

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

INDIVIDUAL PART RULES OF
JUSTICE JAMES L. HYER

(Amended January 27, 2022 – These Rules are subject to change)

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INDIVIDUAL PART RULES OF
JUSTICE JAMES L. HYER

(Amended January 27, 2022 – These Rules are subject to change)

Commencing January 1, 2022, matters before the Honorable James L. Hyer, Justice of the Supreme Court, Orange County, shall be conducted pursuant to the following information, practices rules and procedures:

General Information:

Courtroom: 4
Address: 285 Main Street, Goshen, New York 10924
Telephone: (845) 762-5913
Facsimile: (212) 266-9527

Justice Hyer’s Staff:

Principle Law Clerk: Lisa R. Marlow Wolland, Esq.
E-Mail: 9jd-JudgeHyer@nycourts.gov
Telephone: (845) 762-5913

Secretary: Rita Cavero
E-Mail: 9jd-JudgeHyer@nycourts.gov
Telephone: (845) 762-5913

Part Clerk: Stacy Deacon
E-Mail: 9jd-JudgeHyer@nycourts.gov
Telephone: (845) 762-5916

These Rules supplement and, where inconsistent with, supersede the Uniform Civil Rules of the Supreme and the County Court, 22 NYCRR § 202.1, et seq., and the amendments thereto, which became effective February 1, 2021.

A. 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 record of appearance with Chambers. The record of appearance shall include the attorney's name, firm affiliation, e-mail address, mailing address, telephone and facsimile numbers as well as the party represented. The record of appearance shall also contain a written acknowledgement that counsel is familiar with these Part Rules.**

B. Certification of Papers:

- a. 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.

C. Communications 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 OR e-mail OR facsimile OR regular mail.
- 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 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.

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

D. E-Filing Rules & Protocol:

- a. **E-Filing Protocols** - Counsel and self-represented litigants shall familiarize themselves with the statewide E-Filing Rules (§§ 202.5-b and 202.5-bb of the Uniform Rules, available at www.nycourts.gov/efile) 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

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov. Specific questions about local procedures should be addressed to the Orange County and Supreme Court Clerk's Office at 845-291-2697.

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

- b. **Working Copies** – In e-filed cases, working copies of all legal papers which require judicial action are not required, **except** in the following types of motions: (1) summary judgment motions that rely upon deposition testimony; (2) Article 78 proceedings; and (3) motions with large records to be reviewed. 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.**

Working copies of proposed judgements, orders and separation agreements must be separated from the motion submission for ease of uploading. Bindings or fastenings either on the top of left-side of the page shall not encroach upon, delete, or otherwise omit the content of the papers. Do **not** bind papers with heavy-duty staples.

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All working copies shall be submitted to Chambers, by mail or hand delivery, within twenty-four (24) hours of e-filing and no later than the return date or notice of settlement date. In the event the Court does not receive working copies, the Court may not consider the submission until the working copy is received by Chambers.

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

All working copies must include a copy of the NYSCEF Confirmation Notices and must comply with all the requirements of the Orange County and Supreme Court E-Filing Protocols. The Confirmation notice is generated when the case is e-filed and is available in the specific file at <http://www.nycourts.gov/efile>. Working copies that do not include a NYSCEF Confirmation Notice will be rejected.

E. 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 9:30 a.m. in Courtroom 4 of the Orange County Courthouse, 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.**

In matrimonial actions, attorneys are to appear with their clients for all conferences, unless such appearances are dispensed with by the Court on prior written request, on notice to the adversary, and if applicable, the children(s)'s attorney(s). In non-matrimonial matters, represented parties need not appear for conferences unless directed to do so by the Court.

Where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant, as well as the name, claim number and phone number of the adjuster assigned to the matter.

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. Tardy arrivals will not be tolerated.

Counsel scheduled to appear simultaneously before this Court and another must communicate that fact to Chambers prior to the date of appearance so the conflicting appearances can be reconciled. Counsel is not to rely on opposing counsel to advise the Court of their conflict at the time the case is called. In the event counsel does not advise the Court of a conflict, the Court may proceed in the absence of the attorney.

- b. Adjournment of Conferences** – A request to adjourn a conference must be made in writing, by e-mail or NYSCEF only, to the Part Clerk at least two (2) full business days in advance of the scheduled conference, unless there is an emergency.

All applications for adjournments must set forth:

- (1) The reason why an adjournment is necessary;
- (2) Whether the opposing 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.

- c. Preliminary Conferences** – The Court will schedule a Preliminary Conference within forty-five (45) days:

- (1) After a written Request for Judicial Intervention (“RJI”) is duly filed with the Office of the Clerk in accordance with Uniform Rule § 202.12(a); or
- (2) After an appropriate notice is filed in medical malpractice actions pursuant to Uniform Rule § 202.56; or
- (3) After an appropriate notice is filed in matrimonial actions pursuant to Uniform Rule § 202.16; or
- (4) Upon a specific directive by the Court.

Preliminary Conferences in matrimonial actions will be conducted in accordance with Uniform Rule § 202.16 and DRL § 236(B)(4). Preliminary Conferences in medical, dental, and podiatric malpractice actions will be conducted in accordance with Uniform Rule § 202.56(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.

- d. **Discovery Disputes** – 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.

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 to advise of the nature of the dispute and the efforts that have been made to attempt to resolve it. The Court will either resolve the issue by letter or Court Order, or by scheduling a conference.

Counsel are expected to abide by the Uniform Rules for the Conduct of Depositions, 22 NYCRR § 221.1, *et seq*, in particular section 221.2, which prohibits, except in certain instances, directing a witness not to answer a question. Rulings concerning disputed objections may be obtained by calling the Court.

Exception: Where an Order of Protection prohibits one party from contacting another party, the party who believes that discovery is not being complied with shall contact the Part Clerk without contacting the opposing party.

- e. **Compliance Conferences** – The Court will conduct a Compliance Conference as directed at the Preliminary Conference. At the Compliance Conference, the Court will ensure that discovery is proceeding as scheduled, or has been completed, so that the Court can direct a date by which a Notice of Issue shall be filed and can schedule a Pre-Trial Conference and trial dates. Parties are not permitted to file a Note of Issue in any action unless permission to do so is granted by the Court. The Court may also conduct a settlement conference at this time. Counsel are to be fully familiar with the action as well as all settlement discussions that have previously taken place so that meaningful discussions can be held.

Not later than twenty (20) days after the filing of a Note of Issue, the parties must enter into a Stipulation, setting forth:

- (1) Agreed upon matters of fact; and
- (2) The admissibility of documents where the accuracy and reliability of these documents are not in dispute, such as bank statements, closing statements, credit card statements, tax returns, benefit plans, and real estate documents.

Each party reserves all rights to raise issues and arguments, notwithstanding the admissibility of the document(s). The parties' failure to stipulate to undisputed matters of fact or the admissibility of documents, thereby generating unnecessary trial time, shall be a factor in evaluating requests for the granting, or denying, or counsel fees, if otherwise authorized.

- f. **Expert Disclosure** – Except as otherwise directed by the Court, a party who has the burden of proof on a claim, cause of action, damage or defense shall serve its response to an expert demand pursuant to CPLR § 3101(d) on or before the filing of the Note of Issue, if not sooner filed. Any opposing party shall serve its answering response pursuant to CPLR § 3101(d) within sixty (60) days after the filing of the Note of Issue. Any amended or supplemental expert witness disclosure shall be allowed only with the Court's permission. Unless the Court directs otherwise, a party who fails to comply with this Rule may be precluded from offering the testimony and opinions of the expert for whom a timely response has not been given.

The statutory stay for disclosure (CPLR § 3214[b]) upon the service of a dispositive motion under CPLR § 3211 shall not apply to service of these expert responses, or other disclosure devices or deadlines.

The word "expert" shall include, but is not limited to, any physician, dentist, chiropractor, psychiatrist, psychologist, or other health care provider of any specialty, economist, engineer, architect, lawyer, accountant, appraiser, rehabilitation counsel or other person who will testify concerning his/her qualifications and give opinions concerning the issues in the case. However,

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“expert” shall not include a treating physician or other treating health care provider whose record(s) and report(s) have been timely provided and whose testimony is limited solely to the contents of the records or reports provided. In the event that a treating physician or other treating health care provider is intending only to testify as to matters not within the contents of the records or reports provided, then disclosure as an “expert” is required.

Any motion by a party to preclude, or limit, expert testimony under this Rule, must be made as soon as practicable, but no later than thirty (30) days after the party’s receipt of the expert disclosure, or the motion will be waived.

This rule does not apply to matrimonial actions.

- g. Settlement Conferences** – The Court will conduct a Settlement Conference 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).

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:

- (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.

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.

h. Pre-Trial Conferences – A Pre-Trial Conference with all counsel and self-represented parties will be conducted at least one week before the trial. On or before the Pre-Trial Conference, all counsel and self-represented parties must exchange with each other and provide to the Court, if not previously provided, 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 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.
- (9) Memoranda of Law concerning any procedural, evidentiary, or other legal issue which the parties anticipate the Court will need to determine;
- (10) Proposed Verdict Sheet
- (11) 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. 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;

F. Requests to Charge:

- a. 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 writing and by e-mail in Word format to the Court's Principal Law Clerk, not later than the Pre-Trial Conference. Where the requested charge comes directly from the PJI, only the PJI title, section number and page number need to be provided. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted, together with any supporting legal authority.

G. Proposed Verdict Sheet:

- a. A Proposed Verdict Sheet, jointly prepared by all parties, typewritten and in final form for presentation to the jury, shall be submitted. If the parties cannot agree to the questions to be posed to the jury prior to the Pre-Trial Conference, each party will present a Proposed Verdict Sheet, which will be served upon all the parties and the Court. Proposed Verdict Sheets must be submitted in writing and by e-mail in Word format to the Court's Principal Law Clerk, as directed by the Court.

H. Motions in Limine:

- a. Motions in limine must be in writing and made returnable on the day of the Pre-Trial Conference. Such motions must be made on no less than seven (7) days' notice to opposing counsel and/or self-represented parties. To the extent possible, the Court will decide such motions prior to commencement of jury selection.

I. Motions/Orders to Show Cause/Temporary Restraining Orders:

a. General Rules –

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

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2. Proposed Orders to Show Cause submitted for consideration by the Court, in non-e-filed cases, **must** include a facsimile number, or email address, to permit a confirmed copy of the signed Order to be sent to the movant.
3. Written applications by Notice of Motion (or Notice of Petition, where applicable) must be made returnable on any **Wednesday** the Court is in sessions.
4. Absent express permission obtained in advance from the Court, briefs/memoranda of law are limited to twenty (20) pages each, and affirmations and affidavits are limited to fifteen (15) pages each. Papers exceeding these limitations may not be considered, or may be rejected, by the Court. Motion papers are limited to Moving Papers, Opposing Papers and Reply Papers. **Sur-Reply papers are not permitted.** All paperwork over 1/2-inch thick must be acco-fastened, not stapled.
5. 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.
6. Except by permission of the Court, all motion papers and Orders to Show Cause must be typewritten (minimum 12-point type), double-spaced, securely acco-fastened, 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.
7. 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.
8. Citations to legal authority must be to the official citations.
9. Deposition/Examination before Trial transcripts included as exhibits must be single, font-faced pages only. Parties shall not submit manuscripts.

10. All counsel are to submit a self-addressed stamped envelope with their moving or opposition papers (except in e-filed cases), and to allow a copy of the Decision and/or Order to be mailed to the party. The case's name and Index Number, and return date of the motion, should appear on the envelope.
11. 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, facsimile, or email at least twenty-four (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 other emergency relief is being presented to the Court. In a true emergency, the Court, in its discretion may dispense with the twenty-four (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.
12. **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 fax or e-mail a copy of the papers which are going to be submitted for signature prior to counsel appearing.**

- b. **Summary Judgment Motions** – Summary Judgment motions must be made within sixty (60) days of the filing of the Note of Issue or at a later date if permitted by court order. 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.

J. Adjournment of Motions:

- a. A request to adjourn a motion must be made in writing and transmitted to Chambers by facsimile, email, or NYSCEF, 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:
 - (1) The current return date;
 - (2) The reason why an adjournment is necessary;
 - (3) Whether the opposing party(ies) consent(s) or object(s) to the application
 - (4) The length of the adjournment sought; and
 - (5) The number of prior requests for adjournment and the dates previously set.

- b. The letter request and the response, if any, are not to be used to advocate a position on the substantive dispute and shall only address the reason that consent for the requested adjournment is being declined. The Court will advise the requesting party if the adjournment is granted, and if so, the new return date for the motion. That party must immediately advise all other parties in writing, and if fails to do so, sanctions may be imposed.

K. Infant Compromises:

- 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. Counsel shall follow the Court's instructions in that packet in the bringing of said application. Counsel shall follow the Court's instructions in that packet in order to prevent any unnecessary delays.

L. Judgments, Decisions and Orders:

- a. Where the Court issues a Bench Decision and a party desires a written Decision or Order, the party may submit a proposed Order to the Court, together with the transcript of the proceedings at which the Bench Decision was rendered to be "So Ordered." Proposed Orders and Judgments are not to be submitted via facsimile.
- b. Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will be returned unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR § 202.48 has been included.
- c. All papers which are submitted to for signature by the Court shall be identified on the signature page so that the document being signed by the Court can be identified. Example: Jones v. Jones, Index #/year, Type of Document (Judgment of Divorce, etc.).

M. Foreclosure Actions:

- a. **General Rules:** All motions must include a proposed Order which disposes of the motion or application for the Court's signature. Copies of templates to be used by counsel can be found on the Office of Court Administration website at <https://www.nycourts.gov/forms/foreclosure/index/shtml>. In addition to the general provisions included in such orders, the movant shall include the additional provisions as set forth below:

- 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 purposes 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 Referee** – Requests to substitute a Referee must be made in writing by letter to the Court, not by formal motion.
- d. **Judgment of Foreclosure & 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

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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

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

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 & 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.

N. 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.

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

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.

The Court expects the parties to stipulate to grounds if the action has been brought under DRL § 170(7). In the event the action is predicated on DRL § 170(7), and the Defendant wishes to contest grounds, trial of that issue will be held on the date scheduled for the Preliminary Conference or as soon thereafter as the Court’s schedule allows.

Counsel must have a substantive conference before the date set for the Preliminary Conference, either in person or telephonically, to determine the issues to be litigated. The scope of discovery shall be discussed so that the Court can determine if the requested items are necessary and/or to set dates for compliance with the discovery demands.

- b. **Automatic Orders** - Counsel shall inform their clients of the Automatic Orders created by DRL § 236(B)(2)(b) as soon as the attorney-client relationship is formed.
- c. **Appearances** – As noted above, parties to a matrimonial action shall appear at all matrimonial conferences, unless otherwise directed by the Court.
- d. **Pendente Lite Stipulation and Order** - Upon receipt of a Request for Preliminary Conference in a matrimonial action, the Part Clerk will, along with a letter advising of the date of the Preliminary Conference, mail a “Pendente Lite Stipulation and Order” and “Statutory Calculation for Guideline Amount of Temporary Maintenance Pursuant to Domestic Relations Law § 236 Part (B)(5-a)(c)” to be completed by counsel and/or the parties and for use by the Court at the Preliminary Conference.
- e. **Grounds** - During the Preliminary Conference, the Court shall ascertain if the granting of the divorce is contested. In the event the parties agree that the granting of a divorce will not be contested, a stipulation to that effect shall be entered into

at the Preliminary Conference. If a Complaint or Answer has not been served, the Stipulation shall provide that the parties waive and relinquish any right either may have to discontinue the action as of right. In the event that a party opposes the granting of a divorce, then the Court shall adjourn the Preliminary Conference (except under DRL § 170[7]), and: (1) if a Complaint or Answer has not yet been served, the Court shall provide a schedule for the service of all required pleadings; and (2) provide for the filing of a Note of Issue limited to the issue of divorce grounds, which filing date shall be no later than twenty (20) days of the Preliminary Conference so that such trial may be promptly scheduled. In the event that a finding is made upon trial that divorce grounds exist, then the Court shall fix a date for the resumption of the Preliminary Conference.

- f. **Discovery Disputes** - During the Preliminary Conference, the Court shall provide appropriate direction to resolve any existing or anticipated disclosure disputes.
- g. **Appointment of Attorney 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.
- h. **Experts & Reports** – No attorney shall be appointed for a child nor a child forensic evaluation ordered, except upon Order of the Court, which shall be made: (a) upon a motion made by Order to Show Cause pursuant to these Rules; or (b) as a result of a conference. No expert shall be appointed except upon evaluation of the requests made by a party or parties, the parties’ Net Worth Statements and most recent tax returns, if applicable, or any recommendation by the Court. Nothing contained herein shall be deemed to limit or restrict the Court’s authority, in accordance with the law, to make any appointment, it being the purpose of this Rule to simplify the process and reduce cost, expense, and burden to the Court and to the parties.
- i. **Child Custody/Access Forensic Evaluator** – In any case in which a Neutral Forensic Evaluator has been appointed by the Court to assist in custody or access determinations, the reports of evaluators appointed by the Court are confidential. These may be reviewed only by a party’s attorney. The report(s) shall not be copied or disclosed to any person, except as permitted by Order of this Court. Any attorney in the action, who wishes to receive a copy of any such report, must first sign an affirmation that may be obtained from the Judge’s Part Clerk. A party (client) may review any such report, but may not possess a copy of the report. Self-represented litigants may arrange directly with the Judge’s Part Clerk to review any such report at the Courthouse. No device, capable of recording or photographing, is permitted in the room where the self-represented litigant is reviewing the report. Notes may

be taken. If any party seeks to retain an expert other than the Neutral Forensic Evaluator appointed by the Court, counsel may apply to the Court for permission to have the proposed expert receive a copy of the report. The expert will be required to sign a confidentiality agreement prior to receipt of the report. Any counsel or party who violate these restrictions is subject to sanctions.

- j. Property Evaluations** - 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 evaluation and to the allocation of the expense thereof between the parties. If counsel (including any self-represented litigants) agree upon the evaluation as necessary and as to the allocation of expenses, but cannot agree upon a person or firm to conduct the evaluation, they may submit proposed names to the Court to order the designation. If the parties cannot agree upon the necessity for the evaluation 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. Nothing contained herein shall be deemed to limit or restrict the authority of the Court, in accordance with the law, to make any appointment, it being the purpose of this Rule to simplify the process and reduce cost, expense, and burden to the Court and to the parties.
- k. Compliance Conference and Pre-Trial Conference** – At the conclusion of the Preliminary Conference, the Court shall set a date for a Compliance Conference, which shall be held at least ten (10) days prior to the date by which disclosure is to be completed, for the purpose of confirming that all disclosure is complete or will be completed timely. The date for the Compliance Conference shall be set in the Preliminary Conference Order, and, if the date is thereafter adjourned, the adjourned date shall be set forth in an Order. Any disclosure not completed in conformity with this Preliminary Conference Order may be deemed waived. Appropriate sanctions may be imposed against a party who failed to provide timely discovery.
- l. Motions** – As noted above, all motions (including cross motions) in matrimonial actions must be made by Order to Show Cause. Both parties and counsel must appear on the return date of any motion brought, unless otherwise directed. On the return date of any *pendente lite* motion, the Court will conduct either a Preliminary Conference or conference on the motion, as appropriate. In the event a Bench Decision is issued on the motion, a copy of the transcript will be So-Ordered by the Court, the cost of which will be shared equally the parties, unless otherwise ordered. Any *pendente lite* motion which does not include a Statement of Net Worth and

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calculations showing the manner in which the amount of any *pendente lite* support sought has been calculated will be denied.

m. 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:

- i. marked pleadings;
- ii. 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);
- iii. 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. 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;
- iv. a List of Witnesses, including the address of each witness, the time anticipated for the witness’ direct examination, and the general subject

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matter of his or her testimony. The failure to identify a witness may result in the preclusion of that witness' testimony;

- v. 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;
- vi. a Child Support Worksheet, if applicable; and
- vii. a Spousal Support Worksheet, if applicable; and
- viii. 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.

- n. **Divorce Papers** – In non-e-filed matters **only**, the Court requires working copies of the proposed Judgment of Divorce, Findings of Fact, and accompanying documents.

O. Trials and Hearings:

- a. **Trial and Hearing Dates** – Scheduled trial and hearing dates will be adhered to except in the most extraordinary good cause shown. Clients, fact witnesses, experts of all kinds (including physicians) are to be timely advised of the date set for trial by the Court within a reasonable period of time of the setting of such date to avoid last minute claims of unavailability. The parties, and their attorneys, are encouraged to videotape, in accordance with the applicable rules and statutes, any witness' testimony who may be unavailable for trial. The Court will respect counsels' and parties' actual scheduled, or anticipated, vacation plans when setting a trial date. However, neither counsel, nor a litigant, shall schedule a vacation which conflicts with a scheduled trial date after the Court has set that trial date.
- b. **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

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

- c. **Interpreters** – In the event a translator or interpreter is required at trial, Counsel shall notify the Part Clerk no later than the Pre-Trial Conference so that timely and appropriate arrangements can be made.
- d. **Personal Injury/Bifurcation** – Trials of personal injury actions, except those involving claims of wrongful death or medical/dental malpractice, will be bifurcated in accordance with 22 NYCRR § 202.42.
- e. **Jury Selection** – Juries will be selected using “White’s Rules” (*see* NYCRR § 202.33). Jurors will be designated; alternate jurors will not non-designated, unless the parties otherwise agree, on the record, prior to commencement of jury selection, that the alternates will also be designated.
- f. **Jury Contact** – Counsel are not to read from any pleading, part of a pleading, or other document during jury selection, nor may counsel refer to any specific amount of money being sought. Counsel are not to discuss any aspect of the law with the jury. Instruction on the law is for the Court alone. In jury trials, the parties, and their attorneys, are to stand (if physically able) whenever the jury enters or leaves the courtroom.
- g. **Non-Party Witnesses** - Non-party witnesses are not to be in the courtroom during the trial except when that witness is testifying.
- h. **Reading of Exhibits** – If counsel intends to use/read from any anticipated exhibit or item of demonstrative evidence during Opening Statements and/or Summation, Counsel is to advise the Court of such intention prior to commencement of jury selection.
- i. **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 a one-or two-word statement as to the basis for the objection. Speaking Objections are prohibited. If the Court requires further explanation of the Objection, the Court will ask for further explanation, or invite Counsel to approach at side bar.
- j. **Use of Videotapes** – If a party intends to use a videotape at trial, that party shall submit a copy of the videotape (or other video recording) and transcript of the proceedings, if applicable, to the Court at least two (2) weeks prior to the scheduled trial date in order to allow the Court to rule on the admissibility of the videotape (or other video recording), and any Objections made during the video recording.

- k. **Displays & Monitors** – The Court provides no electronic support. Specifically, counsel must bring all equipment it plans to utilize during trial (i.e., screens, monitors, etc.).

P. Settled and Discontinued Cases:

- a. Counsel **must** notify the Court by facsimile or NYSCEF of the settlement, or withdrawal, of any action or proceeding immediately upon such settlement or withdrawal. A copy of the signed Stipulation of Discontinuance, which has been (or will be) submitted to the County Clerk shall be submitted to the Part Clerk. The matter will not be marked disposed until the Stipulation of Discontinuance is filed with the Court.

Q. Substitution/Discharge of Attorneys:

- a. 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. The use of a “Consent to Change Attorney” form to withdraw where a party becomes a self-represented litigant is specifically prohibited. Any attempt to do so will not be recognized by the Court.

R. Virtual Evidence Courtroom:

- a. For all hearings and trials to be held virtually, a Virtual Evidence Courtroom will be set up in NYSCEF for each hearing or trial. Counsel and self-represented litigants are to upload all exhibits within five (5) days after the Pre-Trial Conference or the date at which a Decision is rendered by the Court as to which exhibits will be admissible, whichever date is later. Instructions for uploading evidence may be accessed online:

<https://iappscontent.courts.state.ny.us/NYSCEF/live/help/EvidenceSubmission.pdf>

S. Accommodations:

- a. The New York State Unified Court System is dedicated to ensuring that all qualified individuals with disabilities have equal and full access to the judicial system. We are committed to making sure that our services, programs and activities are accessible to every person who uses the Court. In the event that any accommodations are required at any time during any matters before the Court, counsel or self-represented litigants shall notify the District Executive at ada9jd@nycourts.gov or (914) 824-5100, and the Chief Clerk’s Office, Supreme

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Court Orange County at (845) 476-3500, so that timely and appropriate arrangements may be made. More information about reasonable accommodations for Court users may be located online at: http://ww2.nycourts.gov/Accessibility/CourtUsers_Guidelines.shtml

T. Fiduciary Appointments:

- a. **Part 36** - In order to be eligible for appointments to serve as referee, court evaluator, guardian ad litem, receiver, attorney for an alleged incapacitated person, counsel must appear on the Part 36 list promulgated by the Office of Court Administration.
- b. **Attorney for the Child** - In order to be eligible for appointment to serve as an attorney for a child, counsel must be a member of the appropriate panel.
- c. **Forms** - Court evaluators and appointed attorneys must complete and file each of the following forms:
 - i. Notice of Appointment (UCS-830.1)
 - ii. Statement of Approved Compensation (UCS-830)
 - iii. Certificate of Compliance (UCS 930.3)
 - iv. Affirmation of Legal Services

U. 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:
 - i. 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;

- ii. 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;
- iii. 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.

V. Alternative Dispute Resolution:

- a. **Court Policy** - It is the policy of the Unified Court System to encourage the resolution of civil legal disputes by methods including mediation, arbitration, neutral evaluation, in-court settlement practices, and summary jury trials. All civil actions or proceedings heard in the Supreme Court, shall be presumptively eligible for early referral to an alternative dispute resolution process unless otherwise excluded. Courts may refer parties to an ADR process at any time after an action has been commenced and are encouraged to do so at the earliest appropriate opportunity.
- b. **Presumptive Mediation Cases** – The following types of cases are subject to Presumptive Mediation in the Orange County Supreme Court and will be assigned by the Court to a mediator at the time of the Preliminary Conference:
 - i. ***Subrogation*** – All cases;
 - ii. ***Contract*** – Cases seeking less than \$50,000.00;
 - iii. ***Matrimonial*** – Cases involving W-2 employees with issue of maintenance; child support; and equitable distribution. Cases where custody is resolved may be included.
 - iv. ***Post Judgment*** – All cases, and;
 - v. ***Personal Injury*** – Cases with no or minimal insurance (\$25k/\$50k)
- c. **Court Rules** – Counsel and self-represented litigants are directed to review and be familiar with the following alternative dispute resolution rules for the 9th Judicial District and Orange County:

<https://www.nycourts.gov/LegacyPDFS/courts/9jd/ADR/rules/DISTRICT-WIDE-RULES.pdf>

<https://www.nycourts.gov/LegacyPDFS/courts/9jd/ADR/rules/orange-Supreme-Court-Rules.pdf>

- d. **Non-Presumptive Mediation Cases** – At any time during a litigation, Counsel and/or self-represented litigants may request an Order of Reference from the Court, appointing a mediator to assist the parties in reaching a resolution. While the parties may select any mediator, a 9th Judicial District Mediator Roster is available at:

<https://ww2.nycourts.gov/courts/9jd/ADR.shtml#rom>

W. Civility:

- a. 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.

-END-

(Effective January 24, 2022 – These Rules are subject to change)