

HONORABLE TRACY C. MacKENZIE, Acting Justice of the Supreme Court

50 Market Street

Poughkeepsie, New York 12601

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

Principal Court Attorney: 845-431-1818

Sr. Court Clerk: 845-431-1856

Part Rules

(Adopted May 14, 2019 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.

APPEARANCES:

(A) Within ten (10) days of written notification of this Part's assignment to a case, or written notification of a Preliminary Conference, whichever shall first occur, each attorney shall file a record of appearance with chambers. The record of appearance shall include the attorney's name, firm affiliation, mailing address, telephone and facsimile number as well as the party represented. The record of appearance shall also contain a written acknowledgment that counsel is familiar with these Part Rules.

(B) Pursuant to §130-2.1 of the Rules of the Chief Administrator of the Courts, the Court may impose financial sanctions and award costs and reasonable attorney's fees against any attorney who, without good cause, fails to appear at a time and place scheduled for an appearance in any action or proceeding.

(C) Pursuant to §202.27 of the Uniform Civil Rules for the Supreme Court, upon the default of any party in appearing at a scheduled call of a calendar or at any conference, the Court may grant judgment rent by default against the non-appearing party.

(D) At all scheduled appearances and conferences before the Court, only an attorney thoroughly familiar with the action and authorized to act on behalf of a party shall appear.

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). General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or 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.

SETTLED AND DISCONTINUED CASES:

Counsel shall immediately notify the Court of a case disposition.

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