

INDIVIDUAL PART RULES

Effective June 15, 2020

**HONORABLE CHRISTI J. ACKER
Dutchess County Supreme Court
10 Market Street, 2nd Floor
Courtroom 207
Poughkeepsie, New York 12601**

Justice Acker's Staff:

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I. Communications with the Court

A. Correspondence: All correspondence to the Court must be brief, concise and contain the full case title and Index Number of the action. Correspondence to the Court shall, without exception, be copied to all other counsel (or self-represented litigant(s)) simultaneously with transmittal to the Court. Correspondence between counsel and/or self-represented parties shall not be copied to the Court. The Court does **not** permit litigation by way of letter correspondence to the Court, or by way of being copied with letter correspondence by and between counsel. Any such submission shall be rejected by the Court without further action or consideration. **Correspondence to the Court shall not be e-filed.**

B. Telephone Calls: Except as set forth below, telephone calls to the Court staff are permitted only in situations requiring immediate attention that cannot otherwise be obtained by correspondence.

C. **E-Mail:** E-mails to the Court's staff should be brief and concise, stating the relief or action requested to be taken by the Court.

D. **Facsimiles:** Unless specifically approved by the Court in advance in a particular case, the Court does not accept legal papers of any kind by fax transmission. Faxed communications are not to exceed 3 pages unless prior permission is obtained from the Court or the Court staff.

E. **E-Courts:** While E-Courts can be a useful tool, it is not always accurate. In the event of a conflict between the appearance date provided by the Court and E-Courts, the parties should appear on the date and time provided by the Court.

II. E-Filing Rules and Protocol

A. **E-Filing Protocols:** Counsel and self-represented litigants shall familiarize themselves with the statewide E-Filing Rules (§§ 202.5-b and 202.5bb of the Uniform Rules for the New York State Trial Courts, available at www.nycourts.gov/efile) and the Joint Protocols for New York State Courts e-filing for cases filed in Dutchess County available at:

https://www.nycourts.gov/legacypdfs/courts/gjd/dutchess/dutchess_e-file/dutchessprotocols.pdf

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov. Specific questions about local procedures should be addressed to the Dutchess County and Supreme Court Clerk's Office at (845) 431-1720.

All documents in mandatory e-filed cases, except documents subject to the opt-out provision of § 202.5-bb of the Uniform Rules for the New York State Trial Courts, or documents subject to e-filing in which consent is being withheld, are to be filed through the New York State Courts E-Filing System (NYSCEF). All submissions to the Court, except correspondence (*see* Rule I(A), *supra*), must be electronically filed.

B. **Working Copies:** Counsel and self-represented litigants MUST provide working copies of all legal papers which require judicial action (*e.g.*, Orders to Show Cause, motions, notices of settlement, *ex parte* applications and proposed orders). The working copy of a motion must include all documents filed in support of the motion, including exhibits WITH external tabs, as required by Rule IV(A)(5) below.

All working copies MUST include a copy of the NYSCEF Confirmation Notice, firmly fastened, and must comply with all requirements of the E-Filing Protocols. The Confirmation Notice is generated when the case is e-filed and is available in the specific case

file at www.nycourts.gov/efile. Working copies that do not include a NYSCEF Confirmation Notice will be rejected.

All working copies shall be submitted to the Chambers within 24 hours of e-filing. In the event the Court does not receive a working copy, the Court may not consider the submission.

Counsel shall not submit working copies of letters to the Court that have been uploaded to the system where such correspondence has been faxed to Chambers.

Orders to Show Cause which are not of an emergent nature will **NOT** be acted upon until the working copy is received by Chambers.

C. Hard Copy Submissions: Hard copy submissions in e-filed cases will be rejected unless they bear the Notice of Hard Copy Submission - E-Filed Case required by Uniform Rule § 202.5-b(d)(1)(b). The form is available at www.nycourts.gov/efile.

III. Calendar Call & Conferences

A. General Rules: The Court's calendar will be called at 9:30 a.m., in Courtroom 207 of the Dutchess County Courthouse. Counsel and self-represented parties are expected to appear for all Court appearances on time and be fully prepared to discuss all factual and legal issues presented. If counsel or a party is unable to appear on time due to unforeseen circumstances (delays due to inclement weather or road closures, for example), he/she should contact opposing counsel and advise the Part Clerk or Court's staff by telephone as soon as possible.

Counsel who are scheduled to appear before this Court and another Court must communicate that fact to Chambers prior to the date of appearance so that the conflicting appearances can be reconciled. Otherwise, Counsel should provide the Court with an Affidavit of Engagement. Counsel are not to rely on opposing counsel to advise the Court of their conflict when the case is called. In the event Counsel does not advise the Court of a conflict, the Court may proceed in that counsel's absence.

B. Who Must Appear: Only counsel (or self-represented parties) who are fully familiar with a case and authorized to enter into binding agreements on all aspects of the case are to appear for conferences. (This means that counsel for the plaintiff(s) must be prepared to make a settlement demand and counsel for the defendant(s) must be prepared to respond to the demand.) In non-matrimonial actions, represented parties need not appear for conferences unless directed to do so by the Court. **Where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant as well as the name, claim number and phone number of the adjuster assigned to the matter.**

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

C. Adjournment of Conferences: A request to adjourn a conference must be made in writing, *preferably by email or by fax* (one method only), to Chambers at least one (1) full business day in advance of the scheduled conference, unless there is an emergency. All applications for adjournments must set forth: 1) the reason why an adjournment is necessary; 2) whether the opposing party(ies) consent(s) or object(s) to the application; and 3) the length of the adjournment sought or, if on consent, a date all parties are available. All such communications must be copied to all counsel and self-represented parties.

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

The Court will advise the requesting party if the requested adjournment has been granted. The requesting party shall advise all other parties to the action if the adjournment request was granted and the new date. The parties should not assume that the request for adjournment has been granted until the Court has specifically addressed the request.

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

At the Preliminary Conference, the Court will set specific dates for completion of various items of discovery, the date by which a Note of Issue must be filed and a date for a Compliance Conference. All counsel and self-represented litigants are expected to abide by and comply with the Court's discovery schedule and deadlines. No modifications of the dates set by the Court are permitted except by Order of the Court.

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

E. Compliance Conference: The Court will conduct a Compliance Conference as directed at the Preliminary Conference. At the Compliance Conference, the Court will ensure that discovery proceeded as scheduled. The Court may also conduct a settlement conference at this time. Counsel are to be fully familiar with the action as well as all settlement discussions that have previously taken place so that meaningful discussions can be held. In all cases where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant as well as the name, claim number and phone number of the adjuster assigned to the matter. In a proper case, the Court may contact the claims adjuster by telephone or direct that the claims adjuster shall appear for a conference.

A. Settlement Conference: The Court will also conduct at least one Settlement Conference. Counsel attending the Settlement Conference must be fully familiar with the action and authorized to discuss all factual and legal issues presented by the litigation, settlement demands or offers, witness scheduling, and trial procedure – including, for example, whether any party or witness will require a translator or accommodation for a physical challenge. Counsel must also be authorized to enter into binding settlements on terms agreeable to the parties and to the Court. The parties (including adjusters) must be available by phone if not present for the conference. The Court will explore limitation of issues for trial (e.g., whether liability may be conceded or certain claims or defenses withdrawn in an appropriate case).

On or before the date of the Settlement Conference, counsel (or self-represented parties) must provide the Court and opposing counsel (or self-represented party) with the following:

1. Marked pleadings in accordance with CPLR § 4012, including copies of any exhibits incorporated by reference in the pleadings;
2. A copy of all Bills of Particulars (including Supplemental and/or Amended Bills of Particulars);
3. A copy of all medical narrative reports exchanged by the parties;
4. A copy of all expert disclosures served pursuant to CPLR § 3101(d);
5. A list of probable trial witnesses; and
6. A copy of all prior Decisions or Orders on motions issued in the case.

Counsel are advised that, in an effort to foster open settlement discussions, the Court may meet with one side or the other apart from opposing counsel. Counsel are presumed to have consented to the Court doing so unless an objection is stated.

G. Pre-Trial Conference: A Pre-Trial Conference with all counsel and self-represented parties will be conducted before the commencement of jury selection or of a non-jury trial. The parties must be available by phone if not present for the conference.

On or before the Pre-Trial Conference, counsel (and self-represented parties) must provide the Court and opposing counsel (or self-represented party) with the following:

1. Memoranda of law concerning any procedural, evidentiary, or other legal issue which the parties anticipate the Court will need to determine;
2. Requests to Charge. A complete list of requested jury charges, drawn from the Pattern Jury Instructions (PJI) of the then current year, must be submitted by email in Word Perfect or Word format to the Court's Principal Law Clerk or Confidential Secretary. Where the requested charge comes directly from the PJI, only the PJI title, section number and page number need to be provided. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted, together with any supporting legal authority.
3. Proposed Verdict Sheet. A proposed Verdict Sheet, jointly prepared by all parties, typewritten and in final form for presentation to the jury shall be submitted. If agreement cannot be reached between and among the parties as to the questions to be posed to the jury prior to the Pre-Trial Conference, each party will present a proposed verdict sheet which will be served upon all the parties. Proposed Verdict Sheets must be submitted by email in Word Perfect or Word format to the Court's Principal Law Clerk or Confidential Secretary.
4. **Written motions in limine must be made returnable on the day of the Pre-Trial Conference.** Such motions must be made on no less than seven (7) days' notice to opposing counsel and/or self-represented parties.

IV. Motions/Orders to Show Cause/Temporary Restraining Orders

A. General Rules

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

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

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

3. Absent express permission obtained in advance from the Court, briefs/memoranda of law are limited to 20 pages each and affirmations and affidavits are limited to 15 pages each. Papers which exceed these limitations may not be considered by or may be rejected by the Court. Motion papers are limited to Moving Papers, Opposing Papers and Reply. **Sur-Reply papers are not permitted.** Counsel and the parties are reminded that the CPLR does not provide for the submission of sur-reply papers, however denominated, or the presentation of papers or letters to the Court after the return date of a motion. Nor is motion practice by correspondence permitted. Any opposing counsel or self-represented party who receives a copy of such materials submitted in violation of this rule shall not respond in kind.

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

5. Except by permission of the Court, all motion papers and Orders to Show Cause must be typewritten (minimum 12 point type), double-spaced, securely bound and entirely legible. **All exhibits must be legible and labeled with external tab markings.** Plaintiffs shall designate exhibits by number, defendants shall designate exhibits by letter. Exhibit lettering or numbering should not begin anew for subsequent papers submitted by the same party.

6. Reference to exhibits longer than ten (10) pages shall indicate the page number where the information cited is contained. Should the exhibit not contain page numbers, the exhibit shall be bates stamped.

7. Citations to legal authority must be to the official citations.

8. Deposition/Examination Before Trial transcripts included as exhibits must be single, front-faced pages only. Parties are requested not to submit miniscripts.

9. In non e-filed cases, all counsel shall submit a self-addressed stamped envelope with their moving or opposition papers to allow a copy of the Decision and/or Order to be mailed to the party. The name and Index Number of the case and return date of the motion should appear on the envelope.

10. On any motion seeking leave to renew or reargue a prior motion, the moving party shall submit copies of all papers submitted on the prior motion. Failure to comply with this requirement may result in the denial of the motion unless the papers on the prior motion are submitted to the Court by another party.

11. On any motion for a default judgment, proof must be presented that a military-status investigation of all applicable defendants has been conducted after the time for each such defendant to appear or answer has expired. In addition, to be sufficient, the military-status investigation must include, at a minimum, a search conducted through the Department of Defense, which may be performed through that agency's site, www.dmdc.osd.mil/appi/scra.

12. In the event the parties settle a motion or part of a motion before the return date or before a decision has been rendered, they shall immediately inform the Court in writing.

B. Adjournments of Motions

A request to adjourn a motion must be made in writing and transmitted to Chambers by fax or ***preferably by email*** (one method only) prior to the return date of the motion, copied to all counsel and self-represented parties.

All applications for adjournments must set forth: 1) the reason why an adjournment is necessary; 2) whether the opposing party(ies) consent(s) or object(s) to the application; 3) the length of the adjournment sought; and 4) the number of prior requests for adjournment and the dates previously set. The Court will advise the party who submitted the request whether the adjournment is granted and, if so, the new return date for the motion. That party must immediately advise all other parties in writing.

No more than three (3) adjournments of any motion or cross-motion will be permitted. The total period of time that a motion may be adjourned shall not exceed 60 days. No adjournment on a motion will be granted on a motion with a return date within thirty (30) days of a trial date.

Where the adjournment sought is not on consent, the requesting party should briefly set forth why the adjournment is necessary, the length of the adjournment sought and the reason offered by the non-consenting party for his/her lack of consent. Opposing counsel or self-represented party may succinctly provide their reasons for objecting to the requested adjournment if opposing counsel believes that his/her position has been stated incorrectly. No

further communication concerning the request for adjournment will be permitted. The request and the response, if any, are NOT to be used to advocate a position on the substantive dispute and shall address only the reason that consent for the requested adjournment is being declined.

The Court will advise the requesting party if the requested adjournment has been granted. The requesting party shall advise all other parties to the action if the adjournment request was granted. The parties should not assume that the request for adjournment has been granted unless specifically advised by the Court.

C. Temporary Injunctive Relief

Unless there are extremely unusual circumstances in which significant prejudice (set forth in detail in a supporting affidavit/affirmation) will result, opposing counsel are to be advised by telephone or fax at least 24 hours in advance of the date and time that any Order to Show Cause which includes a request for a stay or Temporary Restraining Order is being presented to the Court. In a true emergency, the Court, in its discretion, may dispense with the 24-hour notice requirement. If there has been no appearance by opposing counsel, the adverse party is to be provided with notice of the intention to submit an Order to Show Cause as provided by 22 NYCRR § 202.7(f) and is to be advised that he/she has the right to be heard on the application.

D. Discovery Related Motions

In lieu of discovery motion practice, it is the policy of the Court to make itself and its staff available to resolve disputes related to pretrial discovery. Therefore, ***no discovery motion is to be made by any party unless authorized or directed by the Court.***

Parties who have a discovery dispute are NOT to wait until the Compliance Conference to bring such dispute or complaint about non-disclosure to the Court's attention. 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 noncompliance with the counsel or self-represented litigant who is claimed not to be complying with the Court Order. A pro forma letter does not constitute a good faith effort. There must be actual *substantive* communication between counsel, either telephonically or in writing, regarding the claimed failure to engage in discovery and the claimed compliance or reason for noncompliance. Exception: Where an Order of Protection prohibits one party from contacting another party, the party who believes that discovery is not being complied with shall contact the Confidential Secretary or Principal Law Clerk without contacting the opposing party. The parties are **NOT** to copy the Court on correspondence between counsel concerning discovery issues unless specifically requested to do so by the Court.

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

E. Summary Judgment Motions

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

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

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

F. Motions in Limine

Written motions in limine must be made returnable on the day of the Pre-Trial Conference. Such motions must be made on no less than seven (7) days' notice to opposing counsel and/or self-represented parties.

G. Expert Disclosure

The statutory stay of disclosure (CPLR 3214(d)) upon the filing of a dispositive motion under CPLR 3211 or 3212 shall not apply to service of expert disclosure as ordered in the preliminary conference order.

V. Judgments, Decisions and Orders

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

Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will be returned unsigned unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR § 202.48 has been included.

All papers which are submitted for signature by the Court shall be identified on the signature page so that the document being signed by the Court can be identified. Example: *Jones v Jones*, Index #, Type of Document (*e.g.*, Judgment of Divorce).

VI. Foreclosure Actions

A. Motions: All motions in foreclosure actions must include a proposed order which disposes of the motion or application for the Court's signature. The proposed order shall be a separate document, not attached to the motion.

The motion templates mandated for residential foreclosure cases statewide where the homeowner has defaulted MUST be used. They are available at http://www.nycourts.gov/admin/OPP/foreclosure_resources.shtml. The Court additionally requires certain paragraphs be added to the Orders of Reference and Judgments of Foreclosure. Please see the appendix attached to those part rules.

B. Substitution of Referee: Requests to substitute a Referee shall be made by letter to the Court, NOT by formal motion.

C. Judgment of Foreclosure and Sale: All proposed Judgments of Foreclosure and Sale submitted to the Court must be on notice to all Defendants and shall comply with the form set forth in the motion templates.

VII. Matrimonial Actions

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

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

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

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

Parties to matrimonial actions are to appear at all matrimonial conferences unless otherwise directed by the Court.

B. Motions: All motions (including cross-motions) in matrimonial actions **MUST** be made by Order to Show Cause. Both parties and counsel must appear on the return date of any motion brought.

On the return date of any *pendente lite* motion, the Court will conduct either a Preliminary Conference or conference on the motion, as appropriate. In the event a Bench Decision is issued on the motion, a copy of the transcript will be ordered by the Court, the cost of which will be shared by the parties unless otherwise ordered.

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

C. Child Custody/Access Forensic Evaluator:

In any case in which a neutral forensic evaluator has been appointed by the Court to assist in custody or access determinations, the reports of evaluators appointed by the Court are **confidential**. The report(s) shall not be copied or disclosed to any person except as permitted by this order or any other orders of this Court. Any attorney who wishes to receive a copy of the report must first sign an affirmation that may be obtained from the Judge's Part Clerk or Confidential Secretary. A party may review the report, but may not possess a copy of the report. Self-represented litigants may make arrangements directly with the Judge's Part Clerk to review the report at the Courthouse. No device, capable of recording or photographing, is permitted in the room where the self-represented litigant is reviewing the report. Notes may be taken. If any party seeks to retain an expert other than the neutral forensic evaluator appointed by the Court, counsel may apply to the Court for permission to have the proposed expert receive a copy of the report. The expert will be required to sign a confidentiality agreement prior to receipt of the report.

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

D. Evaluations: Counsel (including a party not represented by counsel) may stipulate at a Preliminary or other Conference to designate a specific person or firm to conduct a property evaluation and to the allocation of the expense thereof between the parties. If Counsel (including any party not represented by counsel) agree upon the evaluation

as necessary and as to the allocation of expenses, but cannot agree upon a person or firm to conduct the evaluation, they may submit proposed names and curriculum vitae to the Court to order the designation. If the parties cannot agree upon the necessity for the evaluation or upon the allocation of responsibility therefor, an application shall be made, on notice to all parties, to the Court. The requesting party shall include a proposed apportionment of responsibility for costs between the parties, including the reasons therefor. Such statement shall be served upon all adverse parties, and any party opposing the application, in whole or in part, shall submit a statement, setting forth which part(s) of the application is opposed and the basis for such opposition. Nothing contained herein shall be deemed to limit or restrict the authority of the Court, in accordance with the law, to make any appointment, it being the purpose of this rule to simplify the process and reduce cost, expense and burden to the Court and to the parties.

E. **Compliance Conference:** The Court shall set a date for a Compliance Conference in the Preliminary Conference Order, which shall be held at least ten (10) days prior to the date by which disclosure is to be completed, for the purpose of confirming that all disclosure is complete or will be completed timely. **Any disclosure not completed in conformity with the Preliminary Conference Order may be deemed waived or appropriate sanctions may be imposed against a party who failed to timely provide discovery.**

At the Compliance Conference, the Court will schedule a Pre-Trial Conference and a date for submission of statements of proposed disposition.

F. **Judgment of Divorce/Settlement Agreements:** Please ensure that all submissions comply with the relevant law. For example, if the agreement deviates in any way from the Child Support Standards Act, the agreement must contain specific recitations. There are divorce forms on the Office of Court Administration homepage which contains all necessary paragraphs.

G. **Trials:** In all matrimonial actions in which a trial has been scheduled, no later than two (2) weeks prior to trial, the Court is to be provided with: (a) statements of proposed disposition as required by 22 NYCRR § 202.16(h); (b) updated Net Worth Statements (with the latest available supporting documents, such as income tax returns, W-2's, brokerage and retirement plan statements); and (c) any neutral 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.

On the first day of trial, counsel must submit to the Court the following documents:

- (a) marked pleadings;
- (b) a fully executed stipulation of relevant facts that are not in dispute. The Court expects that no matter how contentious the

case, there will be at least some facts that are not in dispute (*e.g.*, the date of marriage, the names and birth dates of children, the location of any residential real estate and the approximate date of acquisition, approximate cost, and the approximate balance on any mortgage);

- (c) an exhibit list and pre-marked exhibits. Only those items that are received in evidence will be marked by the reporter. Copies of all exhibits intended to be offered must be presented to the Court in a ringed notebook with a table of contents, with the plaintiff's exhibits numbered and the defendant's exhibits lettered in the order in which they are generally intended to be used with external tabs separating each exhibit. Counsel are to exchange their notebooks with proposed exhibits at least seven (7) business days prior to the Pre-Trial Conference. Failure to timely submit an exhibit list and proposed exhibits may result in preclusion. Counsel must either stipulate to the admission of the exhibits to be offered by the adverse parties or state the ground of any objection to admission of any such exhibit. Counsel must be prepared to argue to the Court at the time of the Pre-Trial Conference the admissibility of any exhibits to which objection is taken. Counsel are advised that the failure to include an exhibit in the exhibit list and exhibit exchange provided for herein may result in preclusion of that exhibit;
- (d) a list of witnesses, including the address of each witness, the time anticipated for the witness' direct examination, and the general subject matter of his or her testimony. The failure to identify a witness may result in the preclusion of the witness' testimony; and
- (e) a child support worksheet if applicable.

Counsel and/or the self-represented parties shall, to the extent not restricted by an order of protection, meet and confer in good faith to identify exhibits which will be stipulated into evidence.

The Court may, in its discretion, determine that issues relating to child decision-making and/or parenting time are to be bifurcated from the economic issues, with the issues relating to child decision-making and/or parenting time tried first.

VIII. Election Law cases

- (1) Orders to Show Cause to validate or invalidate designating or nominating petitions will be made returnable no later than five (5) days after the last day to statutorily commence such proceedings.
- (2) The calendar call on the return date must be answered by counsel or the litigant(s), (self represented) who shall provide the Part Clerk with their addresses and telephone numbers. Non-lawyer "representatives" of the parties are not permitted to answer the calendar call. Proof of service of the Orders to Show Cause, as well as any interposed Counterclaims or Answers, shall be filed with the Part Clerk at or before the initial appearance.
- (3) ON OR BEFORE THE RETURN DATE AND TIME:
 - (A) a written offer of proof in any matter alleging a question of residency of a candidate shall be filed with the court clerk and served on the opposing party;
 - (B) specifications of objections or bills of particulars not previously served and/or filed with the Board of Elections shall be filed with the court clerk and served on the opposing party;
 - (C) a complete written offer of proof in all matters alleging fraud including identification of witnesses to be called, their names and addresses, together with the status of each candidate, signatory, notary, expert, subscribing witness, etc. shall be filed with the court clerk and served on all opposing parties.

FAILURE TO COMPLY WITH SECTION A, B, OR C OF THIS PARAGRAPH SHALL BE DEEMED A WAIVER, AND FURTHER PROOF MAY BE PRECLUDED, EXCEPTING THE TESTIMONY OF A WITNESS THE COURT DETERMINES COULD NOT BE IDENTIFIED BEFORE THE RETURN DATE.

IX. Trials and Hearings

A. Trial and Hearing dates: Scheduled trial and hearing dates will be adhered to except for the most extraordinary good cause shown. Clients, fact witnesses, experts of all kinds (including physicians) are to be timely advised of the date set for trial by the Court within a reasonable period of time of the setting of such date, to avoid last minute claims of unavailability. The parties and their attorneys are encouraged to videotape, in accordance with the applicable rules and statutes, any witness' testimony who may be unavailable for trial.

B. **Subpoenas:** Counsel are referred to CPLR §§ 2306 and 2307 for guidance as to subpoenas directed to hospitals and municipal entities such as libraries, municipal corporations and their departments and bureaus. The Court requires that written proof be provided showing that all parties and necessary records holders have been given notice that

the subpoenas are being presented to the Court for signature. The Court's issuance of a subpoena to such entities does not constitute a ruling as to the admissibility of the subpoenaed records. Counsel are also reminded that they are designated agents for service of subpoenas on their clients under CPLR § 2303-a.

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

C. **Interpreters:** In the event a translator or interpreter is required at trial, counsel shall notify the Part Clerk no later than the Pre-Trial Conference so that timely and appropriate arrangements can be made.

D. **Personal Injury/Bifurcation:** Trials of personal injury actions, except those involving claims of wrongful death or medical/dental malpractice, will be bifurcated in accordance with 22 NYCRR § 202.42. The damages portion of a trial will commence with the same jury immediately following a plaintiff's liability verdict.

E. **Jury Selection:** Juries will be selected using "White's Rules". (See 22 NYCRR § 202.33). Unless the parties agree otherwise, Jurors will be designated. However, alternate jurors will be undesignated unless the parties otherwise agree on the record prior to commencement of jury selection that the alternates will also be designated.

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

In jury trials, the parties and their attorneys are to stand (if physically able) whenever the jury enters or leaves the courtroom. Nonparty witnesses are not to be in the courtroom during the trial except when the witness is testifying.

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

H. **Objections:** Objections to questions at trial are to be limited to the objecting party standing (if physically able) and stating "Objection" and no more than one word or two words as to the basis for the objection. Speaking Objections are not to be made. If the Court requires further explanation of the Objection, the Court will ask for further explanation or invite counsel to approach at side bar.

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

J. **Courtroom Behavior:** All remarks shall be directed to the Court. Comments shall not be made to opposing counsel or self-represented parties. Personal attacks upon parties, counsel or the Court will not be tolerated and may result in the imposition of sanctions. Do not attempt to speak over an adversary; only one person shall speak at a time.

K. **Summation Exhibits:** Any counsel or self-represented party who intends during summation to use any type of demonstrative exhibit not marked into evidence must advise the Court and all other counsel/self-represented parties of that intention at the charge conference. Failure to comply with this rule may result in an order precluding use of the exhibit during summation.

X. **Settled and Discontinued Cases**

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

XI. **Substitution/Discharge of Attorneys**

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

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

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

ORDER OF REFERENCE – ADDITIONAL PARAGRAPHS

ORDERED that pursuant to 22 NYCRR §36.1, the Referee shall be subject to Part 36 of the Rules of the Chief Judge; and it is further

ORDERED that by accepting this appointment the Referee certifies that he/she is familiar with the duties and responsibilities of a Referee and has experience in such area, and is fully capable and prepared to assume those duties and responsibilities which are commensurate with his/her abilities; and it is further

ORDERED that attorneys or support staff in the Appointee's office may perform tasks under the Appointee's direct supervision [unless otherwise directed by the Court], but all substantive appearances and reports must be performed and/or created by the Appointee; and it is further

ORDERED upon receipt of this order and UCS Form 872 (Notice of Appointment and Certification of Compliance), the Referee shall complete, execute and return the UCS Form 872 to the Fiduciary Clerk; and it is further

ORDERED that if the Referee's fees are anticipated to exceed \$1,100, the Referee must apply to the Court for approval of such fees, and the Referee comply with 22 NYCRR §36.4(e), before such fees can be paid; and it is further

ORDERED that Plaintiff is only authorized to pay the Referee fees in excess of \$1,100 upon receipt of an order by the Court authorizing such payment; and it is further

ORDERED that the plaintiff shall serve a copy of this order upon the Referee appointed herein, the owner of the equity of redemption and all parties' counsel who have appeared in this action, except such counsel, if any, representing a party dismissed herein; and it is further

ORDERED that the Referee shall advise, by first class mail, the defendant(s) named herein or his/her/their attorney of record, of the date, time and place of the hearing to compute; and it is further

ORDERED that the proof of mailing of the date, time and place of the hearing shall be provided to the Court together with the Referee's Oath and Report; and it is further

ORDERED that in the event the Referee is required to take testimony or hear argument from the defendant(s), then the Referee shall be entitled to an additional fee of \$300.00 per hour; and it is further

ORDERED that the Referee is entitled to a fee of \$350 for the computation Report; and it is further

ORDERED that the Plaintiff shall provide the Referee with all necessary paperwork so that the Referee can complete and submit the computation report within 45 days of the date of the Order of Reference; and it is further

ORDERED that Plaintiff shall make application for Judgment of Foreclosure and Sale by Notice of Motion duly served upon the defendant(s), or his/her/their attorney of record, and upon all other parties included in the caption; and it is further

ORDERED that Plaintiff shall make application for Judgment of Foreclosure and Sale no later than 120 days of the date of this Order, unless extension is granted by the Court for good cause shown; and it is further

ORDERED that this matter is scheduled for a conference at **2:00 p.m.**_____.

The purpose of this conference is to determine whether the Referee has completed and submitted the computation report and whether Plaintiff has filed an application for Judgment of Foreclosure and Sale. Appearances by the parties and appointed Referee are required unless: (1) the Referee has completed and submitted the computation report; and (2) Plaintiff has filed an application for Judgment of Foreclosure and Sale.

JUDGMENT OF FORECLOSURE - ADDITIONAL PARAGRAPHS

ORDERED that the Referee is entitled to a fee of \$750 upon the sale; and it is further

ORDERED that if the Referee is awarded and receives total compensation in excess of \$1,100.00, the Referee shall follow the procedure set forth in 22 NYCRR section 36.4(e); and it is further

ORDERED that the closing of title shall take place at the office of the Referee, or at such other location as the Referee shall determine, within forty-five (45) days after such sale unless otherwise stipulated by all parties. The Referee shall transfer title only to the successful bidder at auction. Any delay or adjournment of the closing date beyond forty-five (45) days may be stipulated among the parties, with the Referee's consent, up to ninety (90) days from the date of sale, but any adjournments beyond ninety (90) days may be set only with the approval of this Court; and it is further

ORDERED that the Referee shall make a Report of Sale showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were made, and shall file the Report of Sale with the County Clerk of the County of Dutchess within thirty (30) days after completing the sale and executing the proper conveyance to the purchaser; and it is further

ORDERED that the Referee shall deposit the surplus monies, if any, with the Commissioner of Finance of the County of Dutchess within five (5) days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only on an Order of this Court signed by a Justice of this Court; and it is further

ORDERED that Plaintiff's counsel shall furnish the Foreclosure Action Surplus Monies Form to the appointed Referee prior to the foreclosure sale date; and it is further

ORDERED that within thirty (30) days of the foreclosure sale, the Referee shall complete the Foreclosure Action Surplus Monies Form, file the completed Form with the Dutchess County Clerk's office, and send a copy of the completed Form directly to the Chambers of the undersigned. A fillable version of this Form can be found on the court's website at: <http://www.nycourts.gov/FORMS/SurplusMoniesFormFillable.pdf>; and it is further

ORDERED that this matter is scheduled for a conference at 2:00 p.m. on _____. The purpose of this conference is to determine whether the foreclosure sale has occurred as ordered, the outcome of such sale and to make such further orders as the Court deems necessary. Appearances by the parties and appointed Referee are required unless: (1) a Report of Sale and a completed Foreclosure Action Surplus Monies Form has been filed and received by the undersigned one week prior to this date; or (2) the Referee notifies the Court in writing one week prior to this date that the sale is not going to occur prior to this date and requests a new date based upon when he/she believes the sale will occur.

**ORDER OF REFERENCE AND JUDGMENT OF FORECLOSURE AND
SALE -(COMBINED) ADDITIONAL PARAGRAPHS**

ORDERED that pursuant to 22 NYCRR §36.1, the Referee shall be subject to Part 36 of the Rules of the Chief Judge; and it is further

ORDERED that by accepting this appointment the Referee certifies that he/she is familiar with the duties and responsibilities of a Referee and has experience in such area, and is fully capable and prepared to assume those duties and responsibilities which are commensurate with his/her abilities; and it is further

ORDERED that attorneys or support staff in the Appointee's office may perform tasks under the Appointee's direct supervision [unless otherwise directed by the Court], but all substantive appearances and reports must be performed and/or created by the Appointee; and it is further

ORDERED upon receipt of this order and UCS Form 872 (Notice of Appointment and Certification of Compliance), the Referee shall complete, execute and return the UCS Form 872 to the Fiduciary Clerk; and it is further

ORDERED that if the Referee's fees are anticipated to exceed \$1,100, the Referee must apply to the Court for approval of such fees, and the Referee comply with 22 NYCRR §36.4(e), before such fees can be paid; and it is further

ORDERED that Plaintiff is only authorized to pay the Referee fees in excess of \$1,100 upon receipt of an order by the Court authorizing such payment; and it is further

ORDERED that the closing of title shall take place at the office of the Referee, or at such other location as the Referee shall determine, within forty-five (45) days after such sale unless otherwise stipulated by all parties. The Referee shall transfer title only to the successful bidder at auction. Any delay or adjournment of the closing date beyond forty-five (45) days may be stipulated among the parties, with the Referee's consent, up to ninety (90) days from the date of sale, but any adjournments beyond ninety (90) days may be set only with the approval of this Court; and it is further

ORDERED that the plaintiff shall serve a copy of this order upon the Referee appointed herein, the owner of the equity of redemption and all parties' counsel who have appeared in this action, except such counsel, if any, representing a party dismissed herein; and it is further

ORDERED that the Referee shall make a Report of Sale showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were made, and shall file the Report of Sale with the County Clerk of the County of Dutchess within thirty (30) days after completing the sale and executing the proper conveyance to the purchaser; and it is further

ORDERED that the Referee shall deposit the surplus monies, if any, with the Commissioner of Finance of the County of Dutchess within five (5) days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only

on an Order of this Court signed by a Justice of this Court; and it is further

ORDERED that Plaintiff's counsel shall furnish the Foreclosure Action Surplus Monies Form to the appointed Referee prior to the foreclosure sale date; and it is further

ORDERED that within thirty (30) days of the foreclosure sale, the Referee shall complete the Foreclosure Action Surplus Monies Form, file the completed Form with the Dutchess County Clerk's office, and send a copy of the completed Form directly to the Chambers of the undersigned. A fillable version of this Form can be found on the court's website at: <http://www.nycourts.gov/FORMS/SurplusMoniesFormFillable.pdf>; and it is further

ORDERED that this matter is scheduled for a conference at 2:00 p.m. on _____. The purpose of this conference is to determine whether the foreclosure sale has occurred as ordered, the outcome of such sale and to make such further orders as the Court deems necessary. Appearances by the parties and appointed Referee are required unless: (1) a Report of Sale and a completed Foreclosure Action Surplus Monies Form has been filed and received by the undersigned one week prior to this date; or (2) the Referee notifies the Court in writing one week prior to this date that the sale is not going to occur prior to this date and requests a new date based upon when he/she believes the sale will occur.