

**WESTCHESTER SUPREME COURT  
DIFFERENTIATED CASE MANAGEMENT PROTOCOL  
PART RULES  
Revised Effective June 30, 2017<sup>1</sup>**

By Order of the Hon. Alan D. Scheinkman, Administrative Judge of the Ninth Judicial District, the Westchester Supreme Court Differentiated Case Management (DCM) Protocol as set forth herein has been established for the handling of general civil litigation in Westchester Supreme Court. The DCM Protocol took effect with the Tenth Term of 2009 on September 14, 2009. The protocol was thereafter revised in light of experience since September 2009 and in consultation with the Bar.

Developed in consultation with the Chief Administrative Judge, Presiding Justice of the Appellate Division, Second Department and Deputy Chief Administrative Judge, Courts Outside New York City, the protocol was designed to promote active and effective case management consistent with the guidelines set forth in the Uniform Civil Rules for the Supreme Court. The protocol focuses the use of judicial resources by concentrating the use of judges to trials and resolution of substantive motions. The protocol is implemented through a comprehensive framework designed to provide intensive case supervision throughout the civil litigation process. As part of the protocol, four component parts operate to monitor the progress of cases from discovery to trial - a Preliminary Conference Part, a Compliance Part, a Settlement Conference Part and a Trial Ready Part. Excluded from the protocol are tax certiorari, contested matrimonial, Commercial Division, and Article 81 Mental Hygiene Law cases, which are handled in specialized parts. The following constitute the Rules of the Preliminary Conference Part, Compliance Part, Settlement Conference Part and Trial Ready Part, as amended, and are effective as of January 3, 2017.

This protocol includes information specific to the implementation of the New York State Courts e-filing system (NYSCEF) in the Westchester County Supreme Court in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules for the Supreme and County Courts (Uniform Rules) §§202.5-b and 202.5-bb, the Administrative Judge of the Ninth Judicial District and the Westchester County Clerk as Clerk of the Supreme and County Courts.

In any matters commenced by e-filing assigned to the DCM parts, counsel and unrepresented parties should familiarize themselves with the statewide e-filing rules (Uniform Rule §§ 202.5-b and 202.5-bb – available at [www.nycourts.gov/efile](http://www.nycourts.gov/efile)) and the

---

<sup>1</sup>**The DCM Protocol has been revised effective June 30, 2017 to the limited extent of providing a new, separate email for the Compliance Part Motion Clerk to increase the Compliance Part’s efficiency in responding to email inquiries. No other changes have been made to the Protocol revised effective January 3, 2017.**

Westchester County E-Filing Protocol available at <http://www.courts.state.ny.us/courts/9jd/efile/WestchesterCountyJointProtocols.pdf>. General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or [efile@nycourts.gov](mailto:efile@nycourts.gov). Questions relating to local e-filing procedures may be addressed to the Civil Calendar Office at (914)824-5300.

## **PRELIMINARY CONFERENCE PART RULES**

**Personnel:** Janet Jackson, Preliminary Conference Part Clerk  
**Courtroom:** 800  
**Phone:** (914)824-5342  
**Facsimile:** (914)824-5869  
**Email:** [PreliminaryConferenceWestchester@nycourts.gov](mailto:PreliminaryConferenceWestchester@nycourts.gov)

### **I. Preliminary Conference Part E-Filing Rules**

#### **A. Requests for Preliminary Conferences in E-Filed Actions**

In accordance with 22 NYCRR §202.12 (a), a party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses and telephone numbers of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall e-file a request for judicial intervention (RJI) together with the request for a preliminary conference.

Preliminary conferences sought by parties pursuant to 22 NYCRR §202.12 will be scheduled through the Preliminary Conference Part (PCP) upon e-filing of a request for a preliminary conference and RJI.

Pursuant to 22 NYCRR §202.12 (b), the preliminary conference will be held within 45 days of the filing of the RJI unless the Court orders otherwise. Any party may move to advance the date of a preliminary conference upon a showing of special circumstances (22 NYCRR §202.12 (g)).

The PCP will give notice by e-mail of the preliminary conference. The preliminary conference may be adjourned once by written request of all parties submitted at least two (2) business days prior to the preliminary conference. The request for an adjournment may be made to the PCP by e-filing or by e-mail to [PreliminaryConferenceWestchester@nycourts.gov](mailto:PreliminaryConferenceWestchester@nycourts.gov) and shall include two (2) proposed alternative dates for rescheduling the preliminary conference, which dates shall be no later than one month following the scheduled preliminary conference. The PCP will thereupon give notice to the parties of the adjourned preliminary conference date by e-mail if the parties so request.

The parties are cautioned to arrive on time for the preliminary conference. Defaulting or late

arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to preliminary conferences may summarily be subject to sanctions and/or costs.

Pursuant to 22 NYCRR §202.12 (c), the matters to be addressed at the preliminary conference shall include as appropriate, the simplification and limitation of factual and legal issues; the establishment of a timetable for the completion of all disclosure proceedings; the establishment of the method and scope of any electronic discovery; the addition of other necessary parties; settlement of the action; and removal to a lower court pursuant to CPLR §325.

Court attorney-referee(s) may conduct the preliminary conferences. At the preliminary conference, the PCP will confirm or modify the DCM track selected by the party who filed the RJI and will establish the schedule within the applicable DCM deadline for completion of pre-trial proceedings. Parties are reminded of the purpose and consequence of the DCM designations and that even if they designate a case as expedited, the case will be not be expedited, unless the PCP confirms that an expedited DCM track is warranted. At the conclusion of the preliminary conference, a preliminary conference order will be issued.

#### **B. Preliminary Conference Stipulation in E-Filed Actions**

For actions subject to e-filing assigned to the PCP, in lieu of making an appearance at a scheduled preliminary conference, all parties in a NYSCEF case may agree upon a discovery schedule and submit a preliminary conference form stipulation executed by all parties (available at [http://www.nycourts.gov/courts/9jd/diffCaseMgmt/PreConfForm\\_Rev122409.pdf](http://www.nycourts.gov/courts/9jd/diffCaseMgmt/PreConfForm_Rev122409.pdf)) by uploading same as a “Proposed Stipulation to be So Ordered – Preliminary Conference” in the NYSCEF system at least three (3) business days prior to the conference date.

The preliminary conference stipulation submitted to be so-ordered must be signed by all parties who have appeared in the action. If all parties are unable to come to an agreement as to the terms of the preliminary conference stipulation, the preliminary conference will be conducted as scheduled.

The preliminary conference stipulation must strictly comply with 22 NYCRR §202.19 and provide that all disclosure be completed within 8, 12 or 15 months in expedited, standard and complex cases, respectively as set forth in 22 NYCRR §202.19. The preliminary conference stipulation will be reviewed by the PCP to confirm that the DCM track selected by the party who filed the RJI and the schedule proposed by the parties is within the applicable DCM deadline for completion of pre-trial proceedings. The parties may agree in the preliminary conference stipulation to change the DCM track, subject to approval by the PCP.

If the preliminary conference stipulation is acceptable and so-ordered, it will be uploaded to NYSCEF and the preliminary conference will be cancelled. If the proposed preliminary conference stipulation is not acceptable, the PCP will advise the parties that a preliminary conference is

necessary. In the discretion of the PCP, a telephone conference with the parties may be held to address any issues with the preliminary conference stipulation that can be resolved without the necessity of a physical appearance at a preliminary conference. In the event that matters cannot be resolved without a physical appearance, the in-person preliminary conference shall proceed on the scheduled conference date.

If the preliminary conference stipulation is not submitted, or is not submitted in a timely basis to allow proper review, the preliminary conference shall take place as scheduled. Untimely submissions will be rejected by the PCP, except in exigent circumstances as determined on a discretionary basis by the PCP. It is incumbent upon the parties to ascertain that the PCP has received a timely submission of the preliminary conference stipulation and that no appearance will be required at the preliminary conference. Parties should not assume that a preliminary conference has been cancelled in the absence of verification from the PCP.

The parties are cautioned that preliminary conference orders are to be followed and it is expected that pre-trial proceedings will be completed on time, absent good cause. Lack of diligence will not be regarded as a sufficient excuse.

**C. Medical, Dental and Podiatric Malpractice Actions in E-Filed Actions**

These PCP rules shall apply in medical, dental and podiatric malpractice actions only to the extent that they are not inconsistent with the provisions of 22 NYCRR §202.56. A preliminary conference will be scheduled as soon as practicable after the filing via NYSCEF of the notice of medical, dental or podiatric action in accordance with 22 NYCRR §202.56(b). The PCP rules shall also apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR §3407 only to the extent that they are not inconsistent with the provisions of CPLR §3407. In such cases, the request for a preliminary conference may be filed at any time after commencement of the action and shall be accompanied by the physician's affidavit as required by CPLR §3407 (22 NYCRR §202.12 (l)).

A Preliminary Conference Stipulation and Order specific to Medical, Dental and Podiatric Actions will be utilized for such actions. The form is available at <http://www.nycourts.gov/courts/9jd/diffCaseMgmt/StipandOrder.pdf>. Preliminary conferences in these actions will generally be held, to the extent practicable, on Monday and Tuesday mornings.

**D. Discovery Motions In E-Filed Actions**

No motions (including cross-motions) relating to discovery may be interposed until a preliminary conference has been held in the PCP. The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. In the event that motion practice is necessary, a briefing schedule will be established by the court attorney-referee at the preliminary conference and the motion will be referred to the Compliance Part for disposition. Such

motions shall be orally argued and the Compliance Part Justice may render a bench decision or a written decision, as appropriate. Motions relating to a failure to provide discovery or adhere to the preliminary conference order shall be heard in the Compliance Part (see Compliance Part Rules below). However, no such discovery motion (including a motion to dismiss predicated upon a discovery violation and including any discovery cross-motion) may be interposed and e-filed until a pre-motion conference has been requested and held in the Compliance Part (see Compliance Part Rules below).

Failure to comply with the terms of a preliminary conference order, and making frivolous motions may result in the imposition of costs or other sanctions on the offending party (22 NYCRR §202.12(f)). Motions e-filed after the preliminary conference has been scheduled and before a pre-motion conference has been held may be denied unless there is shown good cause why such relief is warranted before the conference is held (22 § NYCRR §202.12(h)).

In the event that a dispositive motion is e-filed and accompanies the RJI rather than a request for a preliminary conference, the case will be referred to the PCP for a preliminary conference and will also be assigned to an IAS Justice. Unless otherwise directed by Order of the Court, the statutory stay in CPLR §3214 for dispositive motions made pursuant to CPLR §§3211, 3212 or 3213 is superseded by this protocol. While counsel may agree to submit a preliminary conference stipulation to be so-ordered that defers discovery during the pendency of a dispositive motion, the parties are cautioned that they will be expected to complete all discovery within the designated DCM track and discovery shall not be stayed or otherwise extended due to the pendency of motions.

The return date for any pre Note of Issue motions for summary judgment once made may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days. Any request for an adjournment of a pre Note of Issue Summary Judgment motion shall be made to the IAS Part Justice assigned.

**All questions, requests for adjournments or other inquiries regarding a matter pending in the Preliminary Conference Part shall be addressed to the Preliminary Conference Part Clerk. No inquiries shall be directed to the Justices' IAS chambers.**

## COMPLIANCE PART RULES

**Presiding:** HON. ALAN D. SCHEINKMAN, JSC  
Administrative Judge, Ninth Judicial District

HON. JOAN B. LEFKOWITZ, JSC

### Conferences

**Personnel:** Carolyn Carpenito, Compliance Part Clerk  
**Room:** 800  
**Phone:** (914)824-5344  
**Facsimile:** (914)824-5869  
**E-mail:** [ComplianceWestchester@nycourts.gov](mailto:ComplianceWestchester@nycourts.gov)

### Motions

**Personnel:** Steven Stone, Compliance Motion Clerk  
**Room:** 800  
**Phone:** (914)824-5343 (Motions)  
**Facsimile:** (914)824-5869  
**E-mail:** [ComplianceMotionsWestchester@nycourts.gov](mailto:ComplianceMotionsWestchester@nycourts.gov)

## II. Compliance Part E-Filing Rules

### A. Compliance Conferences in E-Filed Actions

To ensure that a case stays on its designated DCM track, a compliance conference in the Compliance Part (CP) will be scheduled approximately one hundred fifty (150) days prior to the date fixed as the last day of discovery in the preliminary conference order.

Correspondence regarding scheduling, only as expressly permitted herein, may be filed and transmitted to other parties via the NYSCEF system. A party seeking an adjournment shall do so in accordance with this protocol via the NYSCEF system by choosing the following NYSCEF document type: Correspondence (Request for Adjournment). No duplicate copies of the correspondence shall be provided to the CP by either fax or mail.

The compliance conference may be adjourned once by request of the parties submitted via the NYSCEF system at least two business (2) days prior to the compliance conference. The request for an adjournment may be made to the CP through the NYSCEF system and shall include two (2) proposed alternative dates for rescheduling the compliance conference, which dates shall be no later than one hundred twenty (120) days prior to the last day of discovery set forth in the preliminary

conference order. The CP will thereupon give notice to the parties of the adjourned compliance conference date by email or through the NYSCEF system. The parties are cautioned that any adjournment of the compliance conference will not excuse a failure to provide discovery or failure to adhere to the preliminary conference order and that discovery shall proceed during the period of any adjournment.

The parties are cautioned to arrive on time for the compliance conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to compliance conferences may summarily be subject to sanctions and/or costs.

Compliance conferences will be conducted by court attorney-referees who will monitor the progress of discovery to completion and assure that discovery obligations and deadlines are enforced (and, where appropriate, adjusted) on a consistent basis. The court attorney-referees may, if discovery is not complete, and under limited circumstances, extend the time to complete discovery, but the parties are cautioned that no further extensions may be forthcoming. Requests for modifications to discovery schedules shall be addressed to the court attorney-referees at a conference. Inquiries submitted via the NYSCEF system or by email to the CP are restricted to scheduling matters and routine submissions only. The CP will not entertain requests to extend court-ordered discovery deadlines by e-mail or filed requests or respond to discovery disputes submitted via email or the NYSCEF system. If assistance is required in regards to a discovery issue, the parties shall request a compliance conference in a timely manner.

**B. Discovery Materials and Required Redaction in E-Filed Actions**

Discovery materials are not required to be filed via NYSCEF. However, in any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court unless otherwise specified by statute, rule or part rule.

The parties must comply with the requirements of GBL §399-dd(6), regarding the redaction of social security numbers and the Uniform Civil Rules of the Supreme and County Courts, 22 NYCRR202.5(e), relating to the omission or redaction of confidential personal information.

**C. Discovery Motions in E-Filed Actions**

Any party seeking to make a discovery motion shall do so in accordance with this protocol by requesting a pre-motion conference by e-filing a “Request for Pre-Motion Conference

(Compliance Part)” via the NYSCEF system or by e-mailing the Compliance Part clerk and requesting an immediate conference. The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. Nothing in these rules shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party’s interests. However, to foster the just, expeditious and inexpensive resolution of discovery disputes, pre-motion conferences shall be held in order to permit the Court the opportunity to resolve issues before motion practice ensues. In the event that motion practice is necessary, a briefing schedule will be established by the court attorney-referee(s). Failure to make a motion within the time allowed by the briefing schedule may result in a waiver of the issues that were to be raised by the motion. Failure to oppose a motion within the time allowed by the briefing schedule may result in the motion being decided without consideration of opposition. All motions shall be made by Order to Show Cause and will be orally argued. The CP Justice may render a bench decision or a written decision, as appropriate. When e-filing a discovery motion by Order to Show Cause in the NYSCEF system, a party may utilize the “Special Instructions” field to reference the Briefing Schedule in accordance with which the motion is being made.

Absent unusual practical difficulties, a proposed Order To Show Cause and supporting documents that have been filed with NYSCEF will be reviewed through the NYSCEF system by the Court. If there are problems with the documents, the submitting attorney will be promptly contacted by e-mail or telephone. If the CP Justice declines to sign the Order To Show Cause, the Clerk will electronically file the declined order.

In the NYSCEF system, each exhibit to an Order to Show Cause should be uploaded as a separate PDF file. After uploading the Order to Show Cause, please choose the document type “Exhibit”, enter the appropriate number or letter, and be sure to place a check mark to the left of “Attach to main document.” Any Order To Show Cause not filed in accordance with the Uniform Rules and the DCM part rules will not be addressed by the CP; however, an immediate conference will be scheduled.

Motions relating to a failure to provide discovery or failure to adhere to the preliminary conference order shall be made returnable and heard in the CP. However, no discovery or discovery compliance motion (including a motion to dismiss predicated upon a discovery violation) may be interposed until a preliminary conference has been held in the PCP and a pre-motion conference has been requested and held in the CP.

The CP does not require working copies unless otherwise directed by the CP in a particular matter. In the event that the CP requires a working copy, the working copy shall have the Confirmation Notice generated by the NYSCEF system firmly fastened thereto as a cover page. Should counsel fail to file a document required to be filed with NYSCEF, that document will not be part of the County Clerk’s file and will not be reviewed by the CP.

Decisions and/or orders issued will be scanned by court staff into the NYSCEF system, which will immediately transmit notice of the event via the NYSCEF system to all parties and a link



to the decision and/or order. In the case of orders, this notice does not constitute service of notice of entry by any party.

Substantive motions made in the case through summary judgment will be decided by the assigned IAS Justice. Substantive motions do not require a pre-motion conference and, absent a specific order to the contrary from the IAS Justice, may be served and filed via NYSCEF and submitted without oral argument. Notification will be forwarded through the NYSCEF system upon the assignment of an IAS Justice. Unless otherwise accepted by the CP and a briefing schedule issued in the CP, motions to sever, amend, consolidate and with regard to spoliation of evidence are referred to the IAS Parts for disposition.

Motions to be relieved as counsel, for pro hac vice admission, or for reargument of a decision and order rendered in the CP do not require a pre-motion conference. However, motions to be relieved as counsel shall be made by Order to Show Cause returnable in the CP and shall be orally argued. The CP Motion Calendar shall be called generally every Monday at 2 p.m.

**D. Note of Issue and Motions for Summary Judgment in E-Filed Actions**

At the conclusion of the compliance conference if discovery is complete or has been deemed waived, the CP Justice shall issue a Trial Readiness Order pursuant to which plaintiff will be ordered to serve and file via the NYSCEF system a Note of Issue and Certificate of Readiness within twenty (20) days. Where all parties agree that discovery is complete and request the issuance of a Trial Readiness Order without the necessity of an appearance at a compliance conference, they may submit via the NYSCEF system a signed Trial Readiness Stipulation to such effect to the CP in the form available at <http://www.nycourts.gov/courts/9jd/diffCaseMgmt/TrialReadyStip010317.pdf>, to be so-ordered.

The CP Justice shall establish the deadline for any post-note summary judgment motions in the Trial Readiness Order which shall provide that any motion for summary judgment by any party must be made within forty-five (45) days following the filing of the Note of Issue.

The CP Justice shall set a briefing schedule for the service of papers in opposition or support of summary judgment motions in the Trial Readiness Order, which shall provide that opposition papers must be served and filed via NYSCEF within thirty (30) days of service and filing via the NYSCEF system of motion papers and reply papers, if any, must be served and filed via NYSCEF within ten (10) days following service of any opposition papers.

The return date for a motion for summary judgment once made may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days. Any request for an adjournment may be made in writing to the CP, to the attention of the Motion Clerk, by e-mail to [ComplianceMotionsWestchester@nycourts.gov](mailto:ComplianceMotionsWestchester@nycourts.gov) at least two (2) business days prior to the return date. A proposed stipulation of the parties or order shall be filed via NYSCEF

when any request for an adjournment is made.

**Counsel are cautioned that untimely motions cannot be made timely by denominating such as cross-motions. The failure of a party to serve and file a motion or cross-motion within the 45-day time period pursuant to this protocol and the Trial Readiness Order shall result in the denial of the untimely motion or cross-motion.**

**In no event shall an adjournment be granted after the time to move or submit opposition or reply papers has expired. It is incumbent upon counsel to ensure that any request for an adjournment of the return date of a motion has been received and approved within the requisite time period. Requests for adjournments sent in error to IAS parts will not be processed.**

Applications seeking to vacate a Note of Issue or to otherwise challenge readiness for trial shall be made via NYSCEF within twenty (20) days of the service of the Note of Issue as required by 22 NYCRR §202.21(e). Applications made after the twenty (20) day period has expired shall be denied except in the unusual circumstances recognized by 22 NYCRR §202.21(d). Any such motion shall be made returnable and heard in the CP. However, no such motion shall be interposed until a pre-motion conference has been requested and held.

Unless otherwise directed by Order of the Court, the statutory stay in CPLR §3214 for dispositive motions made pursuant to CPLR §§3211, 3212 or 3213 is superceded by this protocol. While counsel may agree to defer discovery during the pendency of a dispositive motion, the parties are cautioned that they will be expected to complete all discovery within the designated DCM track and pursuant to the preliminary conference order and any compliance conference orders and that discovery shall not be stayed or otherwise extended due to the pendency of such motions.

All questions, requests for adjournments or other inquiries regarding a matter pending in the CP shall be addressed to the CP clerks or the court attorney-referee assigned to the case. No inquiries shall be directed to the Justices' IAS chambers.

**E. Settlement in E-Filed Actions**

The parties are cautioned that the all too common practice of appearing before the Court and representing that a settlement has been made will no longer be accepted. Counsel or self-represented parties must file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed.

If a stipulation of discontinuance is not filed via NYSCEF prior to the scheduled compliance conference, the parties must appear on the scheduled compliance conference date to report to the court attorney-referee the status of any such settlement. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of

discontinuance or to address settlement related issues such as liens, the matter may be set down for an appearance in the CP to ensure that discontinuance is effectuated in accordance with CPLR §2104, CPLR §3217 and CPLR §8020(c). However, the pendency of settlement negotiations will not delay, adjourn or in any way affect the scheduling of discovery proceedings.

### **SETTLEMENT CONFERENCE PART RULES**

**Presiding:** HON. JOAN B. LEFKOWITZ, JSC

**Personnel:** Frances Schiel-Doyle

**Room:** 1600

**Phone:** (914)824-5339

**Facsimile:** (914)995-4552

**E-mail:** [SettlementConferenceWestchester@nycourts.gov](mailto:SettlementConferenceWestchester@nycourts.gov)

### **III. Settlement Conference Part E-Filing Rules**

#### **A. Settlement Conferences in E-Filed Actions**

Settlement conferences are held commencing at 9:15 a.m. on a daily basis. There will be generally two (2) intensive settlement conferences held in the Settlement Conference Part (SCP) to maximize the resolution of cases. Additional settlement conferences may be held at the request of the parties and in the discretion of the SCP Justice to promote the just and expeditious resolution of a case through settlement.

Once a Note of Issue is filed, the case will be assigned to the SCP. Cases will be placed on the SCP calendar for an initial settlement conference which will be scheduled, to the extent possible, ninety (90) to one hundred twenty (120) days following the filing of the Note of Issue. Cases will not be placed on the SCP calendar unless the time within which to move for summary judgment has expired or any pending summary judgment motion has been determined.

The SCP will give notice by email or via NYSCEF of the first settlement conference. The first settlement conference may be adjourned no more than two (2) times by written request of the parties submitted at least two (2) business days prior to the scheduled settlement conference date. The request for an adjournment shall be made to the SCP by email or via NYSCEF and shall include two (2) proposed alternative dates for rescheduling the first settlement conference, which dates shall be no later than three (3) weeks following the previously scheduled settlement conference date. The SCP will thereupon give notice by email or via NYSCEF to the parties of the adjourned settlement conference date.

The parties are cautioned to arrive on time for settlement conferences. The parties should submit a completed settlement conference form by email no later than seven (7) days in advance of

the first conference. The settlement conference form can be found at [http://www.nycourts.gov/courts/9jd/diffCaseMgmt/Settlement\\_Conference\\_Form.pdf](http://www.nycourts.gov/courts/9jd/diffCaseMgmt/Settlement_Conference_Form.pdf).

Attorneys attending the first settlement conference must bring a copy of all documents relevant to the issues of liability and damages, be fully familiar with every aspect of the case, and be expressly authorized to engage in meaningful settlement negotiations. Attorneys must have evaluated the case prior to the settlement conference date and be prepared to negotiate in good faith to effectuate a reasonable settlement. Absent good cause, the plaintiff(s) and defendant(s) must be reachable by phone to consent to any settlement. No answering services will be permitted. The plaintiff and defendant may attend such conferences with counsel.

Should counsel report that all efforts to settle the case have been previously exhausted and request that a trial date be set, they may waive the settlement conference before the Justice and appear to schedule a trial date directly with the SCP clerk. Should counsel report after the first settlement conference is conducted that a second settlement conference will be futile and request that a trial date be set, a trial date will be set at the conclusion of the first conference.

Except as set forth above, at least two months before trial, the parties will be scheduled to appear at a second settlement conference in the SCP. The second settlement conference shall be calendared at the conclusion of the first settlement conference, except as set forth above.

The second or any further settlement conference may be adjourned no more than two (2) times, by written request of the parties submitted at least two (2) business days prior to the scheduled settlement conference. The request for an adjournment shall be made to the SCP by email or via NYSCEF and shall include two (2) proposed alternative dates for rescheduling the settlement conference, which dates shall be no later than three (3) weeks following the previously scheduled settlement conference. The SCP will thereupon give notice by email or via NYSCEF to the parties of the adjourned settlement conference date.

Correspondence regarding scheduling, only as expressly permitted herein, shall be filed and transmitted to other parties via the NYSCEF system. A party seeking an adjournment shall do so in accordance with this protocol via the NYSCEF system by choosing the following NYSCEF document type: Correspondence (Request for Adjournment). No duplicate copies of the correspondence shall be provided to the SCP by either fax or mail.

The final settlement conference will be the parties' last clear chance to settle the case prior to trial before the IAS Trial Judge. The parties are cautioned that without prior court approval, there will be no further settlement conferences held prior to the trial date, and in no event shall settlement discussions result in an adjournment of the trial date. Attorneys must have evaluated the case prior to the final settlement conference date and be prepared to negotiate in good faith to effectuate a reasonable settlement. Each attorney attending the final settlement conference must bring a complete file including the marked pleadings, medical reports and all other documents related to the issues of liability and damages. Moreover, counsel must be authorized to settle and/or make binding concessions. Absent good cause, the plaintiff(s) and defendant(s) must be reachable by phone to

consent to any settlement. The date for trial will be fixed at the final settlement conference.

**B. Trial Date Scheduling in E-Filed Actions**

All trial dates will be no earlier than two months after the second settlement conference. Attorneys are reminded of the rules regarding actual engagement of counsel (Section 125.1(g) of the Rules of the Chief Administrator). Attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any such attorney is actually engaged on trial elsewhere, he or she must produce substitute trial counsel. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed. Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced.

**C. Summary Jury Trial Program in E-Filed Actions**

The Westchester County Supreme Court operates a summary jury trial program. Parties electing to proceed by summary jury trial must file via NYSCEF a fully executed summary jury trial stipulation with the SCP thirty (30) days prior to the second settlement conference. The untimely submission of a summary jury trial stipulation may result in the action being retained in the SCP and the scheduling of a conventional trial. The Rules of the Summary Jury Trial Program and forms are available at <http://www.nycourts.gov/courts/9jd/PDFs/SJTRules.pdf>.

**D. Settlement in E-Filed Actions**

The parties are cautioned that the all too common practice of appearing before the Court and representing that a settlement has been made will no longer be accepted. Counsel or self-represented parties must file a stipulation of discontinuance before the case is marked settled and disposed via NYSCEF.

In the event that a stipulation has been filed no later than noon of the business day prior to the scheduled conference date, the parties will not be required to appear on the scheduled settlement conference date. If a stipulation of discontinuance is not filed, or is not filed in a timely basis, the parties must appear on the scheduled settlement conference date to report to the SCP Justice the status of any such settlement. It is incumbent upon the parties to ascertain that the SCP has notice of the filing of a stipulation and that no appearance will be required. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement related issues such as liens, the matter may be set down for an appearance in the SCP to ensure that discontinuance is effectuated in accordance with CPLR §2104, CPLR §3217 and CPLR §8020(c). However, the pendency of settlement negotiations will not delay, adjourn or in any way affect the scheduled trial date.

All questions, requests for adjournments or other inquiries regarding a matter pending in the SCP shall be addressed to the SCP clerk. No inquiries shall be directed to the Justices' IAS chambers.

**E. Infant Compromise Proceedings in E-Filed Actions**

Infant Compromise Proceedings are handled centrally in the SCP. Any inquiries regarding such proceedings shall be directed to the SCP and not to IAS Parts.

**TRIAL READY PART RULES**

**Presiding: HON. ALAN D. SCHEINKMAN, JSC**  
**Administrative Judge, Ninth Judicial District**

**HON. NICHOLAS COLABELLA, JHO**

**Personnel: Maryann Tamberella, Trial Ready Part Clerk**  
**Room: 1200**  
**Phone: (914)824-5365**  
**Facsimile: (914)995-2194**  
**E-mail: [TrialReadyWestchester@nycourts.gov](mailto:TrialReadyWestchester@nycourts.gov)**

**IV. Trial Ready Part E-Filing Rules**

**A. Trial Calendar in E-Filed Actions**

A call of the trial calendar will be held promptly at 9:30 a.m. in the Trial Ready Part (TRP) by the TRP JHO or Justice. Trial counsel for all parties must appear and be ready to commence trial (and, in cases in which juries have been demanded, to select a jury). No requests for adjournments will be granted, absent unusual and exigent circumstances. Sanctions and/or costs may be imposed on counsel who are not present upon the call of the TRP Calendar. Failure to proceed may result in the striking of the case from the trial calendar, vacating the Note of Issue, dismissal of the complaint or the striking of the answer, or other remedies, including, but not limited to, those set forth in CPLR §3404 and 22 NYCRR §202.21 and §202.27. Counsel are cautioned that where the Note of Issue is stricken, no case will be restored to the trial calendar without the filing of a new Note of Issue.

**B. Rules Regarding Actual Engagement of Counsel in E-Filed Actions**

Attorneys are reminded of the rules regarding actual engagement of counsel (Section 125.1(g) of the Rules of the Chief Administrator: Attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she

must produce substitute trial counsel. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed). Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced.

**C. Trial in E-Filed Actions**

Any cases which are not sent out for trial (or jury selection) will be deemed ready and passed to the following day or otherwise as directed by the TRP JHO or Justice. The TRP will endeavor to send all cases to jury selection, beginning with special preference cases, and then by oldest cases as determined by the date of filing of the Note of Issue. In the event that counsel fail to proceed to select a jury, or timely appear before the assigned IAS Trial Judge, the action may be dismissed or a default taken or other sanction imposed, as appropriate under the circumstances. Every effort will be made to assign the trial to the IAS Justice who had the case previously.

**D. Settlement in E-Filed Actions**

The parties are cautioned that the all too common practice of appearing at the trial calendar and representing that a settlement has been made will no longer be accepted. Counsel or self-represented parties must file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed and submit a working copy to the TRP with the NYSCEF Confirmation Notice firmly fastened to the front cover page of the stipulation of discontinuance. Working copies without the Confirmation Notice will not be accepted.

The parties will be permitted to submit a working copy of the e-filed stipulation of discontinuance to the TRP by facsimile, mail or by e-mail to [TrialReadyWestchester@nycourts.gov](mailto:TrialReadyWestchester@nycourts.gov). In the event that a working copy of the e-filed stipulation is submitted no later than noon of the business day prior to the scheduled trial date, the parties will not be required to appear on the scheduled trial date. If a stipulation of discontinuance is not filed via NYSCEF and a working copy is not submitted, or is not submitted in a timely basis, the parties must appear on the scheduled trial date to report to the TRP Justice the status of any such settlement. It is incumbent upon the parties to ascertain that the TRP has received a timely submission of the working copy and that no appearance will be required. E-mail may be used only to submit fully executed, scanned (pdf format) stipulations. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement related issues such as liens, the matter may be taken off the Trial Calendar and referred back to the SCP to ensure that discontinuance is effectuated in accordance with CPLR §2104, CPLR §3217 and CPLR §8020(c).

**E. Motions in the Trial Ready Part in E-filed Actions**

1. Working Copies. The TRP requires the submission of “working copies” of all electronically filed motions and other documents. See Uniform Rule §202.5-b(d)(4). Working

copies are to be submitted to the TRP by mail or delivery to the 12<sup>th</sup> Floor Lobby Drop Off Basket designated for such purpose.

All working copies submitted to the TRP must include a copy of the NYSCEF Confirmation Notice firmly fastened to the front cover page of the submission and comply with all the other requirements set forth in the Joint Protocols for New York State Courts E-Filing (NYSCEF) for Cases Filed in Westchester County. Working copies without the Confirmation Notice will not be accepted.

Working copies are to be delivered no later than 10 a.m. on the first business day following the electronic filing of the document on the NYSCEF site.

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

ALL REQUESTS FOR ANY FORM OF RELIEF ARE TO BE MADE SOLELY BY ORDER TO SHOW CAUSE. COUNSEL ARE ADVISED THAT APPLICATIONS FOR ADJOURNMENTS OF A TRIAL MADE IN SUFFICIENT ADVANCE OF THE TRIAL WILL BE HEARD, TO THE EXTENT POSSIBLE, WITHOUT DELAY. HOWEVER, COUNSEL ARE CAUTIONED THAT APPLICATIONS MADE ON THE EVE OF TRIAL MAY NOT BE HEARD UNTIL THE DAY OF TRIAL.

Motions to Consolidate, Sever or Vacate the Note of Issue in matters with a trial date shall be made by Order to Show Cause and may be referred to the CP for decision. Counsel are cautioned to make such motions in a timely manner. Motions made on the eve of trial without good cause for the delay may be denied by the TRP JHO or Justice.

#### **V. Mediation in E-Filed Actions**

The parties are strongly encouraged to use the Westchester County Supreme Court's General Civil Mediation Program.

Information regarding the General Civil Mediation Program may be found at [http://www.nycourts.gov/courts/9jd/Westchester/generalCivilMediation/Mediation\\_program.pdf](http://www.nycourts.gov/courts/9jd/Westchester/generalCivilMediation/Mediation_program.pdf). The rules governing the General Civil Mediation Program can be found at [http://www.nycourts.gov/courts/9jd/Westchester/generalCivilMediation/rules\\_adr.pdf](http://www.nycourts.gov/courts/9jd/Westchester/generalCivilMediation/rules_adr.pdf).

However, as set forth in the rules, unless otherwise directed by the Administrative Judge, all deadlines and proceedings, including discovery, motion practice and trials, shall not be extended or stayed during mediation.



## **VI. Preliminary Conferences in Matters Not Subject to E-filing**

### **A. Requests for Preliminary Conferences in Matters Not Subject to E-filing**

In accordance with 22 NYCRR §202.12 (a), a party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses and telephone numbers of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention (RJI) together with the request for a preliminary conference. The request shall be served on all other parties.

Preliminary conferences sought by parties pursuant to 22 NYCRR §202.12 will be scheduled through the PCP upon filing of a request for a preliminary conference with proof of service. If the case has not yet been assigned to an IAS Justice, the party must also submit an original and one copy of an RJI with proof of service; proof of purchase of the index number for the main action, if applicable, and payment of filing fees for all third-party actions. Similarly, if the case has been assigned to an IAS Justice, the party must submit proof of payment of the filing fees for any third-party action.

Pursuant to 22 NYCRR §202.12 (b), the preliminary conference will be held within 45 days of the filing of the RJI unless the Court orders otherwise. Any party may move to advance the date of a preliminary conference upon a showing of special circumstances (22 NYCRR §202.12 (g)).

The PCP will give notice by mail of the preliminary conference. The preliminary conference may be adjourned once by written request of all parties submitted at least two (2) business days prior to the preliminary conference. The request for an adjournment may be made to the PCP by mail, facsimile or e-mail to [PreliminaryConferenceWestchester@nycourts.gov](mailto:PreliminaryConferenceWestchester@nycourts.gov) and shall include two (2) proposed alternative dates for rescheduling the preliminary conference, which dates shall be no later than one month following the scheduled preliminary conference. The PCP will thereupon give notice to the parties of the adjourned preliminary conference date by mail, or by e-mail if the parties so request.

The parties are cautioned to arrive on time for the preliminary conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to preliminary conferences may summarily be subject to sanctions and/or costs.

Pursuant to 22 NYCRR §202.12 (c), the matters to be addressed at the preliminary conference shall include as appropriate, the simplification and limitation of factual and legal issues; the establishment of a timetable for the completion of all disclosure proceedings; the establishment of the method and scope of any electronic discovery; the addition of other necessary parties; settlement of the action; and removal to a lower court pursuant to CPLR §325.

Court attorney-referees may conduct the preliminary conferences. At the preliminary conference, the PCP will confirm or modify the DCM track selected by the party who filed the RJI and will establish the schedule within the applicable DCM deadline for completion of pre-trial proceedings. Parties are reminded of the purpose and consequence of the DCM designations and that even if they designate a case as expedited, the case will not be expedited, unless the PCP confirms that an expedited DCM track is warranted. At the conclusion of the preliminary conference, a preliminary conference order will be issued.

**All questions, requests for adjournments or other inquiries regarding a matter pending in the PCP shall be addressed to the PCP clerk. No inquiries shall be directed to the Justices' IAS chambers.**

**B. Preliminary Conference Stipulation in Matters Not Subject to E-filing**

Where all parties can agree upon a discovery schedule, they may submit a preliminary conference stipulation to the PCP to be so ordered. In the event that the preliminary conference stipulation is submitted at least three (3) business days prior to the scheduled conference date and is determined to be acceptable, no appearance at the previously scheduled preliminary conference will be required.

A standard form to be used as the preliminary conference stipulation will be available in the PCP and online on the web site of the Ninth Judicial District. Parties will be permitted to submit same to the PCP by facsimile, mail or e-mail (fully executed, scanned pdf format only) to [PreliminaryConferenceWestchester@nycourts.gov](mailto:PreliminaryConferenceWestchester@nycourts.gov).

The preliminary conference stipulation submitted to be so-ordered must be signed by all parties who have appeared in the action. If all parties are unable to come to an agreement as to the terms of the preliminary conference stipulation, the preliminary conference will be conducted as scheduled.

The preliminary conference stipulation must strictly comply with 22 NYCRR §202.19 and provide that all disclosure be completed within 8, 12 or 15 months in expedited, standard and complex cases, respectively as set forth in 22 NYCRR §202.19. The preliminary conference stipulation will be reviewed by the PCP to confirm that the DCM track selected by the party who filed the RJI and the schedule proposed by the parties is within the applicable DCM deadline for completion of pre-trial proceedings. The parties may agree in the preliminary conference stipulation to change the DCM track, subject to approval by the PCP.

By no later than the day prior to the scheduled preliminary conference, if the preliminary conference stipulation is acceptable and so-ordered, the PCP will contact the parties to confirm the cancellation of the preliminary conference. If the proposed preliminary conference stipulation is not acceptable, the PCP will advise the parties that a preliminary conference is necessary. In the discretion of the PCP, a telephone conference with the parties may be held to address any issues with

the preliminary conference stipulation that can be resolved without the necessity of a physical appearance at a preliminary conference. In the event that matters cannot be resolved without a physical appearance, the in-person preliminary conference shall proceed on the scheduled conference date.

If the preliminary conference stipulation is not submitted, or is not submitted in a timely basis to allow proper review, the preliminary conference shall take place as scheduled. Untimely submissions will be rejected by the PCP, except in exigent circumstances as determined on a discretionary basis by the PCP. It is incumbent upon the parties to ascertain that the PCP has received a timely submission of the preliminary conference stipulation and that no appearance will be required at the preliminary conference. Parties should not assume that a preliminary conference has been cancelled in the absence of verification from the PCP.

Once a preliminary conference stipulation is so-ordered, a copy will be transmitted to counsel by mail or facsimile, or if an e-mail address is designated by the parties for such purposes, by e-mail. The parties are cautioned that preliminary conference orders are to be followed and it is expected that pre-trial proceedings will be completed on time, absent good cause. Lack of diligence will not be regarded as a sufficient excuse.

**C. Medical, Dental and Podiatric Malpractice Actions in Matters Not Subject to E-filing**

These PCP rules shall apply in medical, dental and podiatric malpractice actions only to the extent that they are not inconsistent with the provisions of 22 NYCRR §202.56. A preliminary conference will be scheduled as soon as practicable after the filing of the notice of medical, dental or podiatric action in accordance with 22 NYCRR §202.56(b). The PCP rules shall also apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR §3407 only to the extent that they are not inconsistent with the provisions of CPLR §3407. In such cases, the request for a preliminary conference may be filed at any time after commencement of the action and shall be accompanied by the physician's affidavit as required by CPLR §3407 (22 NYCRR §202.12 (l)).

A Preliminary Conference Stipulation and Order specific to Medical, Dental and Podiatric Actions will be utilized for such actions. The form is available at <http://www.nycourts.gov/courts/9jd/diffCaseMgmt/StipandOrder.pdf>. Preliminary conferences in these actions will generally be held, to the extent practicable, on Monday and Tuesday mornings.

**D. Motions in Matters Not Subject to E-filing**

No motions (including cross-motions) relating to discovery may be interposed until a

preliminary conference has been held in the PCP. The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. In the event that motion practice is necessary, a briefing schedule will be established by the court-attorney referee at the preliminary conference and the motion will be referred to the CP for disposition. Such motions shall be orally argued and the CP Justice may render a bench decision or a written decision, as appropriate. Motions relating to a failure to provide discovery or adhere to the preliminary conference order shall be heard in the CP (see CP Rules below). However, no such discovery motion (including a motion to dismiss predicated upon a discovery violation and including any discovery cross-motion) may be interposed until a pre-motion conference has been requested and held in the CP (see CP Rules below).

Failure to comply with the terms of a preliminary conference order, and making frivolous motions may result in the imposition of costs or other sanctions on the offending party (22 NYCRR §202.12(f)). Motions made after the preliminary conference has been scheduled and before a pre-motion conference has been held, may be denied unless there is shown good cause why such relief is warranted before the conference is held (22 NYCRR §202.12(h)).

In the event that a dispositive motion accompanies the RJI rather than a request for a preliminary conference, the case will be referred to the PCP for a preliminary conference and will also be assigned to an IAS Justice. Unless otherwise directed by Order of the Court, the statutory stay in CPLR §3214 for dispositive motions made pursuant to CPLR §§3211, 3212 or 3213 is superceded by this protocol. While counsel may agree to submit a preliminary conference stipulation to be so-ordered that defers discovery during the pendency of a dispositive motion, the parties are cautioned that they will be expected to complete all discovery within the designated DCM track and discovery shall not be stayed or otherwise extended due to the pendency of motions.

The return date for any pre Note of Issue motions for summary judgment once made may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days. Any request for an adjournment of a pre Note of Issue summary judgment motion shall be made to the IAS Part Justice assigned.

## **VII. Compliance Part Rules in Matters Not Subject to E-filing**

### **A. Compliance Conferences in Matters Not Subject to E-filing**

To assure that a case stays on its designated DCM track, a compliance conference will be scheduled approximately one hundred fifty (150) days prior to the date fixed as the last day of discovery in the preliminary conference order.

The compliance conference may be adjourned once by written request of the parties submitted at least two (2) business days prior to the compliance conference. The request for an adjournment may be made to the Compliance Part (CP) by mail, facsimile or e-mail to [ComplianceWestchester@nycourts.gov](mailto:ComplianceWestchester@nycourts.gov), and shall include two (2) proposed alternative dates for

rescheduling the compliance conference, which dates shall be no later than one hundred twenty (120) days prior to the last day of discovery set forth in the preliminary conference order. The CP will thereupon give notice to the parties of the adjourned compliance conference date by mail, or by e-mail if the parties so request. The parties are cautioned that any adjournment of the compliance conference will not excuse a failure to provide discovery or failure to adhere to the preliminary conference order and that discovery shall proceed during the period of any adjournment.

The parties are cautioned to arrive on time for the compliance conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to compliance conferences may summarily be subject to sanctions and/or costs.

Compliance conferences will be conducted by court attorney-referees who will monitor the progress of discovery to completion and ensure that discovery obligations and deadlines are enforced (and, where appropriate, adjusted) on a consistent basis. The court attorney-referees may, if discovery is not complete, and under limited circumstances, extend the time to complete discovery, but the parties are cautioned that no further extensions may be forthcoming. Requests for modifications to discovery schedules shall be addressed to the court attorney-referees at a conference. Inquiries by e-mail to the CP are restricted to scheduling matters and routine submissions only. The CP will not entertain requests to extend court-ordered discovery deadlines by e-mail or respond to discovery disputes submitted by e-mail. If assistance is required in regards to a discovery issue, the parties shall request a compliance conference in a timely manner.

#### **B. Discovery Motions in Matters Not Subject to E-filing**

Motions relating to a failure to provide discovery or failure to adhere to the preliminary conference order shall be made returnable and heard in the CP. However, no discovery or discovery compliance motion (including a motion to dismiss predicated upon a discovery violation) may be interposed until a preliminary conference has been held in the PCP and a pre-motion conference has been requested and held in the CP.

Pre-motion conferences may be requested by letter, transmitted to the CP by mail, facsimile or e-mail to [ComplianceWestchester@nycourts.gov](mailto:ComplianceWestchester@nycourts.gov). The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. Nothing in these rules shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, to foster the just, expeditious and inexpensive resolution of discovery disputes, pre-motion conferences shall be held in order to permit the Court the opportunity to resolve issues before motion practice ensues. In the event that motion practice is necessary, a briefing schedule will be established by the court attorney-referee(s). Failure to make a motion within the time allowed by the briefing schedule may result in a waiver of the issues that were to be raised by the motion. Failure to oppose a motion within the time allowed by the briefing schedule may result in the motion being decided without consideration of opposition. All motions will be orally argued and the CP Justice may render a bench decision or a written decision, as appropriate.

Substantive motions made in the case will be decided by the assigned IAS Justice. Substantive motions do not require a pre-motion conference and, absent a specific order to the contrary from the IAS Justice, will be submitted without oral argument. Unless otherwise accepted by the CP and a briefing schedule issued in the CP, motions to sever, amend, consolidate and with regard to spoliation of evidence are referred to the IAS Parts for disposition.

Motions to be relieved as counsel, for pro hac vice admission, or for reargument of a decision and order rendered in the CP do not require a pre-motion conference. However, motions to be relieved as counsel shall be made by Order to Show Cause returnable in the CP and shall be orally argued. The CP motion calendar shall be called generally every Monday at 2 p.m.

**C. Note of Issue and Motions for Summary Judgment in Matters Not Subject to E-filing**

At the conclusion of the compliance conference if discovery is complete or has been deemed waived, the CP Justice shall issue a Trial Readiness Order pursuant to which plaintiff will be ordered to serve and file a Note of Issue and Certificate of Readiness within twenty (20) days.

Where all parties agree that discovery is complete and request the issuance of a Trial Readiness Order without the necessity of an appearance at a compliance conference, they may submit a signed Trial Readiness Stipulation to such effect to be so ordered to the CP in the form available online at <http://www.nycourts.gov/courts/9jd/diffCaseMgmt/TrialReadyStip010317.pdf>.

The CP Justice shall establish the deadline for any post-note summary judgment motions in the Trial Readiness Order which shall provide that any motion for summary judgment by any party must be served within forty-five (45) days following the filing of the Note of Issue.

The CP Justice shall set a briefing schedule for the service of papers in opposition or support of summary judgment motions in the Trial Readiness Order, which shall provide that opposition papers must be served within thirty (30) days of service of motion papers and reply papers, if any, must be served within ten (10) days following service of any opposition papers.

The return date for a motion for summary judgment once made may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days. Any request for an adjournment may be made in writing at least two (2) business days in advance of the return date to the CP, to the attention of the motion clerk, by mail, facsimile or e-mail to [ComplianceMotionsWestchester@nycourts.gov](mailto:ComplianceMotionsWestchester@nycourts.gov). Requests for adjournments shall be accompanied by a proposed stipulation of the parties or order.

**Counsel are cautioned that untimely motions cannot be made timely by denominating such as cross-motions. The failure of a party to serve and file a motion or cross-motion within the 45-day time period pursuant to this protocol and the trial readiness order**

**shall result in the denial of the untimely motion or cross-motion.**

**In no event shall an adjournment be granted after the time to move or submit opposition or reply papers has expired. It is incumbent upon counsel to ensure that any request for an adjournment of the return date of a motion has been received and approved within the requisite time period. Requests for adjournments sent in error to IAS parts will not be processed.**

Applications seeking to vacate a Note of Issue or to otherwise challenge readiness for trial shall be made within twenty (20) days of the service of the Note of Issue as required by 22 NYCRR §202.21(e). Applications made after the twenty (20) day period has expired shall be denied except in the unusual circumstances recognized by 22 NYCRR §202.21(d). Any such motion shall be made returnable and heard in the CP. However, no such motion shall be interposed until a pre-motion conference has been requested no less than two (2) business days in advance.

Unless otherwise directed by Order of the Court, the statutory stay in CPLR §3214 for dispositive motions made pursuant to CPLR §§3211, 3212 or 3213 is superceded by this protocol. While counsel may agree to defer discovery during the pendency of a dispositive motion, the parties are cautioned that they will be expected to complete all discovery within the designated DCM track and pursuant to the preliminary conference order and any compliance conference orders and that discovery shall not be stayed or otherwise extended due to the pendency of such motions.

**All questions, requests for adjournments or other inquiries regarding a matter pending in the CP shall be addressed to the CP clerks or the court attorney-referee assigned to the case. No inquiries shall be directed to the Justices' IAS chambers.**

**D. Settlement in Matters Not Subject to E-filing**

The parties are cautioned that the all too common practice of appearing before the Court and representing that a settlement has been made will no longer be accepted. Counsel or self-represented parties must file a stipulation of discontinuance before the case is marked settled and disposed and submit a copy to the CP stamped and filed by the County Clerk indicating that the required fee was paid to the County Clerk (CPLR §2104, CPLR §3217 and CPLR §8020[c]).

The parties will be permitted to submit a copy of the stamped and filed stipulation of discontinuance to the CP by facsimile, mail or by e-mail to [ComplianceWestchester@nycourts.gov](mailto:ComplianceWestchester@nycourts.gov). In the event that a copy of the stamped and filed stipulation is submitted no later than noon of the business day prior to the scheduled conference date, the parties will not be required to appear on the scheduled compliance conference date. If a stipulation of discontinuance is not submitted, or is not submitted in a timely basis, the parties must appear on the scheduled compliance conference date to report to the court attorney-referee the status of any such settlement. It is incumbent upon the parties to ascertain that the CP has received a timely submission of a stipulation and that no

appearance will be required. E-mail may be used only to submit fully executed, scanned (pdf format) stipulations. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement related issues such as liens, the matter may be set down for an appearance in the CP to ensure that discontinuance is effectuated in accordance with CPLR §2104, CPLR §3217 and CPLR §8020(c). However, the pendency of settlement negotiations will not delay, adjourn or in any way affect the scheduling of discovery proceedings.

## **VIII. Settlement Conference Part Rules in Matters Not Subject to E-filing**

### **A. Settlement Conferences in Matters Not Subject to E-filing**

Settlement conferences are held commencing at 9:15 a.m. on a daily basis. There will be generally two (2) intensive settlement conferences held in the SCP to maximize the resolution of cases. Additional settlement conferences may be held at the request of the parties and in the discretion of the SCP Justice to promote the just and expeditious resolution of a case through settlement.

Once a note of issue is filed, the case will be assigned to the SCP. Cases will be placed on the SCP calendar for an initial settlement conference which will be scheduled, to the extent possible, ninety (90) to one hundred (120) days following the filing of the Note of Issue. Cases will not be placed on the SCP calendar unless the time within which to move for summary judgment has expired or any pending summary judgment motion has been determined.

The SCP will give notice by mail of the first settlement conference. The first settlement conference may be adjourned no more than two (2) times by written request of the parties submitted at least two (2) business days prior to the scheduled settlement conference date. The request for an adjournment may be made to the SCP by mail, facsimile or e-mail to [SettlementConferenceWestchester@nycourts.gov](mailto:SettlementConferenceWestchester@nycourts.gov), and shall include two (2) proposed alternative dates for rescheduling the first settlement conference, which dates shall be no later than three (3) weeks following the previously scheduled settlement conference date. The SCP will thereupon give notice to the parties of the adjourned settlement conference date by mail, or by e-mail if the parties so request.

The parties are cautioned to arrive on time for settlement conferences. The parties should submit a completed settlement conference form seven (7) days in advance of the first conference. The settlement conference form can be found at [http://www.nycourts.gov/courts/9jd/diffCaseMgmt/Settlement\\_Conference\\_Form.pdf](http://www.nycourts.gov/courts/9jd/diffCaseMgmt/Settlement_Conference_Form.pdf).

Attorneys attending the first settlement conference must bring a copy of all documents relevant to the issues of liability and damages, be fully familiar with every aspect of the case, and be expressly authorized to engage in meaningful settlement negotiations. Attorneys must have evaluated the case prior to the settlement conference date and be prepared to negotiate in good faith to effectuate a reasonable settlement. Absent good cause, the plaintiff(s) and defendant(s) must be reachable by



phone to consent to any settlement. No answering services will be permitted. The plaintiff(s) and defendant(s) may attend such conferences with counsel.

Should counsel report that all efforts to settle the case have been previously exhausted and request that a trial date be set, they may waive the settlement conference before the Justice and appear to schedule a trial date directly with the SCP clerk. Should counsel report after the first settlement conference is conducted that a second settlement conference will be futile and request that a trial date be set, a trial date will be set at the conclusion of the first conference.

Except as set forth above, at least two months before trial, the parties will be scheduled to appear at a second settlement conference in the SCP. The second settlement conference shall be calendared at the conclusion of the first settlement conference, except as set forth above.

The second or any further settlement conferences may be adjourned no more than two (2) times, by written request of all parties submitted at least two (2) business days prior to the scheduled settlement conference. The request for an adjournment may be made to the SCP by e-mail to [SettlementConferenceWestchester@nycourts.gov](mailto:SettlementConferenceWestchester@nycourts.gov) or by facsimile or mail and shall include two (2) proposed alternative dates for rescheduling the settlement conference, which dates shall be no later than three (3) weeks following the previously scheduled settlement conference. The SCP will thereupon give notice to the parties of the adjourned settlement conference date by mail, or by e-mail if the parties so request.

The final settlement conference will be the parties' last clear chance to settle the case prior to trial before the IAS Trial Judge. The parties are cautioned that without prior court approval, there will be no further settlement conferences held prior to the trial date, and in no event shall settlement discussions result in an adjournment of the trial date. Attorneys must have evaluated the case prior to the final settlement conference date and be prepared to negotiate in good faith to effectuate a reasonable settlement. Each attorney attending the final settlement conference must bring a complete file including the marked pleadings, medical reports and all other documents related to the issues of liability and damages. Moreover, counsel must be authorized to settle and/or make binding concessions. Absent good cause, the plaintiff(s) and defendant(s) must be reachable by phone to consent to any settlement. The date for trial will be fixed at the final settlement conference.

#### **B. Trial Date Scheduling in Matters Not Subject to E-filing**

All trial dates will be no earlier than two months after the second conference. Attorneys are reminded of the rules regarding actual engagement of counsel (Section 125.1(g) of the Rules of the Chief Administrator: Attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she must produce substitute trial counsel. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed). Attorneys are cautioned that the rules regarding

actual engagement will be strictly enforced.

**C. Summary Jury Trial Program in Matters Not Subject to E-filing**

The Westchester County Supreme Court operates a summary jury trial program. Parties electing to proceed by summary jury trial must file a fully executed summary jury trial stipulation with the SCP thirty (30) days prior to the second settlement conference. The untimely submission of a summary jury trial stipulation may result in the action being retained in the SCP and the scheduling of a conventional trial. The Rules of the Summary Jury Trial Program and forms are available at <http://www.nycourts.gov/courts/9jd/PDFs/SJTRules.pdf>.

**D. Settlement in Matters Not Subject to E-filing**

The parties are cautioned that the all too common practice of appearing before the Court and representing that a settlement has been made will no longer be accepted. Counsel or self-represented parties must file a stipulation of discontinuance before the case is marked settled and disposed and submit a copy to the SCP stamped and filed by the County Clerk indicating that the required fee was paid to the County Clerk (CPLR §2104, CPLR §3217 and CPLR §8020[c]).

The parties will be permitted to submit a copy of the stamped and filed stipulation of discontinuance to the SCP by facsimile, mail or by e-mail to [SettlementConferenceWestchester@nycourts.gov](mailto:SettlementConferenceWestchester@nycourts.gov). In the event that a copy of the stamped and filed stipulation is submitted no later than noon of the business day prior to the scheduled conference date, the parties will not be required to appear on the scheduled settlement conference date. If a stipulation of discontinuance is not submitted, or is not submitted in a timely basis, the parties must appear on the scheduled settlement conference date to report to the SCP Justice the status of any such settlement. It is incumbent upon the parties to ascertain that the SCP has received a timely submission of a stipulation and that no appearance will be required. E-mail may be used only to submit fully executed, scanned (pdf format) stipulations. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement related issues such as liens, the matter may be set down for an appearance in the SCP to ensure that discontinuance is effectuated in accordance with CPLR §2104, CPLR §3217 and CPLR §8020(c). However, the pendency of settlement negotiations will not delay, adjourn or in any way affect the scheduled trial date.

**All questions, requests for adjournments or other inquiries regarding a matter pending in the SCP shall be addressed to the SCP clerk. No inquiries shall be directed to the Justices' IAS chambers.**

**E. Infant Compromise Proceedings in Matters Not Subject to E-filing**

Infant Compromise Proceedings are handled centrally in the SCP. Any inquiries regarding

such proceedings shall be directed to the SCP and not to IAS Parts.

**IX. Trial Ready Part Rules in Matters Not Subject to E-filing**

**A. Trial Calendar in Matters Not Subject to E-filing**

A call of the trial calendar will be held promptly at 9:30 a.m. in the Trial Ready Part (TRP) by the TRP JHO or Justice. Trial counsel for all parties must appear and be ready to commence trial (and, in cases in which juries have been demanded, to select a jury). No requests for adjournments will be granted, absent unusual and exigent circumstances. Sanctions and/or costs may be imposed on counsel who are not present upon the call of the TRP Calendar. Failure to proceed may result in the striking of the case from the trial calendar, vacating the Note of Issue, dismissal of the complaint or the striking of the answer, or other remedies, including, but not limited to, those set forth in CPLR §3404 and 22 NYCRR §202.21 and § 202.27. Counsel are cautioned that where the Note of Issue is stricken, no case will be restored to the trial calendar without the filing of a new Note of Issue.

**B. Rules Regarding Actual Engagement of Counsel in Matters Not Subject to E-filing**

Attorneys are reminded of the rules regarding actual engagement of counsel (Section 125.1(g) of the Rules of the Chief Administrator: Attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she must produce substitute trial counsel. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed). Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced.

**C. Trial in Matters Not Subject to E-filing**

Any cases which are not sent out for trial (or jury selection) will be deemed ready and passed to the following day or otherwise as directed by the TRP JHO or Justice. The TRP will endeavor to send all cases to jury selection, beginning with special preference cases, and then by oldest cases as determined by the date of filing of the Note of Issue. In the event that counsel fail to proceed to select a jury, or timely appear before the assigned IAS Trial Judge, the action may be dismissed or a default taken or other sanction imposed, as appropriate under the circumstances. Every effort will be made to assign the trial to the IAS Justice who had the case previously.

**D. Settlement in Matters Not Subject to E-filing**

The parties are cautioned that the all too common practice of appearing at the trial calendar and representing that a settlement has been made will no longer be accepted. Counsel or self-represented parties must file a stipulation of discontinuance before the case is marked settled and disposed and submit a copy to the TRP stamped and filed by the County Clerk indicating that the

required fee was paid to the County Clerk ((CPLR §2104, CPLR §3217 and CPLR §8020(c)).

The parties will be permitted to submit a copy of the stamped and filed stipulation of discontinuance to the TRP by facsimile, mail or by e-mail to [TrialReadyWestchester@nycourts.gov](mailto:TrialReadyWestchester@nycourts.gov). In the event that a copy of the stamped and filed stipulation is submitted no later than noon of the business day prior to the scheduled trial date, the parties will not be required to appear on the scheduled trial date. If a stipulation of discontinuance is not submitted, or is not submitted in a timely basis, the parties must appear on the scheduled trial date to report to the TRP JHO or Justice the status of any such settlement. It is incumbent upon the parties to ascertain that the TRP has received a timely submission of a stipulation and that no appearance will be required. E-mail may be used only to submit fully executed, scanned (pdf format) stipulations. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement related issues such as liens, the matter may be taken off the Trial Calendar and referred back to the SCP to ensure that discontinuance is effectuated in accordance with CPLR §2104, CPLR §3217 and CPLR §8020(c).

**E. Motions in the Trial Ready Part in Matters Not Subject to E-filing**

**ALL REQUESTS FOR ANY FORM OF RELIEF ARE TO BE MADE SOLELY BY ORDER TO SHOW CAUSE. COUNSEL ARE ADVISED THAT APPLICATIONS FOR ADJOURNMENTS OF A TRIAL MADE IN SUFFICIENT ADVANCE OF THE TRIAL WILL BE HEARD, TO THE EXTENT POSSIBLE, WITHOUT DELAY. HOWEVER, COUNSEL ARE CAUTIONED THAT APPLICATIONS MADE ON THE EVE OF TRIAL MAY NOT BE HEARD UNTIL THE DAY OF TRIAL.**

Motions to Consolidate, Sever or Vacate the Note of Issue in matters with a trial date shall be made by Order to Show Cause and may be referred to the CP for decision. Counsel are cautioned to make such motions in a timely manner. Motions made on the eve of trial without good cause for the delay may be denied by the TRP JHO or Justice.

**X. Mediation in Matters Not Subject to E-filing**

The parties are strongly encouraged to use the Westchester County Supreme Court's General Civil Mediation Program.

Information regarding the General Civil Mediation Program may be found at [http://www.nycourts.gov/courts/9jd/Westchester/generalCivilMediation/Mediation\\_program.pdf](http://www.nycourts.gov/courts/9jd/Westchester/generalCivilMediation/Mediation_program.pdf). The rules governing the General Civil Mediation Program can be found at [http://www.nycourts.gov/courts/9jd/Westchester/generalCivilMediation/rules\\_adr.pdf](http://www.nycourts.gov/courts/9jd/Westchester/generalCivilMediation/rules_adr.pdf).

However, as set forth in the rules, unless otherwise directed by the Administrative Judge, all deadlines and proceedings, including discovery, motion practice and trials, shall not be extended or stayed during mediation.