

Hon. David S. Zuckerman. A.J.S.C.

Contact Information:

Address: Rockland County Courthouse
1 South Main Street
New City, NY 10956

Courtroom: 6
Chambers Phone: (845) 483-8340
Chambers Fax: (845) 708-7236

Part Clerk Phone: (845) 483-8335
Part Clerk Fax: (845) 483-8141

Justice Zuckerman's Staff:

Principal Law Clerk: J. Raymond Mechmann Esq.

Confidential Secretary: Enrique Miseses

Part Clerk: Eileen Dillon (845) 483-8335

Motion Day: Fridays

Motions are on submission, unless the Court directs otherwise.

Part Rules

The following Part Rules are effective as of May 30,2017 in all non-criminal proceedings assigned to the Hon. David S. Zuckerman, A.J.S.C.

I. General Rules

A. General Conference Rules--

All conferences with the Court are conducted in public before Justice Zuckerman or his Principal Law Clerk at 9:15 a.m. sharp weekdays in Courtroom #6 of the Rockland County Courthouse, unless otherwise directed. Counsel and pro se litigants are expected to appear for all conferences on time. Depending on the day's schedule, it is possible that a matter will only be called once and could result in an adjournment, dismissal or default for an attorney or party's failure to appear timely.

Revised: 05/30/2017

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 as to both substantive and procedural matters on behalf of their clients. Attorneys appearing of counsel to the attorneys of record and self-represented parties shall be held to the same requirements. Failure to comply with this rule may be regarded as a default and dealt with appropriately. All counsel and self-represented parties must be on time for all scheduled appearances.

B. Conferences:

1. Preliminary Conferences—Appearances at Preliminary Conferences are mandatory and counsel must be prepared to discuss the facts of the case, prepare a discovery schedule, and, if appropriate, discuss settlement. In Matrimonial Cases, the provisions of 22 NYCRR 202.16(f) shall also apply. The attorneys shall advise the court of any outstanding motions.

Preliminary Conferences will ordinarily result in the issuance of a Preliminary Conference Order which shall address all aspects of anticipated pretrial discovery and which shall set forth a date for a compliance conference. Counsel shall notify the court, in writing, if discovery does not proceed as directed as well as any reason for the delay. All counsel and pro se litigants are expected to scrupulously abide by the court's discovery schedule and deadlines and non-compliance shall only be excused if explained by extraordinarily extenuating circumstances.

Discovery may be expedited in third party actions, joint actions and consolidated actions to avoid undue delay in completing overall discovery. Preliminary Conferences for medical, dental, and podiatric malpractice actions will be conducted in accordance with Uniform Rule §202.56(b).

Preliminary Conferences of matrimonial actions will be conducted in accordance with Uniform Rule §202.16 and Domestic Relations Law §236(B)(4), by which the parties are required, *inter alia*, to submit at the conference copies of counsels' retainer agreements and certified copies of the parties' net worth statements (including copies of their most recent three years of federal and state income tax returns, latest W-2 forms and pay stubs, bank and investment statements and other relevant supporting documentation). Failure to do so may result in significant sanctions.

2. Compliance Conferences--The purpose of the Compliance Conference is for counsel and pro se litigants to report to the court that pre-trial discovery has been completed, to enable the Court to direct a date on which a Note of Issue shall be filed and to schedule dates for Mediation, a Pre-Trial Conference, and Trial. Pre-Trial Conferences and trial dates that are scheduled during a Compliance Conference should be viewed by the parties and counsel as firm dates. Parties are not permitted to file a Note of Issue in any action unless permission to do so is granted by the court. Motions to strike Notes of Issue are discouraged, as matters of outstanding discovery, if any, are expected to be raised, discussed and resolved at the

Compliance Conference. The court reserves the right to set forth at the Compliance Conferences a further discovery schedule if the litigation or the interests of justice so require, though parties are warned that any additional permissible discovery may be subject to an expedited schedule. The court also reserves the right to impose appropriate sanctions against any party or counsel responsible for a non-excusable failure to complete pretrial discovery by the date of the Compliance Conference.

3. Pre-Trial Conferences--The court shall conduct a Pre-Trial Conference with all counsel and pro se litigants on a date that shall ordinarily be within thirty (30) days of the Trial date. It is expected that counsel attending Pre-Trial Conferences shall be fully familiar with the action and be authorized to discuss: (1) all factual and legal issues presented by the litigation, (2) settlement demands or offers, (3) trial procedure and witness scheduling, and (4) that counsel also be authorized to enter into settlements on terms agreeable to the parties and to the court. Further, counsel attending the Pre-Trial Conference shall either be the actual attorney trying the case or a partner/associate in the law firm representing that party (NO OF COUNSEL APPEARANCES PERMITTED AT PRE-TRIAL CONFERENCES). The actual parties in any litigation, or in actions involving insurance carriers, an authorized claims representative, must be available for the Pre-Trial Conference either in person or, if prior permission is granted by the Court, by telephone for the purpose of direct contact with the court in settlement discussions. The court endeavors to be of assistance to parties in settling actions prior to Trial. In the event a Pre-Trial Conference does not result in settlement of an action, the court will favorably entertain any later request by the parties, on consent, to conduct an additional Pre-Trial Conference prior to the date of Trial, but shall not allow any such additional conference to delay the Trial schedule.

C. Adjournments.

As a matter of general practice, adjournments will not be granted for conferences (Preliminary, Compliance, Mediation, Pre-Trial) or trials. Applications for adjournments must be made in writing actually received by the court (by mail or fax) at least twenty-four (24) hours in advance of the scheduled conference, and must address:

- (1) The date of the scheduled court appearance and trial date, if any,
- (2) good cause why an adjournment is sought,
- (3) whether the adverse party(ies) consent or object to the application, and
- (4) may, at the option of the sender, suggest an approximate time period, or an exact date, for which the adjournment is sought.

All such communications must be copied to all counsel and pro se litigants. The court may, in the exercise of sound discretion, permit or refuse an adjournment in any given instance.

D. Settlements and Discontinuances: If an action is settled, discontinued, or otherwise disposed of in any manner by the parties, counsel and self-represented parties shall immediately inform the court by letter and by filing a Stipulation of Discontinuance with the Part Clerk, or through NYSCEF in an e-filed case. The court will not mark any matter settled unless it has received a copy of a Stipulation of Discontinuance, the original of which shall have been filed with the County Clerk.

II. Papers by Fax: The court does not accept papers of any kind by fax transmission without prior court approval. However, copies of letters confirming an adjournment of a motion or a conference may be faxed to the Court's chambers at (845)708-7236. However, the original of all correspondence must be mailed to the Part Clerk. Any authorized fax transmission directed to the Part Clerk should be faxed to (845)483-8141.

III. *Ex Parte* Communications: *Ex parte* communications are strictly prohibited except: (1) upon consent of all counsel and self-represented parties, (2) with respect to scheduling matters, (3) the presentation of orders to show cause for signature, or (4) where otherwise permissible by law.

IV. Communications with Represented Parties: Counsel are directed to inform their clients that under no circumstances shall any represented party engage in any conversation or exchange any communication with the court's staff (*see* CPLR §321[a]).

V. Scheduling: Counsel and any self-represented party should address questions about scheduling appearances or adjourning appearances to the Part Clerk, Eileen Dillon at (845) 483-8335.

VI. E-Filing Rules and Protocol

A. E-Filing Rules and Protocol: Counsel for all parties shall familiarize themselves with the statewide E-Filing Rules (*see* §§ 202.5-b and 202.5bb of the Uniform Rules for the New York State Trial Courts, available at www.nycourts.gov/efile) and the Rockland County E-Filing Protocol.

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or [e file@courts.state.ny.us](mailto:e_file@courts.state.ny.us).

Specific questions about local procedures should be addressed to the Supreme Court Civil Calendar Office at (845) 483-8310.

B. Electronic Filing: All documents filed in mandatory e-filed cases, except those documents subject to the "opt out" provision of §202.5-bb of the Uniform Rules for the New York State Trial Courts, or documents subject to e-filing in which consent is being withheld, are to be filed through the New York State Courts E-Filing System

(NYSCEF). All submissions to the Court, including proposed orders, judgments and letters must be electronically filed.

C. Working Copies: This Part requires one working copy of each motion, exhibit, letter, transcript, stipulation, and proposed order, which shall be delivered to the Part Clerk. (*see* §202.5-b [d] [4] of the Uniform Rules for the New York State Trial Courts). All working copies submitted MUST include a copy of the NYS CEF Confirmation Notice firmly fastened to the front cover page of the working copy submission and must comply with all of the other requirements set forth in the Rockland County Protocol (*see* Uniform Rules for the New York State Trial Courts §202.5-b [d] [1]). The Confirmation Notice is generated when the case is e-filed and is available in the specific case file at www.nycourts.gov/efile. Working copies that do not include a NYSCEF Confirmation Notice may be rejected.

Working copies shall be mailed or hand-delivered so as to be received by chambers no later than the return date or notice of settlement date, or as otherwise directed or permitted by the court. For convenience, working copies may be delivered to Chambers (for access please call 845-483-8340.), Part Clerk Eileen Dillon at 845-483-8335, or in courtroom 6, or at the Central Calendar Office.

VII. Motion Practice Rules

A. Discovery Motions: Counsel must consult with one another in a good faith effort to resolve all disclosure disputes. See Uniform Rule 202.7. If counsel are unable to resolve a disclosure dispute, the procedures previously set forth must be followed before any formal motion may be made.

B. Motion Calendar and Appearances for Cases Assigned to this Part: All motions made by notice of motion or proceedings commenced by Notice of Petition assigned to this Part shall be made returnable before the Court on any Friday the court is in session at 9:15 a.m.

The court will call a motion submission calendar for the purpose of providing an efficient, orderly means for parties to submit, and the court to collect, all opposition, cross-moving, and reply papers in connection with motions on the calendar. All papers in connection with a motion shall be received by the court prior to, or at the time of, the calendar call on the return date of the motion. If opposition, cross-moving, or reply papers are not submitted by the return date, the opportunity to do so will be lost, unless an adjournment is arranged or court permission is obtained at least two working days prior to the return date. The submission of papers shall constitute a party's appearance on a motion, and the failure of any party to appear at the submission calendar call shall not constitute a default.

There is no oral argument at the submission calendar call, unless the court directs otherwise. If the court requests appearances or oral argument in connection with a motion, the parties will be notified in advance of the date and time for their appearance.

The court encourages, and is available to facilitate, the settlement of all matters. Accordingly, in any case assigned to this Part, where all parties consent, they may contact chambers to request a conference for the purpose of resolving motions pending before this court or settling the entire matter. If the parties agree to attend a court conference, this shall not serve to delay the submission date of any motion nor as a stay of the proceedings.

C. Applications, Adjournments, Submission of Late Papers for Cases Assigned to this Part: To protect movants against any potential prejudice resulting from the submission of late opposition papers or cross-motions, the court may *sua sponte* adjourn cases in which appropriate time has not been given to opposing parties. Parties seeking an adjournment must follow the direction delineated below in order to adjourn a motion.

D. Adjournments by Stipulation for Cases Assigned to this Part: A party seeking an adjournment must contact all other parties in an effort to obtain consent and demonstrate such efforts to the court. No more than three adjournments, for a total of no more than 60 days, are allowed except with the court's permission (*see* §202.8 [e] [1] of the Uniform Rules for the New York State Trial Courts), which shall be given by means of a so-ordered stipulation.

E. Adjournments by Affidavit/Affirmation of Consent for Cases Assigned to this Part: If all parties consent to an adjournment as allowed by these rules, but a written stipulation cannot be obtained in time for submission, the applicant for the adjournment on consent may submit an Affidavit or Affirmation reciting that such consent was obtained. The Affidavit/Affirmation of consent must state the reason for the adjournment request, how consent was obtained from all parties, when it was obtained, and the name of each attorney or self-represented party who gave oral consent. The Affidavit/Affirmation must be received by the court before the scheduled submission date or at the time of the submission calendar call.

F. Adjournments Without Consent for Cases Assigned to this Part: If consent for an adjournment cannot be obtained from all parties prior to the return date, a party may: (1) make a letter application to chambers for an adjournment (by fax or through NYSCEF), on notice to all other parties having appeared in the action or proceeding, or (2) appear on the return date of a motion at 9:15 a.m. and state on the record before the court the reason for the requested adjournment and a description of the efforts

made to obtain such consent, including the date when contact was initiated or attempted, the means used, and the person contacted (if consent was refused) or for whom a message was left (if no contact was made). Furthermore, an applicant must, by phone, fax, e-mail, or mail transmitted with adequate lead time, advise all parties who have not consented that an application will be made at the Motion Calendar call. No motion shall be considered adjourned unless the Part Clerk or Principal Law Clerk has conveyed the court's approval of an adjournment.

H. Orders to Show Cause for Cases Assigned to this Part: Orders to show cause submitted for signature shall be presented to the office of the Calendar Clerk, after payment of any required fee at the County Clerk's Office. If the order to show cause is signed by the court, a copy of it shall be sent by fax or through NYSCEF to counsel for the moving party or self represented party. If appearances are required on the return date of the motion, the court shall so indicate in the order to show cause. Otherwise, no appearances shall be required and no oral argument shall be heard on the return date of the motion.

I. Requests for Temporary Injunctive Relief for Cases Assigned to this Part: When an order to show cause to be presented to the court seeks temporary injunctive relief, including but not limited to a stay or a temporary restraining order, counsel for the moving party or any self-represented party shall demonstrate compliance with §202.7 (f) of the Uniform Rules for the New York State Trial Courts, regarding notice to affected parties.

J. Communications Regarding Motions for Cases Assigned to this Part: All communications regarding motions, including requests for adjournments and questions concerning the status of motions, shall be directed to the Part Clerk, or in her absence, Principal Law Clerk.

K. Time for Filing and Serving Summary Judgment Motions: Summary judgment motions shall be filed with the court and served upon all adverse parties no later than sixty (60) days after the filing of the note of issue.

L. No Stay of Discovery: There shall be no stay of pretrial discovery resulting from the filing of a motion made pursuant to CPLR §§3211 or 3212 unless otherwise ordered by the court.

M. Form of Papers: All motion papers submitted to the court, including orders to show cause, must be legible, and should be typewritten, with all exhibits labeled with tab markings. Motion papers and all correspondence must indicate the index number

assigned to the action. Courtesy copies of papers shall be submitted to chambers.

N. Papers Required on Particular Motions:

1. Dispositive Motions: For any dispositive motion, the moving party shall include copies of all pleadings filed as of the date the motion is filed. The failure to comply with this requirement may result in denial of the motion unless the pleadings are submitted to the court by another party.

2. Motions 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 may result in denial of the motion unless the papers on the prior motion are submitted to the court by another party.

3. 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 may result in denial of the motion unless copies of the prior pleadings are submitted to the court by another party.

4. Motions for Injunctive Relief: When an order to show cause is presented to the court which seeks injunction relief, copies of the summons and complaint or petition commencing the underlying action must be provided to the court by the moving party. The failure to comply with this requirement may result in denial of the order to show cause. Where temporary injunctive relief is sought, counsel for the moving party or any self-represented party shall demonstrate compliance with §202.7 (f) of the Uniform Rules for the New York State Trial Courts regarding notice to affected parties.

5. Default Motions: On any motion for a default judgment, proof must be presented that a military-status investigation of all defendants who are persons has been conducted after the time for each such defendant to appear or answer, as applicable, has transpired. In addition, to be sufficient, the military-status investigation must include, at a minimum, a search conducted through the Department of Defense, which may be performed through that agency's internet site, www.dmdc.osd.mil/appj/scra.

O. Reply Papers: Counsel and self-represented parties shall not set forth factual claims or legal arguments in reply papers that were not set forth in the papers initiating the

motion or cross-motion. New factual claims and legal arguments not directly in response to factual claims or legal arguments offered in opposition to a motion or cross motion shall not be considered by the court in its determination of a motion or cross motion.

P. Sur-Reply and Post-Submission Papers: Counsel and the parties are reminded that the CPLR does not provide for 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. Any opposing counsel or self-represented party who receives a copy of such materials submitted in violation of this rule shall not respond in kind.

Q. Settled Motions: In the event the parties settle a motion or part of a motion before the motion return date or a decision has been rendered, they shall immediately inform the court in writing.

R. Motion Decisions and Orders:

1. Written Decisions: In most instances, a written decision and order will be issued by the court following submission of the motion. The decision and order, with supporting papers, will be e-filed in the Rockland County Clerk's Office. If a party opts-out from participation in e-filing, a copy of the order shall be faxed or mailed to that party.

2. Bench Decisions: In certain instances, the court will render a decision from the bench. Any party seeking a written order shall submit to the court a proposed order supported by a copy of the transcript of the proceedings at which the bench decision was rendered. The signed order will be e-filed in the Rockland County Clerk's Office by the court, and faxed or mailed to any party that opts-out from participating in e-filing.

VIII. Trial Practice Rules

A. Trial Preparation: Prior to commencement of a trial or hearing, counsel shall ascertain the availability of all witnesses and subpoenaed documents. Counsel for any party or any self-represented party who has issued subpoenas for the production of records shall request that the Part Clerk requisition all subpoenaed documents from the part clerk.

B. Interpreters and Special Services: Upon reporting to the court for a trial or a hearing, counsel and any self-represented party shall immediately 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. Similarly, the Part Clerk shall be immediately informed if there is a need for an easel, blackboard, shadow box, or any other trial aid.

C. Pleadings and Submissions Due Immediately Upon Appearance: Immediately upon being assigned to this Part for a trial or hearing, counsel for each party and any self-represented party shall report to the Part Clerk and submit the following to the court:

1. A statement of the estimated length of trial.
2. Marked pleadings and bills of particulars.
3. A list of all witnesses who may be called at trial, including any potential rebuttal witnesses.
4. A list of all exhibits the party expects to use at trial, indicating whether such exhibits are stipulated for admission into evidence or are marked only for identification.
5. A written stipulation governing all facts that are not in dispute.
6. In all matrimonial actions, an updated net worth statement and a statement of proposed disposition.
7. A copy of any statutory provisions upon which any party intends to rely.
- 8 All expert witness reports and disclosures exchanged between the parties.
9. All reports, transcripts of examinations before trial, and written statements that may be used either to refresh a witness' recollection or for cross-examination.

D. Marking of Exhibits: After filing the above listed submissions with the court, counsel and any self-represented party shall meet with the assigned Official Court reporter to pre-mark all exhibits for identification. Any exhibits whose admission is

agreed upon by the parties shall be pre-marked for admission.

E. Conference: Immediately prior to the commencement of the trial, the court shall conduct a brief conference with all counsel and self-represented parties to discuss preliminary matters. At this conference, all counsel and self-represented parties shall be prepared to:

- I. Advise the court as to all anticipated disputed issues of law and fact, and provide the court with citations to all statutory and common-law authority upon which they will rely.
2. Stipulate to undisputed facts and the admission of documents, records and other exhibits, for which no evidentiary objection will be made.
3. Alert the court to any anticipated in limine motions or evidentiary or legal issues they believe will arise during the trial.
4. Provide the court with a copy of all prior decisions and orders in the case that may be relevant to any in limine applications or evidentiary or legal issues.
5. Discuss scheduling, as well as the number of witnesses to be called at trial, any anticipated issues regarding the attendance at trial of any party, attorney or witnesses, and any other practical problems the court should consider in scheduling.
6. Alert the court as to any anticipated requests for a jury instruction relating to missing witnesses or evidence.
7. Alert the court as to any anticipated request pursuant to CPLR Article 16 for apportionment of liability as to an allegedly culpable non-party.
8. Provide a proposed verdict sheet and requests to charge.

F. Copies of Transcripts: If any part of a transcript of an examination before trial or other recorded proceeding will be read during the proceedings, the proponent of the transcript shall provide a complete copy of it to the court, with citations to the page and line numbers for all portions to be read.

G. Copies of Exhibits: Upon the admission of an exhibit at trial, the proponent of the exhibit shall provide a copy of it to the Court.

H. Addressing the Court: Any counsel or self-represented party who is presenting an argument or otherwise addressing the court, shall stand while doing so, unless the court directs otherwise. If it is believed that argument on an objection is necessary, to avoid any inappropriate influence on the jury, any counsel or self-represented party may ask permission to approach the bench for a sidebar conference to discuss the matter.

I. Courtroom Behavior: All remarks shall be directed to the court. Comments shall not be made to opposing counsel or self-represented parties. Personal attacks upon parties, counsel or the court shall not be tolerated and may result in the imposition of sanctions as determined by the court to be warranted under the circumstances. Do not attempt to speak over an adversary; only one person shall speak at a time. If a significant discussion with an adversary is required, ask for permission to approach the bench for a sidebar conference.

J. Use of Exhibits: Do not show anything, including an exhibit or proposed exhibit, to a witness without first showing it to all opposing counsel and self-represented parties. If any counsel or self-represented party believes this procedure will compromise his or her trial strategy, he or she shall first request a pre-offer ruling outside the presence of the jury.

K. Summation Exhibits: Any counsel or self-represented party who intends during summation to use any type of demonstrative exhibit not marked into evidence must advise the court and all other counsel and self-represented parties of that intention at the pre-charge conference. Failure to comply with this rule may result in an order precluding use of the exhibit during summation.

L. Examination of Witnesses: Do not approach a witness on the stand during questioning without the court's permission. Inquiring counsel or self-represented parties shall allow the witness to complete his or her answer to a question before asking another question. Do not interrupt a witness in the middle of an answer unless it is totally unresponsive, in which event a ruling from the court shall be requested. If an objection is made during the examination of a witness, opposing counsel shall not make further inquiry of the witness until the court rules on the objection.

M. Jury Charges: In all jury trials, a complete list of requests to charge shall be submitted to the court immediately preceding the commencement of trial, with copies to be provided to all other counsel and self-represented parties. If a requested charge is drawn from the current Pattern Jury Instructions (PJI), only the PJI number need .be submitted. Where deviations from, and/or additions to, the PJI are requested, the full text of such requests must be submitted in writing, together with any supporting legal precedents. In addition, such proposals shall be prepared in WordPerfect and e-mailed to the Court's Principal Law Clerk at: jmechman@nycourts.gov. At the final charge conference, if marshaling of the evidence is required as to a particular jury charge, counsel and all self-represented parties shall provide the court with the proposed facts that they seek to be presented to the jury.

N. Verdict Sheet: At the commencement of the trial, counsel for the parties and any self represented parties shall jointly prepare a verdict sheet. If agreement cannot be reached, each party shall present a proposed verdict sheet which shall be served upon all other parties. The verdict sheet shall be in a final, typewritten form, which may be given to the jury. In addition, the proposed verdict sheet(s) shall be submitted in WordPerfect and e-mailed to the Court's Principal Law Clerk at: jmechman@nycourts.gov

O. Check-in: At the start of each day of trial, all counsel and self-represented parties shall check in with the Part Clerk so that she will be aware of your presence.

P. Food and Drinks: Absent the Court's permission obtained in advance, no counsel or party shall bring any beverage or food into the courtroom, except bottled water.