

HON. DAVID F. EVERETT, J.S.C.

Contact Information:

Address: Westchester County Courthouse
111 Dr. Martin Luther King Jr. Boulevard
White Plains, New York 10601

Courtroom: Courtroom 201 (Annex)

Chambers Phone: (914) 824-5413
Chambers Fax: (212) 618-5104

Part Clerk e-mail: ldavis1@nycourts.gov
Clerk Phone: (914) 824-5776
Part Clerk Fax: (212) 618-5104

Judge Everett's Staff:

Principal Court Attorney: Miriam A. Boggio, Esq.

Confidential Secretary: Roberta Sutherland

Part Clerk: La'Shawn Davis

Assigned Staff:

Court Attorney Referee: B. Michael Wright, Esq.

Motion Day: Wednesdays

Motions are on submission only unless the Court directs otherwise.

Orders to Show Cause routinely have a mandated Court appearance, unless the Court directs otherwise.

PLEASE NOTE: The Court encourages and is available to facilitate the settlement of all matters. Accordingly, in any case assigned to this Part, where all parties consent, they may contact Chambers to request a conference for the purpose of resolving motions pending before this Court or settling the entire matter. Nonetheless, even if the parties agree to attend a Court conference, this shall not serve to delay the submission date of any motion, nor as a stay of the proceedings.

Part Rules:

The following Part Rules are effective as of September 15, 2023, in all proceedings assigned to the Hon. David F. Everett, J.S.C.:

I. General Rules

A. Conferences: This Part conducts preliminary conferences and compliance conferences in accordance with the Westchester Supreme Court Civil Case Management Rules, effective December 6, 2021 (Civil Case Management Rules). The Civil Case Management Rules are available at the following site:

<https://ww2.nycourts.gov/courts/9jd/civilCaseMgmt.shtml>.

B. Appearances by Counsel with Knowledge and Authority: All counsel who appear before the Court must be familiar with the case and be fully authorized to enter into agreements as to both substantive and procedural matters on behalf of their clients. Attorneys appearing “of counsel” to the attorneys of record and self-represented parties shall be held to the same requirements. Failure to comply with this rule may be regarded as a default and dealt with appropriately. All counsel and self-represented parties must be on time for all scheduled appearances.

C. Settlements and Discontinuances: If an action is settled, discontinued, or otherwise disposed of in any manner by the parties, counsel and self-represented parties shall immediately inform the Court by letter, along with a copy of the Stipulation of Discontinuance, and, in an e-filed case, by filing the Stipulation via NYSCEF. In a non-e-filed case, the Stipulation of Discontinuance must be filed with the County Clerk, with a copy provided to Chambers. The Court will not mark any matter settled unless these directions have been complied with.

D. Papers by Fax: The Court does not accept papers of any kind by fax transmission without prior Court approval. However, copies of letters confirming an adjournment of a motion or conference, which must have prior Court approval and be accompanied by a written stipulation signed by all parties, should be faxed to the Court’s Chambers at (212) 618-5104 or e-mailed to the Part Clerk at ldavis1@nycourts.gov. However, the correspondence must be uploaded to NYSCEF, or in a non-e-filed case, mailed to the Part Clerk.

E. Conduct of Parties and Counsel: It is expected that all parties and counsel shall conduct themselves appropriately in all in-court and out-of-court (virtual) proceedings and in their communications with each other and to the Court. Personal attacks upon parties, counsel or the Court will not be tolerated and may result in the imposition of sanctions, as the Court determines to be warranted under the circumstances.

F. Ex Parte Communications: Ex parte communications are strictly prohibited except upon consent of all counsel, or with respect to scheduling matters, the presentation of orders to show cause for signature, or where otherwise permitted by law.

G. Communications with Represented Parties: Counsel are directed to inform their clients that under no circumstances shall any represented party engage in any conversation or exchange any communication with the Court's staff (*see* CPLR § 321[a]). If a represented party communicates with any member of the Court's staff, all counsel shall be informed of the communication and, if it is in writing, shall be sent a copy of that writing.

H. Scheduling: Counsel and any self-represented party should address questions about scheduling appearances or adjourning appearances to the Part Clerk, La'Shawn Davis, at ldavis1@nycourts.gov.

II. E-Filing Rules and Protocol

A. E-Filing Rules and Protocol: Counsel for all parties shall familiarize themselves with the statewide E-Filing Rules (*see* §§ 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 Westchester County E-Filing Protocol available at:

<http://ww2.nycourts.gov/courts/9jd/e-file.shtml#ProtocolsRules>

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

Specific questions about local procedures should be addressed to the Westchester County Supreme Court Civil Calendar Office at (914) 824-5300.

B. Electronic Filing: All documents filed in mandatory e-filed cases, except those 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, including proposed orders, judgments and letters must be electronically filed.

III. Discovery

A. Compliance Conference: The date of the first compliance conference shall be noted on the preliminary conference order. To ensure that a case stays on its designated track, the first compliance conference shall be held approximately one hundred fifty (150) days prior to the date fixed as the last day of discovery. Once a preliminary conference order has been issued, the case will remain on this court's inventory for discovery proceedings. Compliance conferences shall be conducted by this Part.

B. Discovery Schedule: Compliance conferences shall be conducted by either the Court Attorney Referee or Principal Court Attorney, 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. Requests for modifications to discovery schedules shall be addressed to the Court Attorney Referee or Principal Court Attorney at the conference (22 NYCRR 202.20-e). Applications for extensions of a discovery deadline shall be made by stipulation showing good cause as soon as practicable and prior to the expiration of the deadline. Requests to extend court-ordered discovery deadlines or respond to discovery disputes shall be submitted via e-mail and uploaded to the NYSCEF system. The date of the adjourned compliance conference, received after consultation with the Court Attorney Referee or Principal Court Attorney, shall be included in the stipulation.

C. Adjournment of Compliance Conference: An adjournment of the date on which the compliance conference is to be held shall be granted upon a showing of good cause (22 NYCRR 202.10). When practicable, the request for an adjournment shall be made at least two (2) business days before the scheduled conference. A stipulation of adjournment filed in NYSCEF and emailed to the Part Clerk is preferred. However, if a stipulation cannot be obtained, a request for an adjournment shall be filed in NYSCEF and e-mailed to the Part Clerk on notice to all other parties. All requests should state the earliest period when the parties will be available for the next conference. The Part Clerk will advise when the next compliance conference will be held, which date 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 there are special circumstances. Unless the parties receive confirmation from the Part Clerk that a conference has been rescheduled, the parties shall appear for the conference as originally scheduled.

D. Adherence to Discovery Schedule: The parties are cautioned that any adjournment of the 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).

E. Routine Requests: Inquiries submitted via the NYSCEF system and by email to the Part Clerk are restricted to scheduling matters and routine submissions only. If assistance is required regarding a discovery issue, a party shall request a compliance conference in a timely manner by e-mailing the Part Clerk, on notice to all other parties.

IV. Motion Practice Rules

A. Motion practice is in accordance with the Civil Case Management Rules. These Rules are available at <https://ww2.nycourts.gov/courts/9jd/civilCaseMgmt.shtml>. All motions must be referred to the Motion Support Office for processing and assignment to the IAS Parts. All motions must be made returnable in the Motion Support Office. With the exception of pre-motion conferences, all inquiries regarding motions, including adjournments, shall be directed to the Motion Support Office. A motion may not be

adjourned more than three (3) times and the return date may not be adjourned for more than a total of sixty (60) days.

B. Working Copies: This Part does not require working copies unless otherwise directed by this Part in a particular matter. In the event that this Part requires a working copy, the working copy shall have the Confirmation Notice generated by the NYSCEF system, showing that the documents have been e-filed, firmly fastened thereto as a cover page.

C. Orders to Show Cause for Cases Assigned to this Part: If the order to show cause is signed by the Court, a copy of it shall be served in the manner set forth therein. Unless indicated otherwise, an in-person court appearance is required on the return date of all orders to show cause. If an appearance is not required, the order to show cause will so indicate and no oral argument will be heard on the return date.

D. Discovery Disputes for Cases Assigned to this Part: Prior to seeking judicial intervention, counsel and/or unrepresented parties shall communicate with each and attempt to resolve or limit any discovery issues. The court endeavors to resolve discovery disputes promptly, usually by conference, which may be held telephonically, virtually or in person. A discovery conference may be obtained by submitting a letter application, not exceeding one (1) page in length, to the Part Clerk, via e-mail and e-filing same in NYSCEF. No discovery motion will be entertained absent a pre-motion conference authorizing the application. After the pre-motion conference, if the discovery issues are not resolved, any motion to bring the issue before the Court must be made by order to show cause.

E. Requests for Temporary Injunctive Relief for Cases Assigned to this Part: When an order to show cause is to be presented to the Court which seeks temporary injunctive relief, including, but not limited to, a stay or a temporary restraining order, counsel for the moving party or any self-represented party shall demonstrate compliance with §202.7(f) of the Uniform Rules for the New York State Trial Courts, regarding notice to affected parties.

F. Form of Papers: All motion papers submitted to the Court, including orders to show cause, must be legible, and should be typewritten and double-spaced, with all exhibits labeled (and, in the case of hard copies, affixed with tab markings). Motion papers and all correspondence must indicate the index number assigned to the action.

G. Papers Required on Particular Motions:

Motion exhibits shall not be replicated in the same motion sequence or related sequences once submitted, including simultaneous submission of summary judgment motions (CPLR 2214 [c]). The parties shall confer to assure that this rule is followed. Exhibits referenced in depositions that are to be considered on a motion shall be labeled as all other exhibits.

As provided in CPLR 2214 (c), with respect to furnishing papers to the court:

Each party shall furnish to the court all papers served by that party. The moving party shall furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved. Except when the rules of the court provide otherwise, in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system. Where such papers are in the possession of an adverse party, they shall be produced by that party at the hearing on notice served with the motion papers. Only papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct.

1. Dispositive Motions: Pursuant to 22 NYCRR 202.8-g, motions for summary judgment may be accompanied by a separate statement with numbered paragraphs of material facts as to which it is contended there is/is not a genuine issue of fact to be tried. The numbered paragraphs in the moving party's statement of material fact will be deemed admitted unless specifically controverted by a corresponding numbered paragraph in the opposing party's statement of material fact. EACH statement of material fact must be followed by citation to evidence submitted in support of or opposition to the motion. The moving party shall include copies of all pleadings filed as of the date the motion is filed.

a. **Pre-Note of Issue Summary Judgment/Dispositive Motions:** Pre-note of issue summary judgment or other dispositive motions are subject to and governed by the Westchester Supreme Court Civil Case Management Rules (Revised Effective December 6, 2021). 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.

b. **Post-Note of Issue Summary Judgment / Dispositive Motions:** Post-note of issue summary judgment or dispositive motions are subject to and governed by the Westchester Supreme Court Civil Case Management Rules (Revised Effective December 6, 2021). Any motion for summary judgment by any party must be made within sixty (60) days following the filing of the Note of Issue. Once a post-note of issue summary judgment or dispositive motion is marked fully submitted, this Court CANNOT grant any further adjournment on the case.

2. Motions for Leave to Renew or Reargue: On any motion seeking leave to renew or reargue a prior motion pursuant to CPLR 2221, if the action is e-filed on NYSCEF, papers previously filed do not need to be uploaded again but must be

referenced by their NYSCEF document number. The failure to comply with this requirement may result in the denial of the motion unless the papers on the prior motion are referenced by another party.

3. Motions for Leave to Amend, Supplement, or Correct Pleadings: On any motion for leave to amend, supplement, or correct a pleading, in addition to the proposed amended, supplemental, or corrected pleading, the moving party shall reference copies of all pleadings filed in NYSCEF as of the date of the motion. The proposed changes to a pleading must be clearly shown. The failure to comply with this requirement may result in the denial of the motion unless copies of the prior pleadings are submitted to the Court by another party.

4. Motions for Injunctive Relief: Where an order to show cause, which seeks injunctive relief, is to be presented to the Court, copies of the summons and complaint or petition commencing the underlying action must be provided to the Court by the moving party. The failure to comply with this requirement may result in the denial of the order to show cause. Where temporary injunctive relief is sought, counsel for the moving party or any self-represented party shall demonstrate compliance with §202.7 (f) of the Uniform Rules for the New York State Trial Courts regarding notice to affected parties. (*see above*).

5. Default Motions: On any motion for a default judgment, proof must be presented that a military status investigation of all individual (non-corporate) defendants has been conducted after the time for each such defendant to appear or answer, as applicable, has passed. In addition, to be sufficient, the military status investigation must include, at a minimum, proof of a search conducted through the Department of Defense, which may be performed through that agency's internet site, <https://scra.dmdc.osd.mil/scra/#/home>.

6. Adjournments by Stipulation for Cases Assigned to this Part: Once fully submitted, if appropriate, a motion will be scheduled for an in-person oral argument and/or settlement conference. A party seeking a short adjournment must contact all other parties to obtain consent and demonstrate such efforts to the Court. All requests for adjournments shall be sent in writing by email to the Part Clerk. Any stipulations or letters concerning an adjournment shall be electronically filed on NYSCEF at least 36 hours prior to the date of the conference. No adjournment will be granted if not received at least 36 hours prior to the motion conference date unless the court determines that there are extraordinary circumstances.

No motion shall be considered adjourned unless the Part Clerk, Confidential Secretary, or Principal Court Attorney has conveyed the Court's approval of an adjournment.

H. Reply Papers: Parties must adhere to the CPLR, and counsel and self-represented parties shall not set forth factual claims or legal arguments in reply papers that were not previously set forth. New factual claims and legal arguments not directly in response to factual claims or legal arguments offered in opposition to a motion or cross motion will not be considered by the Court in its determination of a motion or cross motion.

I. Sur-Reply and Post-Submission Papers: Counsel and self-represented 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 to same.

J. Settled Motions: In the event that before the motion return date or before a decision has been rendered the parties settle, withdraw, or otherwise resolve a motion, or part of a motion, they shall immediately inform the Court by contacting our Part Clerk, La'Shawn Davis, by e-mail at ldavis1@nycourts.gov. In addition, a document detailing the withdrawal, settlement, or other resolution of the motion shall be filed via NYSCEF or, in a non-e-filed case, with the County Clerk.

K. Motion Decisions and Orders:

1. Written Decisions: In certain instances, a written decision and order will be issued by the Court following submission of the motion. The decision and order will be e-filed through NYSCEF. E-filing parties must serve documents in hard copy on parties who have not recorded their participation in e-filing and e-file proof of such service.

2. Bench Decisions: In certain instances, the Court will render a decision from the bench. Any party seeking a written order shall submit to the Court a proposed order supported by a copy of the transcript of the proceedings at which the bench decision was rendered. The signed order will be e-filed by the Court through NYSCEF. E-filing parties must serve documents in hard copy on parties who have not recorded their participation in e-filing and e-file proof of such service.

V. Trial Practice Rules

A. Trial Preparation: Prior to the commencement of the trial or hearing, counsel shall ascertain the availability of all witnesses and subpoenaed documents. Counsel for any party or any self-represented party who has issued subpoenas for the production of records shall request that the Part Clerk obtain all subpoenaed documents from the file room upon reporting to the Part for trial.

B. Interpreters and Special Services: Upon reporting to the Court for a trial or a hearing, counsel and any self-represented party shall immediately advise the Part Clerk if the services of a foreign language interpreter are required for any party or witness, or if any special services are required for any party or witness who is hearing-impaired or who suffers from any other disability. Similarly, the Part Clerk shall be immediately informed if there is a need for an easel, shadow box, blackboard, white board, or any other trial aid. Projection equipment, screens, and/or extension cords shall be provided by counsel.

C. Pleadings and Submissions Due Immediately Upon Appearance: Immediately upon being assigned to this Part for a trial or hearing, counsel for each party and any self-represented party shall report to the Part Clerk and submit the following to the Court:

1. Marked pleadings and bills of particulars.
2. A statement of the estimated length of trial.
3. A list of all witnesses who counsel plans to call at trial.
4. A list of all exhibits the party expects to use at trial, indicating whether such exhibits are stipulated for admission into evidence or are marked only for identification.
5. A written stipulation governing all facts that are not in dispute.
6. In all matrimonial actions, an updated net worth statement and a statement of proposed disposition.
7. A copy of any statutory provisions upon which any party intends to rely.
8. All expert witness reports and disclosures exchanged between the parties.

D. Marking of Exhibits: After filing the above listed submissions with the Court, counsel and any self-represented party shall meet with the assigned Official Stenographer to pre-mark all exhibits for identification. Any exhibits whose admission is agreed upon by the parties shall be pre-marked for admission.

E. Conference: Immediately preceding the commencement of the trial, the Court shall conduct a conference with all counsel and self-represented parties to discuss preliminary matters and the possibility of settlement. At this conference, counsel must have full authority to settle, or be able to immediately reach the person with such authority by telephone. Additionally, all counsel and self-represented parties shall be prepared to:

1. Advise the Court as to all anticipated disputed issues of law and fact and provide the Court with citations to all statutory and common-law authority upon which they will rely.
2. Stipulate to undisputed facts and the admission of documents, records, and other exhibits, for which no evidentiary objection will be made.
3. Alert the Court to any anticipated in limine motions or evidentiary or legal issues they believe will arise during the trial.
4. Provide the Court with a copy of all prior decisions and orders in the case that may be relevant to any in limine applications or evidentiary or legal issues.
5. Discuss scheduling, as well as the number of witnesses to be called at trial, any anticipated issues regarding the attendance at trial of any party, attorney or witnesses, and any other practical problems the Court should consider in scheduling.
6. Alert the Court as to any anticipated requests for a jury instruction relating to missing witnesses or evidence.
7. Alert the Court as to any anticipated request pursuant to CPLR Article 16 for apportionment of liability as to an allegedly culpable non-party.

F. Copies of Transcripts: Immediately prior to the commencement of the trial, all transcripts of examinations before trial that may be used either to refresh a witness' recollection or for cross-examination shall be provided to the Court. If any part of a transcript of an examination before trial or other recorded proceeding will be read as evidence-in-chief, the proponent of the transcript shall provide a complete copy of it to the Court immediately prior to the commencement of the trial, with citations to the page and line numbers for all portions to be read.

G. Addressing the Court: Any counsel or self-represented party who is presenting an argument or otherwise addressing the Court, including the making of objections, shall stand while doing so, unless the Court directs otherwise. If it is believed that argument on an objection is necessary, to avoid any inappropriate influence on the jury, any counsel or self-represented party may ask permission to approach the bench for a sidebar conference to discuss the matter.

H. Courtroom Behavior: All remarks and all requests, such as for a read-back of testimony or the assistance of a Court Officer, 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 as determined by the Court to be warranted under the circumstances. Do not

attempt to speak over an adversary; only one person shall speak at a time. If a significant discussion with an adversary is required, permission to approach the bench for a sidebar conference should be requested.

I. Use of Exhibits: Do not show anything, including an exhibit or proposed exhibit, to a witness without first showing it to all opposing counsel and self-represented parties. If any counsel or self-represented party believes this procedure will compromise his or her trial strategy, he or she shall first request a pre-offer ruling outside the presence of the jury.

J. 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 and self-represented parties of that intention at the pre-charge conference. Failure to comply with this rule may result in an order precluding use of the exhibit during summation.

K. Examination of Witnesses: Do not approach a witness on the stand during questioning without the Court's permission. In the absence of such permission, counsel shall not come closer to the witness stand than the line created by the front of the table occupied by plaintiff's counsel. While conducting the examination of a witness, the questioning counsel or self-represented party shall not intentionally make eye to eye contact with the jurors. The questioning counsel or self-represented party shall allow the witness to complete his or her answer to a question before asking another question. Do not interrupt a witness in the middle of an answer unless it is totally unresponsive, in which event a ruling from the Court shall be requested. If an objection is made during the examination of a witness, opposing counsel shall not make further inquiry of the witness until the Court rules on the objection.

L. Jury Charges: In all jury trials, a complete list of requests to charge shall be submitted to the Court immediately prior to the commencement of trial, with copies to be provided to all other counsel and self-represented parties. If a requested charge is drawn from the current Pattern Jury Instructions (PJI), only the PJI number need be submitted. Where deviations from, or additions to, the PJI are requested, or where an instruction has a space for facts or other information to be filled in, the full text of such requests or insertions must be submitted in writing, together with any supporting legal precedents. In addition, such proposals shall be prepared in Word format and e-mailed to the Judge's Confidential Secretary at rsutherl@nycourts.gov. At the final charge conference, if marshaling of the evidence is required as to a particular jury charge, counsel and all self-represented parties shall provide the Court with the proposed facts they seek to be presented to the jury.

M. Verdict Sheet: At the commencement of the trial, counsel for the parties and any self-represented parties shall jointly prepare a verdict sheet. If agreement cannot be reached, each party shall present a proposed verdict sheet which shall be served upon all other parties. The verdict sheet shall be in a final, typewritten form, which may be used given by the court to the jury. In addition, the proposed verdict sheet(s) shall be submitted in

Word format and e-mailed to the Judge's Confidential Secretary at rsutherl@nycourts.gov.

N. Check-in: At the start of each day of trial, all counsel and self-represented parties shall check in with the Part Clerk so she will be aware of your presence.

O. Food and Beverage: Absent the Court's permission obtained in advance, no counsel or party shall bring any food or beverage into the courtroom, except coffee or tea in a covered container or bottled water.

P. Inquest/Assessment of Damages: Generally, being granted a default judgment only addresses liability. When there is to be an assessment of damages, the plaintiff must prove damages at an inquest with legally sufficient evidence. In particular, where recovery is sought for a sum of money alleged to have been paid by the plaintiff, the proof presented to the Court must include all bills, invoices, or estimates marked paid, cancelled checks, or other documents that show proof of payment and substantiate with specificity the sum being sought. The Court will only issue a judgment for the damages that have been documented with legally sufficient evidence.