the Trial Readiness Conference, after the action is marked trial ready, the parties shall be directed to appear for one settlement conference or shall be given a settlement conference date and a trial date which shall be deemed firm and final.

1. Counsel must be prepared to discuss the potential for settlement of the case at the trial readiness/settlement conference. Counsel should be prepared to place upon the record or provide a written stipulation as to all matters that are resolved. A Note of Issue must be filed within 30 days of the Trial Readiness Conference, and a file-stamped copy submitted to the Part Clerk. Sanctions, including the striking of pleadings or dismissal of the action, may be imposed for failure to do so.

E. Pre-trial/Settlement Conference: Counsel must be fully prepared to discuss settlement. Sanctions may be imposed upon counsel who are not prepared for the conference. In the event counsel believe that there are no prospects to settle the case, they should be prepared to explain their reasoning.

1. At the pre-trial conference, counsel should bring with them:
 - a. Marked pleadings;
 - b. An exhibit list. The attorneys are to pre-mark their exhibits. Only those items which are received in evidence will be marked by the reporter. The reporter is to be provided with an exhibit list. Copies of all exhibits intended to be offered must be presented to the Court in a notebook with a table of contents, with plaintiff's exhibits numbered and defendant's exhibits lettered in the order in which they are generally intended to be used. Counsel must be prepared to argue to the Court any exhibits that are not agreed upon;
 - c. A list of witnesses, including the address of each witness and the general subject matter of his or her testimony;
 - d. Statements of proposed disposition.
 - e. A child support worksheet, if applicable;
 - f. Updated statements of net worth;
 - g. Proof of filing of the Note of Issue;

to request a settlement conference with the Court of the Court's Law Clerk.

- J. Interpreters and Special Services: At least one week prior to the date for any scheduled court appearance, counsel shall 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.

- K. Appointments of Experts: At least one week prior to the date for the scheduled preliminary conference, any party seeking the appointment of an expert by the Court shall, in writing, inform the Court of the issues which the party believes should be addressed by the expert.

VII. MOTION PRACTICE

- A. Noticed Motions: Motions on notice shall be made returnable at 9:30 a.m. on any Monday or Tuesday that the Court is in session. No appearances shall be required and no oral argument shall be heard on the motion unless ordered by the Court. Any discovery motion made will require a mandatory appearance on the return date. (ALL MOTIONS MUST BE ACCOMPANIED BY AN ATTORNEY AFFIRMATION THAT THE PARTIES HAVE ATTEMPTED TO SETTLE THE MATTER PRIOR TO THE FILING OF THE MOTION. THE AFFIRMATION SHALL DETAIL EXACTLY WHAT MEASURES THE PARTIES HAVE UNDERTAKEN IN ORDER TO SETTLE THE ISSUE BEING RAISED IN THE MOTION.)

- B. Papers must be received by the Court on or before the date and time set forth in the Order to Show Cause or return date in the Notice of Motion in order to be considered. Late papers will be rejected unless good cause is shown and there is no prejudice caused by the delay.

- C. The Court does NOT hold motions in abeyance. Motions must be formally withdrawn by letter. If a motion is not formally withdrawn, the Court expects counsel to be prepared to argue the motion on the return date if requested. The Court may render a decision on the return date.

- D. Except by express permission of the Court, all litigation papers must be typewritten, single sided, and double spaced, with clearly marked tab labels for exhibits. The index number shall be clearly shown to the right of the caption of the matter on all litigation papers. The next scheduled appearance date, if any, must also be listed. All other papers and related correspondence must include the same. Where papers include more than one affidavit/affirmation, there must be a tab showing the names of all affiant/affirmants except the top one.
- E. Proposed orders must include any transcript or other evidence that the Judge has directed the submission of such order.
- 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. All orders to show cause shall include a facsimile number, telephone number, and e-mail address as well as an **extra, unbound copy of the order without supporting papers**. A conformed copy of the order will be transmitted to the facsimile number submitted by counsel. Appearances by all parties are required on the return date of the motion for all Orders to Show Cause. A statement of compliance with the provisions of 22 NYCRR §202.7, where applicable, must be contained within any ex parte Order to Show Cause.
1. If a requested order has specific urgency, counsel should make the clerk aware of the issue. The Court will use every effort to address all orders as soon as practical after their receipt.
 2. If an order to show cause requests temporary relief, counsel must comply with the provisions of 22 NYCRR 202.7(f). If counsel has complied with this provision, the order to show cause must clearly specify such, either in separate affirmation clearly marked, or an accompanying letter to the Court. Failure to comply with this section will result in all temporary relief being struck. Note that compliance with this section does not ensure that temporary relief will be granted.
 3. If a proposed order to show cause contains a request for a temporary order of protection, counsel should advise the Part Clerk and should be prepared, with his or her client, for a hearing at such time as the Court will direct.

- G. Courtesy Copies of Motion Papers: If requested by Chambers, courtesy copies of briefs and memoranda may be sent directly to the chambers e-mail address at chambersjusticesdwalker@courts.state.ny.us.
- H. Communications Regarding Motions: All communications regarding motions, including requests for adjournments, shall be directed to the Court's Part Clerk.
- I. Adjournments: Motions may be adjourned no more than two times and, in the aggregate, for no longer than 45 days. Absent exigent circumstances, no adjournment request will be considered that is made less than 3 Court days before the return date of the motion. Before requesting an adjournment, the requesting counsel or party appearing *pro se* shall communicate with all other counsel and the Law Guardian, if any, to obtain consent for the adjournment. Whether the request is on consent or not, if an adjournment is granted the Court shall schedule a new return date, and the requesting counsel shall send a fax transmission to the Court and all other counsel confirming the new return date. Unless the Part Clerk conveys the Court's approval of an adjournment, no motion shall be considered to have been adjourned. Under no circumstances will the Court recognize an adjournment of a motion agreed to between counsel for the parties and the Law Guardian, if any, unless approval of the adjournment has been obtained as set forth in this rule.
- J. Motion 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.
- K. 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 denial of the motion.
- L. Discovery Motions: It is the policy of this Court to make itself and its staff available to resolve any disputes related to pretrial discovery.

If a dispute arises which relates to pretrial discovery, the aggrieved party shall immediately seek a telephonic conference with the Court. If the dispute cannot be resolved with the assistance of the Law Clerk, a conference shall be promptly scheduled so that a determination of the dispute may be rendered by the Court. Although counsel are strongly encouraged to resolve discovery disputes between themselves, under no circumstances shall counsel fail to bring to the Court's attention any discovery dispute which they cannot resolve within a reasonably brief period of time. If the time set for the completion of particular aspects of pretrial discovery passes without complete compliance by all parties, in determining what action to take, the Court shall consider the responsibility of any counsel who has failed to alert the Court of an ongoing discovery dispute. No motions regarding discovery shall be made without the specific permission of the Court. All motions, whether discovery or otherwise, must provide proof that the parties or counsel have attempted to resolve the issue before making the motion. Any discovery motion made will require a mandatory appearance on the return date.

- M. Reply Papers: Counsel 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 or legal arguments offered in opposition to the motion or cross-motion shall not be considered by the Court in its determination of the motion or cross-motion without specific permission from the Court. Cross motions which seek only the denial of the relief in the original motion will not be recognized as motions with respect to which a reply may be submitted.

- 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. Opposing counsel who receives a copy of such material submitted in violation of this rule shall not respond in kind. Permission may be granted only upon a showing of exceptional circumstance.

- 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.

- P. Pendente Lite Motions: In some instances where a motion for pendente lite relief is brought either before or after a preliminary conference has been conducted in the action, a written Decision and Order will be issued following the return date of the motion. In other instances, the Court will render a decision on the record which will subsequently be “so-ordered” on the record without the necessity for signature. To ensure that the Court has received all papers submitted by the parties on all pendente lite motions, in Orders to Show Cause signed to schedule pendente lite motions, the Court shall set forth the service and filing dates of all opposition and reply papers. The parties and counsel shall strictly adhere to all such filing dates, and the Court shall not consider any paper not received in the Civil Calendar Clerk’s Office by the filing date it sets in the Order to Show Cause. In the event that the parties settle a motion, or part of a motion, for pendente lite relief, they shall immediately inform the court in writing in advance of the motion return date. Any failure to inform the Court of a settlement which results in the needless expenditure of court resources on a pendente lite motion may result in the imposition of sanctions against counsel for both parties to the action. (ALL PENDENTE LITE SUPPORT MOTIONS MUST BE ACCOMPANIED BY COMPLETED NET WORTH STATEMENTS OF THE PARTIES. MOTIONS LACKING THE PARTIES’ NET WORTH STATEMENTS WILL NOT BE CONSIDERED BY THE COURT.
- Q. On Motions pursuant to CPLR 2221, movant must submit copies of all papers on the prior motion. Failure to comply with this provision shall result in the automatic denial of the motion unless another party submits the papers to the Court.
- R. Letters sent to the Court following submission of motions will not be considered.
- S. Self-addressed stamped envelopes must be provided by all parties on all motions.
- T. A copy of any cited authorities that are unpublished or not available on Westlaw must be attached to the motion or memoranda.

- U. Affidavits of Service must be filed with the County Clerk, and courtesy copies of all affidavits of service for all motions must be sent to the Part Clerk at least two days before the return date.

VIII. DISCOVERY

- A. Counsel must consult with one another in a good faith effort to resolve all disclosure disputes. See Uniform Rule 202.7. If a problem exists regarding discovery that cannot be resolved, they should be brought to the Court's attention immediately (but no later than the date specified for completion of discovery) via a short letter. Any response to that letter must be made within 48 hours. Upon reviewing the submissions, the Court will determine the appropriate course of action.
- B. Parties are also expected to abide by the provisions of the Preliminary Conference Order and Stipulation. Failure to do so may result in the imposition of costs or sanctions.
- C. The Court will not allow discovery after the dates set forth in the Preliminary Conference Order without good cause shown for non-compliance.
- D. Subpoenaed documents may only be reviewed with permission of the Court.