

# PART RULES

(Revised 1/2/24)



**HON. LARRY J. SCHWARTZ**  
**Justice of the Supreme Court**  
State of New York, Ninth Judicial District

**Westchester County Courthouse**  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, NY 10601  
Courtroom 302

Chambers Tel: (914) 824-5047  
Chambers Fax: (914) 824-5211  
Part Clerk: (914) 824-5449

Principal Law Clerk: Djinsad Desir  
Secretary: Eileen Carson  
Part Clerk: Daniell Negron

## I. COMMUNICATIONS WITH THE COURT

### A. Telephone Calls

Telephone calls to the Court staff are permitted only in necessary or emergency situations requiring immediate attention that cannot otherwise be attained by correspondence. Counsel and pro se litigants should not call Chambers or the Part Clerk to discuss the substance of pending cases, unless a conference call is approved by the Court and all opposing counsel or pro se litigants are involved in the conference call.

**For Civil Matters:** If a telephone call to Chambers' staff is necessary as described above, the call should be made to the Court's secretary at (914) 824-5047.

**For Criminal Matters:** Do not call chambers. Call the Part Clerk at (914) 824-5449. Counsel will be directed to call chambers by the clerk if necessary.

### B. Correspondence

Correspondence to the Court shall be copied to all adversaries (counsel and pro se litigants) and must reflect the Index Number of the action to which it relates. Correspondence between counsel(s) and/or pro se litigants shall not be copied to the Court unless there is some judicial purpose to be served by transmitting copies to the Court.

In E-Filed matters, any and all correspondence sent to the Judge must be electronically filed. If the matter requires immediate attention (letter requesting an adjournment of an upcoming court date or motion; or an Order to Show Cause), then a working copy must

be faxed to Chambers at (914) 824-5211 to receive immediate attention.

### C. Faxes

Counsel are not permitted, without prior approval, to send facsimile transmissions to Chambers that exceed five (5) pages in length. Faxes of correspondence with the Court will be accepted so long as the cover sheet or correspondence clearly indicates that the communication was sent to all other parties.

The Court will not accept faxed papers that must be filed with the Westchester County Clerk's office (motions, opposition papers, reply papers, proposed Orders, or documents to be so-ordered). Such papers must be delivered in hard copy (mail or drop off).

### D. Ex Parte Communications

Ex parte communications are strictly prohibited, except: 1) in the limited permissible context involving the presentation of Orders to Show Cause for signature, or 2) with the consent of all parties during settlement negotiations at the Courthouse, or 3) in the unusual circumstance where oral argument is required by the Court on a motion and a party fails to appear at the scheduled date and time, argument may be heard by the adversary party/parties in attendance in open court. Inappropriate ex parte communications will be returned to the sender, unread.

### E. Court Papers

In non E-Filed matters, all pleadings, motions, Orders to Show Cause, opposition papers, reply papers, memoranda of law and other submissions must be signed by counsel to the extent required by § 130-1.1-a of the Uniform Rules of the Chief Administrator (hereinafter "Uniform Rules").

In E-Filed matters, all pleadings, motions, Orders to Show Cause, opposition papers, reply papers, memoranda of law and other submissions must contain a signature in accordance with Uniform Rules § 202.5-b(e).

### F. E-Filing

All parties should familiarize themselves with the statewide E-Filing Rules (Uniform Rule §§ 202.5-b and 202.5-bb, available at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) and the Westchester County E-Filing protocol. General questions about E-Filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or [efile@nycourts.gov](mailto:efile@nycourts.gov). Specific questions relating to local procedures should be addressed to the Westchester County Clerk's Office. All actions specified by the Chief Administrator of the Courts, except those specifically excluded pursuant to Uniform Rule § 202.5-bb, are to be filed through the New York State Courts E -Filing system (NYSCEF).

All submissions to the Court, including proposed Orders, proposed judgments, and letters, must be electronically filed through the NYSCEF system. Subpoenas *Duces Tecum* and

Subpoenas *ad Testificatum* to be so-ordered should still be presented to the Court in original paper form for signature for upcoming hearings.

All counsel and/or parties participating in the NYSCEF system are required to keep abreast of any filings through the NYSCEF system, whether such documents are filed by the adverse party(ies) or the Court. Once an attorney or party has linked into the NYSCEF system and consented to E-Filing (plaintiff/petitioner or defendant/respondent), the Court will only send communications through the NYSCEF system. An attorney or party that has linked into the NYSCEF system will be charged with receipt of a document once it is uploaded to the NYSCEF system, whether by the Court or by an adversary.

#### G. Working Copies

Working copies are required as follows:

Motions and Orders to Show Cause. Working copies of motion papers and Orders to Show Cause are required, including supporting affidavits/affirmations and tabbed exhibits, and will not be reviewed until a working copy has been received by the Court.

Working copies shall be addressed directly to Chambers - not to the Clerk's office. If the required working copy is being hand-delivered, it can be delivered to Courtroom 302 on the 2<sup>nd</sup> Floor of the Annex. If no one is in the courtroom, please contact chambers to arrange for receipt of the documents. If the required working copy is being mailed, it is sufficient to address it to chambers at the address listed above. No working copies should be delivered to the Civil Calendar Office.

#### H. Hard Copy Submissions

In the event that a party or attorney properly opts out of E-Filing pursuant to *Uniform Rule* § 202.5-bb(e), said party is permitted to make submissions to the Court, and serve on all parties, by hard copy with no electronically filed copy. However, the Court will reject any hard copy submissions in E-Filed cases unless those submissions bear the Notice of Hard Copy Submission - E-Filed Case required by *Uniform Rule* § 202.5-b(d)(1). The form is available at [www.nycourts.gov/efile](http://www.nycourts.gov/efile).

## II. COURT CONFERENCES

#### A. General Rules

Counsel and pro se litigants are expected to appear for all conferences on time. Depending on the day's schedule, it is possible that a matter will only be called once, and could result in an adjournment, dismissal or default for an attorney or party's failure to appear timely.

Counsel must be fully familiar with the action on which they appear and must be authorized to enter into both substantive and procedural agreements on behalf of their client(s).

Attorneys appearing "of counsel" for an attorney of record, and parties appearing pro se, are held to the same requirements. A failure to comply with this rule may be deemed by the Court as a default and dealt with appropriately.

#### B. Adjournments

As a matter of general practice, adjournments will not be granted for conferences or hearings. Applications for adjournments must be made in writing actually received by the Court (by mail or fax) at least twenty-four (24) hours in advance of the scheduled conference, and must address:

- (1) The date of the scheduled Court appearance and hearing date, if any,
- (2) good cause why an adjournment is sought,
- (3) whether the adverse parties consent or object to the application, and
- (4) may, at the option of the sender, suggest an approximate time period, or an exact date, for which the adjournment is sought.

All such communications must be copied to all counsel and pro se litigants. The Court may, in the exercise of sound discretion, permit or refuse a conference adjournment in any given instance.

#### C. Non-Appearance at Scheduled Conferences

The failure of any counsel or pro se litigant to appear for a conference may be treated by the Court as a default and may be dealt with by an Order directing the dismissal of a Complaint or Petition, the striking of any Answer, and the conduct of an inquest, or by other appropriate remedy authorized by Uniform Rule § 202.27.

### **III. APPEARANCE BY ATTORNEY**

In order to appear on behalf of a client, an attorney must formally appear in the action by filing a pleading or a motion, or a formal Notice of Appearance. In E-Filed matters, the attorney must also link into the NYSCEF system for the individual client(s). Once an attorney has formally appeared in the action, the attorney remains the attorney of record for that party until such time as the requirements of Civil Practice Law and Rules § 321 are met.

Where a party discharges his/her/its attorney, with or without cause, the discharged attorney shall memorialize the termination of services in writing, and file a copy of the letter with the Court, on notice to the former client, and all other parties (or counsel if represented). The letter must also request that the matter be scheduled for an immediate conference requiring the appearance of the former client, and new counsel if same has been retained. In such instances, the automatic stay provision of Civil Practice Law and Rules § 321(c) does not apply.

Where the party and his/her/its attorney agree on a change of counsel, the change from former counsel to new counsel can be effectuated with the filing of a "Consent to Change Attorney" signed by the retiring attorney and signed and acknowledged by the party,

pursuant to Civil Practice Law and Rules § 321(b)(1). The "Consent to Change Attorney" memorializing a change in representation from one attorney to another attorney must also be sent to all parties (or counsel if represented). In such instances, the automatic stay provision of Civil Practice Law and Rules § 321(c) does not apply.

Where the attorney wishes to withdraw, but there is no new counsel substituting in, a "Consent to Change Attorney" may not be used. If the party and his/her/its attorney agree that the attorney may seek permission to withdraw as counsel of record, and the client will appear pro se, then the attorney must file with the Court a stipulation signed and acknowledged by the party, and signed by the attorney, indicating that the client and counsel agree that the attorney may request permission to withdraw. The attorney shall also file with the Court a letter requesting that the matter be scheduled for a conference immediately for the attorney and the client to appear and formally request that the Court permit the attorney to withdraw. In such instances, the automatic stay provision of Civil Practice Law and Rules § 321(c) does not apply.

Where the attorney wishes to withdraw, but there is no new counsel substituting in, and the attorney does not have the agreement of the client, the attorney must file an Order to Show Cause seeking permission to withdraw. The Court will set a return date and the client will have an opportunity to object to the application on the record. In the event that the Court grants the attorney's request to be relieved, the Court will consider giving the client time to hire new counsel to represent him/her/it in the action.

#### **IV. MOTIONS AND ORDERS TO SHOW CAUSE**

##### **A. General Rules**

The Court will entertain motions on submission (Notice of Motion) for 2:30 p.m. on any Wednesday the Court is in session. The return date for an Order to Show Cause shall, of course, be determined by the Court at the time papers are submitted for consideration and executed. Unless "Appearance Required" is noted, the papers shall be marked submitted without appearance and no oral argument permitted. If "Appearances Required" is noted, the motion will be considered on the return date, and argument may be permitted and a decision may be rendered from the bench. The failure of a moving party to appear at the scheduled date and time may result in the motion being denied and otherwise marked off, while the failure of appearance by an opposing party may result in the motion being argued ex parte and then decided either on the merits or granted on default.

For all motions: (a) no affidavit or affirmation shall exceed 15 pages in length unless the affirmation contains legal authority in which case it may not exceed 20 pages in length; (b) affirmations or affidavits of counsel shall address only those facts which are within their personal knowledge; (c) the only exhibits that shall be attached to motion papers shall be those which are specifically referred to in an accompanying affidavit or affirmation and only that portion of the document which is specifically referenced shall be attached as an exhibit; and (d) type point shall be at least type point 12 and double spaced.

## B. Filing of Papers Applicable to All Motions

Except with the express permission of the Court, all motion papers and Orders to Show Cause, including Notices of Motion, proposed Orders, affidavits or affirmations in support, affidavits or affirmations of good faith and memoranda of law, must contain the address, telephone and fax numbers of counsel (or pro se litigant) and be typewritten, double-spaced, securely bound, entirely legible, and all exhibits labeled with exhibit tabs. The Court may refuse to accept any such paper which does not conform to the foregoing. Similarly, working copies of electronically filed motions should conform to the above requirements as well. Motion papers and all related correspondence must reflect the Index Number assigned to the action.

Unless directed otherwise by the Court, the filing of a motion does not relieve any party from attending any previously scheduled conferences, or court appearances, regardless of the nature of the relief sought in the motion.

## C. Electronically Filed Submissions

Counsel and pro se litigants must use appropriate document titles when uploading items through the NYSCEF system, and include a description when possible. In the NYSCEF system, exhibits to motion papers must be uploaded as separate documents labeled with the appropriate exhibit designation (1, 2, etc... or A, B, etc...). If a movant files an electronic submission that does not comply with this requirement, he/she will be given one opportunity to remedy the submission, or the motion will be denied.

Working copies of all Orders to Show Cause and all motions are required. Such working copies submitted to Chambers must include exhibit tabs and be properly bound. Further, the working copy must match the electronically filed document exactly.

## D. Supporting Documents

In all matters, all documents required to decide the application must be included in the moving papers. It is not sufficient that those documents are on file with the County Clerk or e-filed. Compliance with this rule is particularly important on motions brought pursuant to Civil Practice Law and Rules § 2221. If the required documents are not attached, the Court may dismiss or deny the application entirely.

## E. Motion Adjournments

Applications for adjournments of motions must be made in writing actually received by the Court (by letter or fax) not later than 9:00 a.m. on the day prior to the return date, and must address:

- (1) good cause why an adjournment is sought,
- (2) whether the adverse party (parties) consent or object to the application,
- (3) whether the motion has previously been adjourned and if so, at the request of which side,

- (4) the Hearing date, if one has been scheduled, and
- (5) may, at the option of the sender, suggest an approximate time period, or an exact date, for which the adjournment of the motion is sought.

All such communications must be copied to all counsel and pro se litigants. Stipulations to adjourn motions that are not accompanied by the above-mentioned application or request in writing **will not** be entertained. The Court may, in the exercise of sound discretion, permit or refuse a motion adjournment in any given instance. No more than three adjournments of any single motion will be permitted. In assigning an adjourned date, the Court shall give due consideration to any specific date agreed upon by all parties. Motion adjournments shall be confirmed to the Court and all adversary parties in writing. No adjournment request will be entertained by the Court unless the party seeking the adjournment has first attempted to obtain consent from all the other parties in the action, or provides sufficient reason why he/she has not contacted his/her adversary(ies). Parties seeking a non-consented to adjournment must provide good cause as to why the adjournment should be granted.

#### F. Reply Papers.

Reply Papers shall not set forth new factual claims, legal arguments, expert affidavits, or requests for relief that were not within the scope of the papers that initiated the motion.

#### G. Sur-Reply Papers.

The *Civil Practice Law and Rules* does not recognize the existence of Sur-Reply Papers, however denominated, and accordingly, this Court will not consider any papers or materials submitted after a Reply submission absent a party receiving express permission from the Court in advance. Such materials received in violation of the *Civil Practice Law and Rules* and these part rules will be returned, unread, to the Office of the Westchester County Clerk for filing in non E-Filed matters, or discarded in E-Filed matters. Opposing counsel who receives a copy of such materials submitted in violation of this rule should not respond in kind.

### V. DECISIONS AND ORDERS

#### A. Written Decisions and Orders.

In most instances, a Decision and Order will be rendered in written form following the full submission of the motion, or Order to Show Cause.

In non E-Filed matters, the Decision and Order, with all supporting and opposition papers, will be filed by the Court with the Office of the Westchester County Clerk. A copy of the Decision and Order will be faxed to counsel for the parties or any pro se party provided a facsimile number was provided with the motion papers as required by these Part Rules.

If the matter is E-Filed, the Decision and Order will only be uploaded to the NYSCEF system, and will only be sent by mail or fax to a party who has properly opted out of e-

filing.

B. Oral Decisions and Orders.

In certain instances, the Court may render a Decision and issue an Order orally from the bench. In such instances, a transcript of the Decision and Order, paid for by the parties and provided to the Court, will be executed or so-ordered by the Court. Counsel or any pro se litigant may also submit a proposed Order with a copy of the transcript.

In non E-Filed matters, the so-ordered transcript, or executed proposed Order, will be filed with the Office of the Westchester County Clerk.

In E-Filed matters, the so-ordered transcript, or the executed proposed Order, will be uploaded through the NYSCEF system.

C. Interpreters.

In the event that any party requires the services of a translator during any appearance for foreign languages or services for the hearing impaired, the Court is to be notified of same as soon as practicable, so that appropriate arrangements can be made by the Court in advance.

**VI. SETTLED AND DISCONTINUED CASES**

Plaintiff's/Petitioner's counsel or pro se Plaintiff/Petitioner shall immediately notify the Court in writing (either by fax or mail) of a case disposition. Following the initial notification, either side shall submit a copy of the stipulation of discontinuance to chambers so that the matter may be marked off the calendar.