

HON. STEPHEN W. CASS

Acting Supreme Court Justice
Gerace Office Building, 2nd Floor
P.O. Box C

Mayville, New York 14757

PHONE: 716-753-4337 / CHAMBER’S FAX: 716-753-4730

Court Attorney Referee :	Marlene T. Sirianno, Esq.	753-4748
	msiriann@nycourts.gov	
Principal Court Attorney:	Curt N. Meeder, Esq.	753-4338
	cmeeder@nycourts.gov	
Court Clerk – Contested:	Lora Reed	753-4497
	lreed@nycourts.gov	
Secretary:	Carmella Catanese	753-4337
	ccatanes@nycourts.gov	
Court Reporter:	Cherilynn Schlemmer	753-4348
	cschlemm@nycourts.gov	

MOTIONS/OTSC:

Motions/OTSC are heard Monday mornings beginning at 10:30 am at half hour intervals. **At this time (7/12/21) all motions and orders to show cause will be heard in person unless otherwise arranged.** Emergency matters may be heard at other times as specifically arranged by Chambers.

Notices of Motion: Notices of Motion must be filed in NYSCEF unless the case is exempt from NYSCEF. Prior to filing the Notice of Motion in NYSCEF, counsel must contact Chambers to confirm a return date and time. If the motion is to be heard virtually counsel will be given a telephone number and conference ID to be inserted in the Notice of Motion with the following language:

“This matter will be heard by the Court virtually via Microsoft Teams. Parties shall appear telephonically by calling _____ and when prompted entering conference ID _____ or by calling chambers at 716-753-4337 and providing an email address and a Microsoft Teams invite will be sent to the party’s email address to appear virtually.”

Orders to Show Cause: Pursuant to 22 NYCRR 202-8d, Orders to Show Cause may only be brought when there is a genuine urgency, a stay is required or as required by statute. Orders to Show Cause must be presented by movant's attorney to the Court via NYSCEF unless the case is exempt from NYSCEF. Counsel must contact chambers prior to filing the proposed order to show cause to obtain a return date and time. The Court will insert the Microsoft Teams telephone number and conference ID into the OTSC at the time the Court signs the OTSC, if the matter is to be heard virtually.

Counsel should consult 22 NYCRR 202-8a to ensure motions and all accompanying documents comply with the rule.

Cases exempt from NYSCEF **only**:

Notice of Motion: An original and one copy of the NOM marked as filed in the Chautauqua County Clerk's office.

Orders to Show Cause: The movant must pay the filing fee for the OTSC in the County Clerk's office and then provide Chambers with the original "Paid" stamped, OTSC and one copy. After the OTSC is signed, the original must be filed in the County Clerk's office.

All answering papers and other moving papers must be filed through NYSCEF by Thursday at 4:30 pm or at least one business day prior to the return date. If the case is exempt from NYSCEF, reply to papers must be submitted directly to Chambers.

Request for TRO's must be made on notice to opposing counsel and the Attorney for the Child. Counsel should consult 22 NYCRR 202-8e to ensure compliance.

Counsel should review 22 NYCRR 208-08a to ensure all motions, orders to show cause and accompanying documents comply with the rule.

ADJOURNMENTS: Motions and Orders to Show Cause will not be adjourned without prior approval by chambers. Counsel seeking an adjournment should first contact the court for potential adjournment dates then contact opposing counsel

to reach a mutually acceptable adjournment date. If opposing counsel consent to an adjournment date, counsel should notify the Court via email and copy opposing counsel.

MATRIMONIAL CASES:

1. Preliminary Conferences: 22 NYCRR 202.12(b) requires that a Preliminary Conference be held within 45 days of the filing of the RJI for a matrimonial action. Remember this time frame when requesting adjournments. Financial Affidavits (236B) and Retainer Agreements **MUST** be filed in NYSCEF at least 48 hours prior to the Preliminary Conference.
2. Pre-Trial Conferences: Statements of Proposed Disposition must be filed in NYSCEF at least 48 hours prior to the Pre-Trial Conference.
3. If a case is resolved by stipulation of the parties, the matter **WILL NOT** be taken off the calendar until the Court receives a signed copy of the stipulation. Since this usually occurs on the eve of trial, stipulations must be emailed directly to chambers.
4. When Judgments of Divorce provide for the full continuation of Family Court orders (custody/visitation or child support), the Judgment must reference the Docket number(s) and Date(s) of Family Court orders, and copies of said orders must be filed with the divorce packet/judgment roll.
5. When an oral default is put on the record, the transcript of the default must be filed with the record; however, **DO NOT** attach the default transcript to the Judgment of Divorce.
6. When a stipulation of settlement is placed on the record or if the case is settled by written stipulation of the parties, a transcript of the oral stipulation or the written stipulation **MUST** be filed in NYSCEF with the judgment of divorce. Where the case has been settled by oral stipulation, the Affidavit of Appearance and Adoption of Oral Stipulation **MUST** be Filed in NYSCEF with the judgment of divorce.

7. When the court has rendered a written decision or bench decision, the written decision or transcript of the bench decision **MUST** be attached to the Findings of Fact and Conclusions of Law; and, directives of the Court must be detailed in decretal paragraphs in the Judgment of Divorce.
8. When a divorce is settled by stipulation which is incorporated into the Judgment of Divorce, the decretal paragraphs need not specify the provisions concerning equitable distribution. However, separate decretal paragraphs must specify provisions regarding custody, visitation, child support and maintenance.
9. CPLR 306-b: Where service of the Summons with Notice or Summons and Complaint has not been effected within 120 days of filing with the County Clerk's Office, you must obtain the Court's permission to extend the time for service for "good cause shown". This can be done on the papers without the necessity of counsel's appearance, on ex parte notice of motion and payment of the necessary motion filed fee.
10. UCS-111 Forms: 202 NYCRR 202.50c requires that judgments submitted to the court **shall** be accompanied by a completed form.
11. Effective date of Child Support and/or maintenance in judgments and/or orders: Every proposed judgment of divorce or temporary order containing an order of support or maintenance **MUST** specify the effective date. If the parties entered into an oral stipulation placed on the record in court and the stipulation does not specify the effective date of any child support and/or maintenance orders, the effective date to be inserted in the proposed judgment or order will be the date the stipulation was placed on the record. If the matter is resolved by a written stipulation and there is no date specified in the stipulation, the effective date to be inserted in the proposed judgment or order will be effective the date the stipulation is fully signed by both parties. The best practice would be to specify the effective date in any stipulation, written or oral. If the child support and/or maintenance order is by decision of the Court, the decision will indicate the effective date and this date must be inserted in the proposed judgment. If orders are payable through the Support Enforcement Unit and the effective

date is not specified in the Judgment, the Support Enforcement Unit will adhere to the dates specified in this paragraph.

12. Prior Family Court Orders: In some judgments, the language continues a prior Family Court order but with changes. This causes confusion in the future to have two orders in effect. In this case, attorneys should either specify that the Family Court Order will continue in its entirety or set forth a new, complete order in the Judgment and specify the effective date of the new order and terminating the prior Family Court order.
13. Direct Pay orders or through Support Enforcement Unit: Any proposed judgment of divorce should state whether child support is by way of direct pay or through the Support Enforcement Unit. If the order is by direct pay, counsel must file the necessary form with the State Case Registry in Albany and provide the Court with a copy of the form and letter of filing. If payments are to be made through the Support Enforcement Unit, the proposed judgment must contain a provision directing the filing of a copy of the judgment with the Support Enforcement Unit.
14. Social Security Numbers: Every proposed Judgment of Divorce must contain the social security numbers of parties. In addition, pursuant to DRL 240-b, any proposed judgment with an order for child support must contain the social security numbers of the minor children.
15. DRL Section 255 (health insurance notifications) will be enforced. All stipulations after November 1, 2007 must contain a provision and Judgments of Divorce must contain a decretal paragraph in accordance with the statute.

TEMPORARY ORDERS OF PROTECTION:

1. If one form of relief requested in an Order to Show Cause is an order of protection **PRIOR** to the return date of the Order to Show Cause, counsel should have the client available at the time the Court signs the Order to Show Cause to present testimony on the issue. If the Order to Show Cause seeks an order of protection upon the return date of the Order to Show Cause, counsel should have the client available on the return date to

present testimony on the issue. As a matter of course, mutual orders of protection will not be granted.

2. If there is a pending criminal charge involving the same parties and domestic violence allegations arising in any of the local courts and/or county court, the divorce action may be transferred to the IDV Court. Proceedings will continue in the matrimonial court until the case is accepted and transferred.

STATEMENT OF NEW WORTH:

1. **MUST** be in substantial compliance with the Statement of Net Worth form contained in Appendix A of the uniform rules. 22 NYCRR 202.16(b).
2. **MUST** complete all categories, marking “NONE”, “INAPPLICABLE” or “UNKNOWN” if necessary.
3. **MUST** attach pay stubs (3 pay periods), W-2 statements or previous year’s tax return.

QUALIFIED DOMESTIC RELATIONS ORDERS:

Those QDROs (or DROs) submitted with the Judgment of Divorce or within one year after entry **do not** require a motion. However, they do require either the opposing counsel’s approval (or litigant’s approval if pro se) or proper notice and default, with proof provided to the Court of same. Those presented greater than one year after entry require a formal motion, on notice, to the opposing party, with proof provided to the Court. A motion fee **is not** required.