ROCKLAND SUPREME COURT PART RULES

1 South Main Street
New City, New York 10956
Supreme Court Clerk's Office: 845-483-8320

Hon. Sherri L. Eisenpress, J.S.C.
Principal Law Clerk: Dara Warren (dawarren@nycourts.gov)
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Chambers: 845-483-8206
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E-Filing

All correspondence addressed to or copied to Judge Eisenpress on an e-filed matter must be electronically filed in the NYSCEF e-filing system. If correspondence is faxed to Chambers and has not been electronically filed, it will not be considered.

When uploading submissions to the NYSCEF system, each document must be uploaded as a separate document in the NYSCEF system and labeled with an appropriate description. For example, a Notice of Motion should be uploaded as a "Notice of Motion," the supporting affirmation should be uploaded as "Affirmation" with a description (name of attorney or affiant), a supporting affidavit should be uploaded as "Affidavit" with a description (name of affiant), and each exhibit should be uploaded as an individual exhibit with the appropriate designation (letter or number) and a description of the document. Affidavits of service should be uploaded as separate documents with a description of who was served.

Submissions that do not comply with this requirement may be rejected.

Working Copies

The Court requires one (1) working copy of all Orders to Show Cause. An Order to Show Cause submission will not be considered until a working copy is received. Working copies must be delivered to Chambers and must be tabbed (when mailed, addressed to the Chambers of the Hon. Sherri L. Eisenpress, 1 South Main Street, New City, New York 10956).

The Court does not require working on motions that are e-filed except when there are excessive exhibits or unique exhibits such as maps.

The Court does not require working copies of correspondence.

The Court does require working copies of all orders, subpoenas, and stipulations requiring a signature.

Communication with the Court

Communication with the Court shall be made in writing. Counsel and parties should strive to limit telephone calls to the Court staff to situations requiring immediate attention that cannot otherwise be addressed by correspondence. Telephone communication should be limited to contact with the secretary, part clerk or the principal law clerk regarding non-substantive, administrative issues in a case. At no time shall an attorney or litigant contact the court attorney to speak about or ask questions relating to the merits of the case, or inquire about substantive issues within the case.

All letters, on any subject, to the Court must be (1) copied to **all counsel or *pro se* parties** (and sent to counsel via email, whenever possible); (2) contain email addresses for all counsel; and (3) state the next appearance date. Letters not complying with these rules will be disregarded and/or returned to the sender. Correspondence between attorneys and/or parties shall not be copied to the Court unless there is some specific judicial purpose to be served by transmitting copies to the Court.

A letter to the Court in PDF form may be transmitted via email in cases where all parties are represented by counsel (the email must be copied to all counsel on the case). Do not copy clients on any emails that include court staff. If the matter is pending before Judge Eisenpress, counsel shall direct any email for Judge Eisenpress' review to the attention of the Secretary and the Principal Law Clerk.

Neither Chambers nor the Clerk of the Court will accept faxed or emailed copies of papers that must otherwise be filed in original form with the Clerk or the Court (such as Orders to Show Cause, petitions, proofs of service, motions, opposition to motions, replies, proposed Orders, and documents to be "So Ordered").

Communication about substantive issues via letter to the Court is strongly discouraged. Parties or counsel should either wait to address substantive issues at the next scheduled court appearance or file the appropriate application with the Court in lieu of litigating via letter. Requests for Microsoft Teams conferences with Chambers shall be limited to situations where the attorneys and/or parties have made substantial good-faith efforts to resolve the dispute or issue but have been unsuccessful. Letters requesting such conference must specify the nature of the efforts that have been made to resolve the issue before the Court will respond to the request for a conference.

Under no circumstances may parties represented by counsel contact the Court.

Ex parte communications are strictly prohibited except upon consent of all counsel, or with respect to scheduling matters, or the presentation of Orders to Show Cause for signature.

Appearances

Parties who are not represented by counsel should address questions about scheduling appearances or adjourning appearances to Chambers via letter, (including the case name, index or family unit number, date of next appearance and the post office and email addresses and phone and fax numbers of all counsel). In cases where all parties are represented by counsel, such inquiries may be made via email. Please note that no request for an adjournment will be considered unless it is:

- in writing; and
- made at least **72 hours prior to the appearance**; and
- states that the request is on consent of the other attorney(s) or party(ies) or that a good-faith effort was made to obtain that consent.

Adjournments of appearances without the consent of the other attorney(s) or party(ies) will not be granted unless (1) there is an affirmation of prior engagement in full compliance with 22 NYCRR § 125.1, and it must include the date the conflicting appearance was scheduled; or (2) there are exceptional circumstances.

Do not telephone the Court to determine the status of an adjournment request; the Court will respond as soon as possible. If you do not receive a response, it means the adjournment was not granted. If the adjournment was granted, a new date will be reflected in E-Courts.

Note that the party requesting the adjournment is responsible for notifying all parties and counsel of the status of the adjournment in writing, and a copy of that letter must be copied to the Court via efile and/or email. If all parties are represented, this confirmation can be sent via email as described above. No additional notices to appear will be issued by the Court with the adjourned court date.

Appearance of Counsel

A Notice of Appearance must be filed at the time that counsel is retained and must list the attorney's address, phone number, fax and email address. Once counsel has filed a Notice of Appearance, the attorney-of-record, or an attorney appearing on his or her behalf, is expected to appear at *each and every* court appearance (with his or her client if it is a matrimonial matter) until the case is disposed or counsel is relieved. Counsel must be discharged, and a Consent to Change Attorney form filed, or an Order to Show Cause to be relieved must have been made and granted, before counsel is relieved. Attorneys must comply with CPLR § 321.

Counsel who appear in Court must be fully familiar with the case, have met with their

clients and have authority to enter into any agreement, either substantive or procedural, on behalf of their clients. Counsel and their clients must be **on time** for all scheduled appearances. Scheduling conflicting appearances shall not be an acceptable excuse for tardiness.

The failure of any attorney or party to appear for a scheduled conference or appearance date may be treated as a default and may, when appropriate, result in the dismissal of the action.

Orders

Proposed Orders must be submitted in accordance with 22 NYCRR § 202.48, either with Notice of Settlement attached to the proposed order, or as a proposed consent order, with signatures from all parties whereby Notice of Settlement is waived. Each attorney submitting a proposed order is expected to take copious notes of the proceedings or to obtain a transcript of the proceedings so that the order accurately reflects the settlement placed on the record in open Court. If the proposed order is not reflective of the actual settlement reached, it will be returned to the attorney who drafted it and the attorney will be directed to correct the order and resubmit it within seven (7) days of it being returned.

All counter-orders and counter-judgments must be submitted with a cover letter and a "red-lined" copy highlighting the language which differs from that of the originally submitted order or judgment pursuant to 22 NYCRR § 202.48.

All proposed orders or other documents, including transcripts. for the Judge's signature must include a "So-Ordered" signature line with the name of the Judge.

Discontinuing a Matter

If a matter is settled, discontinued, or otherwise disposed, counsel shall *immediately* provide written confirmation of the settlement to Chambers via letter uploaded onto the NYSCEF system. Counsel is also responsible for ensuring that the other parties, his or her client and any witnesses scheduled to appear at the next court date are notified that the matter has concluded and that there is no future court date.

Counsel shall also advise the Court if, at the time of discontinuance, there are any outstanding motions or scheduled conferences, hearings or trial dates.

As soon as is practicable but in no event later than thirty (30) days after the Court is notified of the settlement, counsel shall provide the Court with a fully executed stipulation or proposed consent order evidencing the disposition. If the matter is already scheduled for an appearance and no fully executed stipulation or proposed consent order is submitted prior to the scheduled appearance, the matter will be deemed active and the parties will be expected to appear in Court.

Motions

If the matter is not e-filed, one courtesy copy must be provided to the Court. Return dates for all motions are on Fridays at 9:45 AM. Return dates on Notice of Motions do **not** require

appearances, unless the parties and counsel are notified otherwise by the Court indicating that there will be an oral argument. Return dates on Orders to Show Cause require appearances unless the parties and counsel are notified otherwise by the Court.

Adjournments of motions

(1) On consent: If the parties consent to a proposed adjournment, send a letter to Chambers copied to all parties identifying the date to which both parties seek the adjournment. Open-ended adjournment requests without a specific proposed adjourned date will not be considered. No more than two adjournments of any motion will be granted without the Court's permission.

(2) Without consent: If a party does not consent to the requested adjournment, send a letter to Chambers indicating the reason for the adjournment request, and the reason for the refusal to consent.

Answering papers

Opposition and Reply papers must be received by the Court by the return date in the Notice of Motion in order to be considered. Late papers will be rejected unless good cause is shown and there is no prejudice caused by the delay.

Papers must only address the relief sought in the Notice of Motion. New issues raised in opposition or reply papers shall not be considered without specific permission from the Court. Cross-motions which seek only the denial of the relief in the original motion will not be recognized as motions with respect to which a reply may be submitted. Sur-replies shall not be considered without specific permission from the Court. Permission for sur-replies will be granted only upon a showing of exceptional circumstances.

Orders to Show Cause

In addition to the motion rules, the following provisions are applicable to orders to show cause:

Submit one original.

If the case is not e-filed, counsel or a party filing an Order to Show Cause **must provide a facsimile number and an email address in a cover letter or on the litigation back** so that if the Court chooses to sign the order to show cause, it can be faxed and/or emailed to the filing party/counsel for service purposes if it is not an e-filed matter.

If an order to show cause requests temporary relief, counsel must comply with the provisions of 22 NYCRR § 202.7(f) and notify the opposing counsel/party that he or she has 48 hours to respond via letter to the Court to the request for temporary relief, unless counsel provides an affirmation alleging that there would be significant prejudice suffered by complying with this requirement, or if the order to show cause seeks an order of protection via temporary restraining order. If counsel has complied with this provision, the order to show cause must clearly specify

such, either in a separate affirmation or an accompanying letter to the Court. Failure to comply with this section will result in all temporary relief being struck; however, compliance with this section does not ensure that temporary relief will be granted.

If a requested order has specific urgency, counsel should make the Clerk of the Court aware of the issue. The Court will use every effort to address all orders as soon as is practical after their receipt. If a proposed order to show cause contains a request for a temporary order of protection or other emergency *ex parte* relief, counsel should advise the Clerk of the Court upon filing and should be prepared, with his or her client, for a hearing at such time as the Court will direct. Counsel should not appear without permission from the Court.

Discovery Motions

Discovery Motions may not be filed absent permission from the Court and will be denied absent compliance with this Part's Rules as set forth herein. In the event of a discovery dispute, the parties should attempt to resolve the matter absent Court intervention. If after consultation, the parties cannot reach a resolution, either party may upload a letter to NYSCEF outlining the discovery issue and requesting that a conference be scheduled with the Court. The Court will then schedule a virtual conference via Microsoft Teams, or if necessary, an in-person conference to address the issues.

Summary Judgment Motions

Summary judgment motions must be made within sixty (60) days of the filing of the Note of Issue. An extension of time to file said motions in excess of sixty (60) days will only be permitted upon application to the Court and upon a showing of extraordinary circumstances. In connection with any motion for summary judgment, other than a motion made pursuant to CPLR § 3213, the Court requires a Statement of Material Facts in accordance with 22 NYCRR § 202.8-g.

Forensics

All requests for a forensic evaluation or accounting may be made in open Court or in writing as set forth above. If the parties have consented to a forensic evaluation and the request is being made in writing, please list the reasons for why a forensic evaluation is being requested, what issues the parties wish to have the forensic evaluator examine, whether the parties have agreed on how the fee should be paid, and the names of three (3) forensic evaluators that the parties would like for the Court to consider assigning to the matter.

A request for a forensic evaluation in a custody or visitation matter must be made as soon as possible, but no later than ninety (90) days prior to any scheduled fact-finding hearing on the pending matter.

When the Court has issued an order directing a forensic evaluation, all parties must participate and cooperate with the forensic evaluator. The evaluation must be completed by the deadline set forth in the Court's order absent further order from the Court discontinuing the evaluation.

After the forensic order is issued and a court-appointed neutral forensic evaluator is assigned, all correspondence to such evaluator as well as any documents supplied to the evaluator shall be copied on the other party/attorney in the case. Prior to the completion of the forensic evaluation report and its submission to the Court, all communications between the attorneys and the forensic evaluator shall be in writing, copied on all parties. After submission of the report to the Court, if the forensic evaluator consents, counsel may either meet with the forensic evaluator or speak with the forensic evaluator for purposes of preparing testimony, discussions regarding the substance of the report, scheduling of testimony, etc.; however, prior to initiating such communication, counsel shall advise the other party/attorneys in the case, in writing, that such communication is being initiated. Except for purposes of inquiring about scheduling testimony for trial, parties and attorneys shall refrain from any communication with the forensic examiner's staff following the production of the report. Any communications between the forensic examiner and an attorney will not be privileged and may be the proper subject of questioning during trial.

Where parties have privately retained counsel, only private forensic evaluators will be appointed unless there are exceptional circumstances.

An attorney-of-record in a matrimonial matter or custody proceeding may obtain a copy of a forensic evaluation upon the signing of an Affirmation that is filed with the Court and must comply with the requirements as set forth in the Affirmation. A *pro se* party may review a forensic custody evaluation report on his or her matter between the hours of 2:30-4:30 p.m. at the Family Court Clerk's Office upon filling out a request to review the file, unless otherwise arranged with the Court in writing to Chambers.

Once the report is received, if the parties and/or counsel consent to the Court reviewing the report prior to an upcoming conference, the Court should be advised in writing at least three days prior to the conference. The Court's review of the report does not impact the issue of whether the report is admissible.

Forensic Custody Evaluation's and Sexual Abuse Validation Reports Admissibility

1. All parties, or their attorneys if represented, have an opportunity to object to the admissibility of the forensic evaluation report or validation report ("report"). Said objection to the admissibility of the report must be made in writing and filed with the Court, copied to all sides. The written objection must be received on or before the earlier of the following two dates: (1) two weeks before the date of the scheduled trial; or (2) on the date of the compliance conference with the court attorney.

   If a written objection to the admissibility of the report is not properly received by the Court in accordance with this procedure, then such objection will be deemed waived, and the report will be automatically received into evidence as Court's Exhibit #1 at the commencement of trial. In that circumstance, any party (or his/her attorney) that wishes to cross-examine the maker of the report will be responsible to secure his/her attendance during the hearing, and payment of any attendance fees, subject to reallocation.

2. The report in its entirety shall be admissible in evidence if all parties to the action stipulate to its admission.

3. If one or more parties do not stipulate to the admission of the report in accordance with the procedure outlined above, then the report shall be admitted into evidence only if:

   a. the evaluator testifies at the hearing regarding the contents of his or her report and demonstrates that he or she relied upon collateral information accepted in the profession as a basis in forming an opinion and that such out-of-court material is accompanied by evidence at the hearing establishing its reliability (see Wagman v. Bradshaw, 292 A.D.2d 84 (2d Dept. 2002); D'Esposito v . Kepler, 14 A.D.3d 509 (2d Dept. 2005)). Ultimately, the evaluator's ultimate opinion must be based principally upon legally competent evidence (see Lisa W. v. Seine W., 9 Misc. 3d 1125A, 862 N.Y.S.2d 809 (Fam. Ct. Kings Co. 2005)(*citing* People v. Stone, 35 N.Y.2d 69 (1974)); **or**

   b. the evaluator testifies at the hearing regarding the contents of his or her report and the out-of-court statements made by collateral sources in the report are derived from a witness or witnesses subject to full cross-examination at the hearing (see Wagman v. Bradshaw, 292 A.D.2d 84 (2d Dept. 2002)).

If hearsay from a collateral contact is not "of a kind accepted in the profession as reliable in forming a professional opinion" and if there is no "independent evidence establishing the reliability of the out-of-court material", and the "collateral source" does not testify then the hearsay portions of the report must be stricken from the report prior to the report's admission into evidence. See Lubit v. Lubit, 885 N.Y.S.2d 492 (1st Dept. 2009).

3. If one or more parties properly object to the admission of the report in accordance with the procedure outlined above, then the report, excluding all hearsay sections of the report relating to "collateral contacts" (which shall be stricken and not be considered by the Court), shall be admitted into evidence only if:

   a. the evaluator has stated under oath in the report that his or her final opinion is principally based upon discussions with and observations of the parties and the children and that his or her opinion did not rely upon inadmissible "collateral contact" hearsay (see Ashmore v. Ashmore, 92 A.D.3d 817 (2d Dept. 2012)(*citing* Mohammed v. Mohammed, 23 A.D.3d 476 (2d Dept. 2005)); **or**

   b. the evaluator testifies at the hearing that his or her final opinion is principally based upon discussions with and observations of the parties and the children and that his or her opinion did not rely upon inadmissible "collateral contact" hearsay (see Ashmore v. Ashmore, 92 A.D.3d 817 (2d Dept. 2012)(*citing* Mohammed v. Mohammed, 23 A.D.3d 476 (2d Dept. 2005)), and the evaluator's testimony as to the express contents of the out-of-court material will not be admissible (see Wagman v. Bradshaw, 292 A.D.2d 84 (2d Dept. 2002)).

Failure to satisfy (a) or (b) above will render the report inadmissible, assuming that one or more parties has properly raised an objection in accordance with the procedure outlined above.

Settlement Conferences

Settlement conferences will be held in person. At least three (3) days prior to a scheduled conference, counsel must email a confidential settlement memorandum outlining their position on liability and damages, as well as a settlement range, to rcominsk@nycourts.gov or mtarsnan@nycourts.gov. Failure to do so may result in the cancellation of the settlement conference. Counsel appearing at the conference must be fully familiar with the matter and be able to reach their client and/or adjuster during the conference when requested to do so by the Court.

Hearings/Trials

Trial Subpoenas

When subpoenas are directed to documents in the possession, custody or control of libraries, hospitals, and municipal corporations and their departments and bureaus the subpoena notice must be "So Ordered" by the Court ("judicial subpoena") pursuant to CPLR §§ 2306 and 2307 and then be served on the intended recipient at least three (3) days before the time fixed for the production of the documents, unless such notice is waived by the Court due to emergency circumstances as set forth in CPLR § 2307. The judicial subpoena must be served on all counsel and parties to the proceeding promptly after service on the witness, as required by CPLR § 2303(a).

Any party wishing to obtain a judicial trial subpoena must move the Court on one (1) day's notice to the person having custody of the record or document pursuant to CPLR § 2302 (b) and must do so at least seven (7) days prior to the scheduled fact-finding hearing, except in exceptional circumstances. Fact-finding hearings will not be adjourned for failure to comply with this provision, except for good cause. Motions for judicial subpoenas should be delivered to the Clerk of the Court. The Court's issuance of a judicial subpoena does not constitute a ruling as to the admissibility of the subpoenaed materials.

Contents of a "Trial Notebook"

No less than two (2) weeks before the first scheduled trial date on a matter, each party or counsel must file with the Court a "Trial Notebook" and provide a copy of that notebook to each attorney or unrepresented party to the matter.

The Trial Notebook shall consist of:

1. Witness List

The list shall identify the name, address and telephone number of the proposed witness and a brief statement, or offer of proof, as to why the witness is being called and to what the party expects the witness to testify.

If a witness is not identified in the witness list provided to opposing counsel or party as part of the trial notebook, the witness may not be permitted to testify in a party's case-in-chief unless an adequate explanation is provided for the failure to identify such witness prior to trial. Fact witnesses and expert witnesses should be advised of the scheduled dates at the time the dates are set. Absent unanticipated, exigent circumstances, last minute claims of unavailability will not be accommodated where the trial dates have been previously set. All witnesses should be on one-hour phone call notice so that their waiting time in court is minimized. Professional witnesses, such as doctors, nurses and social workers, and witnesses who are public employees, such as teachers, counselors and police officers, will be permitted to testify out of order to accommodate their employment schedules. School teachers should be scheduled after 3:00 p.m. so that it is not necessary for their employers to provide substitutes. Rebuttal witnesses need not be listed.

2. Exhibit List with copies of Pre-Marked proposed Exhibits

The list shall enumerate all exhibits to be offered into evidence at trial by each party with a brief description of each exhibit and the "trial notebook" shall contain a copy of each proposed exhibit that the party/attorney intends to offer into evidence in support of his or her case-in-chief at trial.

The parties/counsel shall make a good faith effort to resolve any disputes regarding admissibility of evidence and stipulate to the admissibility of as many exhibits as possible. Additionally, the counsel (or pro se litigants) may be required to appear for a pre-trial conference with the Judge's Court Attorney for the purpose of pre-marking exhibits, discussing stipulations that have been agreed upon between counsel/parties, and resolving as many remaining disputed evidentiary issues as possible. The pre-trial conference will take place approximately two weeks before the first trial date.

Any exhibit not identified in the exhibit list provided to opposing counsel or party, other than an exhibit offered for the purpose of impeachment or rebuttal, may not be admitted into evidence unless an adequate explanation is provided for the failure to identify such exhibit prior to trial. Exhibits marked into evidence at trial will not be returned until the final conclusion of the matter. Exhibits marked for identification will be retained by the offering attorney during trial, unless taken into evidence.

3. Motions in Limine

Motions in Limine shall be filed at least two weeks prior to trial. Failure to timely file said motion may result in the preclusion of any such motions thereafter.

Interpreters and Special Services

There is a Spanish Interpreter available on-site. However, if a party requires an interpreter for any other language, no later than one week prior to the date for any scheduled court appearance, counsel shall advise the Court Clerk's Office if the services of a foreign language interpreter are required for any party or witness, or if any special services are required for any party or witness

who is hearing-impaired or who suffers from any other disability. Likewise, if there is a need for any special equipment such as a television monitor, counsel must advise the part at least one (1) week before so arrangements can be made.

Integrated Domestic Violence Part (IDV)

Motions for pretrial hearings on all criminal matters shall be made in accordance with a schedule set forth by the Court and in accordance with the Criminal Procedure Law.

So Ordered: /s/ Hon. Sherri L. Eisenpress, J.S.C. January 2, 2024

[Updated January 2024]