

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND**

**INDIVIDUAL PART RULES OF
JUSTICE PAUL I. MARX**

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These Rules supplement and, where inconsistent with, supersede the Uniform Civil Rules for the Supreme and the County Court, 22 NYCRR § 202.1, et seq., and the amendments thereto, which became effective February 1, 2021.

I. Communications with the Court

A. Correspondence

All correspondence to the Court must bear the full Title and Index Number of the action and indicate that a copy was sent to all other counsel or self-represented litigant(s) simultaneous

with transmittal to the Court. All correspondence shall be concise and state the relief sought or action requested to be taken by the Court.

Transmit correspondence to the Court by ONE method only: e-mail OR fax OR regular mail. Do not e-file correspondence to the Court.

Do not copy the Court on correspondence between counsel and/or self-represented parties.

B. Telephone Calls

Except as set forth below (*see* Section III.F. Discovery Disputes), telephone calls to Chambers are permitted only in situations requiring immediate attention that cannot otherwise be obtained by correspondence.

C. Fax transmissions

Unless specifically approved by the Court in advance in a particular case, the Court does not accept legal papers of any kind by fax transmission.

II. E-Filing Rules and Protocol

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

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov. Specific questions about local procedures should be addressed to the Chief Clerk's Office at (845) 483-8310.

All documents in mandatory e-filed cases, except 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 must be electronically filed, except correspondence or materials specifically requested by the Court.

III. Calendar Call & Conferences

A. General Rules

The Court's calendar will be called at 9:15 a.m. daily unless individual cases are scheduled for virtual appearance and a Teams invitation is sent to all parties.

Counsel and self-represented parties are expected to appear for all Court appearances on time. If counsel or a party is unable to appear on time due to unforeseen circumstances (delays due to inclement weather or road closures, for example), please contact opposing counsel and advise the Part Clerk or Court's staff by telephone as soon as possible. Tardy arrivals will not be tolerated.

Counsel who are scheduled to appear before this Court and another Court must communicate that fact to Chambers prior to the date of appearance so that counsel's conflicting appearances can be reconciled. Do not ask opposing counsel to advise the Court of conflicting appearances when the case is called. The Court may proceed in that counsel's absence.

B. Who Must Appear

Only counsel or self-represented litigants who are fully familiar with a case and authorized to enter into binding agreements on all aspects of the case are to appear for conferences. This means that counsel for the plaintiff(s) must be prepared to make a settlement demand and counsel for the defendant(s) must be prepared to respond to the demand. Please note that **failure to comply with this Rule may be treated as a default for purposes of 22 NYCRR § 202.27 and/or may be treated as a failure to appear for purposes of 22 NYCRR § 130.2.1.**

Where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant as well as the name, claim number and phone number of the adjuster assigned to the matter.

In non-matrimonial actions, represented parties need not appear for conferences unless directed to do so by the Court.

In matrimonial actions, litigants must appear with their counsel for all conferences unless such appearance is excused by the Court.

C. Adjournment of Conferences

A request to adjourn a conference must be made in writing **by email only to the Part Clerk** at least twenty-four (24) hours in advance of the scheduled conference.

All applications for adjournments must set forth: 1) the reason why an adjournment is necessary; 2) whether the opposing party(ies) consent(s) or object(s) to the application; and 3) the length of the adjournment sought or, if on consent, a date all parties are available. **All such communications must be copied to all counsel and self-represented parties.**

Where the adjournment sought is not on consent, the requesting party must briefly set forth why the adjournment is necessary, the length of the adjournment and the reason offered by the non-consenting party for his/her lack of consent. Opposing counsel or self-represented party may succinctly provide their reasons for objecting to the requested adjournment if

opposing counsel believes that his/her position has been stated incorrectly. No further communication concerning the request for adjournment will be permitted. The request and the response, if any, are NOT to be used to advocate a position on the substantive dispute and shall address only the reason that consent for the requested adjournment is being declined.

The Court will advise the requesting party by reply email (with copies to all parties copied on the originating email) whether the requested adjournment has been granted. Requests that are not copied to all other parties will not be acted on. The parties should not assume that the request for adjournment (even if consented to) has been granted unless specifically advised by the Court.

D. Preliminary Conference

The Court will schedule a Preliminary Conference within 45 days after a Request for Judicial Intervention (RJI) has been filed on a matter. The Part Clerk will forward to the party filing the RJI a letter or email setting forth the date on which the Preliminary Conference will be conducted. The party who files the RJI shall advise all other parties of the Preliminary Conference date in writing.

At the Preliminary Conference, the Court will set specific dates for completion of various items of discovery, the date by which all disclosure must be completed and a date for a Compliance Conference. All counsel and self-represented litigants are expected to abide by and comply with the Court's discovery schedule and deadlines.

No modifications of the dates set by the Court are permitted except by Order of the Court.

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

Parties who have a discovery dispute are NOT to wait until the Compliance Conference to bring such dispute or complaint about non-disclosure to the Court's attention. Such parties shall comply with the procedures set forth in Section F -- Discovery Disputes.

E. Compliance Conference

The Court will conduct a Compliance Conference after the date by which disclosure was to be completed as directed at the Preliminary Conference. At the Compliance Conference, the Court will ensure that discovery proceeded as scheduled. The Court may conduct a settlement conference at this time. Counsel must be fully familiar with the action as well as all settlement discussions that have previously taken place so that meaningful discussions can be held. As noted

above, in all cases where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant as well as the name, claim number and phone number of the adjuster assigned to the matter. In a proper case, the Court may contact the claims adjuster by telephone or direct that the claims adjuster shall appear for a conference.

If the matter is ready for trial, the Court will direct that a Note of Issue be filed. Counsel shall not file a Note of Issue until directed by the Court.

F. Discovery Disputes

Counsel (or self-represented litigant) who believes that discovery is not being conducted in accordance with the Court's Order is to discuss, in good faith, as required by Court Rule § 202.7, the claimed noncompliance with the counsel or self-represented litigant who is claimed not to be complying with the Court Order. A pro forma letter does not constitute a good faith effort. There must be actual substantive communication between counsel, either telephonically or in writing, regarding the claimed failure to engage in discovery and the claimed compliance or reason for noncompliance.

Exception: Where an Order of Protection prohibits one party from contacting another party, the party who believes that discovery is not being complied with shall contact Chambers without contacting the opposing party. The parties are NOT to copy the Court on correspondence between counsel concerning discovery issues unless specifically requested to do so by the Court.

The parties are NOT to make any motion concerning discovery. If counsel cannot resolve the discovery issue between themselves after a good faith effort, then the counsel who believes that discovery is not being conducted in accordance with the Court's Order is to contact the Court by letter (via e-mail or fax) to advise of the nature of the dispute and the efforts that have been made to attempt to resolve it. The Court will either resolve the issue by letter or by scheduling a conference.

Counsel are expected to abide by the Uniform Rules for the Conduct of Depositions, 22 NYCRR § 221.1, *et seq.*, in particular section 221.2, which prohibits, except in certain instances, directing a witness not to answer a question. Rulings concerning disputed objections may be obtained by calling the Court.

G. Settlement Conference

The Court will conduct a Settlement Conference approximately 30 days after the Compliance Conference. Counsel attending the Settlement Conference must be fully familiar with the action and authorized to discuss all factual and legal issues presented by the litigation, settlement demands or offers, witness scheduling, and trial procedure – including, for example, whether any party or witness will require a translator or accommodation for a physical challenge. Counsel must also be authorized to enter into binding settlements on terms agreeable to the

parties and to the Court. The Court will explore limitation of issues for trial (e.g., whether liability may be conceded or certain claims or defenses withdrawn in an appropriate case).

Counsel are advised that, in an effort to foster open settlement discussions, the Court may meet with counsel separately during the discussions. Counsel are presumed to have consented to the Court doing so unless an objection is stated.

IV. Motions & Orders to Show Cause (Temporary Restraining Orders)

A. General Rules

1. Parties may move by Notice of Motion or Order to Show Cause, depending on the exigency of the relief sought. **All motions and cross motions in matrimonial actions are to be made by Order to Show Cause.**

Except in e-filed cases, proposed Orders to Show Cause submitted for consideration by the Court must include a fax number to permit a conformed copy of the signed Order to be sent to the movant.

2. Written applications by Notice of Motion (or Notice of Petition as the case may be) must be made returnable on any Wednesday the Court is in session.

3. Motion papers are limited to Moving Papers, Opposing Papers, including Cross Motions, and Reply (except that reply papers are not permitted on Orders to Show Cause without advance permission). **Sur-Reply papers, including those contained in letter submissions, are not permitted and will not be considered. There is no Reply permitted to a Cross Motion.**

4. There will be no oral argument required on any motion or Order to Show Cause unless directed by the Court. Parties seeking oral argument of a motion or Order to Show Cause may request that oral argument be heard by stating "Oral Argument Requested" above the Index Number on the first page of the papers submitted. A request for oral argument should not be construed as an automatic grant of same. If the Court grants the request for oral argument, the Court staff will inform the attorney for the party who requested oral argument of the date and time for argument. It is the responsibility of that person to inform all other attorneys of the date and time set.

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

6. Multiple documents shall not be grouped together under a single exhibit; each exhibit shall contain only a single document. Exhibits shall be specifically referenced in the papers or they will not be considered.

7. Citations to legal authority must be to the official citations.
8. Deposition/Examination Before Trial transcripts included as exhibits must be single sided only. Parties are requested not to submit minusccripts.
9. In non efiled cases, all counsel shall submit a self-addressed stamped envelope with their moving or opposition papers to allow a copy of the Decision and/or Order to be mailed to the party. The name and Index Number of the case and return date of the motion should appear on the envelope.

B. Adjournments of Motions

A request to adjourn a motion must be made in writing and transmitted **by email only to the Part Clerk** prior to the return date of the motion, copied to all counsel and self-represented parties.

All applications for adjournments must set forth: 1) the reason why an adjournment is necessary; 2) whether the opposing party(ies) consent(s) or object(s) to the application; 3) the length of the adjournment sought; and 4) the number of prior requests for adjournment and the dates previously set.

No more than three (3) adjournments of any motion or cross-motion will be permitted. The total period of time that a motion may be adjourned shall not exceed 60 days.

Where the adjournment sought is not on consent, the requesting party should briefly set forth why the adjournment is necessary, the length of the adjournment sought and the reason offered by the non-consenting party for his/her lack of consent. Opposing counsel or self-represented party may succinctly provide their reasons for objecting to the requested adjournment if opposing counsel believes that his/her position has been stated incorrectly. No further communication concerning the request for adjournment will be permitted. The request and the response, if any, are NOT to be used to advocate a position on the substantive dispute and shall address only the reason that consent for the requested adjournment is being declined.

The Court will advise the requesting party by reply email (with copies to all parties copied on the originating email) whether the requested adjournment has been granted and, if so, the new return date for the motion. Requests that are not copied to all other parties will not be acted on. The parties should not assume that the request for adjournment (even if consented to) has been granted unless specifically advised by the Court.

C. Temporary Restraining Orders

Unless there are extremely unusual circumstances in which significant prejudice (set forth in detail in a supporting affidavit/affirmation) will result, opposing counsel are to be advised by

telephone or fax at least 24 hours in advance of the date and time that any Order to Show Cause which includes a request for a Temporary Restraining Order is being presented to the Court.

In a true emergency, the Court, in its discretion, may dispense with the 24-hour notice requirement. If there has been no appearance by opposing counsel, the adverse party is to be provided with notice of the intention to submit an Order to Show Cause as provided by 22 NYCRR § 202.7(f) and is to be advised that he/she has the right to be heard on the application.

D. Discovery Disputes

In lieu of discovery motion practice, it is the policy of the Court to make itself and its staff available to resolve disputes related to pretrial discovery. Therefore, **no discovery motion is to be made by any party unless authorized or directed by the Court.** Instead, counsel should abide by the procedures set forth in Section III.F above to resolve discovery disputes.

E. Summary Judgment Motions

Summary Judgment motions must be made within sixty (60) days of the filing of the Note of Issue.

In the event that a Summary Judgment motion is made prior to completion of discovery, the making of the motion is not to be deemed to be a stay of discovery. The parties are to continue to abide by any Order or Notice pertaining to discovery unless otherwise directed by the Court.

Unsigned deposition transcripts will not be considered on motions for Summary Judgment unless it is demonstrated that the transcript was forwarded to the deponent for his/her review and signature in compliance with CPLR § 3116(a). (*See Marmer v IF USA Express Inc.*, 73 AD3d 868 [2nd Dept 2010]).

V. Judgments, Decisions and Orders

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

Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will not be signed unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR § 202.48 has been included.

All papers which are submitted for signature by the Court shall be identified on the signature page at least two lines below the signature line, so that the document being signed by

the Court can be identified. Example: *Jones v Jones*, Index #, Type of Document (e.g., Judgment of Divorce).

VI. Contested Matrimonial Actions

A. Preliminary Conferences

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

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

Counsel must have substantive communications before the date set for the preliminary conference, either in person or telephonically, to determine the issues to be litigated.

The scope of discovery shall be discussed at the conference so that the Court can determine if the requested items are necessary and/or to set dates for compliance with the demands.

Counsel are to inform their clients of the automatic orders created by DRL § 236(B)(2)(b) as soon as the attorney-client relationship is formed.

As noted above, parties to matrimonial actions are to appear at all matrimonial conferences unless otherwise directed by the Court.

B. Motions

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

On the return date of any pendente lite motion, the Court will conduct either a Preliminary Conference or conference on the motion, as appropriate. In the event a Bench

Decision is issued on the motion, a copy of the transcript will be ordered by the Court, the cost of which will be shared by the parties unless otherwise ordered.

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

C. Child Custody/Access Forensic Evaluator

In any case in which a neutral forensic evaluator has been appointed by the Court to assist in custody or access determinations, the reports of evaluators appointed by the Court are confidential. These may be reviewed only by the attorney for a party. The report(s) shall not be copied or disclosed to any person except as permitted by order of the Court.

Any attorney who wishes to receive a copy of the report must first sign an affirmation that may be obtained from the Judge's Part Clerk. A party may review the report, but may not possess a copy of the report.

Self-represented litigants may arrange directly with the Judge's Part Clerk to review the report at the courthouse. No device, capable of recording or photographing, is permitted in the room where the self-represented litigant is reviewing the report. Notes may be taken.

If any party seeks to retain an expert other than the neutral forensic evaluator appointed by the Court, counsel may apply to the Court for permission to have the proposed expert receive a copy of the report. The expert will be required to sign a confidentiality agreement prior to receipt of the report.

Any counsel or party who violates these restrictions is subject to sanctions.

D. Settlement Conference

The parties must submit the following documents to the Court at the Settlement Conference. Failure to submit the required items may result in the Court determining the issues in favor of the party who complied with these Rules.

- (a) A fully executed stipulation of relevant facts that are not in dispute. The Court expects that no matter how contentious the case, there will be at least some facts that are not in dispute (e.g., the date of marriage, the names and birth dates of children, the location of any residential real estate and the approximate date of acquisition, approximate cost, and the approximate balance on any mortgage);
- (b) A joint statement of proposed disposition as required by 22 NYCRR § 202.16(h). To the extent that the parties disagree on any item, the plaintiff's position should be set out first, followed by the defendant's position;

- (c) A child support worksheet, if applicable;
- (d) Updated statements of net worth (with the latest available supporting documents, such as income tax returns, W-2's, brokerage and retirement plan statements);

E. Trials and Hearings

All hearings and cases assigned to this Part for trial will proceed day-to-day until conclusion, unless the Court directs otherwise.

VII. Uncontested Matrimonial Actions

The Court will review all uncontested matrimonial materials submitted on an as received basis. Counsel or self-represented parties will be advised of any deficiencies in the papers submitted. The parties will be notified of any deficiency with the papers submitted which must be cured.

All deficiencies in the papers must be cured by the date in the Court notice or the matter will be dismissed (without prejudice to refiling on proper papers).

Counsel or a party seeking to vacate the dismissal shall submit a letter application to the Court requesting vacatur. The letter application must include a proposed order or stipulation vacating the order of dismissal and the document(s) which cure the deficiencies identified in the Court notice.

Where a Stipulation of Settlement or Settlement Agreement is being incorporated into the Judgment of Divorce, all the provisions of the Stipulation or Agreement must not be copied into the proposed Judgment of Divorce or the Findings of Fact and Conclusions of Law. Only those provisions required by the form proposed Judgment of Divorce and/or Findings of Fact and Conclusions of Law should be repeated from the Stipulation or Agreement. See the forms which are provided on the nycourts website:

www.nycourts.gov/divorce/divorce_withchildrenunder21.shtml.

VIII. Trials and Hearings

A. Subpoenas

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

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

B. Interpreters

In the event a translator or interpreter is required at trial, counsel shall notify the Part Clerk no later than the Settlement Conference so that timely and appropriate arrangements can be made.

C. Personal Injury/Bifurcation

Trials of personal injury actions, except those involving claims of wrongful death or medical/dental malpractice, will be bifurcated in accordance with 22 NYCRR § 202.42.

D. Jury Selection

Juries will be selected using “White’s Rules”. (See 22 NYCRR § 202.33). Jurors will be designated; alternate jurors will be non-designated unless the parties otherwise agree on the record prior to commencement of jury selection that the alternates will also be designated.

E. Jury Contact

Counsel shall not read from any pleading, part of a pleading or other document during jury selection, nor may counsel refer to any specific amount of money being sought. Counsel shall not discuss any aspect of the law with the jury. Instruction on the law is for the Court alone.

In jury trials, the parties and their attorneys are to stand (if physically able) whenever the jury enters or leaves the courtroom.

Non-party witnesses shall not be in the courtroom during the trial except when they are testifying.

F. Reading of Exhibits

If counsel intends to use/read from any anticipated exhibit or item of demonstrative evidence during Opening Statements, counsel is to advise the Court of such intention prior to commencement of jury selection.

G. Objections

Objections to questions at trial are to be limited to the objecting party standing (if physically able) and stating “Objection” and no more than one word or two words as to the basis for the objection. Speaking Objections are not to be made. If the Court requires further

explanation of the Objection, the Court will ask for further explanation or invite counsel to approach at side bar.

H. Use of Videotapes

Any party intending to use a videotape at trial is to submit a copy of the videotape (or other video recording) and transcript of the proceedings, if applicable, to the Court at least 2 weeks prior to the scheduled trial date in order to allow the Court to rule on the admissibility of the videotape (or other video recording) and any Objections made during the video recording.

IX. Settled and Discontinued Cases

Counsel must notify the Part Clerk by email of the settlement or withdrawal of any action or proceeding immediately upon such settlement or withdrawal. A copy of the signed Stipulation of Discontinuance which has been (or will be) submitted to the County Clerk shall be submitted to the Part Clerk so that the matter may be marked disposed.

In those cases where a party is obligated to make payments over time, the parties shall file a Stipulation of Discontinuance **without prejudice**. The Court will not allow counsel to hold the Stipulation of Discontinuance until all payments are made.

X. Substitution/Discharge of Attorneys

Except in cases where an attorney is replaced by another attorney on consent, any change or withdrawal of counsel must be approved by the Court on a motion, brought by Order to Show Cause pursuant to CPLR § 321.

The Court does not recognize the purported withdrawal by counsel where such withdrawal would result in a party becoming self-represented (except where the party is an attorney) by the filing of a "Consent to Change Attorney" form. The use of a "Consent to Change Attorney" to withdraw where a party becomes self-represented is specifically prohibited.

XI. Civility

This Court values civility and courteousness. Parties are encouraged to refrain from histrionics, showmanship, gamesmanship and discourteousness. The Court expects that the Judge, his staff, the Part Clerk, the Court Reporter, the Court Officers and all attorneys and parties will be treated respectfully. Discourteous behavior (constant interruptions, outbursts or ad hominem attacks for example) will not be tolerated by the Court.

These Rules are subject to revision or modification by the Court.

INDEX

	<u>Page No.</u>
I. Communications with the Court	1
A. Correspondence	1
B. Telephone Calls	2
C. Fax transmissions	2
II. E-Filing Rules and Protocol	2
III. Calendar Call & Conferences	2
A. General Rules	2
B. Who Must Appear	3
C. Adjournment of Conferences	3
D. Preliminary Conference	4
E. Compliance Conference	4
F. Discovery Disputes	5
G. Settlement Conference	5
IV. Motions & Orders to Show Cause (Temporary Restraining Orders)	6
A. General Rules	6
B. Adjournments of Motions	7
C. Temporary Restraining Orders	7
D. Discovery Disputes	8
E. Summary Judgment Motions	8
V. Judgments, Decisions and Orders	8
VI. Contested Matrimonial Actions	9
A. Preliminary Conferences	9
B. Motions	9
C. Child Custody/Access Forensic Evaluator	10
D. Settlement Conferences	10
E. Trials and Hearings	11
VII. Uncontested Matrimonial Actions	11

VIII.	Trials and Hearings	11
A.	Subpoenas	11
B.	Interpreters	12
C.	Personal Injury/Bifurcation	12
D.	Jury Selection	12
E.	Jury Contact	12
F.	Reading of Exhibits	12
G.	Objections	12
H.	Use of Videotapes	13
IX.	Settled and Discontinued Cases	13
X.	Substitution/Discharge of Attorneys	13
XI.	Civility	13