

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: mhaberst@nycourts.gov
Part Clerk Fax: (212) 618-5104

Judge Everett's Staff:

Principal Law Clerk: Robert Elting, Esq.

Confidential Secretary: Roberta Sutherland

Part Clerk: Maureen Haberstroh

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 January 1, 2021 in all proceedings assigned to the Hon. David F. Everett, J.S.C.:

I. General Rules

A. Conferences: In accordance with the Westchester Supreme Court Differentiated Case Management Protocol Part Rules, this Part does not conduct Preliminary Conferences or Compliance Conferences. All questions, requests for adjournments, or other inquiries regarding these conferences should be addressed to the appropriate Part as follows:

Preliminary Conference Part
Contact: Preliminary Conference Part Clerk
Room 811
(914) 824-5342
PreliminaryConferenceWestchester@nycourts.gov

Compliance Conference Part
Contact: Compliance Part Clerk or the assigned Court Attorney Referee
Room 800
(914) 824-5344
ComplianceWestchester@nycourts.gov

Settlement Conference Part (Hon. Joan Lefkowitz, J.S.C.)
Contact: Settlement Conference Clerk
Room 1600
SettlementConferenceWestchester@nycourts.gov

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 mhaberst@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, Maureen Haberstroh, at mhaberst@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 efile@courts.state.ny.us.

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.

**JUSTICE EVERETT IS NOT ACCEPTING WORKING COPIES
UNTIL FURTHER NOTICE.**

III. Motion Practice Rules

A. Discovery Motions: The making, submission, scheduling, and calendaring of discovery motions are subject to and governed by the Westchester Supreme Court Differentiated Case Management Protocol Part Rules (*see* sections (I) © and (II) © of the Preliminary Conference Part Rules, and section (I) (B) of the Compliance Part Rules). As per these rules, all discovery motions are handled in the Preliminary Conference and Compliance Parts, not this Part.

B. Motion Calendar and Appearances for Cases Assigned to this Part: All motions made by notice of motion or proceedings commenced by notice of petition assigned to this Part shall be made returnable before the Court on any Wednesday the Court is in session. All motions not returnable on a Wednesday will be administratively adjourned to the next Wednesday that the Court is in session.

C. Post-Note of Issue Summary Judgment/Dispositive Motions: The making, submission, scheduling, and calendaring of post-note of issue summary judgment or other dispositive motions are subject to and governed by the Westchester Supreme Court Differentiated Case Management Protocol Part Rules (*see* section (II) (D) of the Compliance Part Rules).

Requests for adjournments sent to this Part in post-note of issue cases will not be considered at any time.

D. Pre-Note of Issue Summary Judgment/Dispositive Motions: The making, submission, scheduling, and calendaring of pre-note of issue summary judgment or other dispositive motions are subject to and governed by the Westchester Supreme Court Differentiated Case Management Protocol Part Rules (*see* section (I) (D) of the Preliminary Conference Part Rules, and section (II) © of the Compliance Part Rules).

1. Applications, Adjournments, Submission of Late Papers for Cases Assigned to this Part: To protect movants against any potential prejudice resulting from the submission of late opposition papers or cross-motions, the Court may sua sponte adjourn for one week cases in which appropriate time has not been given to opposing parties. Parties seeking an adjournment must follow the direction set forth below in order to adjourn a motion.

2. Adjournment by Stipulation for Cases Assigned to this Part is not permitted without prior court approval: A party seeking an adjournment must contact all other parties in an effort to obtain consent and demonstrate such efforts to the Court. No more than three (3) adjournments, for a total of no more than sixty (60) days, are allowed except with the Court's permission (*see* § 202.8[e][1] of the Uniform Rules for the New York State Trial Courts), which shall be given by means of a so-ordered stipulation signed by all parties in the action or proceeding.

3. Adjournments by Affidavit/Affirmation of Consent for Cases Assigned to this Part: If all parties consent to an adjournment as allowed by these rules, but a written stipulation cannot be obtained in time for submission, the applicant for the adjournment on consent may submit an affidavit or affirmation reciting that such consent was obtained. The affidavit/affirmation of consent must state the reason for the adjournment request, how consent was obtained from all parties, when it was obtained, and the name of each attorney or self-represented party who gave oral consent. The affidavit/affirmation must be received by the Court before the scheduled submission date.

4. If consent for an adjournment cannot be obtained from all parties prior to the return date, a party may: (1) make a letter application to Chambers for an adjournment (via NYSCEF), on notice to all other parties having appeared in the action or proceeding, or (2) appear on the return date of a motion and state on the record before the Court the reason for the requested adjournment and a description of the efforts made to obtain such consent, including the date when contact was initiated or attempted, the means used, and the person contacted (if consent was refused) or for whom a message was left (if no contact was made). No motion shall be considered adjourned unless the Part Clerk or Principal Law Clerk has conveyed the Court's approval of an adjournment.

E. 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, a 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.

F. 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.

G. Communications Regarding Motions for Cases Assigned to this Part: All communications regarding motions, including requests for adjournments and questions concerning the status of motions, shall be directed to the Part Clerk, Maureen Haberstroh, or in her absence, Justice Everett's confidential secretary, Roberta Sutherland.

H. No Stay of Discovery: There shall be no stay of pretrial discovery resulting from the filing of a motion made pursuant to CPLR 3211 or 3212, unless otherwise ordered by the Court.

I. 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.

J. Papers Required on Particular Motions:

1. Dispositive Motions: For any dispositive motion, the moving party shall include copies of all pleadings filed as of the date the motion is filed. The failure to comply with this requirement may result in the denial of the motion.

2. Motions for Leave to Renew or Reargue: On any motion seeking leave to renew or reargue a prior motion, the moving party must submit copies of all papers submitted on the prior motion. The failure to comply with this requirement may result in the denial of the motion.

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 submit copies of all pleadings filed as of the date of the motion. The failure to comply with this requirement may result in the denial of the motion.

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* III [J] 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> .

K. 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.

L. 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.

1. **M. 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, Maureen Haberstroh, by e-mail at mhaberst@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.

N. Motion Decisions and Orders:

1. **Written Decisions:** In most 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.

IV. 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.

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 preceding 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 preceding 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 preceding 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 WordPerfect (preferred) or 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 WordPerfect (preferred) or 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.