

HON. LAWRENCE H. ECKER, J.S.C.

Contact Information:

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

Courtroom: 1602

Chambers Phone: (914) 824-5408

Chambers Fax: (914) 824-5874

Part Clerk Phone: (914) 824-5746

Part Clerk Email: mhaberst@nycourts.gov

Justice Ecker's Staff:

Principal Court Attorney: Miriam Boggio, Esq. (mboggio@nycourts.gov)

Assistant Law Clerk: Matthew Pappalardo, Esq. (mpappala@nycourts.gov)

Court Attorney Referee (Compliance): Robert Pierson, Esq.
(rpierson@nycourts.gov)

Part Clerk: Maureen Haberstroh (mhaberst@nycourts.gov)

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

Part Rules:

All attorneys are expected to be familiar with the Westchester Supreme Court Civil Case Management Rules (Revised Effective December 6, 2021) and Westchester Supreme Court Matrimonial Rules (Effective January 1, 2020).

In addition, the following Part Rules are effective as of January 15, 2022 in all actions or proceedings assigned to this Court:

I. General Rules

A. Appearances by Counsel with Knowledge and Authority: All counsel who appear before the Court must be familiar with the case and be fully authorized to enter into agreements as to both substantive and procedural matters on behalf of their clients. Attorneys appearing of counsel to the

attorneys of record and self-represented parties shall be held to the same requirements. Failure to comply with this rule may be regarded as a default and dealt with appropriately. All counsel and self-represented parties must be on time for all scheduled appearances.

B. Settlements and Discontinuances: If an action is settled, discontinued, or otherwise disposed in any manner by the parties, counsel and self-represented parties shall immediately inform the Court by email and by filing a Stipulation of Discontinuance with the County Clerk (if opt-out of NYSCEF), or through the New York State Court Electronic Filing (NYSCEF) in an e-filed case. The Court will not mark any matter settled unless it has received a copy of a Stipulation of Discontinuance, the original of which has been filed with the County Clerk.

C. Papers by Fax: The Court does not accept papers of any kind by fax transmission without prior Court approval. However, copies of letters confirming or requesting an adjournment of a motion or a conference shall be emailed to the Part Clerk at mhaberst@nycourts.gov with a copy to mpappala@nycourts.gov, and filed via NYSCEF.

D. Ex Parte Communications: *Ex parte* communications are strictly prohibited except upon consent of all counsel and self-represented parties, or with respect to scheduling matters, the presentation of Orders to Show Cause for signature, or where otherwise permissible by law.

E. Communications with Represented Parties: Counsel are directed to inform their clients that under no circumstances shall any represented party engage in any conversation or exchange any communication with the Court's staff (*see* CPLR 321 [a]).

F. Scheduling: Counsel and any self-represented party should address questions about adjournments on motions, scheduling or adjourning appearances, and all other calendar matters to the Part Clerk at mhaberst@nycourts.gov with a copy to mpappala@nycourts.gov, and filed via NYSCEF.

II. E-Filing Rules and Protocols

A. E-Filing Rules and Protocol: Counsel for all parties shall familiarize themselves with the statewide E-Filing Rules (*see* §§ 202.5-b and 202.5bb of the Uniform Rules for the New York State Trial Courts, available at www.nycourts.gov/efile) and the Westchester County E-Filing Protocol available at: www.nycourts.gov/LegacyPDFS/courts/9jd/Efile/WestchesterCountyJointProtocols.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 Westchester County Supreme Court Civil Calendar Office at (914) 824-5300.

B. Working Copies: With the exception of non-NYSCEF paper cases, this Court does **NOT** require working copies. Hence, working copies of any papers shall **NOT** be mailed to the Courthouse.

III. Discovery

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

B. Adjournments of compliance conferences shall be granted upon a showing of good cause (22 NYCRR 202.10). While a party may upload to NYSCEF a request for an adjournment by selecting NYSCEF document type "Correspondence (Request for Adjournment)," the party must also e-mail the adjournment request to the Part Clerk and Assistant Law Clerk on notice to all other parties. When practicable, the request for an adjournment shall be made at least two (2) business days before the scheduled conference and shall include two (2) proposed alternative dates for rescheduling the conference, which dates shall be no later than one hundred twenty (120) days prior to the last day of discovery set forth in the preliminary conference order. Unless the parties receive confirmation from the Part Clerk or Assistant Law Clerk that a conference has been rescheduled, the parties shall appear for the conference as originally scheduled.

The parties are cautioned that any adjournment of the compliance conference will not excuse a failure to provide discovery or failure to adhere to a preliminary conference order or compliance conference order and that discovery shall proceed during the period of any adjournment (22 NYCRR 202.10).

Compliance conferences shall be conducted by either the Court Attorney Referee or Principal Court Attorney, who shall monitor the progress of discovery to completion and ensure that discovery obligations and deadlines are enforced (and, where appropriate, adjusted) on a consistent basis. Requests for modifications to discovery schedules shall be addressed to the Court Attorney Referee or Principal Court Attorney at the conference. Applications for extensions of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline (22 NYCRR 202.20-e). Inquiries submitted via the NYSCEF system or by email to the Part Clerk or Assistant Law Clerk are restricted to scheduling matters and routine submissions only. Requests to extend court-ordered discovery deadlines or respond to discovery disputes shall not be submitted via e-mail or uploaded to the NYSCEF system. If assistance is required regarding a discovery issue, a party shall request a compliance conference in a timely manner by e-mailing the Part Clerk and Assistant Law Clerk, on notice to all other parties.

IV. Motion Practice Rules

NOTICE: In the event the parties settle a motion or part of a motion prior to the motion return date or before a decision has been rendered, the movant shall immediately inform the Court in writing, by email to the Assistant Law Clerk and uploaded via the NYSCEF system.

A. Orders to Show Cause: Orders to Show Cause submitted for signature shall be submitted by filing with the NYSCEF system. After payment of any required fee, absent unusual practical difficulties, the proposed Order to Show Cause and supporting documents will be reviewed

through the NYSCEF system by the Court. If there are no problems with the documents, the Order to Show Cause and supporting papers shall be immediately delivered to chambers. If the Order to Show Cause is signed by the Court, a copy of it shall be sent to counsel for the moving party or self-represented party. If appearances are required on the return date of the motion, the Court will so indicate in the Order to Show Cause. Otherwise, no appearances shall be required, and no oral argument shall be heard on the return date of the motion. The Order to Show Cause should state that no prior application for the relief sought has been made to this court or to any Judge or Justice thereof, or state if prior applications have been made.

B. Requests for Temporary Injunctive Relief for Cases Assigned to this Part: When an Order to Show Cause is presented to the Court which seeks temporary injunctive relief, including but not limited to a stay or a temporary restraining order, counsel for the moving party or any self-represented party shall demonstrate compliance with 22 NYCRR § 202.7 (f) of the Uniform Rules for the New York State Trial Courts, regarding notice to affected parties.

C. Return Date: The motion calendar is called on **Wednesdays**, excluding holidays. Counsel should thus endeavor to make all motions returnable on a Wednesday. All motions not returnable on a Wednesday will be administratively adjourned to the next Wednesday when the Court is in session. All adjournments for motions by the parties or counsel must also be on a Wednesday when the Court is in session. No appearances are required on the return of a motion unless the Court directs otherwise.

D. No Oral Argument: Motions are generally on submission, unless the Court directs otherwise. A request for oral argument may be made on the first page of the motion or order to show cause, or on the first page of the answering papers (*see* Uniform Civil Rules for the Supreme Court and the County Court, § 202.8 [d]). Should the Court determine that oral argument is determined to be necessary on the matter, the Court shall accordingly fix an appropriate date and time.

E. The Court does not accept surreply papers or correspondence filed after the submission of the motion. It may, however, do so for good cause and an exercise of broad discretion to regulate the motion practice before it (*see generally* CPLR 2214 [c]).

F. Form of Papers:

1. All motion papers submitted to the Court, including Orders to Show Cause, must be legible, typewritten, and securely bound if a working copy is requested.
2. Motion papers must indicate the sequence number of the number and index number of the case.
3. **Working copies for paper cases must include external exhibit tabs, with plaintiff using numbered exhibit tabs and defendants and third parties using lettered exhibit tabs. In no event shall the same number or letter be used in the same motion sequence.**
4. **Motion exhibits shall not be replicated in the same motion sequence or related sequences once submitted, including simultaneous submission of summary judgment motions (CPLR**

2214 [c]). The parties shall confer to assure that this rule is followed. Exhibits referenced in depositions that are to be considered on a motion shall be labeled as all other exhibits.

5. All affirmations, affidavits and memoranda of law must contain numbered pages.
6. Pursuant to 22 NYCRR 202.8-b, absent express permission in advance from the Court, each affirmations, affidavits, briefs and memoranda of law in chief submitted shall not exceed 7,000 words, and each reply affirmation, affidavit and memorandum of law shall not exceed 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief. Papers exceeding these limitations may not be considered or may be rejected by the Court. Every brief, memoranda, affirmation and affidavit shall include a certification page at the end which shall certify that the document complies with the word count limit. The word count shall exclude the caption, table of contents, table of authorities and signature block.
7. Legal argument shall be confined to the memorandum of law. Citations to legal authority shall not be included in affirmations and affidavits.
8. Citations to legal authority must be to the official citation.

G. Papers Required on Particular Motions:

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

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

1. Motions Generally: For any dispositive motion, the moving party shall reference all pleadings filed via NYSCEF as of the date the motion is filed. If The failure to comply with this requirement may result in the denial of the motion unless the pleadings are submitted to the Court by another party.
2. Motions Seeking Leave to Renew or Reargue: On any motion seeking leave to renew or reargue a prior motion pursuant to CPLR 2221, if the action is e-filed on NYSCEF, papers previously filed do not need to be uploaded again but must be referenced by their NYSCEF document number. The failure to comply with this requirement may result in the denial of the motion unless the papers on the prior motion are referenced by another party.

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

4. Motions for Injunctive Relief: When an Order to Show Cause is to be presented to the Court which seeks immediate or preliminary injunctive relief, copies of the summons and complaint or petition commencing the underlying action must be provided to the Court by the moving party. The Order to Show Cause should state that no prior application for the relief sought has been made to this court or to any Judge or Justice thereof, or state if prior applications have been made. The failure to comply with these requirements may result in the denial of the Order to Show Cause.

5. Default Motions: On any motion for a default judgment, proof must be presented that a military-status investigation of all defendants, when applicable, has been conducted.

6. Combined Foreclosure Motions: The Court does **not** entertain combined motions for an order of reference and judgment of foreclosure and sale that are filed in one uniform application. Instead, a foreclosing party shall move separately for such relief. Failure to comply with the foregoing may result in the denial of the motion without prejudice to renew in compliance with the Court's rules.

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

H. Ex Parte Motions: The Court does not accept ex parte motions, **unless** they are motions for service by publication or such other motions as permitted by statute. All other motions, including motions for Orders of Reference and Judgments of Foreclosure and Sale, must be on notice. If there is any question about whether a motion should be on notice, contact the Part Clerk or Assistant Law Clerk.

I. Discovery Motions: Discovery motions are subject to and governed by the Westchester Supreme Court Civil Case Management Rules (Revised Effective December 6, 2021).

J. Pre-Note of Issue Summary Judgment/Dispositive Motions: Pre-note of issue summary judgment or other dispositive motions are subject to and governed by the Westchester Supreme Court Civil Case Management Rules (Revised Effective December 6, 2021). The return date for any pre-Note of Issue motions for summary judgment once made may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days.

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

L. Adjournments by Stipulation for Cases Assigned to this Part: A party seeking an authorized adjournment must contact all other parties in an effort to obtain consent and demonstrate such efforts to the Court. All requests for adjournments shall be sent in writing by email to the Part Clerk and Assistant Law Clerk. Any stipulations or letters concerning an adjournment shall be **electronically filed** forthwith on NYSCEF at least 36 hours prior to the motion return date. No adjournment will be granted if not received at least 36 hours prior to the motion return date unless the court determines that there are extraordinary circumstances warranting such.

No more than three stipulated adjournments, for an aggregate period of no more than 60 days, are allowed, except with the Court's permission (*see* § 202.8 [e] [1] of the Uniform Rules for the New York State Trial Courts).

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

M. Proposed Orders: Any Proposed Order in foreclosure and other cases shall be submitted to the Court as a separate document, rather than bound into motion papers.

V. Settlement Conferences

A settlement conference with the Court shall be scheduled approximately one hundred eighty (180) days following the filing of the Note of Issue. The parties may jointly request that the post Note of Issue settlement conference be advanced by emailing the Part Clerk and Assistant Law Clerk.

VI. Trial Practice Rules

In consultation with the Court, the Trial Practice Rules shall apply to virtual and in person trials.

A. Trial Preparation: Prior to the commencement of a trial or hearing, counsel shall ascertain the availability of all witnesses and subpoenaed documents **and notify the Trial Ready Part of the need for interpreters and special services.** Counsel for any party or any self-represented party who has issued subpoenas for the production of records shall request that the Part Clerk requisition all subpoenaed documents from the file room.

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

1. A statement of the estimated length of trial;
2. Marked pleadings and bills of particulars;
3. Prior decisions and orders;
4. A list of all witnesses who may be called at trial, including any potential rebuttal witnesses;
5. A list of all exhibits the party expects to use at trial, indicating whether such exhibits are stipulated for admission into evidence or are marked only for identification;
6. A written stipulation governing all facts that are not in dispute;
7. A copy of any statutory provisions upon which any party intends to rely;
8. All expert witness reports and disclosures exchanged between the parties; and
9. All reports, transcripts of examinations before trial, and written statements that may be used during trial.

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

D. Conference: Upon assignment to this Part, and prior to the commencement of jury selection, the Court shall conduct a conference with all counsel and self-represented parties to discuss preliminary matters. Counsel and self-represented parties shall:

1. Alert the Court to any anticipated *in limine* motions or legal evidentiary issues they believe will arise during the trial.
2. Alert the Court as to any anticipated requests for a jury instruction relating to missing witnesses or evidence.
3. Provide both a proposed verdict sheet and proposed requests to charge in **Microsoft Word document format**.

F. Motions or Letters: Any motions, affirmations, memoranda of law, or letters in connection with an ensuing trial before this Court shall be electronically filed forthwith on NYSCEF.

G. Proposed Jury Charges & Proposed Verdict Sheets: In all jury trials, a complete list of requests to charge shall be submitted to the Court prior to the commencement of trial, with copies to be provided to all counsel and self-represented parties. If a requested charge is drawn from the current Pattern Jury Instructions (PJI), only the PJI number and charge heading need be submitted. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted in writing, together with any supporting legal precedents. In addition, such proposals shall be prepared in **Microsoft Word document format** and emailed to the **COURT'S Principal Court Attorney and Assistant Law Clerk**. All proposed jury charges **must** be electronically filed forthwith on NYSCEF.

H. Verdict Sheet: At the commencement of the trial, counsel and any self-represented parties shall jointly prepare a verdict sheet. If agreement cannot be reached, each party shall present a proposed verdict sheet which shall be served upon all parties. The verdict sheet shall be in a final, typewritten form. The proposed verdict sheet(s) shall be prepared in **Microsoft Word document format** and emailed to the **COURT'S Principal Court Attorney and Assistant Law Clerk**. The verdict sheet shall provide signature lines for each juror, stating yes or no, as to each interrogatory to be considered. **All proposed verdict sheets must be electronically filed forthwith on NYSCEF.**

VII. Fiduciary Appointments

In order to be eligible for appointments to serve as a referee, guardian ad litem, or receiver, counsel must appear on the Part 36 list promulgated by the Office of Court Administration.

THE COURT APPRECIATES YOUR COOPERATION AND COURTESY.

REVISED JANUARY 20, 2022