

**WESTCHESTER SUPREME COURT
DIFFERENTIATED CASE MANAGEMENT PROTOCOL
PART RULES
Revised Effective February 1, 2021¹**

By Order of the Honorable Kathie E. Davidson, Administrative Judge of the Ninth Judicial District, the Westchester Supreme Court Differentiated Case Management (DCM) Protocol as set forth herein remains in effect for the handling of general civil litigation in Westchester Supreme Court. The DCM Protocol took effect with the Tenth Term of 2009.

In February 2016, the Chief Judge of the State of New York, Hon. Janet DiFiore, announced the “Excellence Initiative” for the New York State Unified Court System. The Excellence Initiative seeks to achieve and maintain excellence in court operations by eliminating backlogs and delays. The Excellence Initiative relies on “Standards and Goals” as the benchmark for the timely resolution of cases. The Ninth Judicial District is committed to carrying out the Chief Judge’s Excellence Initiative and delivering justice in a timely and efficient manner to all that enter our courts. The DCM protocol promotes active and effective case management consistent with the Chief Judge’s Excellence Initiative.

The protocol focuses the use of judicial resources by concentrating the use of judges to trials and resolution of substantive motions. The protocol is implemented through a comprehensive framework designed to provide intensive case supervision throughout the civil litigation process. As part of the protocol, four component parts operate to monitor the progress of cases from discovery to trial - a Preliminary Conference Part, a Compliance Part, a Settlement Conference Part and a Trial Ready Part. Excluded from the protocol are tax certiorari, contested matrimonial, Commercial Division, and Article 81 Mental Hygiene Law cases, which are handled in specialized parts. The following constitute the Rules of the Preliminary Conference Part, Compliance Part, and Settlement Conference Part, as amended, and are effective as of February 1, 2021.²

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

¹ The DCM Protocol has been revised effective February 1, 2021 to update the personnel list, to provide guidance with respect to virtual conferences, and to include new requirements as set forth in the December 29, 2020 Administrative Order of the Chief Administrative Judge of the Courts.

² Due to the COVID-19 pandemic, Trial Ready Part operations are currently suspended and no jury trials are being scheduled at this time. The Trial Ready Part rules will be updated following the issuance of a new Administrative Order. In the meantime, the parties are strongly encouraged to use the Westchester County Supreme Court’s General Civil Mediation Program.

and County Courts.

In any matters commenced by e-filing assigned to the DCM parts, counsel and unrepresented parties should familiarize themselves with the statewide e-filing rules (Uniform Rule §§ 202.5-b and 202.5-bb – available at www.nycourts.gov/efile) and the Westchester County E-Filing Protocol available at <https://www.nycourts.gov/legacypdfs/courts/9jd/efile/WestchesterCountyJointProtocols.pdf>. General questions about e-filing should be addressed to the E-Filing Resource Center at nyscef@nycourts.gov. Questions relating to local e-filing procedures may be addressed to the Civil Calendar Office at (914) 824-5300.

PRELIMINARY CONFERENCE PART RULES

Personnel: Kathleen Stradling, Preliminary Conference Part Clerk
Courtroom: 800
Email: PreliminaryConferenceWestchester@nycourts.gov

Due to the COVID-19 pandemic, to ensure timely responses to inquiries, the parties are directed to contact the Part Clerk via e-mail rather than by fax or telephone.

- I. Preliminary Conference Part E-Filing Rules**
 - A. Requests for Preliminary Conferences in E-Filed Actions**

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

Upon the e-filing of the RJI and the request for a preliminary conference, the Preliminary Conference Part (PCP) shall issue a Court Notice via NYSCEF setting forth a control date for the submission of a preliminary conference stipulation. The control date shall be within 30 days of the filing of the RJI unless the Court orders otherwise. In the event that the parties agree upon a discovery schedule, they may submit by the control date a preliminary conference form stipulation (available at <http://www.nycourts.gov/legacypdfs/courts/9jd/diffCaseMgmt/west-general-civil-preliminary-conf-stip-form.pdf>) executed by plaintiff(s) and all answering defendants by uploading same as a “Proposed Stipulation to be So Ordered – Preliminary Conference” via NYSCEF.

The fully executed preliminary conference stipulation shall be reviewed by the PCP. The PCP shall confirm that the parties have designated the proper DCM track (namely 8, 12 or 15 months for the completion of discovery in expedited, standard and complex cases, respectively, as set forth in 22 NYCRR §202.19) and that the schedule proposed by the parties is within the

applicable DCM deadline for completion of pre-trial proceedings. If the preliminary conference stipulation is deemed acceptable and so-ordered, it shall be uploaded to the NYSCEF system by the Court, and the matter shall be transferred from the PCP to the Compliance Part.

B. Events Triggering Virtual Preliminary Conferences

In the event that a party requires guidance from the Court with respect to the preparation of the preliminary conference stipulation, the party may request a virtual preliminary conference with a court attorney-referee prior to the control date set forth in the Court Notice. The request for a virtual preliminary conference shall be made via e-mail to PreliminaryConferenceWestchester@nycourts.gov, on notice to all parties. The PCP shall issue a Court Notice via NYSCEF specifying the date and time of the virtual preliminary conference.

In the event that the parties either fail to upload a preliminary conference stipulation by the control date set forth in the Court Notice or upload a preliminary conference stipulation that is not acceptable to the Court, the PCP shall schedule a virtual preliminary conference with a court attorney-referee. The PCP shall issue a Court Notice via NYSCEF specifying the date and time of the virtual preliminary conference.

C. Protocol for Virtual Preliminary Conferences

Virtual preliminary conferences are conducted via Microsoft Teams. The PCP shall e-mail a Teams link to all parties prior to the scheduled conference. In the event that a party does not receive a link for a scheduled virtual conference, the party shall request a link by e-mailing PreliminaryConferenceWestchester@nycourts.gov, on notice to all other parties, no later than two business days before the conference date. Teams links are sent **only** to the parties' service e-mail addresses, as listed on their NYSCEF accounts. The Teams links are not sent to any other e-mail addresses, even if the parties have listed additional e-mail addresses on their NYSCEF accounts. **It is the responsibility of the parties to ensure that the service e-mail addresses on their NYSCEF accounts are accurate and are properly monitored.**

In the event that a party experiences technical difficulties when attempting to access the Teams link and is also unable to utilize the call-in number, the party shall immediately e-mail PreliminaryConferenceWestchester@nycourts.gov, on notice to all other parties. The party shall include in the e-mail a cell phone number or other direct telephone number at which the party can be reached.

The parties are cautioned to arrive on time for the virtual preliminary conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. A claim that a party did not receive a Teams link shall not be deemed an adequate excuse in the event that a Teams link was sent from the PCP to a service e-mail address listed on a party's NYSCEF account. Counsel who repeatedly fail to appear or arrive late to preliminary conferences may summarily be subject to sanctions and/or costs.

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

Counsel for all parties shall consult with respect to these issues prior to the virtual preliminary conference and shall make a good faith effort to reach agreement in advance of the conference (22 NYCRR §202.23).

D. Adjourning or Advancing Virtual Preliminary Conferences

Adjournments of virtual preliminary conferences shall be granted upon a showing of good cause (22 NYCRR §202.10). While a party may upload to NYSCEF a request for an adjournment by selecting NYSCEF document type “Correspondence (Request for Adjournment),” **the party must also e-mail the request** to PreliminaryConferenceWestchester@nycourts.gov, on notice to all other parties. When practicable, the request for an adjournment shall be made at least two (2) business days before the scheduled conference and shall include two (2) proposed alternative dates for rescheduling the conference, which dates shall be no later than one month following the scheduled virtual preliminary conference. Unless the parties receive confirmation from the PCP either via e-mail or through a Microsoft Teams notification that a conference has been rescheduled, the parties shall appear for the conference as originally scheduled.

Any party may seek to advance the date of a virtual preliminary conference upon a showing of special circumstances (22 NYCRR §202.12 [g]). The request to advance the conference date shall be made via e-mail to PreliminaryConferenceWestchester@nycourts.gov, on notice to all other parties.

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

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

A Preliminary Conference Stipulation and Order specific to Medical, Dental and Podiatric Actions will be utilized for such actions. The form is available at <http://www.nycourts.gov/legacypdfs/courts/9jd/diffCaseMgmt/StipandOrder.pdf>.

F. Motions In E-Filed Actions

No discovery-related motion (including a motion to dismiss predicated upon a discovery violation and including any discovery cross-motion) may be interposed and e-filed until a pre-motion conference has been requested and held (see Compliance Part Rules in Section II.C). In the event that a discovery dispute is addressed during a virtual preliminary conference, the virtual preliminary conference may constitute the pre-motion conference; however, no motion papers may be filed until after a Preliminary Conference Order has been issued. The parties shall be expected to attend pre-motion conferences and attempt in good faith to resolve all discovery disputes. Moreover, absent exigent circumstances, **the parties are expected to confer in good faith either in-person or by telephone prior to requesting a pre-motion conference** (22 NYCRR §202.20-f).

In the event that motion practice is necessary, a briefing schedule shall be established by the court attorney-referee at the pre-motion conference. The briefing schedule may be a separate document or may be incorporated into an order. All motions shall be made by notice of motion. Thereafter, the motion shall be referred to the Compliance Part for disposition (see Compliance Part Rules in Section II.C). Motions e-filed before a pre-motion conference has been held may be denied unless there is shown good cause why such relief is warranted before the conference is held (22 NYCRR §202.12[h]).

Unless otherwise directed by the Court, all discovery-related motions shall be on submission. In the event that oral argument is warranted, it shall be conducted virtually and the parties shall receive a Teams link setting forth the date and time of oral argument. In the event that oral argument is held, the Compliance Part Justice may render a bench decision or a written decision, as appropriate. In the absence of oral argument, a written decision shall be rendered.

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

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

G. Civility

The parties are reminded that they are expected to be courteous to each other and to Court personnel at all times. All parties are directed to refrain from speaking over one another during conferences and from using abusive language. The parties are further directed to speak directly to the Court, as opposed to each other, in the event that an issue arises during a virtual conference. Any party that refuses to behave in a civil manner may, after a warning, be removed from the virtual conference.

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

COMPLIANCE PART RULES

Presiding: HON. JOAN B. LEFKOWITZ, JSC
HON. TERRY JANE RUDERMAN, JSC

Conferences

Personnel: Elizabeth Curtin, Compliance Part Clerk
Room: 800
E-mail: ComplianceWestchester@nycourts.gov

Due to the COVID-19 pandemic, to ensure timely responses to inquiries, the parties are directed to contact the Part Clerk via e-mail rather than by fax or telephone.

Motions

Personnel: Yvette Cruz, Compliance Motion Clerk
Room: 800
E-mail: ComplianceMotionsWestchester@nycourts.gov

Due to the COVID-19 pandemic, to ensure timely responses to inquiries, the parties are directed to contact the Motion Clerk via e-mail rather than by fax or telephone.

II. Compliance Part E-Filing Rules

A. Compliance Conferences in E-Filed Actions

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

Virtual compliance conferences are conducted via Microsoft Teams. The CP shall e-mail a Teams link to all parties prior to the scheduled conference. In the event that a party does not receive a link for a scheduled virtual compliance conference, the party shall request a link by e-mailing ComplianceWestchester@nycourts.gov, on notice to all other parties, no later than two business days before the conference date. Teams links are sent **only** to the parties' service e-mail addresses, as listed on their NYSCEF accounts. The Teams links are not sent to any other e-mail addresses, even if the parties have listed additional e-mail addresses on their NYSCEF accounts. **It is the responsibility of the parties to ensure that the service e-mail addresses on their NYSCEF accounts are accurate and are properly monitored.**

In the event that a party experiences technical difficulties when attempting to access the Teams link and is also unable to utilize the call-in number, the party shall immediately e-mail ComplianceWestchester@nycourts.gov, on notice to all other parties. The party shall include in

the e-mail a cell phone number or other direct telephone number at which the party can be reached.

The parties are cautioned to arrive on time for the virtual compliance conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. A claim that a party did not receive a Teams link shall not be deemed an adequate excuse in the event that a Teams link was sent from the CP to a service e-mail address listed on a party's NYSCEF account. Counsel who repeatedly fail to appear or arrive late to compliance conferences may summarily be subject to sanctions and/or costs.

Adjournments of virtual compliance conferences shall be granted upon a showing of good cause (22 NYCRR 202.10). While a party may upload to NYSCEF a request for an adjournment by selecting NYSCEF document type "Correspondence (Request for Adjournment)," **the party must also e-mail the adjournment request** to ComplianceWestchester@nycourts.gov, on notice to all other parties. When practicable, the request for an adjournment shall be made at least two (2) business days before the scheduled conference and shall include two (2) proposed alternative dates for rescheduling the conference, which dates shall be no later than one hundred twenty (120) days prior to the last day of discovery set forth in the preliminary conference order. Unless the parties receive confirmation from the CP either via e-mail or through a Microsoft Teams notification that a conference has been rescheduled, the parties shall appear for the conference as originally scheduled.

The parties are cautioned that any adjournment of the virtual compliance conference will not excuse a failure to provide discovery or failure to adhere to a preliminary conference order or compliance conference order and that discovery shall proceed during the period of any adjournment (22 NYCRR 202.10).

Virtual compliance conferences shall be conducted by court attorney-referees who shall monitor the progress of discovery to completion and ensure that discovery obligations and deadlines are enforced (and, where appropriate, adjusted) on a consistent basis. The court attorney-referees may, if discovery is not complete, and under limited circumstances, extend the time to complete discovery, but the parties are cautioned that no further extensions may be forthcoming. Requests for modifications to discovery schedules shall be addressed to the court attorney-referees at a conference. Applications for extensions of a discovery deadline shall be made as soon as practicable and **prior to the expiration of such deadline** (22 NYCRR 202.20-e). Inquiries submitted via the NYSCEF system or by email to the CP are restricted to scheduling matters and routine submissions only. The CP will not entertain requests to extend court-ordered discovery deadlines or respond to discovery disputes submitted via e-mail or the NYSCEF system. If assistance is required in regards to a discovery issue, a party shall request a virtual compliance conference in a timely manner by e-mailing ComplianceWestchester@nycourts.gov, on notice to all other parties.

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

Discovery materials are not required to be filed via NYSCEF. However, in any action

subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court unless otherwise specified by statute, rule or part rule.

The parties must comply with the requirements of GBL §399-dd(6), regarding the redaction of social security numbers and the Uniform Civil Rules of the Supreme and County Courts, 22 NYCRR202.5(e), relating to the omission or redaction of confidential personal information, **including but not limited to an infant's full name**. Failure to comply with these requirements shall result in the issuance of a sealing order, and the parties shall be required to resubmit the documents with appropriate redactions.

C. Motions in E-Filed Actions

The parties are cautioned that all directives in preliminary conference orders and compliance conference orders are to be followed and it is expected that pre-trial proceedings will be completed on time, absent good cause. Lack of diligence will not be regarded as a sufficient excuse. Failure to comply with the terms of a preliminary conference order or compliance conference order, and making frivolous motions may result in the imposition of costs or other sanctions on the offending party (22 NYCRR §202.12[f]; 22 NYCRR §202.20-e). Motions relating to a failure to provide discovery or adhere to the preliminary conference order or compliance conference order shall be heard in the CP.

Any party seeking to make a discovery motion shall do so in accordance with this protocol by requesting a virtual pre-motion conference. Notably, absent exigent circumstances, **the parties are expected to confer in good faith either in-person or by telephone prior to requesting a pre-motion conference** (22 NYCRR §202.20-f). A party may request a virtual pre-motion conference by e-mailing ComplianceWestchester@nycourts.gov, on notice to all other parties. The parties shall receive a Teams link specifying the date and time of the virtual pre-motion conference. The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. Nothing in these rules shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, to foster the just, expeditious and inexpensive resolution of discovery disputes, pre-motion conferences shall be held in order to permit the Court the opportunity to resolve issues before motion practice ensues.

In the event that motion practice is necessary, a briefing schedule shall be established by the court attorney-referee during the pre-motion conference. The briefing schedule may be a separate document or may be incorporated into an order. All motions shall be made by Notice of Motion. When e-filing a discovery motion by Notice of Motion to the NYSCEF system, a party may utilize the "Special Instructions" field to reference the briefing schedule in accordance with which the motion is being made. The length of the motion papers is governed by 22 NYCRR

202.8-b. Failure to make a motion within the time allowed by the briefing schedule may result in a waiver of the issues that were to be raised by the motion. Failure to oppose a motion within the time allowed by the briefing schedule may result in the motion being decided without consideration of opposition.

Absent unusual practical difficulties, a Notice of Motion and supporting documents that have been filed with NYSCEF will be reviewed through the NYSCEF system by the Court. If there are problems with the documents, the submitting attorney will be promptly contacted by e-mail or telephone.

In the NYSCEF system, each exhibit to a Notice of Motion shall be uploaded as a separate PDF file. After uploading the Notice of Motion, please choose the document type “Exhibit”, enter the appropriate number or letter, and be sure to place a check mark to the left of “Attach to main document.”

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

Unless otherwise directed by the Court, all discovery-related motions shall be on submission. In the event that oral argument is warranted, it shall be conducted virtually and the parties shall receive a Teams link setting forth the date and time of oral argument. In the event that oral argument is held, the CP Justice may render a bench decision or a written decision, as appropriate. In the absence of oral argument, a written decision shall be rendered.

Decisions and/or orders issued will be scanned by court staff into the NYSCEF system, which will immediately transmit notice of the event via the NYSCEF system to all parties and a link to the decision and/or order. In the case of orders, this notice does not constitute service of notice of entry by any party.

Any Notice of Motion not filed in accordance with the Uniform Rules and the DCM part rules will not be addressed by the CP. Instead, a virtual immediate conference will be scheduled.

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

Motions to be relieved as counsel, for pro hac vice admission, or for reargument of a

decision and order rendered in the CP do not require a pre-motion conference. However, motions to be relieved as counsel shall be made by Order to Show Cause returnable in the CP, and counsel shall submit a proposed order granting the relief requested (22 NYCRR 202.8-a[b]).

D. Civility

The parties are reminded that they are expected to be courteous to each other and to Court personnel at all times. All parties are directed to refrain from speaking over one another during conferences and from using abusive language. The parties are further directed to speak directly to the Court, as opposed to each other, in the event that an issue arises during a virtual conference. Any party that refuses to behave in a civil manner may, after a warning, be removed from the virtual conference.

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

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

http://www.nycourts.gov/legacypdfs/courts/9jd/diffCaseMgmt/TrialReadyStip_orderefiling010317.pdf, to be so-ordered.

The CP Justice shall establish the deadline for any post-note summary judgment motions in the Trial Readiness Order which shall provide that any motion for summary judgment by any party must be made within sixty (60) days following the filing of the Note of Issue.

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

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

Counsel are cautioned that untimely motions cannot be made timely by denominating such as cross-motions. The failure of a party to serve and file a motion or cross-motion within

the 60-day time period pursuant to this protocol and the Trial Readiness Order shall result in the denial of the untimely motion or cross-motion.

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

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

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

F. Settlement in E-Filed Actions

The parties are cautioned that the all too common practice of appearing before the Court and representing that a settlement has been made will no longer be accepted. When an action is settled, discontinued or otherwise disposed of, counsel or self-represented parties must **promptly** file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed (22 NYCRR §202.28).

If a cause of action of a minor/infant or a person who has been declared incompetent has been settled, the parties must file a stipulation of settlement subject to an infant compromise order or an incapacitated person compromise order pursuant to CPLR §1207. (CPLR §1207 provides for judicial approval of the settlement of any action commenced on behalf of an infant or incompetent person.)

If an action is settled that alleges that defendant's wrongful act, neglect or default caused decedent's death, the parties must file a stipulation of settlement subject to a wrongful death compromise order pursuant to EPTL§5-4.6. The parties must specify in the stipulation if the application for the wrongful death compromise will be made in the Settlement Conference Part or

the Surrogate's Court.

If a stipulation of discontinuance or stipulation of subject (subject to a compromise order or wrongful death order) is not filed via NYSCEF prior to the scheduled compliance conference, the parties must appear on the scheduled compliance conference date to report to the court attorney-referee the status of any such settlement.

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

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

SETTLEMENT CONFERENCE PART RULES

Presiding: HON. JOAN B. LEFKOWITZ, JSC

Personnel: Amanda Hall, Settlement Conference Part Clerk

Room: 1600

E-mail: SettlementConferenceWestchester@nycourts.gov

Due to the COVID-19 pandemic, to ensure timely responses to inquiries, the parties are directed to contact the Settlement Conference Part Clerk via e-mail rather than by fax or telephone.

III. Settlement Conference Part E-Filing Rules

A. Settlement Conferences in E-Filed Actions

Pursuant to the Eleventh Amended Administrative Order, Ninth Judicial District (12-21-20), due to the COVID-19 pandemic, all settlement conferences and infant compromises hearings will be held in the Settlement Conference Part virtually via Microsoft Team video conferencing or telephone.

Settlement conferences are held daily in the Settlement Conference Part (SCP) commencing at 9:15 a.m. with conferences held in person or virtually by video conferencing/telephone via Microsoft Teams, as directed by the SCP. A case will be assigned to the SCP after a Trial Readiness Order and Note of Issue are filed (22 NYCRR 202.26[a]). Additionally, a case may be assigned, at any time during the litigation, if a joint request of the parties is granted by the judge assigned to a case and the assigned judge refers the case to the SCP by email to the SCP Clerk to SettlementConferenceWestchester@nycourts.gov (22 NYCRR §202.29).

If a motion is pending in a case, the case is assigned to the IAS Judge assigned the motion for all purposes, including settlement, unless the assigned judge refers the case, upon joint request of the parties, to the SCP for a settlement conference. No case will be accepted by the SCP unless notification of the referral is given by the assigned Judge's Part to the SCP Clerk (as set forth above) and each party files a Settlement Conference Form (see link to the form below).

Once a Note of Issue is filed or a case is referred to the SCP by the assigned judge, the case will be assigned to the SCP to schedule a settlement conference. **Each party shall e-file a Settlement Conference Form within 60 days of the filing of the Note of Issue or 5 business days of referral by the IAS judge assigned to the case.** The Settlement Conference Form is located on the Ninth Judicial District's website under "Differentiated Case Management" and can

be found at:

https://nycourts.gov/LegacyPDFS/courts/9jd/diffCaseMgmt/Settlement_Conference_Form.pdf

There will generally be two (2) settlement conferences held in the SCP for each case to maximize the resolution of cases. Additional settlement conferences may be held at the request of the parties and in the discretion of the SCP Justice to promote the just and expeditious resolution of a case through settlement.

Cases will be placed on the SCP calendar for an initial settlement conference in the order in which the Settlement Conference Forms are filed by the parties. The SCP will give notice by email or via NYSCEF of the date of the first settlement conference.

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

The parties and counsel are cautioned to arrive on time for settlement conferences as required by 22 NYCRR §202.1(g). Counsel attending settlement conferences must bring a copy of all documents relevant to the issues of liability and damages, be fully familiar with every aspect of the case, and be expressly authorized to engage in meaningful settlement negotiations (22 NYCRR §202.1[f]). Counsel must have evaluated the case prior to the settlement conference date and be prepared to negotiate in good faith to effectuate a reasonable settlement. Counsel representing an insured defendant must discuss the case with defendant's insurance adjustor and have authority to settle. Absent good cause, the plaintiff(s) and defendant(s) must appear in person or by video conferencing for the first conference in order to consent to any settlement (22 NYCRR §202.26[a]). No answering services or per diem counsel are permitted to attend settlement conferences.

The second settlement conference, if necessary, shall be calendared at the conclusion of the first settlement conference, except as set forth above. The second or any further settlement conference may be adjourned no more than two (2) times, by written request of the parties submitted at least three (3) business days prior to the scheduled settlement conference. The request for an adjournment shall be made to the SCP by email with all parties copied or via NYSCEF and shall include two (2) proposed alternative dates for rescheduling the settlement conference, which dates shall be no later than three (3) weeks following the previously scheduled settlement conference. The SCP will thereupon give notice by email or via NYSCEF to the parties of the adjourned settlement conference date. Correspondence regarding scheduling, only as expressly permitted herein, shall be filed and transmitted to other parties via the NYSCEF system.

A party seeking an adjournment shall do so in accordance with this Protocol via the NYSCEF system by choosing the following NYSCEF document type: Correspondence (Request for Adjournment). No duplicate copies of the correspondence shall be provided to the SCP by either fax or mail.

The final settlement conference scheduled by the SCP will be the parties' last clear chance to settle the case prior to trial, if the case was assigned to the SCP after the filing of a Note of Issue or by the assigned trial judge. The parties are cautioned that without approval of the assigned trial judge, there will be no further settlement conferences held in the SCP prior to the trial date (22 NYCRR §202.29). In no event shall settlement conferences result in an adjournment of the trial date or any date in a court order unless directed by the court (22 NYCRR §202.10).

B. Stipulations of Discontinuance and Settlement; Applications for a Compromise Order

When an action is settled, discontinued or otherwise disposed of and a cause of action has not been asserted on behalf of an infant or a person judicially declared incompetent or for defendant's wrongful act, neglect or default that caused decedent's death, counsel or self-represented parties must promptly file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed (22 NYCRR §202.28). If a cause of action is asserted on behalf of an infant or person judicially declared incompetent or for a defendant's wrongful act, neglect or default that caused decedent's death, the parties must file a stipulation of settlement subject to a compromise order as set forth below. (A sample stipulation of settlement is located on the Ninth Judicial District's website at <http://ww2.nycourts.gov/courts/9jd/diffCaseMgmt.shtml> under "FORMS".)

If a stipulation of discontinuance or stipulation of subject (subject to a compromise order or wrongful death order) is not filed via NYSCEF prior to a scheduled settlement conference, the parties must appear on the scheduled settlement conference date to report the status of any such settlement.

If a cause of action of an infant or a person who has been judicially declared incompetent has been settled, the parties must file a stipulation of settlement subject to an infant compromise order or an incapacitated person compromise order pursuant to CPLR §1207. The SCP will then place the case on the SCP calendar for the filing of an Order to Show Cause for an Infant/Incapacitated person compromise with the supporting documents and information required by CPLR §1208, 22 NYCRR §202.67 and the SCP's Rules and Instructions for an Infant/Incapacitated Person Compromise (located at https://www.nycourts.gov/LegacyPDFS/courts/9jd/diffCaseMgmt/Infant_Compromise_Rules_and_Instructions_2019.pdf). An Order to Show Cause is required insofar as the Part deems such

applications as “urgent” under 22 NYCRR §202.8-d, and so that the Part can direct service upon all interested lien agencies and direct those agencies to file and/or serve lien letters.

If an action is settled that alleges that defendant’s wrongful act, neglect or default caused decedent’s death, the parties must file a stipulation of settlement subject to a compromise order pursuant to EPTL §5-4.6 (“wrongful death compromise”). The parties must specify in the stipulation if the application for the wrongful death compromise will be made in the Settlement Conference Part or the Surrogate’s Court.

If the parties elect to make an application for a wrongful death compromise in the SCP, the case will be placed on the SCP calendar for the filing of an Order to Show Cause for a Wrongful Death Compromise pursuant to EPTL§5-4.6 with supporting documents and information required by 22 NYCRR §207.38 (a), (b)(1)-(6), and (d). An Order to Show Cause is required insofar as the Part deems such applications as “urgent” under 22 NYCRR §202.8-d, and so that the Part can direct service on all interested lien agencies and direct those agencies to file and/or serve lien letters. The SCP will not allocate the settlement proceeds between causes of action for wrongful death and the decedent’s conscious pain and suffering, and shall direct plaintiff(s) to file a petition for allocation and distribution of the net settlement proceeds in the Surrogate’s Court (after the payment of any liens on the estate, including funeral costs) (see EPTL§5-4.6 [a][1]-[2]). The case will then be placed on the SCP calendar for the filing of the decree of the Surrogate Court as to allocation and distribution of the net settlement proceeds.

C. Civility

The parties are reminded that they are expected to be courteous to each other and to Court personnel at all times. All parties are directed to refrain from speaking over one another during conferences and from using abusive language. The parties are further directed to speak directly to the Court, as opposed to each other, in the event that an issue arises during a virtual conference. Any party that refuses to behave in a civil manner may, after a warning, be removed from the virtual conference.

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

TRIAL READY PART RULES

Personnel: Maryann Tamberella, Trial Ready Part Clerk
Room: 1200
E-mail: TrialReadyWestchester@nycourts.gov

Due to the COVID-19 pandemic, to ensure timely responses to inquiries, the parties are directed to contact the Part Clerk via e-mail rather than by fax or telephone.

Due to the COVID-19 pandemic, in-person Trial Ready Part operations are currently suspended, and no jury trials are being conducted at this time. However, the Court is operating virtually, and options such as virtual bench trials and settlement conferences remain available to the parties. The parties may contact the Trial Ready Part via e-mail at TrialReadyWestchester@nycourts.gov to request a conference to discuss options.

In addition, the parties are strongly encouraged to use the Westchester County Supreme Court's General Civil Mediation Program. Information regarding the General Civil Mediation Program may be found at

http://www.nycourts.gov/legacypdfs/courts/9jd/Westchester/generalCivilMediation/Mediation_program.pdf.

The rules governing the General Civil Mediation Program can be found at

http://www.nycourts.gov/legacypdfs/courts/9jd/Westchester/generalCivilMediation/rules_adr.pdf