

# **HONORABLE TRACY C. MacKENZIE**

**Family Court Judge / Acting Justice of the Supreme Court**

50 Market Street

Poughkeepsie, New York 12601

Chambers: 845-431-1819 / Fax: 845-483-8451

Principal Court Attorney Tesoro: 845-431-1818

Sr. Court Clerk McDermott (Supreme Court / IDV): 845-431-1856

Sr. Court Clerk Kressman (Family Court): 845-431-1875

## **Part Rules**

(Adopted March 3, 2023 and effective immediately. These rules are subject to change.)

### **CERTIFICATION OF PAPERS:**

Every pleading, written motion and other paper served or filed in an action must be signed by an attorney pursuant to §130-1.1a of the Rules of the Chief Administrator of the Courts.

### **COMMUNICATION WITH THE COURT:**

Communication with the Court shall be in writing. Counsel and parties should strive to limit telephone calls to Court staff to situations requiring immediate attention that cannot otherwise be addressed by written correspondence. Telephone communication should be limited to contact with the judicial assistant regarding non-substantive, administrative issues in a case. At no time shall an attorney or litigant contact the court attorney to speak about or ask questions relating to the merits of the case or inquire about substantive issues within the case.

All written communication on any subject to the Court must be: (1) copied to all counsel and pro se parties (and sent to counsel via email, whenever possible); (2) contain email addresses for all counsel; and (3) state the next appearance date. Letters not complying with these rules will be disregarded and/or returned to the sender. Correspondence between attorneys and/or parties shall not be copied to the Court unless there is some specific judicial purpose to be served by transmitting copies to the Court.

A letter to the Court in PDF form may be transmitted via email in cases where all parties are represented by counsel (the email must be copied to

all counsel on the case – do not copy clients on any emails that include court staff).

Neither Chambers nor the Clerk of the Family Court will accept faxed or e-mailed copies of papers that must otherwise be filed in original form with the Office of the Family Court Clerk (such as objections, petitions, proofs of service, motions, opposition to motions, replies, proposed Orders, and documents to be “So Ordered”).

Communication about substantive issues via letter to the Court is discouraged. Parties or counsel should either wait to address substantive issues at the next court appearance or file the appropriate application with the Court in lieu of litigating via facsimile. Requests for telephone/Teams conferences with Chambers shall be limited to situations where the attorneys and/or parties have made substantial good-faith efforts to resolve the dispute or issue, but have been unsuccessful. Letters requesting such conference must specify the nature of the efforts that have been made to resolve the issue before the Court will respond to the request for a conference.

Under no circumstances may parties represented by counsel directly contact the Court.

Ex parte communications are strictly prohibited except upon consent of all counsel, or with respect to scheduling matters, or the presentation of Orders to Show Cause for signature.

## **APPEARANCES:**

Parties who are not represented by counsel should address questions about scheduling appearances or adjourning appearances to:

For Family Court matters- Lisa Kressman, Sr. Court Clerk (e-mail [Lkressma@nycourts.gov](mailto:Lkressma@nycourts.gov) )( including the case name, family unit number, date of the next appearance and the mailing address, phone number, and fax number of all counsel).

For Supreme Court matters- Claudette McDermott, Sr. Court Clerk (e-mail [CLMCDERM@nycourts.gov](mailto:CLMCDERM@nycourts.gov) )( including the case name, INDEX number, date of the next appearance and the mailing address, phone number, and fax number of all counsel).

In cases where all parties are represented by counsel, such inquiries may be made via e-mail. Please note that no request for an adjournment will be considered unless it is:

- in writing; and
- made at least 72 hours prior to the appearance or submission date; and
- State that it is on consent of the other attorney(s) or party(ies) or that a good-faith effort was made to obtain that consent.
- Provides at least two (2) alternate dates and times when all parties and attorneys are available to appear before the Court with such dates coordinated with the Family Court Calendar Clerk who can be reached by calling 845-431-1837.

Adjournments of appearances without the consent of the other attorney(s) or party(ies) will not be granted unless: (1) there is an affirmation of prior engagement in full compliance with 22 NYCRR § 125.1, and it must include the date the conflicting appearance was scheduled; or (2) there are exceptional circumstances.

Do not telephone the Court to determine the status of an adjournment request; the Court will respond as soon as possible. If you do not receive a response, it means the adjournment was not granted.

**Note that the party requesting the adjournment is responsible for notifying all parties and counsel of the status of the adjournment in writing, with a copy of that letter must be copied to the Court via facsimile.** If all parties are represented, this confirmation can be sent via e-mail as described above. No additional notices to appear will be issued by the Court with the adjourn date.

### **APPEARANCE OF COUNSEL:**

A notice of Appearance must be filed with the Family Court Clerk at the time that the counsel is retained (or with the Supreme Court Part Clerk if the matter is pending in the IDV Court or is an Article 78 matter) and must list the attorney's address, phone number, fax and e-mail address. Once counsel has filed a Notice of Appearance, the attorney-of-record, or an

attorney appearing on his or her behalf, is expected to appear at each and every court appearance with his or her client until the case is disposed of or counsel is relieved. Counsel must be discharged, and a Consent to Change Attorney form filed, or a motion to be relieved must have been made and granted, before counsel is relieved, Attorneys must comply with CPLR § 321.

Counsel who appear in Court must be fully familiar with the case, have met with their clients, and have authority to enter into any agreement, either substantive or procedural, on behalf of their clients. Counsel and their clients must be **on time** for all scheduled appearances. Scheduling conflicting appearances shall not be an acceptable excuse for tardiness.

The failure of any attorney or party to appear for a scheduled conference or appearance date may be treated as a default and may, when appropriate, result in the dismissal of a petition.

Before counsel is relieved, either a Consent to Change Attorney form must be filed or a motion to be relieved must have been made by Order to Show Cause and granted. Attorneys must comply with CPLR § 321.

### **Article 78 Proceedings:**

Notice of an Article 78 petition, and affidavits specified in the notice, shall be served on any adverse party at least twenty days before the time at which the petition is noticed to be heard, and shall be filed with the Court (one original and one chambers copy). An answer and supporting affidavits, if any, shall be served at least five days before said return date. A reply, together with supporting affidavits, if any, shall be served one day before said return date.

Late papers will be rejected unless good cause is shown and there is no prejudice caused by the delay. Sur-replies shall not be considered without specific permission from the Court. Permission for sur-replies will be granted only upon a showing of exceptional circumstances.

Return dates on Article 78 Petitions will not require appearances, unless the parties and counsel are notified otherwise by the Court.

### **Adjournments of Article 78 Proceedings**



On consent: If the Article 78 proceeding is adjourned on consent, send a letter to Chambers copied to all parties identifying the date to which both parties seek the adjournment. Open-ended adjournment requests without a specific proposed adjourned date will not be considered. No more than two adjournments will be granted. The parties will be notified if their request for adjournment has been granted.

Without consent: If a party does not consent to the requested adjournment, send a letter to Chambers indicating the reason for the adjournment request, and the reason for the refusal to consent. The parties will be notified if the request for an adjournment has been granted.

### **Integrated Domestic Violence Part (IDV):**

Motions for pretrial hearings on all criminal matters shall be made in accordance with a schedule set forth by the Court and in accordance with the Criminal Procedure Law.

### **ORDERS:**

Orders must be submitted in accordance with 22 NYCRR § 202.48, either with Notice of Settlement attached to the proposed order, or as a fully proposed consent order with signatures from all parties and counsel whereby Notice of Settlement is waived. Each attorney submitting a proposed order is expected to take copious notes of the proceedings or to obtain a transcript of the proceedings so that the order accurately reflects the settlement placed on the record in open Court. If the proposed order is not reflective of the actual settlement reached, it will be returned to the attorney who drafted it and the attorney will be directed to correct the order and resubmit it within seven (7) days of it being returned.

All counter-orders and counter-judgments must be submitted with a cover letter and a “red-lined” copy highlighting the language which differs from that of the originally submitted order or judgment pursuant to 22 NYCRR § 202.48.

All proposed documents, including transcripts submitted for the Judge’s signature must include a “So-Ordered” signature line with the name of the Judge pre-printed as follows:

**Honorable Tracy C. MacKenzie, F.C.J.**

or

**Honorable Tracy C. MacKenzie, A.J.S.C.**

The signature line should not be on a page by itself without any substantive terms from the order.

### **DISCONTINUING A MATTER:**

If a matter is settled, discontinued, or otherwise disposed, counsel (or petitioner if pro se) shall immediately provide written confirmation of the settlement to chambers via facsimile. If all parties are represented by counsel, this communication may be sent by email as noted above. Counsel is also responsible for ensuring that the other parties, his or her client and any witnesses scheduled to appear at the next court date are notified that the matter has concluded and that there is no future court date.

Counsel shall also advise the Court if there are any outstanding motions or scheduled conferences, hearings or trial dates.

As soon as practicable, counsel shall provide the Court with a fully executed stipulation or proposed consent Order evidencing the disposition. If the matter is already scheduled for a fact-finding hearing and no fully executed stipulation or proposed consent order is submitted prior to the scheduled fact-finding date, the matter will be deemed active and the parties will be expected to appear in Court to try the matter.

### **MATRIMONIAL ACTIONS:**

#### **(A) Preliminary Conferences:**

Counsel must be familiar, and comply, with the provisions in 22 NYCRR 202.16. Upon receipt of the Preliminary Conference date all parties are to submit a working copy of all papers filed to chambers. No later than ten (10) days prior to the Preliminary Conference the parties will 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.

Parties and counsel must be present at the preliminary conference.

Any application regarding child support must be accompanied by a completed Child Support Worksheet.

Counsel are to inform their clients of the automatic order created by DRL §236(B)(2)(b) as soon as the attorney-client relationship is formed. Parties to matrimonial actions are to appear at all matrimonial conferences Unless otherwise directed by the Court.

Any application for temporary maintenance must be accompanied by "STATUTORY CALCULATION FOR GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE PURSUANT TO DOMESTIC RELATIONS LAW §236 Part B(5-a)(c)" to be completed by counsel and/or the parties and for use by the Court at the Preliminary Conference.

**(B) Matrimonial Pendente Lite Motions:**

Both parties and counsel must appear on the return date of any pendente lite motion brought. The Court will conduct either a Preliminary Conference or conference on the motion, as appropriate.

**COMPLIANCE CONFERENCE:**

**(A) General Rules:** Given the Court's limited Court time, adjournments will only be granted in extenuating circumstances.

**(B) Who Must Appear:**

Counsel and parties appearing for a scheduled conference must be fully familiar with the action on which they appear and authorized to enter into binding agreements on all aspects of the case. Settlement proposals must be in writing and exchanged at least two (2) days before any settlement conference.

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

- (1) At the compliance conference, the Court will ensure that discovery is proceeding as scheduled.
- (2) Unless a note of issue has been earlier filed, the Court shall direct a date as the deadline for filing a note of issue and certificate of readiness.

### **DISCLOSURE:**

- (A) Parties who have a discovery dispute are NOT to wait until the Compliance Conference to bring such dispute or complaint to the Court's attention. Rather, counsel ( or self-represented litigant) who believes that discovery is not being conducted in accordance with the Preliminary Conference ( or other Court ) Order is to discuss, in good faith, as required by Court Rule 202.7, the claimed non-compliance with the counsel or self-represented litigant. 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 the Principal Court Attorney without contacting the opposing party.

- (B) If counsel cannot resolve the discovery issue 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 to request an expedited conference. 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 discovery motion without having first requested the Court's intervention by letter as provided for herein.

### **PRETRIAL CONFERENCE and EXPERT DISCLOSURE:**

Within 45 days of the filing of a note of issue, the Court shall schedule a Pretrial Conference.

**(A)** At the pretrial conference, the Court shall establish a deadline for the exchange of expert witness information pursuant to CPLR §3101(d)(1) which shall, in no event, be later than ninety (90) days before trial for the party bearing the burden of proof on that issue. The opposing party must serve its disclosure within forty-five (45) days of trial. Any amended or supplemental expert disclosure shall be allowed only with leave of the Court on good cause shown. The statutory stay of disclosure (CPLR 3214[d]) upon the service of a dispositive motion under CPLR 3211 shall not apply to the service of these expert responses. Unless the Court directs otherwise, a party who fails to comply with this rule is precluded from offering the testimony and opinions of the expert for whom a timely response has not been given.

**(B)** The Court will explore limitation of issues for trial, including referring certain issues to a referee if appropriate.

**(C)** The Court will schedule a date certain for trial of all outstanding issues.

**(D)** Counsel should be prepared to discuss settlement and should have full authority from their respective clients.

### **TRIALS:**

**(A)** In all matrimonial actions in which a trial has been scheduled, no later than two (2) weeks prior to the trial, the Court is to be provided with:

- 1.** statements of proposed disposition as required by NYCRR 202.16(h);
- 2.** updated Net Worth Statements (with the latest available supporting documents, such as income tax returns, W-2's, brokerage and retirement statements); and
- 3.** any forensic reports, appraisals or evaluations conducted in the matter.

Failure to submit the required items may result in the Court determining the issues in favor of the party who complied with the Court Rules.

**(B)** Once scheduled, a trial shall not be adjourned for any reason other than the actual engagement of counsel as provided for in §125.1 of the

Rules of the Chief Administrator of the Courts. Any application for an adjournment must be made in writing and must be supported by an affirmation of counsel establishing the requisite grounds set forth in 22 NYCRR §125.1.

**(C)** Prior to the time scheduled for the trial to commence, counsel shall:

1. pre-mark all exhibits
2. file a brief concerning any unusual issue(s) counsel believes may arise at trial (motions in limine should be made at least 30 days before trial when possible)
3. submit a list of probable trial witnesses.

**(D)** The plaintiff shall file and bring to the trial a copy of each of the following:

1. marked pleadings including verified bill of particulars

### **MOTIONS:**

**(A)** Motions are returnable on any day of the week. There will be no appearances unless specifically stated by the Court.

**(B)** Original initiating motion papers should be submitted directly to the County Clerk accompanied by an affidavit/affirmation of service and the required fees. All answering and reply papers should be submitted directly to chambers. DO NOT SUBMIT COURTESY COPIES. MOTION PAPERS MUST BE BOUND TOGETHER. THE COURT WILL NOT ACCEPT LOOSE MOTION PAPERS, AFFIDAVITS, AFFIRMATIONS OR EXHIBITS.

**(C)** Motion papers must be accompanied by proof of payment to the County Clerk of all required fees.

**(D)** All affirmations, affidavits and memoranda of law must contain numbered pages.

**(E)** All citations must be to an official state reporter, if available.

**(F)** All documents required to decide the application must be attached. It is not sufficient that documents may be on file with the Clerk of the Court.

**(G)** The Court does not accept sur-reply papers or correspondence on motions, nor any papers filed after the final submission date of the motion.

**(H)** Motion papers, orders and judgments must be accompanied by a stamped, self-addressed envelope. Counsel submitting motions with a proposed order/judgment must submit an unattached copy of that proposed order/judgment. Counsel must provide an additional copy of any order and judgment submitted to conform to the original.

**(I)** All motions will be decided by submission and personal appearances on the return date are not required unless the Court specifically directs oral argument.

**(J)** Summary Judgment or other dispositive motions must be made within 60 days after filing the note of issue.

**(K)** Any motions seeking to exclude potential evidence shall be made in writing and shall be returnable at least 30 days in advance of trial.

**(L)** NO ADJOURNMENTS on a motion will be granted with a return date within thirty (30) days prior to the date of trial.

**(M)** Counsel shall immediately notify the court when it becomes unnecessary to decide a motion.

### **E-FILING RULES AND PROTOCOLS:**

**(A)** Electronic Filing. All parties should familiarize themselves with the statewide E-Filing Rules (*see* Uniform Rules §§ 202.5-b and 202.5-bb, available at [www.nycourts.gov/efile](http://www.nycourts.gov/efile)). 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).



All actions required to be filed electronically shall be filed through the New York State Courts EFiled system (NYSCEF), including proposed orders, proposed judgments, and letters.

**(B) Working Copies.** This Part requires one working copy of each motion submission, including all exhibits and proposed orders (see Uniform Rule §202.5-b[d] [4]). The NYSCEF Confirmation Notice generated when the motion is e-filed must be firmly attached to the front page of the motion submission. Working copies that do not include the NYSCEF Confirmation Notice may be rejected. Working copies shall be received by Chambers on or before the return date or notice of settlement date.

### **MOTION IN LIMINE:**

Any applications addressing the preclusion of evidence, testimony or other trial related matters shall be brought to the attention of the court immediately upon counsel becoming aware of such matter to be addressed, it being the intent to avoid applications made on the eve of, or during trial of a matter. Failure to bring the matter before the court in a timely fashion may result in summary denial of such application.

### **EXPERT TESTIMONY PRECLUSION:**

**(A)** Any motion by a party to preclude or limit expert testimony under the expert disclosure part of this order or pursuant to CPLR 3101(d) must be made as soon as practicable.

**(B)** Where a party's summary judgment motion is or will be based in whole or in part upon the granting of a motion directed at precluding or limiting expert testimony made pursuant to this part of this order, the motions' return date shall be the same.

### **ADJOURNMENTS:**

**(A)** Adjournments of scheduled trials and hearings are not permitted except as provided in 22 NYCRR §125.1 and in accordance with the procedure set forth therein.

**(B)** Adjournments of motions and conferences may be requested on consent of opposing counsel. After obtaining such consent, the requesting party must fax the adjournment request to 845-483-8451 to obtain a new date. A REQUEST TO ADJOURN A CONFERENCE MUST BE EMAILED TO THE COURT'S PRINCIPAL COURT ATTORNEY AT CTESORO@NYCOURTS.GOV AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED APPEARANCE. NO ADJOURNMENTS WILL BE GIVEN ON APPEARANCES THAT ARE SCHEDULED TO BE ON THE RECORD. All adjournments must be confirmed in writing to the Court, by the requesting party, and a copy of the letter sent to all parties. No more than two adjournments shall be permitted on any matter unless good cause is shown upon written application made to and approved by the Court.

WHEN REQUESTING AN ADJOURNMENT OF A CONFERENCE OR MOTION, THE LETTER REQUEST SHALL INCLUDE THE CURRENT DATE OF ANY MOTION RETURNABLE OR ANY CONFERENCE SCHEDULED.

### **FIDUCIARY APPOINTMENTS:**

**(A)** In order to be eligible for appointments to serve as a referee, Court evaluator, guardian ad litem, receiver, attorney for receiver or attorney for an Alleged Incompetent Person (AIP), counsel must appear on the Part 36 list promulgated by the Office of Court Administration.

**(B)** In order to be eligible for appointment to serve as attorney for a child, counsel must be a member of the Dutchess County Attorney for Child Panel.

**(C)** Court evaluators and appointed attorneys must complete and file each of the following forms:

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