

**INDIVIDUAL PART RULES OF
JUSTICE
THOMAS R. DAVIS**

Effective January 23, 2023

SUPREME COURT OF THE STATE OF
NEW YORK
COUNTY OF DUTCHESS

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General Information:

These Rules supplement and, where inconsistent with, supersede the Uniform Civil Rules for the Supreme and the County Court, 22 NYCRR § 202.1, et seq., and the amendments thereto.

I. Communications with the Court

A. Correspondence

All correspondence to the Court must bear the 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. All correspondence shall be concise (NO MORE THAN 2 PAGES) and state the relief sought, or action requested to be taken, by the Court. ***All correspondence to the Court must be uploaded to NYSCEF. Do not fax or email the Court with correspondence.***

Do not copy the Court on correspondence between counsel and/or self-represented parties.

B. Telephone Calls

Except as set forth below (*see* Section III.F. Discovery Disputes), telephone calls to Chambers are permitted only in situations requiring

immediate attention that cannot otherwise be obtained by correspondence.

C. Fax transmissions

Unless specifically approved by the Court in advance in a particular case, the Court does not accept legal papers of any kind by fax transmission.

II. E-Filing Rules and Protocol

All documents in mandatory e-filed cases, except documents subject to the opt-out provision of § 202.5-bb of the Uniform Rules for the New York State Trial Courts, 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 must be electronically filed through NYSCEF, unless specifically requested by the Court.

III. Calendar Call & Conferences

A. General Rules

The Court's calendar will be called at 9:30 a.m. daily *in person* unless individual cases are scheduled for virtual appearance and a Teams invitation is sent to all parties. Counsel and self-represented parties are expected to appear for all Court appearances on time. If counsel or a party is unable to appear on time due to unforeseen circumstances (delays due to inclement weather or road closures, for example), please contact opposing counsel and advise the Part Clerk or Court's staff by telephone as soon as possible. Tardy arrivals will not be tolerated.

Counsel who are scheduled to appear before this Court and another Court must communicate that fact to Chambers prior to the date of appearance so that counsel's conflicting appearances can be reconciled. Do not ask opposing counsel to advise the Court of conflicting appearances when the case is called. The Court may proceed in that counsel's absence.

B. Who Must Appear

Only counsel or self-represented litigants who are fully familiar with a case and authorized to enter into binding agreements on all aspects of the case are to appear for conferences. This means that counsel for the plaintiff(s) must be prepared to make a settlement demand and counsel for the defendant(s) must be prepared to respond to the demand.

In non-matrimonial actions, represented parties need not appear for conferences unless directed to do so by the Court.

In matrimonial actions, litigants must appear with their counsel for all conferences unless such appearance is excused by the Court. Telephone availability is not an appearance.

C. Adjournment of Conferences

A request to adjourn a conference must be made in writing **by uploading a letter to NYSCEF** at least **two business days in advance** of the scheduled conference. For non e-filed cases, such requests must be emailed to Chambers.

All applications for adjournments must set forth:

- 1) the reason why an adjournment is necessary;
- 2) whether the opposing party(ies) consent(s) or object(s) to the application; and
- 3) 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 (NOT MORE THAN TWO PAGES) set forth why the adjournment is necessary, the length of the adjournment and the reason offered by the non-consenting party for his/her lack of consent. Opposing counsel or self-represented party may succinctly provide their reasons for objecting to the requested adjournment if opposing counsel believes that his/her 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 whether the adjournment has been granted by correspondence electronically filed, or, where the matter is not an e-filed case, by first-class mail and/or e-mail. Requests that are not copied to all other parties will not be acted on. The parties should not assume that the request for adjournment (even if consented to) has been granted unless specifically advised by the Court.

D. Preliminary Conference

Prior to the Preliminary Conference, the parties are to be in compliance with CPLR 3101(f) regarding 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. The Parties shall make this information available to the Court at the Preliminary Conference.

The Court will schedule a Preliminary Conference within 45 days after a Request for Judicial Intervention (RJI) has been filed on a matter. The Part Clerk will forward to the party filing the RJI a letter or email setting forth the date on which the Preliminary Conference will be conducted. The party who files the RJI shall advise all other parties of the Preliminary Conference date in writing.

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 a date for a Compliance Conference. All counsel and self-represented litigants are expected to abide by and comply with the Court's discovery schedule and deadlines.

No modifications of the dates set by the Court are permitted except by Order of the Court.

Counsel are generally referred to 22 NYCRR § 202.12(c) concerning the conduct of the Preliminary Conference and the matters to be considered. Counsel in medical, dental and podiatric malpractice actions are referred to 22 NYCRR § 202.56(b) and counsel in matrimonial actions are referred to 22 NYCRR § 202.16 and DRL § 236(B)(4) for other specific requirements in such cases.

E. Compliance Conference

The Court will conduct a Compliance Conference after the date by which disclosure was to be completed as directed at the Preliminary Conference. At the Compliance Conference, the Court will ensure that discovery proceeded as scheduled. The Court may conduct a settlement conference at this time. Counsel must be fully familiar with the action as well as all settlement discussions that have previously taken place so that meaningful discussions can be held.

Notes of Issue shall be filed when the matter is case ready. Counsel should not wait for court permission to file a Note of Issue, unless readiness is disputed.

Parties who have a discovery dispute are NOT to wait until the Compliance Conference to bring such dispute or complaint about non-disclosure to the Court's attention. Such parties shall comply with the procedures set forth in Section F -- Discovery Disputes.

The compliance conference may also be considered a settlement conference and the rules regarding same, below, may be applicable.

F. Discovery Disputes

Counsel (or self-represented litigant) who believes that discovery is not being conducted in accordance with the Court's Order is to discuss, in good faith, as required by Court Rule § 202.7, the claimed noncompliance with the counsel or self-represented litigant who is claimed not to be complying with the Court Order. A pro forma letter does not constitute a good faith effort. There must be actual substantive communication between counsel, as indicated in the Court Rules, regarding the claimed failure to engage in discovery and the claimed compliance or reason for noncompliance.

The parties are NOT to copy the Court on correspondence between counsel concerning discovery issues unless specifically requested to do so by the Court.

The parties are NOT to make any motion concerning discovery. If counsel cannot resolve the discovery issue between themselves after a good faith effort, then the counsel who believes that discovery is not being conducted in accordance with the Court's Order is to contact the Court by letter uploaded to NYSCEF 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 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.

The Court shall endeavor to make itself available to counsel to resolve disputes that arise at Examinations Before Trial. The Court expects strict compliance with the rules regarding conduct of depositions and the making of objections. Under no circumstances shall a deposition be "busted" or an issue marked for a ruling due to an instruction by counsel to a witness not to answer a question without first making an attempt to obtain a ruling from the Court.

G. Settlement Conference

The Court will conduct Settlement Conferences from time to time on every case as it deems appropriate. **The Court routinely directs parties to appear in person for settlement conferences. Counsel appearing for defendants appointed by an insurance carrier must, when the Court directs party appearances, have available by telephone or in-person a representative with FULL AUTHORITY.** Counsel attending the Settlement Conference must

be fully familiar with the action and 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 also be authorized to enter into binding settlements on terms agreeable to the parties and to the Court. The Court will explore limitation of issues for trial (e.g., whether liability may be conceded, or certain claims or defenses withdrawn in an appropriate case).

Counsel for the plaintiff(s) must be prepared to make a settlement demand and counsel for the defendant(s) must be prepared to respond to the demand. Please note that **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.**

Counsel are advised that, in an effort to foster open settlement discussions, the Court may meet with counsel separately during the discussions. Counsel are presumed to have consented to the Court doing so unless an objection is stated.

H. Pre-Trial Conference: See Uniform Rules §§202.26 (b), (c), 202.20 (h) and 202.37. A Pre-Trial Conference with all counsel, **all parties** and self-represented parties will be conducted before the commencement of jury selection or of a non-jury trial.

On or before the Pre-Trial Conference, counsel (and self-represented parties) must provide the Court and opposing counsel (or self-represented party) with the following:

1. Memoranda of law concerning any procedural, evidentiary, or other legal issue which the parties anticipate the Court will need to determine;
2. A witness list;
3. Requests to Charge. A complete list of requested jury charges, drawn from the Pattern Jury Instructions (PJI) of the then current year, must be submitted by email in Word format to the Court's Principal Law Clerk or Confidential Secretary. 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.
4. Proposed Verdict Sheet. A proposed Verdict Sheet, jointly prepared by all parties, typewritten and in final form for

presentation to the jury shall be submitted. If agreement cannot be reached between and among the parties as 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.

5. Expert reports.
6. **Motions in limine must be made by order to show cause only. Counsel must confer before making such an application to determine whether the issue is truly in dispute. Proposed orders to show cause for an order in limine and supporting papers must be provided to the Court two (2) weeks in advance of the Pre-trial conference.**

IV. Motions & Orders to Show Cause (including Temporary Restraining Orders)

A. General Rules

Parties may move by Notice of Motion or Order to Show Cause, depending on the exigency of the relief sought. Except in e-filed cases, proposed Orders to Show Cause submitted for consideration by the Court must include a fax number for the return of any signed order.

Absent express permission obtained in advance from the Court, briefs/memoranda of law are limited to 20 pages each and affirmations and affidavits are limited to 15 pages each. Papers which exceed these limitations may not be considered by or may be rejected by the Court. Motion papers are limited to Moving Papers, Opposing Papers and Reply. **Sur-Reply papers are not permitted.** See Uniform Rules §202.8-c.

Motion papers are limited to Moving Papers, Opposing Papers, including Cross Motions, and Reply (except that reply papers are not permitted on Orders to Show Cause without advance permission). **Sur-Reply papers, including those contained in letter submissions, are not permitted and will not be considered.**

Motions may be made returnable on any weekday the Court is in session and are on submission only, unless otherwise directed by the Court. There will be no oral argument required or permitted 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. A request for oral argument should not be construed as an

automatic grant of same. If the Court grants the request for oral argument, the Court staff will inform the attorney for the party who requested oral argument 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.

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. References to exhibits of more than five pages shall include the page number of the exhibit.

Multiple documents shall not be grouped together under a single exhibit; each exhibit shall contain only a single document. Exhibits shall be specifically referenced in the papers or they will not be considered.

If a party wishes to submit an exhibit or other evidence in the form of a **video or other digital representation**, a USB flash drive must be submitted to the Court. Hyperlinks to such evidence, such as in an electronically transmitted letter or email, will not be viewed by the Court. Upon completion of the motion, the USB flash drive will be made available by the Court, to return to the attorney/firm who submitted it.

Citations to legal authority must be to the official citations.

Deposition/Examination Before Trial transcripts included as exhibits must be single sided only. Parties are requested not to submit “mini scripts”.

In non-e-filed cases, all counsel shall submit a self-addressed stamped envelope with their moving or opposition papers to allow a copy of the Decision and/or Order to be mailed to the party. The name and Index Number of the case and return date of the motion should appear on the envelope.

All proposed Orders to Show Cause shall include the following language in addition to the usual content:

ORDERED, that opposition papers shall be served on the Court and counsel pursuant to the rules regarding e-filing on or before 1 p.m. on the ____ day of _____, and it is further,

ORDERED, that reply papers shall be served on the Court and counsel pursuant to the rules regarding e-filing on or before 1 p.m. on the ____ day of _____, and it is further,

ORDERED, that Counsel for all parties are to appear on the return date, and it is further,

ORDERED, that all parties are to appear on the return date.

Working Copies: Counsel and self-represented parties MUST provide working copies to chambers of all legal papers which require judicial action (e.g. Orders to Show Cause, motions, notices of settlement, expert applications and proposed orders). The working copies must include all exhibits and supporting papers. External tabs are encouraged. Loose-leaf binders are encouraged for lengthy submissions as well. Working copies should be submitted within one week of e-filing.

B. Adjournments of Motions

A request to adjourn a motion must be made in writing and uploaded to NYSCEF prior to the return date of the motion, copied to all counsel and self-represented parties.

All applications for adjournments must set forth: 1) the reason why an adjournment is necessary; 2) whether the opposing party(ies) consent(s) or object(s) to the application; 3) the length of the adjournment sought; 4) the number of prior requests for adjournment and the dates previously set, and; 5) the actual calendar date which will serve as the return date if the application is granted.

No more than three (3) adjournments of any motion or cross-motion will be permitted. The total period of time that a motion may be adjourned shall not exceed 60 days.

Where the adjournment sought is not on consent, the requesting party should briefly set forth why the adjournment is necessary, the length of the adjournment sought, and the reason offered by the non-consenting party for his/her lack of consent. Opposing counsel or self-represented party may succinctly provide their reasons for objecting to the requested adjournment if opposing counsel believes that his/her 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 whether the adjournment has been granted by correspondence electronically filed, or, where the matter is not an e-filed case, by first-class mail and/or e-mail, and will advise of the new return date for the motion, where applicable. Requests that are not copied to all other parties will not be acted on. The parties should not assume that the request for adjournment (even if consented to) has been granted unless specifically advised by the Court.

C. Temporary Restraining Orders

Unless there are extremely unusual circumstances in which significant prejudice (set forth in detail in a supporting affidavit/affirmation) will result, opposing counsel are to be advised by telephone or fax at least 24 hours in advance of the date and time that any Order to Show Cause which includes a request for a Temporary Restraining Order is being presented to the Court. Counsel are to arrange a date and time for such presentation to the Court with the part clerk in advance and then notify opposing counsel of the date and time.

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.

D. Discovery Disputes

In lieu of discovery motion practice, it is the policy of the Court to make itself and its staff available to resolve disputes related to pretrial discovery. Therefore, **no discovery motion is to be made by any party unless authorized or directed by the Court**. Instead, counsel should abide by the procedures set forth in Section III.F above to resolve discovery disputes.

E. Summary Judgment Motions

Summary Judgment motions must be made within sixty (60) days of the filing of the Note of Issue.

In the event that a Summary Judgment motion is made prior to completion of discovery, the making of the motion is not to be deemed to be a stay of discovery. The parties are to continue to abide by any Order or Notice pertaining to discovery unless otherwise directed by the Court.

Statements of Material Facts in connection with summary judgment motions are **not required** by this Part, **unless otherwise directed** in a particular case.

V. Judgments, Decisions and Orders

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 or judgments are not to be submitted by fax.

Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will not be signed unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR § 202.48 has been included.

All papers which are submitted for signature by the Court shall be identified on the signature page at least two lines below the signature line, so that the document being signed by the Court can be identified. Example: *Jones v Jones*, Index #, Type of Document (e.g., Judgment of Divorce).

VI. Contested Matrimonial actions

A. Preliminary Conferences

Counsel must be familiar, and comply, with the provisions of 22 NYCRR § 202.16. **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 any case in which the issues of spousal support or child support are unresolved EACH party shall submit to the Court in advance of the Preliminary Conference, in addition to Statements of Net Worth and the appropriate attachments, completed support worksheets on the NYS Courts official forms.**

The Court expects the parties to agree upon grounds if the action has been brought under DRL § 170(7).

Counsel must have substantive communications 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 at the conference so that the Court can determine if the requested items are necessary and/or to set dates for compliance with the demands. At the Preliminary Conference, Counsel should be able to:

1. Identify the need for any experts.
2. Be prepared to retain any experts.
3. Discuss the fees for same if seeking contribution from the opposing party.

Counsel are to inform their clients of the automatic orders created by

DRL § 236(B)(2)(b) as soon as the attorney-client relationship is formed.

As noted above, parties to matrimonial actions are to appear at all matrimonial conferences unless otherwise directed by the Court.

All motions and cross motions in matrimonial actions are to be made by Order to Show Cause.

Authorization MUST be obtained from the Court prior to making any motions in matrimonial matters.

B. Motions

As noted above in Rule IV(A)(1), 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.

On the return date of any pendente lite motion, the Court will conduct either a Preliminary Conference or conference on the motion, as appropriate.

Any pendente lite motion which does not include a statement of net worth and calculations showing the manner in which the amount of any pendente lite support sought has been calculated **on the official NYS Courts worksheet** will be denied.

C. 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 the attorney for a party. The report(s) shall not be copied or disclosed to any person except as permitted by order of the Court. A party may review the report, but may not possess a copy of the report.

Self-represented litigants may arrange directly with the Judge's Part Clerk to review the 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 violates these restrictions is subject to sanctions.

D. Settlement Conference

The parties must submit the following documents to the Court at the Settlement Conference. Failure to submit the required items may result in the Court determining the issues in favor of the party who complied with these Rules.

- (a) 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 marriage, the names and birth dates of children, the location of any residential real estate and the approximate date of acquisition, approximate cost, and the approximate balance on any mortgage);
- (b) A joint statement of proposed disposition as required by 22 NYCRR § 202.16(h). To the extent that the parties disagree on any item, the plaintiff's position should be set out first, followed by the defendant's position;
- (c) A child support and/or spousal support worksheet, if applicable;
- (d) Updated statements of net worth (with the latest available supporting documents, such as income tax returns, W-2's, brokerage and retirement plan statements);
- (e) The Court may also require submission of excel spreadsheets in matters with an extensive number of assets.

VII. Uncontested/settled Matrimonial Actions

The Court will review all uncontested matrimonial materials submitted on an as received basis. Counsel or self-represented parties will be advised of any deficiencies in the papers submitted. The parties will be notified of any deficiency with the papers submitted which must be cured.

All deficiencies in the papers must be cured by the date in the Court notice or the matter will be dismissed (without prejudice to refile on proper papers).

Counsel or a party seeking to vacate the dismissal shall submit a letter application to the Court requesting vacatur. The letter application must include a proposed order or stipulation vacating the order of dismissal and the document(s) which cure the deficiencies identified in the Court notice.

Where a Stipulation of Settlement or Settlement Agreement is being incorporated into the Judgment of Divorce, **all the provisions of the Stipulation or Agreement must not be copied into the proposed Judgment of Divorce or the Findings of Fact and Conclusions of Law.** Only those provisions required by the form proposed Judgment of Divorce and/or Findings of Fact and Conclusions of Law should be repeated from the Stipulation or Agreement. See the forms which are provided on the nycourts website:

www.nycourts.gov/divorce/divorce_withchildrenunder21.shtml.

It is strongly recommended that the Judgment and Findings of Fact be submitted with an “agreed as to form and content” signature by opposing counsel.

VIII. Trials and Hearings

- A.** The Court has established rules for summary jury trials which are available upon request to Chambers.
- B. Motions in limine:** See provision regarding Pre-trial conferences, above.
- C. Expert Disclosure:** Expert reports must be exchanged within 60 days of the note of issue. Responsive reports must be exchanged within 60 days of receipt of the opposing report.
- D. Timing and Progression.** All hearings and cases assigned to this Part for trial will proceed day-to-day until conclusion, unless the Court directs otherwise.

E. 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 as to the admissibility

of the subpoenaed records. Counsel are also reminded that they are designated agents for service of subpoenas on their clients under CPLR § 2303-a.

Other than those circumstances where an attorney for a party is NOT authorized to issue a subpoena (see CPLR 2302), the Court does not “so order” subpoenas except under unusual circumstances which must be detailed to the Court or where a party is a non-attorney and self-represented.

F. Interpreters

In the event a translator or interpreter is required at trial, counsel shall notify the Part Clerk no later than the Settlement Conference so that timely and appropriate arrangements can be made.

G. 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.

H. Jury Selection

Juries will be selected using “White’s Rules”. (See 22 NYCRR § 202.33). Alternate jurors will be undesignated.

I. Jury Contact

Counsel shall not 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 shall not 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.

Non-party witnesses shall not be in the courtroom during the trial except when they are testifying.

Under no circumstances shall counsel request the court to approve or qualify an expert in front of the jury. Such a request may subject counsel to sanctions.

J. Reading of Exhibits

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

K. Objections

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

L. Use of Videotapes

Any party intending to use a videotape at trial is to submit a copy of the videotape (or other video recording) and transcript of the proceedings, if applicable, to the Court at least 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.

Counsel are strongly encouraged to use video recordings in order to avoid scheduling issues at trial.

M. Trial Notebooks:

Each party shall submit a trial notebook at least 7 days before jury selection, in a loose-leaf binder, containing at a minimum:

1. Witness List.
2. Marked pleadings
3. Expert disclosure/reports
4. Deposition transcripts if any part is to be read at trial
5. Pertinent medical records
6. Requests to charge
7. Verdict sheet
8. Pre-trial memorandums of law if submitted.

IX. Settled and Discontinued Cases

Counsel must notify the Part Clerk by email of the settlement or withdrawal of any action or proceeding immediately upon such settlement or

withdrawal. A copy of the signed Stipulation of Discontinuance shall be uploaded to NYSCEF as soon as possible.

X. Substitution/Discharge of Attorneys

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 a motion, brought by Order to Show Cause pursuant to CPLR § 321.

The Court does not recognize the purported withdrawal by counsel where such withdrawal would result in a party becoming self-represented (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” to withdraw where a party becomes self-represented is specifically prohibited.**

XI. Civility

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. Discourteous behavior (constant interruptions, outbursts or ad hominem attacks for example) will not be tolerated by the Court.

XII. Virtual proceedings

Counsel are expected to log in 5 minutes in advance of the scheduled time. If counsel does not see that the opposing counsel have signed in within 5 minutes of the scheduled time, they should call the absent counsel’s office to alert them.

XIII. Foreclosure Actions:

- A. Motions.** All motions in foreclosure actions must include a proposed order which disposes of the motion or application for the Court’s signature. The proposed order shall be a separate document, not attached to the motion.

The motion templates mandated for residential foreclosure cases statewide where the homeowner has defaulted MUST be used. They are available at http://www.nycourts.gov/admin/OPP/foreclosure_resources.shtml. The Court additionally requires certain paragraphs be added to the Orders of Reference and Judgments of

Foreclosure. Please see the appendices A and B attached to these Part Rules.

- B. Substitution of Referee.** Requests to substitute a Referee shall be made by letter to the Court, NOT by formal motion.
- C. Judgment of Foreclosure and Sale.** All proposed Judgments of foreclosure and Sale submitted to the Court must be on notice to all Defendants and shall comply with the form set forth in the motion templates.
- D.** Servicer information shall be set forth on the face of the proposed Order of Reference and Judgment of Foreclosure and Sale pursuant to RPAPL §§1321 and 1351.
- E.** Amended New Auction Rules for the Ninth Judicial District. Counsel and Referees are directed to familiarize themselves with the Amended New Auction Rules for the Ninth Judicial District. They are available at [New-Auction-Rules-for-the-9th.pdf \(nycourts.gov\)](https://www.nycourts.gov/new-auction-rules-for-the-9th.pdf).

These Rules are subject to revision or modification by the Court.

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APPENDIX A
ORDER OF REFERENCE—ADDITIONAL PARAGRAPHS

ORDERED that pursuant to 22 NYCRR §36.1, the Referee shall be subject to Part 36 of the Rules of the Chief Judge; and it is further

ORDERED that by accepting this appointment, the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR 36), including but not limited to, Section 36.2(d) (“Limitations on appointments based on compensation”), and if the Referee is disqualified from receiving an appointment pursuant to the provisions of Part 36, the Referee shall notify the appointing judge forthwith; and it is further

ORDERED that by accepting this appointment the Referee certifies that he/she is familiar with the duties and responsibilities of a Referee and has experience in such area, and is fully capable and prepared to assume those duties and responsibilities which are commensurate with his/her abilities; and it is further

ORDERED that attorneys or support staff in the Appointee’s office may perform tasks under the Appointee’s direct supervision [unless otherwise directed by the Court], but all substantive appearances and reports must be performed and/or created by the Appointee; and it is further

ORDERED, that upon receipt of this order and UCS Form 872 (Notice of Appointment and Certification of Compliance), the Referee shall complete, execute and return the UCS Form 872 to the Fiduciary Clerk; and it is further

ORDERED that the Referee is entitled to a fee of \$350 for the computation report; \$250.00 for any sale that is canceled on less than 24 hours’ notice to the Referee (Unless the delay is caused by the Referee); \$250.00 for any third-party sale; and \$750.00 upon the sale; and it is further

ORDERED that if the Referee’s fees are anticipated to exceed \$1,100, the Referee must apply [by letter] to the Court for approval of such fees, and the Referee comply with 22 NYCRR §36.4(e), before such fees can be paid; and it is further

ORDERED that Plaintiff is only authorized to pay the Referee fees in excess of \$1,100 upon receipt of an order by the Court authorizing such payment; and it is further

ORDERED that the Plaintiff shall provide the Referee with all necessary paperwork so that the Referee can complete and submit the computation report within 45 days of the date of this Order of Reference; and it is further

ORDERED that Plaintiff shall make application for Judgment of Foreclosure and Sale by Notice of Motion duly served upon the defendant(s), or his/her/their attorney of record, and upon all other parties included in the caption; and it is further

ORDERED that Plaintiff shall make application for Judgment of Foreclosure and Sale no later than 90 days from 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 90 days from the date of this Order shall result in the tolling of interest, and may result in dismissal; and it is further

ORDERED that the closing of title shall take place at the office of the Referee, or at such other location as the Referee shall determine, within forty-five (45) days after such sale unless otherwise stipulated by all parties. The Referee shall transfer title only to the successful bidder at the auction. Any delay or adjournment of the closing date beyond forty-five (45) days may be stipulated among the parties, with the Referees consent, up to ninety (90) days from the date of sale, but any adjournments beyond ninety (90) days may be set only with the approval of this Court; and it is further

ORDERED that this matter is scheduled for a **status conference, in-person, on _____ at 9:30am before this Court.** The purpose of this conference is to determine whether the Referee has completed and submitted the computation report and whether Plaintiff has filed an application for Judgment of Foreclosure and Sale. Appearances by the parties and appointed Referee are required unless: (1) the Referee has completed and submitted the computation report; and (2) Plaintiff has filed an application for Judgment of Foreclosure and Sale; and it is further

ORDERED, ADJUDGED and DECREED that the Plaintiff shall serve a copy of this order with notice of entry upon the owner of the equity of redemption, any tenants named in this action and any other parties entitled to service, including the Referee appointed herein; and it is further

APPENDIX B

JUDGMENT OF FORECLOSURE – ADDITIONAL PARAGRAPHS

ORDERED, ADJUDGED AND DECREED that pursuant to 22 NYCRR §36.1, the Referee shall be subject to Part 36 of the Rules of the Chief Judge; and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment, the Referee certifies that he/she/they is/are familiar with the duties and responsibilities of a Referee and has experience in such area, and is fully capable and prepared to assume those duties and responsibilities which are commensurate with his/her/their abilities; and it is further

ORDERED, ADJUDGED AND DECREED that attorneys or support staff in the appointee's office may perform tasks under the appointee's direct supervision, unless otherwise directed by the Court, but all substantive appearances and reports must be performed and/or created by the appointee; and it is further

ORDERED, ADJUDGED and DECREED that the Referee is entitled to a fee of \$350 for the computation report; \$250.00 for any sale that is canceled on less than 24 hours' notice to the Referee (Unless the delay is caused by the Referee); \$250.00 for any third-party sale; and \$750.00 upon the sale; and it is further

ORDERED, ADJUDGED AND DECREED that if the Referee's fees are anticipated to exceed \$1,100.00, the Referee must apply [by letter] to the Court for approval of such fees, and the Referee comply with 22 NYCRR §36.4(e) before such fees can be paid; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff is only authorized to pay the Referee fees in excess of \$1,100.00 upon receipt of an Order by the Court authorizing such payment; and it is further

ORDERED, ADJUDGED AND DECREED 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, ADJUDGED AND DECREED that on the date of the foreclosure sale, the Referee shall complete the Foreclosure Action Surplus Monies Form, file the completed Form with the Court Clerk and send a copy of the completed Form directly to the Chambers of the undersigned. A fillable version of this Form can be found on the court's website. at: <http://www.nycourts.gov/FORMS/SurplusMoniesFormFillable.pdf>; and it is further;

ORDERED, ADJUDGED AND DECREED that the Referee shall deposit the surplus monies, if any, with the Commissioner of Finance of the County of Dutchess 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, ADJUDGED AND DECREED that the closing of title shall take place at the office of the Referee, or at such other location as the Referee shall determine, within forty-five (45) days after such sale unless otherwise stipulated by all parties. The Referee shall transfer title only to the successful bidder at auction. Any delay or adjournment of the closing date beyond forty-five (45) days may be stipulated among the parties, with the Referee's consent, up to ninety (90) days from the date of sale, but any adjournments beyond ninety (90) days may be set only with the approval of this Court; and it is further

ORDERED, ADJUDGED AND DECREED 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 Dutchess within thirty (30) days after completing the sale and executing the proper conveyance to the purchaser; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff's counsel shall schedule the foreclosure sale by calling the Chief Clerk's Office at (845) 431-1720 OR sending an e-mail to DutchessAuctions@nycourts.gov; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall read and familiarize himself/herself/themselves with the "New Auction Rules for the Ninth Judicial District Effective February 28, 2022," attached hereto as Schedule B, which rules are hereby incorporated into and made part of this Judgment of Foreclosure and Sale; and it is further

ORDERED, ADJUDGED AND DECREED that the foreclosure sale of the mortgaged property shall be conducted in Compliance with the aforesaid New Auction Rules for the Ninth Judicial District and COVID-19 Health Emergency Rules in effect at the time of the auction, including the scheduling of the foreclosure sale; and it is further

ORDERED, ADJUDGED AND DECREED that if the Referee or the Administrative Judge's Office determines that the auction cannot proceed safely in compliance with COVID-19 courthouse protocols, the Referee has the authority to cancel and reschedule the auction, utilizing the same procedures identified above for scheduling an auction; and it is further

ORDERED, ADJUDGED AND DECREED that this matter is scheduled for an in-person **status conference before this Court on _____ at 9:30am.** 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 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 he/she believes the sale will occur.

ORDERED, ADJUDGED and DECREED that the Plaintiff shall serve a copy of this order with notice of entry upon the owner of the equity of redemption, any tenants named in this action and any other parties entitled to service, including the Referee appointed herein; and it is further

Said property is commonly known as _____.

The legal description of the mortgaged property referred to herein is annexed hereto as Schedule A.

The Amended New Auction Rules for the Ninth Judicial District are annexed hereto as Schedule B.