

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

**INDIVIDUAL PART RULES OF
HON. PAUL I. MARX, J.S.C.**

General Information:

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

I. Communications with the Court

A. Correspondence

All correspondence to the Court must be sent ONLY via NYSCEF, unless otherwise directed by the Court. DO NOT send copies of e-filed correspondence to the Court via e-mail or regular mail. DO NOT e-file correspondence between and among counsel and/or self-represented litigants, and DO NOT send a copy to the Court.

Correspondence must bear the full Title and Index Number of the action. It shall be concise and state the relief sought or the action requested to be taken by the Court.

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, or by contacting the Part Clerk.

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. Calendar Call & Conferences

A. General Rules

The Court's calendar will be called at 9:15 a.m. daily, unless otherwise specified by the Court.

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 Chambers by telephone as soon as possible. Unexcused tardy arrivals will not be tolerated.

Counsel who are scheduled to appear before this Court and another Court must communicate that fact to the Part Clerk 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.

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

C. Adjournment of Conferences

A request to adjourn a conference must be made in writing **by email only to the Part Clerk**. DO NOT upload conference adjournment requests to NYSCEF.

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) the length of the adjournment sought or, if on consent, a date all parties are available. **All such communications must be copied to all counsel and self-represented parties.** Requests that are not copied to all other parties will not be acted on.

Where the adjournment sought is not on consent, the requesting party must briefly set forth 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 Part Clerk will advise the requesting party by reply email (with copies to all parties copied on the originating email) whether the requested adjournment has been granted. The parties should not assume that the request for adjournment (even if consented to) has been granted unless specifically advised by the Part Clerk.

D. Preliminary Conference

Upon the Court's receipt of the Preliminary Conference Stipulation, the Court will review it and modify any dates which the Court deems to be inappropriate. The Court will "So Order" the stipulation, as modified, and all counsel and self-represented litigants shall abide by and comply with the Court's discovery schedule and deadlines.

No modifications of the dates in the Preliminary Conference Order are permitted except by Order of the Court.

E. Compliance Conference

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 below in Section F -- Discovery Disputes.

The Court will conduct a Compliance Conference after the date by which disclosure was to be completed as directed in the Preliminary Conference Order.

At the Compliance Conference, the Court will ensure that discovery proceeded as scheduled. The Court may conduct a settlement conference at this time. See Section G *infra*.

If the matter is ready for trial, the Court will direct that a Note of Issue be filed. Counsel shall not file a Note of Issue until directed by the Court.

Please note that this Part does not generally issue a Trial Readiness Order.

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 opposing counsel or self-represented litigant. A pro forma letter does not constitute a good faith effort. There must be actual substantive communication between counsel, either telephonically or in writing, regarding the claimed failure to engage in discovery and the claimed noncompliance or reason for noncompliance.

The parties are NOT to make any motion concerning discovery. If counsel cannot resolve the discovery issue between themselves after a good faith effort, the counsel who believes that discovery is not being conducted in accordance with the Court's Order is to contact the Court by letter to advise of the nature of the dispute and the efforts that have been made to attempt to resolve it. The Court will either resolve the issue by letter endorsed order or by scheduling a conference to address it.

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 from the deposition.

G. Settlement Conference

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 be authorized to enter into binding settlements on terms agreeable to the parties and to the Court.

In all cases where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant as well as the name, claim number and phone number of the adjuster assigned to the matter. In a proper case, the Court may contact the claims adjuster by telephone or direct that the claims adjuster shall appear for a conference.

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 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.

III. Motions & Orders to Show Cause (Temporary Restraining Orders)

A. General Rules

1. Parties may move by Notice of Motion or Order to Show Cause, depending on the exigency of the relief sought.

2. Written applications by Notice of Motion (or Notice of Petition as the case may be) must be made returnable on any Wednesday the Court is in session.

3. Motion papers are limited to Moving Papers, Opposing Papers, and Reply (except that reply papers are not permitted on Orders to Show Cause without advance permission). **There is no Reply permitted to a Cross Motion.**

Sur-Reply papers, including those contained in letter submissions, are not permitted, and will not be considered.

4. All requests to adjourn a motion or extend the briefing schedule on a motion must be made to the Motion Support Part.

5. There will be no oral argument 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 it 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 will inform the parties.

6. Plaintiffs shall designate exhibits by number, defendants shall designate exhibits by letter. Exhibit lettering or numbering should not begin anew for subsequent papers submitted by the same party.

7. Multiple documents shall not be grouped together under a single exhibit. **Each exhibit shall contain only a single document separately uploaded to NYSCEF.** Exhibits shall be specifically referenced in the papers, or they will not be considered.

8. Motions brought pursuant to CPLR §§3211 or 3212 do not stay discovery.

9. Citations to legal authority must be to the official citations.

10. Deposition/Examination Before Trial transcripts included as exhibits must be single sided only. Parties are requested not to submit minusccripts.

11. In non efiled cases, proposed Orders to Show Cause must include a fax number to permit a conformed copy of the signed Order to be sent to the movant.

B. 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.

In a true emergency, the Court, in its discretion, may dispense with the 24-hour notice requirement. If there has been no appearance by opposing counsel, the adverse party is to be provided with notice of the intention to submit an Order to Show Cause as provided by 22 NYCRR § 202.7(f) and is to be advised that he/she has the right to be heard on the application.

C. 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.

D. Summary Judgment Motions

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

If a Summary Judgment motion (or motion to dismiss) is made prior to the completion of discovery, the motion does not stay discovery. The parties are to continue to comply with any Order or Court Notice pertaining to discovery unless otherwise directed by the Court.

Unsigned deposition transcripts will not be considered on motions for Summary Judgment unless it is demonstrated that the transcript was forwarded to the deponent for his/her review and signature in compliance with CPLR § 3116(a). (*See Marmer v IF USA Express Inc.*, 73 AD3d 868 [2nd Dept 2010]).

IV. Trials and Hearings

A. 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.

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

Requests to "So Order" a subpoena must be emailed to Jenna Lazzaro, Esq. at jlazzaro@nycourts.gov after the subpoena has been efiled.

B. 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.

C. 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.

D. 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.

E. 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.

V. Judgments, Decisions and Orders

Where the Court issues a Bench Decision and a party desires a written Decision and 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 Green Acres, LLC*, Index #, Type of Document.

VI. 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 which has been (or will be) submitted to the County Clerk shall be submitted to the Part Clerk so that the matter may be marked disposed.

In those cases where a party is obligated to make payments over time, the parties shall file a Stipulation of Discontinuance **without prejudice**. The Court will not allow counsel to hold the Stipulation of Discontinuance until all payments are made.

VII. 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.

VIII. 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 Law Clerks, 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.

These Rules (Rev. 1-4-2024) are subject to revision or modification by the Court.

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