

HONORABLE ELENA GOLDBERG VELAZQUEZ

New York State Supreme Court

Orange County Chambers
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Goshen, New York 10924

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Part Rules

(Effective as of 1/25/2024)

These Rules are subject to change.

*Please also refer to the Court's website for any further guidelines and directives
related to court operations at www.nycourts.gov*

COURT APPEARANCES:

- (a) Within ten (10) days of written notification of this Part's assignment to a case, or written notification of a Preliminary Conference, whichever shall first occur, each attorney shall file a Notice of Appearance with chambers. The Notice of Appearance shall include the attorney's name, firm affiliation, mailing address, e-mail, telephone and facsimile number as well as the party represented. The Notice of Appearance shall also contain a written acknowledgment that counsel is familiar with these Part Rules.
- (b) Pursuant to §130-2.1 of the Rules of the Chief Administrator of the Courts, the Court may impose financial sanctions and award costs and reasonable attorney's fees against any attorney who, without good cause, fails to appear at a time and place scheduled for an appearance in any action or proceeding.
- (c) Pursuant to §202.27 of the Uniform Civil Rules for the Supreme Court, upon the default of any party in appearing at a scheduled call of a calendar or at any conference, the Court may grant judgment by default against the non-appearing party.
- (d) Any attorney appearing at a scheduled conference or any other case-related appearance before the Court shall be thoroughly familiar with the action and authorized to act on behalf of a party to the action or proceeding.
- (e) **Civility:** This Court values civility and courteousness. Parties are encouraged to refrain from

histrionics, showmanship, gamesmanship, and discourteousness. The Court expects that the Judge, his staff, the Part Clerk, the Court Reporter, the Court Officers, and all attorneys and parties will be treated respectfully. The Court will not tolerate discourteous behavior (i.e., constant interruptions, outbursts, or ad hominem attacks). Counsel and self-represented litigants are to be guided by the Standards of Civility found at 22 NYCRR § 1200, Appendix A.

ADJOURNMENT REQUESTS:

- (a) Request(s) for adjournments of scheduled **trials and hearings** are not permitted except as provided in 22 NYCRR §125.1 and in accordance with the procedure set forth therein.

- (b) Request(s) for adjournments of **motions and conferences shall be on consent of opposing counsel. REQUESTING COUNSEL SHALL FILE ANY ADJOURNMENT REQUEST TO NYSCEF. FOR NON-NYSCEF CASES, COUNSEL SHALL EMAIL ANY ADJOURNMENT REQUEST TO THE PART CLERK AND SECRETARY TO THE JUDGE. REQUEST TO ADJOURN A CONFERENCE MUST BE SUBMITTED TO THIS COURT AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED APPEARANCE.** No more than two adjournments shall be permitted on any matter unless good cause is shown upon written application made to and approved by the Court. WHEN REQUESTING AN ADJOURNMENT OF A CONFERENCE OR MOTION, THE LETTER REQUEST SHALL INCLUDE THE CURRENT RETURN DATE OF ANY PENDING MOTION(S) AND ANY CONFERENCE DATE.

- (c) All applications for adjournments must set forth:
 - (1) The reason why an adjournment is necessary;
 - (2) Whether the opposing part(ies) consent(s) or object(s) to the application;
 - (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 must briefly set forth why the adjournment is necessary, the length of the adjournment and the reason offered by the non-consenting party for the lack of consent. Opposing counsel of a self-represented litigant may succinctly provide their reasons for objecting to the requested adjournment if they believe their 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 by e-mail (with copies to all parties copied on the original e-mail) or NYSCEF whether the requested adjournment has been granted. Requests that are not copied to all other parties will not be acted upon. **The parties should not assume that the request for adjournment (even if consented to) has been granted, unless specifically advised by the Court.**

CERTIFICATION OF PAPERS:

Every pleading, written motion and other paper served or filed in an action must be signed by an attorney pursuant to § 130-1.1a of the Rules of the Chief Administrator of the Courts.

COMMUNICATION WITH THE COURT:

- (a) **Correspondence** – All correspondence to the Court must bear the full Title and Index Number of the action and indicate that a copy was sent to all other counsel or self-represented litigant(s) simultaneously with transmittal to the Court. Correspondence addressing substantive non-procedural issues, such as adjournments, will not be considered by the Court absent approval, and shall be treated as having been denied without further action by the Court. Correspondence between counsel and/or self-represented litigants shall not be copied to the Court unless there is some specific judicial purpose to be served by transmitting copies to the Court. Correspondence to the Court shall be transmitted by one method only: e-file NYSCEF unless not an e-file matter, then by email to Chambers.
- (b) **Telephone Calls** – Telephone calls to the Court staff are permitted **only in urgent situations** requiring immediate attention that cannot be attained by correspondence.
- (c) **E-Mail** – E-Mails to the Court’s staff (Secretary to the Judge and the Court Clerk) is the **preferred method** of communication. All e-mails should be brief and concise, stating the relief or action requested to be taken by the Court. All e-mails to the Court must bear the full Title and Index Number of the action and indicate that a copy was sent to all other counsel or self-represented litigant(s) simultaneously with transmittal to the Court.
- (d) **Facsimiles** – Pursuant to § 202.5-b of the Uniform Civil Rules for the Supreme and County Courts, unless specifically approved by the Court in advance in a particular matter, the Court does not accept legal papers of any kind by facsimile transmission. Faxed communications are not to exceed three (3) pages unless prior permission is obtained from the Court or the Court staff. Facsimiles should **only be used in urgent situations**.

E-FILING RULES AND PROTOCOLS:

- (a) **Electronic Filing** - All parties should familiarize themselves with the statewide E-Filing Rules(see Uniform Rules §§ 202.5-b and 202.5-bb, available at www.nycourts.gov/efile). General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 and the Joint Protocols for New York State Courts e-filing for cases filed in Orange County available at: https://www.nycourts.gov/LegacyPDFS/courts/9jd/Orange/orange_e-file/E-filing_Protocols_Orange_County_January_18_2017.pdf

Specific questions about local procedures should be addressed to the Orange County and Supreme Court Clerk’s Office at 845-291-2697.

All actions required to be filed electronically shall be filed through the New York State Courts E- Filing system (NYSCEF), including proposed orders, proposed judgments, and letters.

- (b) **Working Copies** - In e-filed cases, working copies of all legal papers which require judicial action are not to be filed, **except** in the following types of motions: **(1) summary judgment motions that contain electronic exhibits and (2) Article 78 proceedings**. When in doubt, counsel and self-represented litigants MUST contact Chambers and ask if working copies are needed. The working copy of a motion **must** include all documents filed in support of the motion, including exhibits with **external tabs**. **Working copies are NOT required in uncontested matrimonials, divorce packets, infant compromise applications, structured settlement applications, mortgage foreclosure actions, credit card actions, motions to discontinue foreclosure actions, and motions for alternative/substituted service.** Do **not** bind papers with heavy-duty staples. The NYSCEF Confirmation Notice generated when the motion is e-filed **must** be firmly attached to the front page of the motion submission with working copies. Working copies that do not include the NYSCEF Confirmation Notice may be rejected. Working copies shall be **received** by Chambers on or before the return date or notice of settlement date. **In the event of a failure to timely submit working copies to Chambers on or before the return date, the Court has the discretion to either (i) adjourn the motion return date to provide additional time to submit working copies of the motion, or (ii) deny the motion based upon noncompliance with the part rules.**

COURT CONFERENCES:

- (a) **General Rules** - See Uniform Rules §§ 202.1(f), (g) and 202.11. In addition, the Court's calendar will be called at 10:00 a.m. and 11:00 a.m. in Courtroom 4 of the Orange County Courthouse or virtually via TEAMS, unless otherwise directed. Counsel, including per diem covering counsel and self-represented litigants, must appear on time, be fully familiar with the action(s) on which they appear, be authorized and prepared to discuss all factual and legal issues presented by the litigation and settlement demands or offers, and be authorized to enter into any agreement on behalf of their client. **Failure to comply with this Rule may be treated as a default for purposes of 22 NYCRR § 202.27 and/or may be treated as a failure to appear for purposes of 22 NYCRR § 130.2.1.**
- (b) If counsel or party is unable to appear on time due to unforeseen circumstances (i.e., delays due to inclement weather or road closures), counsel should contact opposing counsel(s), and advise the Part Clerk or Court's staff, by telephone, as soon as possible.
- (c) 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.

PRELIMINARY CONFERENCES

- (a) A party may request a preliminary conference at any time after issue has been joined. Notwithstanding the absence of such request, the Court will schedule a preliminary conference within forty-five (45) days after an RJI has been filed on a matter. A form stipulation and order shall be provided to the parties which shall establish a timetable for discovery within parameters set forth by the Court after determination as to whether a matter should be designated as a standard or a complex case. If all parties sign the stipulation and return it to chambers prior to the scheduled conference, such form shall be ^{L-1} ordered by

the Court and, unless the Court orders otherwise, appearances will not be required at the preliminary conference. Once the stipulation has been so ordered, no modifications are permitted except by written order of the Court.

- (b) At the Preliminary Conference, the Court will set specific dates for completion of various items of discovery, the date by which all disclosure must be completed, and the dates for a Compliance Conference and Settlement Conference. All counsel and self-represented litigants are expected to abide by, and comply with, the Court's discovery schedule and deadlines. As per Uniform Rule § 202.20-e, no modifications of the dates set by the Court are permitted, except by Court Order.
- (f) Preliminary Conferences in medical, dental, and podiatric malpractice actions will be conducted in accordance with Uniform Rule § 202.56(b).

COMPLIANCE CONFERENCES

- (a) The preliminary conference stipulation and order shall provide a date and time for the parties to appear at a compliance conference.
- (b) At the compliance conference, the Court will ensure that discovery is proceeding as scheduled. Any further compliance conference(s) will be scheduled by the Court as deemed appropriate. Notwithstanding, discovery shall be timely completed within the discovery timetable set forth in the preliminary conference stipulation (and any subsequent court order revising such timetable).
- (c) Unless a note of issue has been earlier filed, the Court shall direct a date as the deadline for filing a note of issue and certificate of readiness.

SETTLEMENT CONFERENCES

- (a) The Court will conduct a Settlement Conference in person approximately thirty (30) days after the Compliance Conference. **Per diem counsel are not permitted.** Counsel attending the Settlement Conference must be fully familiar with the action and be 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 be authorized to enter into binding settlements on terms agreeable to the parties and to the Court. The Court will explore limitation issues for trial (e.g., in an appropriate case, whether liability may be conceded, or certain claims or defenses withdrawn).
- (b) On or before the date of the Settlement Conference, Plaintiff's counsel (or self-represented litigants) must provide the Court and opposing counsel (or self-represented litigants) with the following via NYSCEF:
 - (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 disclosure served pursuant to CPLR § 3101(d);
 - (5) A list of probable trial witnesses;
 - (6) A copy of all prior Decisions or Orders on motions issued in the case;
 - (7) A Stipulation of Agreed Facts and admissible documents; and
 - (8) Requests to Charge.
- (c) Counsel are advised that, in an effort to foster 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.

PRE-TRIAL CONFERENCES

- (a) A Pre-Trial Conference shall be scheduled within 45 days of the filing of a note of issue.
- (b) There shall be one or more pre-trial conferences after the note of issue is filed.
- (c) The Court will explore limitation of issues for trial, including referring certain issues to a referee if appropriate.
- (d) The Court will schedule a date certain for trial of all outstanding issues.
- (e) Counsel should be prepared to discuss settlement and should have full authority from their respective clients and/or the respective insurance carrier.
- (f) Only the parties and the attorneys fully familiar with the action and authorized to make binding stipulations or accompanied by a person authorized to act on behalf of the party represented, will be permitted to appear at a pre-trial conference.
- (g) At any pre-trial conference held 30 days or fewer before trial, the parties and/or their counsel shall be prepared with trial notebooks and any matter any party believes should be brought to the court's attention regarding trial preparation, including those delineated in the "Trial Rules and Procedures for Trial Counsel" below. Parties are to submit marked pleadings in accordance with CPLR § 4012, including copies of any exhibits incorporated by reference in the pleadings. For jury trials, all parties shall submit a proposed verdict sheet and list of proposed charges. For matrimonial cases, Statements of Proposed Disposition shall be submitted per 22 NYCRR §202.16(h).
- (h) 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. At the Pre-Trial Conference, counsel must either stipulate to the admission of the exhibits to be offered by the adverse party or state the ground or any objection to admission of any such exhibit. Counsel must be prepared to argue to the Court at the Pre-Trial Conference, the admissibility of any exhibits to which an objection is taken. Counsel are advised that the failure to include an exhibit in the exhibit list and/or to participate in the exhibit exchange provided for herein, may result in preclusion of that exhibit;

- (i) Counsel shall advise as to the availability of all witnesses and subpoenaed documents. The Court shall be informed of any request(s) for reasonable accommodations (i.e., a New York State certified court interpreter for any non-English speaking witness or deaf witness, by way of example).

DISCOVERY DISPUTES

- (a) Parties who have a discovery dispute shall not wait until the Compliance Conference to bring such dispute or complaint about any non-compliance 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 Order (or other Order) is to discuss, in good faith, as required by the Uniform Rule § 202.7, the claimed non-compliance with the counsel or self-represented litigant who is allegedly non-compliant 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 non-compliance, or the other. **The parties are not to copy the Court on correspondence between counsel concerning discovery issues unless specifically requested by the Court to do so.** Similarly, any scheduling issues for depositions, independent medical examinations, appraisals, etc., must be addressed by counsel, and must not wait until the Compliance Conference.
- (b) The parties are not to make any motion concerning discovery without first having attempted to resolve the issue(s). If counsel cannot resolve the discovery issue between themselves after a good faith effort, then the counsel who believes that the discovery is not being conducted in accordance with the Court's Order is to contact the Court by letter, e-filed via NYSCEF, to advise of the nature of the dispute and the efforts that have been made to attempt to resolve it. **The letter is to be free of a rehashing of factual disagreements between the parties as to the underlying action and disparaging commentary as to the litigants and counsel.** The Court will either resolve the issue by letter or Court Order, or by scheduling a conference.

MOTIONS/ORDERS TO SHOW CAUSE:

- (a) Motions are returnable on any Wednesday the Court is in session. There will be no appearances unless specifically stated by the court. All motions will be decided by paper submission only. Personal appearances are not required on the return date unless the Court specifically directs oral argument.
- (b) Parties may move by Notice of Motion or Order to Show Cause, depending upon the

exigency of the relief sought. **All motions and cross motions in matrimonial actions for pendente lite relief are to be made by Order to Show Cause.**

- (c) The Court's staff is to be advised by telephone that a party intends to submit an Order to Show Cause for signature before counsel presents such application to the Court. The Court's staff may request that the presenting party e-mail a copy of the papers which are going to be submitted for signature prior to counsel appearing if the matter is not one employing NYSCEF. All counsel are directed to comply with 22 NYCRR 202.7(f) as to notice to opposing counsel.
- (d) Proposed Orders to Show Cause submitted for consideration by the Court, in non-e-filed cases, must include an email address, to permit a confirmed copy of the signed Order to be sent to the movant. They also must include a copy of the formal notice provided to the opposing party pursuant to 22 NYCRR 202.7(f).
- (e) 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 stating "Oral Argument Requested" above the Index Number on the first page of the papers submitted. If the Court grants the request for oral argument, the Court staff will inform the requesting party's attorney of the date and time for argument. It is the responsibility of that person to inform all other attorneys of the date and time set, and failure to do so may result in sanctions. A request for oral argument should not be construed as an automatic grant of the same.
- (f) Except by permission of the Court, all motion papers and Orders to Show Cause must be typewritten (minimum 12-point type), double-spaced 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.
- (g) All affirmations, affidavits and memoranda of law must contain numbered pages.
- (h) Reference to exhibits longer than ten (10) pages shall indicate the page number on which the information cited is contained. Should the exhibit not contain page numbers, the exhibit shall be bates-stamped.
- (i) All citations must be to an official state reporter, if available.
- (j) All documents required to decide the application must be attached. It is not sufficient that documents may be on file with the Clerk of the Court.
- (k) The Court does not accept sur-reply papers or correspondence on motions, nor any papers filed after the final submission date of the motion.
- (l) Non-e-filed motion papers, orders and judgments must be accompanied by a stamped, self-addressed envelope. Counsel submitting non-e-filed motions with a proposed order/judgment must submit an unattached copy of that proposed order/judgment. Counsel must provide an additional copy of any order and judgment submitted to conform to the

original.

- (m) **SUMMARY JUDGMENT OR OTHER DISPOSITIVE MOTIONS MUST BE MADE WITHIN 60 DAYS AFTER FILING OF THE NOTE OF ISSUE.** If a Summary Judgment motion is made prior to completion of discovery, the making of the motion is not to be deemed a stay of discovery. The parties shall continue to abide by any Order or Notice pertaining to discovery, unless otherwise directed by the Court. All motions seeking summary judgment must include a Statement of Material Facts in the format defined in 22 NYCRR 202.8-g.
- (n) Any motions seeking to preclude potential evidence from admissibility at trial shall be made in writing and shall be returnable at least thirty (30) days in advance of trial.
- (o) Consistent with the recent Second Department decision in *Richter v. Menocal*, 216 AD3d 823 (2d Dept 2023) a party submitting expert affidavits with the experts' name and signatures redacted pursuant to *Civil Practice Law and Rules* § 3101(d)(1)(i) must submit proof of service demonstrating that the Court was sent the unredacted expert affidavits.

COUNSEL SHALL IMMEDIATELY NOTIFY THE COURT WHEN IT BECOMES UNNECESSARY TO RENDER A WRITTEN DECISION ON A PENDING MOTION.

ADJOURNMENTS OF MOTIONS:

- (a) A request to adjourn a motion must be made in writing and transmitted to Chambers by NYSCEF and email on non-NYSCEF matters, prior to the return date of the motion, copied to all counsel and self-represented parties. Adjournment requests will only be granted by the Court, not by counsel. All applications for adjournments must set forth:
- The current return date;
 - The reason why an adjournment is necessary;
 - Whether the opposing party(ies) consent(s) or object(s) to the application
 - The length of the adjournment sought; and
 - The number of prior requests for adjournment and the dates previously set.

INFANT COMPROMISE:

- (a) All infant compromises must be brought by Order to Show Cause in accordance with the CPLR. In addition, counsel submitting the application to the Court must contact Chambers to obtain a copy of the Court's instructions, sample forms, and a checklist, to assist counsel in the bringing of said application.

EXPERT DISCLOSURE:

- (a) No later than 30 days after filing a note of issue, the Plaintiff shall serve all other parties with expert disclosure per CPLR § 3101(d). Defendant(s) shall then have 60 days to serve any expert disclosure per CPLR §3101(d).
- (b) Any adjournment of the above deadlines, and any amended or supplemental expert

disclosure requires leave of the Court. The statutory stay of disclosure (CPLR 3214[d]) upon the service of a dispositive motion under CPLR 3211 shall not apply to the service of expert disclosure. Unless the Court directs otherwise, a party who fails to comply with this rule is precluded from offering the testimony and opinions of the expert for whom a timely response has not been given.

EXPERT TESTIMONY PRECLUSION:

- (a) Any motion by a party to preclude or limit expert testimony under the expert disclosure part of this order or pursuant to CPLR 3101(d) must be made as soon as practicable or alternatively within the time frame set by the Court.
- (b) Where a party's summary judgment motion is or will be based in whole or in part upon the granting of a motion directed at precluding or limiting expert testimony made pursuant to this part of this order, the motions' return date shall be the same.

FORECLOSURE ACTIONS:

- (a) **General Rules:** All motions must include a proposed Order which disposes of the motion or application for the Court's signature.
- (b) **Order of Reference:** All proposed Orders of Reference submitted to the Court must include the following paragraphs:

ORDERED that the Referee is entitled to a fee of \$350.00 for the computation report; \$250.00 for any sale that is cancelled on less than twenty-four (24) hours' notice to the Referee; \$250.00 for any third-party closing and \$750.0 upon the sale; and it is further

ORDERED that the Referee shall complete and submit the computation report within thirty (30) 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 no later than sixty (60) days of the date of this Order, unless extension is granted by the Court for good cause shown; and it is further

ORDERED that failure to make application for Judgment of Foreclosure and Sale within sixty (60) days of the entry of this Order shall result in the tolling of interest, and may result in dismissal; and it is further

ORDERED that this matter is scheduled for a conference at ____ on _____. 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.

ORDERED that a copy of this Order with Notice of Entry shall be served upon the owner of the equity of redemption, any tenants named in this action, and any other party entitled to notice.

- (c) **Substitution of a Referee:** Requests to substitute a Referee must be made in writing by letter to the Court, not by formal motion.
- (d) **Judgment of Foreclosure and Sale:** All proposed Judgments of Foreclosure and Sale submitted to the Court must contain the following paragraphs:

ORDERED that the Referee is entitled to a fee of \$250.00 for any sale that is canceled on less than twenty-four (24) hours' notice to the Referee; \$250.00 for any third-party closing and \$750.00 upon the sale; 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 Orange 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 Orange County Commissioner of Finance 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 the Referee will complete the form at the auction, and deliver the signed form to the Court Clerk, who will subsequently provide it to the County Clerk; and it is further

That a description of the sale mortgaged premises hereinbefore mentioned is annexed hereto and made part hereof as Schedule A.

- (e) **Additional Provisions in Judgments of Foreclosure and Sale:** In addition to the foregoing provisions, the Judgment of Foreclosure and Sale shall provide that: (1) the foreclosure sale shall occur pursuant to the Amended New Auction Rules for the Ninth Judicial District, Effective October 15, 2020, and (2) the Referee, upon receiving the proceeds of the sale, shall deposit said proceeds in the Referee's IOLA account maintained for legal clients.

MATRIMONIAL ACTIONS

- (a) Preliminary Conferences: The Court (or the Court's Principal Law Clerk), shall conduct a Preliminary Conference in accordance with 22 NYCRR § 202.16(F). Counsel must be familiar, and comply, with the provisions of 22 NYCRR § 202.16.
- (b) No later than ten (10) days prior to preliminary conference in any matrimonial action, each party shall file and serve copies of the following documents:
- Signed Retainer agreement
 - Net worth statement
 - Most recent paystub and income tax return

Statements of Net Worth listing “See Attached Tax Return” in the income portion and omitting other substantive information readily available to the parties and counsel **shall be rejected** by the Court.

- (c) Parties must be present at the preliminary conference.
- (d) Parties to a matrimonial action shall appear at all matrimonial conferences, unless otherwise directed by the Court.
- (e) Any application regarding child support must be accompanied by a completed Child Support Worksheet.
- (f) **Appointment of Attorneys for the Children and/or Forensic Evaluator:** If a party or their counsel requests the appointment of an attorney for the children or requests the appointment of a forensic evaluator for issues relating to a child, the party or parties making such request shall do so at the Preliminary Conference. The Court shall determine the application within ten (10) days of the Preliminary Conference, or at such other time as it appears necessary by written Order.
- (g) **Access to Forensic Evaluation:** Counsel for the parties shall have access to the Forensic Evaluation report after completion of confidentiality affirmation. The forensic report is not to be disseminated to either party but may be reviewed and read by the party in the presence of counsel or their staff. No party may duplicate the report in any means or provide a copy to any person without prior court approval. If a party is *pro se* then they may contact the Supreme Court Clerk for Judge Goldberg-Velazquez and schedule a time where they may review the report in the courtroom. The *pro se* litigant may take notes but cannot duplicate the report in any manner including photographs or screen shots.
- (h) Property Valuation: Counsel (including a self-represented litigant) may stipulate at a Preliminary, or other, Conference to designate a specific person or firm to conduct a property valuation and to the allocation of the expense thereof between the parties. If counsel (including any self-represented litigants) agree upon the valuation as necessary and as to the allocation of expenses but cannot agree upon a person or firm to conduct the valuation, they may submit proposed names to the Court to order the designation. If the parties cannot agree upon the necessity for the valuation or upon the allocation of responsibility thereof, an application shall be made by Order to Show Cause to the Court who shall determine the application. In addition, the requesting party shall include the proposed apportionment of responsibility between the parties, including the reasons thereof. Such statement shall be served upon all adverse parties. 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.
- (i) **Bench Decisions/Orders:** In the event a Bench Decision is issued on the motion and the Court requests, the parties are directed to obtain a copy of the transcript and submit same to the Court, the cost of which will be shared equally the parties, unless otherwise ordered.
- (j) **Matrimonial Trials:** In all matrimonial actions scheduled for trial, no later than two (2)

weeks prior to that trial, the Court is to be provided with: (a) Statements of Proposed Dispositions, 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-2s, brokerage and retirement plan statements); and (c) any 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. Unless the parties obtain an extension of time from the Court, at the Pre-Trial Conference, counsel shall submit to the Court the following documents:

- marked pleadings;
- 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 the marriage, the children's names and birth dates, the location of any residential real estate and the approximate date of acquisition, approximate cost, the approximate balance on any mortgage and the dates of creation of financial accounts and deferred compensation);
- 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 Plaintiff's exhibits numbered, and 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.
- 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 that witness' testimony;
- a Joint Statement of Proposed Disposition. To the extent the parties disagree on any item, Plaintiff's position should be set out first, followed by Defendant's position;
- a Child Support Worksheet, if applicable; and
- a Spousal Support Worksheet, if applicable; and
- updated Statements of Net Worth.
- All matrimonial trials and hearings will proceed day-to-day until conclusion. Counsel and/or the self-represented litigants 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.

- (k) **Divorce Papers:** In non efiled matters only, the Court requires working copies of the proposed Judgment of Divorce, Findings of Fact, and accompanying documents.
- (l) **All documents filed in matrimonial actions must be the most up to date forms.** Please see <https://ww2.nycourts.gov/divorce/index.shtml> for the recently updated forms as of January 2024.

TRIALS:

- (a) Once scheduled, a trial shall not be adjourned for any reason other than the actual engagement of counsel as provided for in '125.1 of the Rules of the Chief Administrator of the Courts. Any application for an adjournment must be made in writing and must be supported by an affirmation of counsel establishing the requisite grounds set forth in 22 NYCRR '125.1.
- (b) Counsel shall refer to the “Trial Rules and Procedures for Trial Counsel” below.

MOTION IN LIMINE:

Any applications addressing the preclusion of evidence, testimony or other trial related matters shall be brought to the attention of the court immediately upon counsel becoming aware of such matter to be addressed, it being the intent to avoid applications made on the eve of, or during trial of a matter. **AS A GENERAL RULE, ANY MOTION(S) IN LIMINE SHALL BE MADE RETURNABLE ON OR BEFORE THE PRE-TRIAL CONFERENCE DATE, UNLESS THERE IS GOOD CAUSE SHOWN FOR DELAYED FILING OF MOTION(S) IN LIMINE NO LATER THAN 30 DAYS PRIOR TO TRIAL.** Failure to bring the matter before the court in a timely fashion may result in summary denial of such application.

VIDEOTAPING:

While the court strives for adherence to scheduled jury selection and commencement dates, the court’s trial calendar is such that exact days cannot always be guaranteed. Requests for a continuance or rescheduling due to an expert’s unavailability for testimony generally cannot be granted due to the large number of matters pending for trial. Counsel may use videotaping of experts when necessary.

SETTLED AND DISCONTINUED CASES:

- (a) Counsel shall immediately notify the Court of a case disposition. Thereafter, counsel shall promptly file a stipulation of discontinuance with any appropriate settlement stipulation(s),

after which the case will be marked “disposed” and marked off the court’s active docket.

- (b) Counsel shall promptly notify the court on the status of any case marked as stayed by a pending bankruptcy proceeding or otherwise. Counsel shall take further proceedings within 60 days after any stay has been lifted.

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 motion, brought by Order to Show Cause, pursuant to CPLR § 321. The Court does not recognize the purported withdrawal of Counsel where such withdrawal would result in a party becoming a self-represented litigant (except where the party is an attorney) by the filing of a “Consent to Change Attorney” form.

FIDUCIARY APPOINTMENTS:

- (c) In order to be eligible for appointments to serve as a referee, court evaluator, guardian ad litem, receiver, attorney for receiver or attorney for an Alleged Incompetent Person (AIP), counsel must appear on the Part 36 list promulgated by the Office of Court Administration.
- (d) In order to be eligible for appointment to serve as an attorney for the child, counsel must be a member of the appropriate panel.
- (e) Court evaluators and appointed attorneys must complete and file each of the following forms:
 1. Notice of Appointment (UCS-830.1)
 2. Statement of Approval of Compensation (UCS-830)
 3. Certification of Compliance (UCS-830.3)
Affirmation of legal services.

ELECTION LAW CASES:

- (a) 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.
- (b) The calendar call on the return date must be answered by counsel or the litigant(s), who shall provide the Part Clerk with their address 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.
- (c) On or before the return date and time:
 - 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;
 - 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, and;

- 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 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 NO BE IDENTIFIED BEFORE THE RETURN DATE.

TRIAL RULES AND PROCEDURES
FOR TRIAL COUNSEL
HON. ELENA GOLDBERG-VELAZQUEZ
ORANGE COUNTY SUPREME COURT

A. **TRIAL READINESS: All trial dates are final. Counsel must notify all witnesses and experts of the trial date as soon as it is issued by the court.** Prior to jury selection, counsel is cautioned to ascertain the availability of all witnesses and subpoenaed documents. If you have non-English speaking or deaf witnesses, the court must be notified at the pre-trial conference to allow the clerk time to arrange for the presence of a New York State certified interpreter.

B. **BIFURCATED TRIALS:** In the Second Department, personal injury trials other than medical malpractice and wrongful death cases are bifurcated pursuant to 22 NYCRR § 202.42. The damages portion commences with the same jury immediately following a liability verdict. Counsel should have medical testimony and any other professionals for the damages portion ready to proceed at such time.

C. **“TRIAL NOTEBOOK” OR “TRIAL BINDER”:** At least 30 days prior to trial, a “Trial Notebook” or “Trial Binder” shall be submitted to the court containing the following:

- A. Marked pleadings as required by CPLR 4012 (including the bill[s] of particular);
- B. Probable witness list
- C. A copy of any statutory provisions in effect at the time the cause of action arose upon which either the plaintiff or defendant relies;
- D. All expert reports relevant to the issues;
- E. All reports, depositions, and written statements which may be used to either refresh a witness’ recollection and/or cross-examine the witness;
- F. If any part of a deposition is to be read into evidence (as distinguished from mere use on cross-examination), you must provide the Court and your adversary with the page and line number of all such testimony so that all objections can be addressed prior to use before the jury.

G. For jury trials:

- i. Requests to charge.
- ii. A complete list of requested charges drawn from the Pattern Jury Instructions (PJI). A list of the PJI numbers and title of the charges of all charges requested is sufficient. However, if deviations from or additions to the PJI are requested, the full text of such request must be submitted together with any supporting legal precedent.
- iii. Proposed verdict sheet.

D. **PRE-MARKED EXHIBITS:** All trial exhibits should be pre-marked by the court reporter whenever possible, for identification, and copies of the resulting Exhibit Sheet provided to

the Court.

E. **PRE-TRIAL CONFERENCE:** At the Pre-Trial Conference, counsel should be prepared:

- To alert 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 counsel will rely;
- To stipulate to undisputed facts and the admissibility of clearly admissible documents and records;
- To alert the Court to any anticipated *in limine* motions or evidentiary objections which counsel believes will be made during the course of the trial;
- To provide the Court with a copy of all prior decisions and orders which may be relevant to said *in limine* applications;
- To discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial;
- To alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling;
- To alert the Court to any anticipated requests for a jury instruction relating to missing witnesses and/or documents;
- To alert the Court to any anticipated request for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.
- To alert the Court to any modifications needed by any party or witnesses for any reason including the Americans with Disabilities Act

F. **SUBPOENAS:** Counsel are referred to CPLR §§ 2306 and 2307 for guidance as to subpoenas directed to municipal entities such as libraries, municipal corporations and their departments and bureaus. The Court's issuance of a subpoena to such entities does not constitute a ruling of admissibility of the subpoenaed records. Counsel are 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 HIPAA Rules shall attach a duly executed authorization permitting the release of such records and the required language from CPLR § 3122.

G. **INTERPRETER:** 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.

H. **NON-PARTY WITNESSES:** Non-party witnesses are not to be in the courtroom during the trial except when that witness is testifying

I. **JURY SELECTION:** THIS PART USES UNDESIGNATED ALTERNATES. There is no exception to this rule.

J. **NO COMMUNICATION WITH JURORS:** In order to maintain the appearance of total impartiality, once the jury has been selected no one is to communicate in any form at any

time with any juror. This includes both verbal and non-verbal communication, including, without limitation, nods, shrugs and shaking the head. Do not even say “hello” or “good morning”.

- K.** **TRIAL OBJECTIONS AND ARGUMENTS:** When making an objection, after saying the word, “objection”, add only those few words necessary to state the generic grounds for the objection, such as “hearsay”, “bolstering”, “leading”, or “asked and answered”. If you believe further argument is required, ask for permission to approach the bench.
- L.** **COURTROOM DEMEANOR:** All remarks should be directed to the Court. Comments should not be made to opposing counsel. If you require a significant discussion with your adversary, such as possible stipulation, ask for permission to approach the bench, so you may have an opportunity to discuss the issue(s) with your adversary outside of the presence of the jury.
- M.** **USE OF PROPOSED EXHIBITS:** Do not show anything, including an exhibit or proposed exhibit to a witness without first showing it to opposing counsel. If this procedure is claimed to compromise trial strategy, a pre-offer ruling outside the presence of the jury should be first obtained.
- N.** **DISPLAYS AND MONITORS:** The Court provides no electronic support unless a party will be testifying virtually through TEAMS. Specifically, counsel must bring all equipment it plans to utilize during trial (i.e., screens, monitors, etc.).
- O.** **EXAMINATION OF WITNESSES:** Do not approach a witness without permission of the Court. Please allow the witness to complete his/her answer to your question before asking another question. Do not interrupt the witness in the middle of an answer, unless it is totally non-responsive to the question asked, in which event you should state your objection and seek a ruling from the Court. Direct examination, cross examination, redirect, and re-cross are permitted.
- P.** **JURY CHARGE AND VERDICT SHEET:** At the Pre-Trial Conference or, if unable to do so by such date, then upon commencement of the trial, all counsel shall submit suggested jury charges and a suggested verdict questionnaire. Amendments thereto shall be permitted at the final charging conference. If counsel relies on a Pattern Jury Instruction [PJI] without any change thereto, it should be referred to by PJI number and topic only. If any changes to the PJI are suggested, then the entire proposed charge should be set forth and the changes should be highlighted or otherwise called to the Court’s attention. Citations to appropriate statutory or common law authority shall be given in support of suggested non-PJI jury charges or suggested PJI modification.
- Q.** **POST-TRIAL INTERVIEW WITH JURORS:** Any contact or discussion with jurors after a verdict is rendered may be conducted outside this part, not in the jury room or adjacent to it.

