

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

111 DR. MARTIN LUTHER KING JR. BLVD
WHITE PLAINS, NEW YORK 10601

INDIVIDUAL PART RULES OF
HON. JANET C. MALONE
Justice of the Supreme Court

Contact Information

Principal Law Clerk: Shirley Thebaud

Email: 9JD-JudgeMalone@nycourts.gov

Telephone: 914-824-5250

Fax: 212-416-1475

Assistant Law Clerk: Timothy Smith

Email: 9JD-JudgeMalone@nycourts.gov

Telephone: 914-824-5250

Fax: 212-416-1475

Part Clerk: Shawn Powell

Email: spowell@nycourts.gov

Telephone: 914-824-5072

Fax: 212-416-1475

Counsel are expected to be familiar and comply with these PART RULES, Uniform Civil Rules for the New York State Trial Courts, 22 NYCRR § 202.1, et seq., and the Westchester Supreme Court [Civil Case Management Rules](#), effective December 6, 2021 (“CCM Rules”). The Uniform Civil Rules and the CCM Rules control unless the same have not been superseded and/or supplemented by these Part Rules.

TABLE OF CONTENTS

I.	COMMUNICATIONS WITH THE COURT	3
	A. ELECTRONIC FILING PROTOCOL AND RULES	3
	B. PAPER CASES	3
II.	CONFERENCE RULES	3-4
III.	MOTIONS - DISCOVERY	5
IV.	MOTIONS/ORDERS TO SHOW CAUSE/ TEMPORARY RESTRAINING ORDERS	5-6
V.	JUDGMENTS, DECISIONS AND ORDERS	6
VI.	FORECLOSURE ACTIONS	6-8
VII.	TRIAL REFERRED BY TRIAL ASSIGNMENT PART	9
VII.	TRIALS	9
VIII.	SETTLED AND DISCONTINUED CASES	10
IX.	SUBSTITUTION/ DISCHARGE OF ATTORNEYS	10
X.	CIVILITY & COURT ROOM ETIQUETTE	10

I. COMMUNICATIONS WITH THE COURT ONLY

Correspondence regarding the scheduling of appearances, requests for conference adjournments, and unresolved discovery issues after exercising due diligence, may be submitted to the Court via NYSCEF along with the case caption, index number, and sufficient detail for the Court's consideration and approval.

A. ELECTRONIC FILING PROTOCOL AND RULES

1. New York State Courts Electronic Filing (NYSCEF) system

- a. NYSCEF OPT-IN: Counsel and self-represented party shall familiarize themselves with the NYSCEF system and statewide E-Filing Rules (§§202.5-b and 202.5bb of the Uniform Rules for the New York State Trial Courts, available at www.nycourts.gov/efile and the Westchester County E-Filing Protocol available at:

<https://www.nycourts.gov/LegacyPDFS/courts/9jd/Efile/WestchesterCountyJointProtocols.pdf>.

- b. NYSCEF OPT-OUT: When a self-represented party has not consented to NYSCEF, counsel shall still submit correspondence via NYSCEF along with proof of service on the self-represented party. The self-represented party shall obtain the assistance of the **County Clerk's Office** in filing correspondence with the Court via NYSCEF.

B. PAPER CASES:

1. If the matter is not electronically filed via NYSCEF, all correspondence to the Court must be by E-Mail to 9JD-JudgeMalone@nycourts.gov and follow the content rules above for correspondence filed via NYSCEF,
2. Under **no** circumstances shall any party and/or attorney copy any **third parties on any E-Mail communication to the Court** without express permission of the Court.
3. All E-Mail must be sent on notice to the opposing party and/or attorney.
4. Facsimile: Transmission by Facsimile will be accepted under approved circumstances.

II. CONFERENCES RULES:

- A. **General Rule**: The Court's calendar will be called at 9:30 a.m. Counsel and self-represented parties are expected to appear for all Court appearances on time. If counsel or a party is unable to appear on time due to unforeseen circumstances he/she must contact opposing counsel and/or party and advise the Park Clerk or Court's staff by telephone as soon as possible.
- B. **Adjournment of Conferences**: A request to adjourn a conference must be made in writing, via NYSCEF and email to 9JD-JudgeMalone@nycourts.gov at least twenty-four (24) hours in advance of a scheduled conference. All applications for adjournments must set forth: 1) reason why an adjournment is necessary; 2) whether the opposing party(ies) consent(s) or object(s) to the application and 3) the length of the adjournment sought or, if on consent, a date all parties are available. All such communications must be copied to all counsel and self-represented parties. The letter request and 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 parties should not assume that the

request for adjournment has been granted unless specifically advised by the Court. **Please do not request an adjournment from the Court without first speaking to opposing counsel or the other party.**

C. Preliminary Conference:

1. Counsel are generally referred to 22 NYCRR §202.12(c) concerning the conduct of the Preliminary Conference and the matters to be considered. In the event assigned to this Part, Counsel in medical, dental, and podiatric malpractice actions are referred to 22 NYCRR §202.56(b) and counsel in matrimonial actions are referred to 22 NYCRR §202.16.
2. If the proposed Preliminary Conference Order is received three (3) days in advance of the scheduled Preliminary Conference, the parties need not appear on the date of the Preliminary Conference. The next court appearance would be for a Compliance Conference scheduled by the Court. However, all parties shall appear on the Preliminary Conference date if there is a scheduling issue that needs to be resolved by the Court.

D. Compliance Conference:

1. **Who Must Appear:** Only counsel or self-represented parties who are fully familiar with a case and authorized to enter into binding agreements on all aspects of the case are to appear for conferences. **Counsel are to be fully familiar with the action as well as all settlement discussions that have previously taken place so that meaningful discussions can be held.** To the extent this rule is repeatedly violated, the Court may have to limit appearances by *per diem* counsel.
2. The Court will conduct a Compliance Conference after the date by which disclosure was to be completed as directed at the Preliminary Conference.

E. Settlement Conference: The Court may conduct a Settlement Conference approximately thirty (30) days after the Compliance Conference. On or before the date of the Settlement Conference, counsel or self-represented parties must provide the Court and opposing counsel or the self-represented with the following:

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

III. MOTIONS -Discovery Motions

The parties are **NOT** to make any motion concerning discovery **without the express approval of the Court. Parties who have a discovery dispute are NOT to wait until the Compliance Conference to bring such dispute or complaint about non-disclosure to the Court's attention.** Rather, counsel or a self-represented litigant who believes that discovery is not being conducted in accordance with the Preliminary Conference or other Court Order is to discuss, in good faith, as required by Court Rule §202.7, the claimed noncompliance of counsel or self-represented litigant with the Court Order.

IV. CPLR 2214 Motions/Orders to Show Cause/Temporary Restraining Orders

1. General Rules

- a. Parties may move by Notice of Motion or Order to Show Cause, depending on the exigency of the relief sought, and include a telephone number, fax number or email address to permit a confirmed copy of the signed Order to be sent to the movant.
- b. Written applications by Notice of Motion (or Notice of Petition) must be made returnable on any Wednesday.
- c. Absent express permission obtained in advance from the Court, briefs/memoranda of law, affirmations and affidavits are limited to **15 pages** each. Papers, which exceed these limitations, may not be considered by the Court without notice to the offending party or may be rejected by the Court. Motion papers are limited to Moving Papers, Opposing Papers, and Reply. **SUR-REPLY PAPERS ARE NOT PERMITTED UNLESS EXPRESSLY AUTHORIZED BY THE COURT FOR GOOD CAUSE. See, CPLR R 2214.** A request for oral argument should not be construed as an automatic grant of same. **Oral arguments are at the discretion of the Court.**
- d. Except by permission of the Court, all motion papers, Orders to Show Cause, and Memoranda of Law, must be typewritten (minimum 12-point type), double-spaced, securely bound and entirely legible. All exhibits must be legible and labeled with external tab markings. Plaintiffs shall designate exhibits by number; defendants shall designate exhibits by letter. Exhibit lettering or numbering should not begin anew for subsequent papers submitted by the same party.
- e. Citations to legal authority must be to the official citations.
- f. Deposition/Examination Before Trial transcripts included as exhibits must be single, front-faced pages only. Parties are requested not to submit manuscripts.

- g. Unless there are extremely unusual circumstances in which significant prejudice (set forth in detail in a supporting affidavit/affirmation) will result, opposing counsel are to be advised by telephone or fax at least 24 hours in advance of the date and time that any Order to Show Cause, which includes a request for a Temporary Restraining Order or Interim Relief is being presented to the Court. In a true emergency or for good cause shown, the Court, in its discretion may dispense with the 24-hour notice requirement. If there has been no appearance by opposing counsel, the adverse party is to be provided with notice of the intention to submit an Order to Show Cause as provided by 22 NYCRR §202.7(f) and is to be advised that he/she has the right to be heard on the application. 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 files it on NYSCEF or presents him/her/themselves at the Court's Part or Chambers with the papers. The Court's staff may request that the presenting party fax a copy of the papers which are going to be submitted for signature prior to counsel appearing.
- h. **Working Copies:** To be filed only upon the request of the Court.

V. **Judgments, Decisions, and Orders**

1. Where the Court issues a Bench Decision and a party desires a written Decision and Order, the party shall submit a proposed Order to the Court together with the transcript of the proceedings at which the Bench Decision was rendered.
2. Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will **not be addressed** unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR § 202.48 has been included.

VI. **Foreclosure Actions**

All motions in foreclosure actions must include a proposed order, which disposes of the motion or application for the Court's signature. If a matter is scheduled for a foreclosure status conference, Counsel must obtain the Court's permission before filing any motions. In addition to the general provisions included in such orders, the movant shall submit additional provisions as set forth below.

- A. **Order of Reference:** All proposed Orders of Reference submitted to the Court must be appropriately titled so as to reflect the nature of the relief sought and contain the following paragraphs:

ORDERED, that the Referee is entitled to a fee for \$350.00 for the computation report; \$250.00 for any sale that is canceled on less than 24 hours' notice to the Referee; \$250.00 for any third party closing and \$500.00 upon the sale; and it is further

ORDERED, that the Referee is prohibited from accepting or retaining any funds for himself/herself or paying funds to himself/herself, without compliance with Part 36 of the Rules

of the Chief Administrative Judge; and it is further

ORDERED, that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including but not limited to, Section 36.2(c) (“Disqualification from appointment), and Section 36.2(d) (“Limitations on appointments based on compensation”); 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 ninety (90) days of the date of this Order, unless the Court for good cause shown grants extension; it is further

ORDERED, that this matter is scheduled for a status conference at ----- on _____, 20___. 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 Plaintiff shall serve a copy of this Order with notice of entry on the owner of the equity of redemption, any tenants named in this action, and any and all other parties or persons entitled to service or notice, including the Referee appointed herein.

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

C. Judgment of Foreclosure and Sale: All proposed Judgments of Foreclosure and Sale submitted to the Court shall include:

1. That the foreclosure sale shall occur at the Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601
2. That the Referee, upon receiving the proceeds of the sale, shall deposit said proceeds in the Referee’s name as Referee in an IOLA account maintained for legal clients;
3. That a description of the said mortgaged premises is annexed hereto as Schedule A and made a part hereof.

D. Additional Provisions in Judgments of Foreclosure and Sale:

The proposed Judgment 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 24 hours' notice to the Referee; \$250.00 for any third party closing and \$500.00 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 Westchester County Clerk 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 moneys, if any, with the Westchester County Department 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 furnish the Foreclosure Action Surplus Monies Form to the appointed Referee prior to the foreclosure sale date; and it is further

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

ORDERED, that Plaintiff shall serve a copy of this Order with notice of entry on the owner of the equity of redemption, any tenants named in this action, and any and all other parties or persons entitled to service or notice, including the Referee appointed herein.

D. Omnibus Motions

In the case of a true default (no answer or Notice of Appearance) counsel may file an Omnibus motion for Order of Reference and Judgment of Foreclosure and Sale without Court permission.

E. Bankruptcy Proceedings and/or Loss Mitigation

1. Counsel have an ongoing obligation to advise the Court of any bankruptcy proceedings. If a defendant(s) in a foreclosure action is involved in a bankruptcy proceeding, Counsel must advise the Court immediately, by submitting the most recent PACER Report, along with any orders, to Chambers via NYSCEF.
2. Please be advised that there will be no stays of foreclosure actions involved in loss mitigation. If the parties in a foreclosure proceeding are involved in loss mitigation, Counsel is to submit proof of the loss mitigation, along with a status letter to Chambers, via NYSCEF, detailing the circumstances and length of time that such case is subject to loss mitigation.

VII. **Trials Referred by the Trial Assignment Part** : Counsel and self-represented parties must provide the Court with the following, if not previously provided:

- A. Marked pleadings in accordance with CPLR §4012;
- B. A copy of all Bills of Particulars (including Supplemental and/or Amended Bills of Particulars);
- C. A copy of all medical narrative reports exchanged by the parties;
- D. A copy of all expert disclosures served pursuant to CPLR §3101(d);
- E. A list of probable trial witnesses; and
- F. A copy of all prior Decisions or Orders on motions issued in the case;
- G. Memoranda of law concerning any procedural, evidentiary, or other legal issue, which the parties anticipate the Court will need to determine.

- H. **Requests to Charge.** A complete list of requested jury charges drawn from the Pattern Jury Instructions (PJI) of the then current year. Requests to charge must be submitted in Word Document format to the Court at 9JD-JudgeMalone@nycourts.gov and uploaded to NYSCEF. **Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted, together with any supporting legal authority.**

- I. **Proposed Verdict Sheet.** A proposed Verdict Sheet, jointly prepared by all parties, typewritten and in final form for presentation to the jury shall be submitted. If an agreement cannot be reached between and among the parties as to the questions to be posed to the jury, each party will present a proposed verdict sheet, which will be served upon all the parties. Proposed Verdict Sheets must be submitted in writing and by email in Word Document format to the Court at 9JD-JudgeMalone@nycourts.gov and uploaded to NYSCEF.

VIII. **Trials**

- A. **Personal Injury/Bifurcation:** Trials of personal injury actions, except those involving claims of wrongful death, or medical/dental malpractice, will be bifurcated in accordance with 22 NYCRR § 202.42.

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

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

- D. **Use of CD/DVD/FLASH DRIVE:** Any party intending to use a CD or DVD or Flash Drive at trial is to submit a copy of the CD or DVD or Flash Drive (or other audio/visual recording) and transcript of the proceedings, if applicable, to the Court as soon as possible to allow the Court to rule on admissibility of the CD or DVD or Flash Drive (or other audio/visual recording) and any objections to the CD or DVD or Flash Drive.
- E. **Special Accommodations:** If any party or attorney needs special accommodations (e.g. assisted listening device(s); accommodations under the Americans with Disabilities Act) counsel or the self-represented party shall notify the Part Clerk at least two weeks of the appearance date, so that timely arrangements can be made.
- F. **Interpreters:** In the event a sign or spoken language interpreter is required at any stage of the litigation, counsel or the self-represented party shall notify the Part Clerk on no less than two weeks' notice, so that timely arrangements can be made.

IX. Settled and Discontinued Cases

Counsel must notify the Court via NYSCEF of the settlement or withdrawal of any action or proceeding immediately upon such settlement or withdrawal. Please be advised that all Index Numbers must be closed out with a signed Stipulation of Discontinuance or by motion, which shall be filed with the County Clerk so that the matter may be marked disposed.

X. Substitution/Discharge of Attorneys

Except in cases when another attorney on consent replaces an attorney, the Court on a motion brought by Order to Show Cause pursuant to CPLR § 321 must approve any change or withdrawal of counsel.

XI. Civility and Court Room Etiquette

The Court expects that the Judge, her Staff, the Part Clerk, the Court Reporter, the Court Officers and all attorneys and parties will be treated respectfully. All attorneys and parties should dress appropriately to conduct business with the Court.

These Rules Are Subject To Revision Without Prior Notice.

Thank You In Advance For Your Cooperation And Courtesy.