

WESTCHESTER SUPREME COURT CIVIL CASE MANAGEMENT RULES
Effective December 6, 2021

I. INTRODUCTION

By Order of the Honorable Anne E. Minihan, Administrative Judge of the Ninth Judicial District, and the Honorable Norman St. George, Deputy Chief Administrative Judge for Courts Outside New York City, the Westchester Supreme Court Civil Case Management Rules will apply to civil actions pending in the Supreme Court, Westchester County effective December 6, 2021. The implementation of these Rules coincides with the start of the Thirteenth Term of 2021.

The Rules are intended to promote active and effective case management consistent with the Excellence Initiative enacted by the Honorable Janet DiFiore, Chief Judge of the State of New York. The Rules are designed to achieve and maintain excellence in court operations by eliminating backlogs and delays. The Ninth Judicial District is committed to carrying out the Chief Judge’s Excellence Initiative and delivering justice in a timely and efficient manner to all that enter our courts.

Generally, the Rules provide for an Individual Assignment System (“IAS”) pursuant to 22 NYCRR §202.3(a), supported by three (3) specialized Parts to facilitate operations: a Preliminary Conference Part, a Central Pre-Trial Alternative Dispute Resolution Part and a Trial Assignment Part. Each IAS Justice has been assigned law department staff to assist with conferences, motions and trials. Actions with even numbered index numbers shall be assigned to a court attorney for case management and actions with odd index numbers shall remain with the IAS Justice’s law clerk for case management. A new Motion Support Office shall expedite the processing of motions.

II. GENERAL PROVISIONS

A. COVID-19

Counsel and/or the parties must comply with the directives of the Office of Court Administration with respect to court operations during the COVID-19 pandemic. The Updated Operating Protocols effective June 20, 2021 are available on the Ninth Judicial District’s website at http://inside-ucs.org/courts/9jd/pdfs/9JDUpdated_Operating_Proto_eff063021.pdf.

B. New York State Courts E-filing System (“NYSCEF”)

The Rules include information specific to the New York State Courts e-filing system (NYSCEF) in accordance with the program established by the Chief Administrator of the Courts pursuant to Uniform Rules for the Supreme and County Courts (Uniform Rules) §§202.5-b and 202.5-bb, the Administrative Judge of the Ninth Judicial District and the Westchester County Clerk as Clerk of the Supreme and County Courts. In any matters commenced by e-filing, counsel and unrepresented parties should familiarize themselves with the statewide e-filing rules (Uniform Rule §§ 202.5-b and 202.5-bb – available at www.nycourts.gov/efile). General questions about e-filing should be addressed to the E-Filing Resource Center at nyscef@nycourts.gov. Questions

relating to local e-filing procedures may be addressed to the Civil Calendar Office at (914) 824-5300.

C. Virtual and In-Person Appearances

These Rules shall apply to virtual and in-person appearances. The parties are cautioned to appear on time for virtual and in-person appearances. Defaulting or late appearances by counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. The parties are reminded that they are expected to be courteous to each other and to Court personnel at all times during virtual and in-person appearances.

Virtual appearances may be ordered or permitted by the assigned IAS Justice or as directed by Administrative Order. In the event that a virtual appearance is scheduled, it shall be conducted via Microsoft Teams. A Teams link shall be emailed to all parties prior to the scheduled virtual appearance. In the event that a party does not receive a link for a scheduled virtual appearance, the party shall request a link by e-mailing the assigned IAS Justice's Part clerk on notice to all other parties, no later than two business days before the virtual appearance date. Teams links are sent only to the parties' service e-mail addresses, as listed on their NYSCEF accounts. The Teams links are not sent to any other e-mail addresses, even if the parties have listed additional e-mail addresses on their NYSCEF accounts. It is the responsibility of the parties to ensure that the service e-mail addresses on their NYSCEF accounts are accurate and are properly monitored.

In the event that a party experiences technical difficulties when attempting to access the Teams link and is also unable to utilize the call-in number, the party shall immediately e-mail the assigned IAS Justice's Part clerk on notice to all other parties. The party shall include in the e-mail a cell phone number or other direct telephone number at which the party can be reached. A claim that a party did not receive a Teams link shall not be deemed an adequate excuse in the event that a Teams link was sent to a service e-mail address listed on a party's NYSCEF account. No party or attorney shall record any virtual appearance. No individual, other than counsel and the parties, may participate or be present in the same room during a virtual appearance, unless expressly permitted by the Court.

III. PRELIMINARY CONFERENCE PART RULES

Personnel: Elizabeth Curtin, Preliminary Conference Part Clerk
Office: 8th Floor, Courthouse Tower
Email: PreliminaryConferenceWestchester@nycourts.gov
Phone: (914) 824-5344

A. Requests for Preliminary Conferences

In accordance with 22 NYCRR §202.12 (a), a party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses and telephone numbers of all attorneys appearing in the action; and the nature of

the action. If the action has not been assigned to a judge, the party shall e-file a request for judicial intervention (RJI) together with the request for a preliminary conference.

Upon the e-filing of the RJI and the request for a preliminary conference, the Preliminary Conference Part (PCP) shall issue a Court Notice via NYSCEF setting forth a control date for the submission of a preliminary conference stipulation. The control date shall be within 30 days of the filing of the RJI unless the Court orders otherwise.

In the event that the parties agree upon a discovery schedule, they may submit by the control date a preliminary conference form stipulation. The form stipulation is available at <http://www.nycourts.gov/legacypdfs/courts/9jd/civilCaseMgmt/west-general-civil-preliminary-conf-stip-form.pdf>. The form stipulation must be executed by plaintiff(s) and all answering defendant(s) and uploaded as a “Proposed Stipulation to be So Ordered – Preliminary Conference” via NYSCEF. The fully executed preliminary conference stipulation shall be reviewed to confirm that the parties have designated the proper track (namely 8, 12 or 15 months for the completion of discovery in expedited, standard and complex cases, respectively, as set forth in 22 NYCRR §202.19) and that the schedule proposed by the parties is within the applicable deadline for completion of pre-trial proceedings. If the preliminary conference stipulation is deemed acceptable and so-ordered, it shall be uploaded to the NYSCEF system by the Court.

B. Preliminary Conferences

In the event that a party requires guidance from the Court with respect to the preparation of the preliminary conference stipulation, the party may request a preliminary conference prior to the control date set forth in the Court Notice. The request for a preliminary conference shall be made via e-mail to PreliminaryConferenceWestchester@nycourts.gov, on notice to all parties.

In the event that the parties either fail to upload a preliminary conference stipulation by the control date set forth in the Court Notice or upload a preliminary conference stipulation that is not acceptable to the Court, or request a preliminary conference, a preliminary conference shall be scheduled. The Court shall issue a Notice via NYSCEF specifying the date and time of the preliminary conference, the name of the Justice assigned to the case, whether the conference shall be held virtually or in person, and if in person, the courtroom where the conference shall be held.

Pursuant to 22 NYCRR §202.12 (c), the matters to be addressed at the virtual preliminary conference shall include as appropriate, the simplification and limitation of factual and legal issues; the establishment of a timetable for the completion of all disclosure proceedings; the establishment of the method and scope of any electronic discovery; the addition of other necessary parties; settlement of the action; and removal to a lower court pursuant to CPLR §325. In addition, the applicable discovery track (namely, expedited, standard, or complex) shall be discussed.

Counsel for all parties shall consult with respect to these issues prior to the virtual preliminary conference and shall make a good faith effort to reach agreement in advance of the conference (22 NYCRR §202.23).

C. Adjourning or Advancing Preliminary Conferences

Adjournments of preliminary conferences shall be granted upon a showing of good cause (22 NYCRR §202.10). While a party may upload to NYSCEF a request for an adjournment by selecting NYSCEF document type “Correspondence (Request for Adjournment),” the party must also e-mail the request to the assigned IAS Justice’s Part clerk on notice to all other parties. When practicable, the request for an adjournment shall be made at least two (2) business days before the scheduled conference and shall include two (2) proposed alternative dates for rescheduling the conference, which dates shall be no later than one month following the scheduled virtual preliminary conference. Unless the parties receive confirmation from the Court either via e-mail or through a Microsoft Teams notification that a conference has been rescheduled, the parties shall appear for the conference as originally scheduled.

Any party may seek to advance the date of a preliminary conference upon a showing of special circumstances (22 NYCRR §202.12 [g]). The request to advance the conference date shall be made via e-mail to the assigned IAS Justice’s part clerk, on notice to all other parties.

In the event that a dispositive motion is filed and accompanies the RJI rather than a request for a preliminary conference, the case shall be referred to the PCP, which shall issue a control date for the submission of a preliminary conference stipulation, and the case shall also be assigned to an IAS Justice. Unless otherwise directed by Order of the assigned IAS Justice, the statutory stay in CPLR §3214 for dispositive motions made pursuant to CPLR §§3211, 3212 or 3213 is superceded by these Rules, with the exception of motions made pursuant to CPLR §3211(g). While counsel may agree to submit a preliminary conference stipulation to be so-ordered that defers discovery during the pendency of a dispositive motion, the parties are cautioned that they will be expected to complete all discovery within the designated track and discovery shall not be stayed or otherwise extended due to the pendency of motions.

D. Medical, Dental and Podiatric Malpractice Actions in E-filed Actions

These rules shall apply in medical, dental and podiatric malpractice actions only to the extent that they are not inconsistent with the provisions of 22 NYCRR §202.56. As soon as practicable after the filing via NYSCEF of the notice of medical, dental or podiatric action in accordance with 22 NYCRR §202.56(b), the PCP shall issue a Court Notice via NYSCEF setting forth a control date for the submission of a preliminary conference stipulation. The PCP rules shall also apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR §3407 only to the extent that they are not inconsistent with the provisions of CPLR §3407. In such cases, the request for a preliminary conference may be filed at any time after commencement of the action and shall be accompanied by the physician’s affidavit as required by CPLR §3407 (22 NYCRR §202.12 [l]).

A Preliminary Conference Stipulation and Order specific to Medical, Dental and Podiatric Actions will be utilized for such actions. The form is available at <http://www.nycourts.gov/legacypdfs/courts/9jd/civilCaseMgmt/StipandOrder.pdf>.

E. Presumptive Mediation

The parties shall complete the Presumptive Mediation section in the Preliminary Conference Stipulation. Cases qualifying for Presumptive Mediation shall be referred to mediation utilizing the procedures and forms established by the Ninth Judicial District Rules.

The following cases are deemed to qualify for presumptive mediation:

- (1) Personal injury actions, including motor vehicle accidents, involving claims or insurance coverage of \$50,000.00 or less;
- (2) Collection cases involving claims of \$50,000.00 or less;
- (3) Breach of contract actions related to home improvement or real estate matters involving claims of \$50,000.00 or less;
- (4) Subrogation matters seeking recovery of \$25,000.00 or less;
- (5) Partition actions; and
- (6) Any case which does not fall into the list of cases above, but where all parties request mediation, or where the Court directs the case to go to mediation in the exercise of the Court's discretion.

The Rules regarding Presumptive Mediation are available at

https://www.nycourts.gov/LegacyPDFS/courts/9jd/civilCaseMgmt/Rules/ADRrules_westchester.pdf

F. Compliance Conferences Conducted in IAS Parts

The date of the first Compliance Conference shall be noted on the preliminary conference order. To ensure that a case stays on its designated track, the first compliance conference shall be held approximately one hundred fifty (150) days prior to the date fixed as the last day of discovery. Once a preliminary conference order has been issued, the case will remain on the assigned IAS Justice's inventory for discovery proceedings. Compliance conferences shall be conducted by the assigned IAS Justice's Part. Compliance conferences shall be conducted in actions with even numbered index numbers by the court attorney assigned to the IAS Justice. Compliance conferences in actions with odd index numbers shall be conducted by the IAS Justice's law clerk.

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

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

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

G. Discovery Materials and Required Redaction

Discovery materials are not required to be filed via NYSCEF. However, in any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court unless otherwise specified by statute, rule or part rule.

The parties must comply with the requirements of GBL §399-dd(6), regarding the redaction of social security numbers and the Uniform Civil Rules of the Supreme and County Courts, 22 NYCRR202.5(e), relating to the omission or redaction of confidential personal information, including but not limited to an infant's full name. Failure to comply with these requirements shall result in the issuance of a sealing order, and the parties shall be required to resubmit the documents with appropriate redactions.

IV. MOTIONS AND MOTION SUPPORT OFFICE

Personnel: Gerard DePaulo, Motion Support Clerk
Office: 8th floor Courthouse Tower
Email: MotionSupportWestchester@nycourts.gov
Phone: (914) 824-5343

A. Motion Support Office

In order to expedite the timely disposition, all motions shall be referred to the Motion Support Office for processing and assignment to the IAS Parts. All motions shall be made returnable in the Motion Support Office. With the exception of pre-motion conferences, all inquiries regarding motions, including adjournments, shall be directed to the Motion Support Office.

B. Early Dispositive Motions

If a dispositive motion is filed and accompanies the RJI rather than a request for a preliminary conference, the case shall be referred to the PCP, which shall issue a control date for the submission of a preliminary conference stipulation, and the case shall also be assigned to an IAS Justice. Unless otherwise directed by Order of the assigned IAS Justice, the statutory stay in CPLR §3214 for dispositive motions made pursuant to CPLR §§3211, 3212 or 3213 is superseded by these Rules, except for motions made pursuant to CPLR §3211(g). While counsel may agree to submit a preliminary conference stipulation to be so-ordered that defers discovery during the pendency of a dispositive motion, the parties are cautioned that they will be expected to complete all discovery within the designated track and discovery shall not be stayed or otherwise extended due to the pendency of motions. The parties are cautioned that the deadlines established in compliance conference orders shall not be extended and discovery shall not be stayed or otherwise extended due to the pendency of such motions.

C. Discovery Motions

The parties are cautioned that all directives in preliminary conference orders and compliance conference orders are to be followed and it is expected that pre-trial proceedings will be completed on time, absent good cause. Lack of diligence will not be regarded as a sufficient excuse. Failure to comply with the terms of a preliminary conference order or compliance conference order, and making frivolous motions may result in the imposition of costs or other sanctions on the offending party (22 NYCRR §202.12[f]; 22 NYCRR §202.20-e). Motions relating to a failure to provide discovery or adhere to the preliminary conference order or compliance conference order shall be heard in the assigned IAS Part.

No discovery-related motion (including a motion to dismiss predicated upon a discovery violation and including any discovery cross-motion) may be interposed and e-filed until a pre-motion conference has been requested and held. If a discovery dispute is addressed during a preliminary conference, the preliminary conference may constitute the pre-motion conference; however, no motion papers may be filed until after a Preliminary Conference Order has been issued. The parties shall be expected to attend pre-motion conferences and attempt in good faith to resolve all discovery disputes. Moreover, absent exigent circumstances, the parties are expected to confer in good faith either in-person or by telephone prior to requesting a pre-motion conference (22 NYCRR §202.20- f). Motions filed before a pre-motion conference has been held may be denied unless there is shown good cause why such relief is warranted before the conference is held (22 NYCRR §202.12[h]).

Applications seeking to vacate a Note of Issue or to otherwise challenge readiness for trial shall be made via NYSCEF within twenty (20) days of the service of the Note of Issue as required by 22 NYCRR §202.21(e). Applications made after the twenty (20) day period has expired shall be denied except in the unusual circumstances recognized by 22 NYCRR §202.21(d). Any such motion shall be made returnable and heard in the IAS Part. However, no such motion shall be interposed until a pre-motion conference has been requested and held.

A party may request a pre-motion conference by e-mailing the IAS Part clerk on notice to all other parties. The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. Nothing in these rules shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, to foster the just, expeditious and inexpensive resolution of discovery disputes, pre-motion conferences shall be held to permit the Court the opportunity to resolve issues before motion practice ensues.

D. Return dates and adjournments

The return date for any motion, whether pre-Note of Issue or post-Note of Issue, including motions for summary judgment and other substantive motions, and discovery related motions, once made, may not be adjourned more than three (3) times and such return date may not be adjourned for more than a total of sixty (60) days. Any request for an adjournment may be made in writing to the Motion Support Clerk by e-mail to MotionSupportWestchester@nycourts.gov at least two (2) business days prior to the return date, on notice to all parties. A proposed stipulation of the parties or order shall be filed via NYSCEF when any request for an adjournment is made. As appropriate, the Motion Support Office shall administratively adjourn motions to the motion day specified in the assigned IAS Justice's Part Rules.

In no event shall an adjournment be granted after the time to move or submit opposition or reply papers has expired. It is incumbent upon counsel to ensure that any request for an adjournment of the return date of a motion has been received by the Motion Support Office and approved within the requisite time period. No requests for adjournments shall be addressed to the IAS Parts. Requests for adjournments sent in error to IAS parts will not be processed.

E. Working Copies, Certification and Oral Argument

The length of the motion papers is governed by 22 NYCRR 202.8-b. Motions shall comply with 22 NYCRR 202.8-b and contain a certificate of compliance. Applications with respect to the length of the motion papers shall be directed to the Motion Support Office. In the NYSCEF system, each exhibit to a Notice of Motion shall be uploaded as a separate PDF file. The IAS Parts do not require working copies unless otherwise directed by the IAS Justice in a particular matter. In the event that the IAS Part Justice requires a working copy, the working copy shall have the Confirmation Notice generated by the NYSCEF system firmly fastened thereto as a cover page. Should counsel fail to file a document required to be filed with NYSCEF, that document will not be part of the County Clerk's file and will not be reviewed by the Court.

Absent a specific order to the contrary from the IAS Justice in a particular case or as otherwise provided in the assigned IAS Justice's Part Rules, all motions shall be submitted without oral argument. The scheduling of oral argument shall not result in an adjournment of the return date of any motion.

Motions to be relieved as counsel shall be made by Order to Show Cause returnable in the IAS Part and counsel shall submit a proposed order granting the relief requested (22 NYCRR 202.8-a[b]).

F. Note of Issue and Motions for Summary Judgment

Once discovery is complete or has been deemed waived, the IAS Justice shall issue a Trial Readiness Order pursuant to which plaintiff will be ordered to serve and file via the NYSCEF system a Note of Issue and Certificate of Readiness within twenty (20) days.

Where all parties agree that discovery is complete and request the issuance of a Trial Readiness Order without the necessity of an appearance at a virtual compliance conference, they may submit via the NYSCEF system a signed Trial Readiness Stipulation to such effect to the IAS Justice to be so-ordered. The Trial Readiness Stipulation form is available at: <http://www.nycourts.gov/legacypdfs/courts/9jd/civilCaseMgmt/TrialReadinessOrder.pdf>.

The deadline for any post-note summary judgment motions shall be set forth in the Trial Readiness Order which shall provide that any motion for summary judgment by any party must be made within sixty (60) days following the filing of the Note of Issue. The Trial Readiness Order shall provide that opposition papers must be served and filed via NYSCEF within thirty (30) days of service and filing via the NYSCEF system of motion papers, and reply papers, if any, must be served and filed via NYSCEF within ten (10) days following service of any opposition papers.

The return date for a motion for summary judgment once made may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days. Any request for an adjournment may be made in writing to the Motion Support Clerk by e-mail to MotionSupportWestchester@nycourts.gov at least two (2) business days prior to the return date, on notice to all parties. A proposed stipulation of the parties or order shall be filed via NYSCEF when any request for an adjournment is made.

Counsel are cautioned that untimely motions cannot be made timely by denominating such as cross-motions. The failure of a party to serve and file a motion or cross-motion within the 60-day time period pursuant to these Rules and the Trial Readiness Order shall result in the denial of the untimely motion or cross-motion.

G. Settlement Conferences

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

The parties are cautioned that the all too common practice of appearing before the Court and representing that a settlement has been made will no longer be accepted. When an action is settled, discontinued or otherwise disposed of, counsel or self-represented parties must promptly file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed (22 NYCRR §202.28).

If a cause of action of a minor/infant or a person who has been declared incompetent has been settled, the parties must file a stipulation of settlement subject to an infant compromise order or an incapacitated person compromise order pursuant to CPLR §1207. (CPLR §1207 provides for judicial approval of the settlement of any action commenced on behalf of an infant or incompetent person.)

If an action is settled that alleges that defendant's wrongful act, neglect or default caused decedent's death, the parties must file a stipulation of settlement subject to a wrongful death compromise order pursuant to EPTL§5-4.6. The parties must specify in the stipulation if the application for the wrongful death compromise will be made in the Central Pre-Trial Alternative Dispute Resolution Part (CPT- ADR Part) or the Surrogate's Court.

If a stipulation of discontinuance or stipulation of settlement (subject to a compromise order or wrongful death order) is not filed via NYSCEF prior to the scheduled compliance conference, the parties must appear on the scheduled compliance conference date to report to the Court the status of any such settlement.

If the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement-related issues such as liens, the matter may be set down for an appearance in the IAS Part to ensure that discontinuance is effectuated in accordance with CPLR §2104, CPLR §3217 and CPLR §8020(c). However, the pendency of settlement negotiations will not delay, adjourn or in any way affect the scheduling of discovery proceedings or trials.

V. CENTRAL PRE-TRIAL ALTERNATIVE DISPUTE RESOLUTION PART

Presiding: HON. JOAN B. LEFKOWITZ, J.S.C.
Personnel: Amanda Hall, ADR Part Clerk
Courtroom: 1600
E-mail: CPT-ADRPartWestchester@nycourts.gov
Phone: (914) 824-5350

A. Pre-Trial Alternative Dispute Resolution Conferences

At any time after the filing of a Request For Judicial Intervention, parties may jointly request a settlement conference in the CPT-ADR Part (22 NYCRR §202.29) before the CPT-ADR Part Justice. Such request will be granted in the discretion of the assigned IAS Justice upon finding that such a separate settlement conference would be beneficial to the parties and the court and would further the interests of justice (22 NYCRR §202.29). If the request of the parties is granted by the IAS Justice, the case shall be referred to the CPT-ADR Part by the IAS Justice by email to the CPT-ADR Clerk at CPT-ADRPartWestchester@nycourts.gov.

Conferences are held daily in the CPT-ADR Part commencing at 9:15 a.m. with conferences held in person or virtually by video conferencing/telephone via Microsoft Teams, as directed by the CPT-ADR Part or by Administrative Order.

Any request for an adjournment of a motion pending in an IAS Part shall be made to the Motion Support Office in accordance with these Rules.

Each party shall e-file a CPT-ADR Conference Form within 5 business days of referral by the IAS Justice assigned to the case. The CPT-ADR Conference Form is located on the Ninth Judicial District's website under "CPT-ADR Part" and can be found at: https://www.nycourts.gov/LegacyPDFS/courts/9jd/civilCaseMgmt/CPT_ADR_Form.pdf.

The parties and counsel are cautioned to arrive on time for CPT-ADR settlement conferences as required by 22 NYCRR §202.1(g). Counsel attending CPT-ADR settlement conferences must bring a copy of all documents relevant to the issues of liability and damages, be fully familiar with every aspect of the case, and be expressly authorized to engage in meaningful settlement negotiations (22 NYCRR §202.1[f]). Counsel must have evaluated the case prior to the CPT-ADR conference date and be prepared to negotiate in good faith to effectuate a reasonable settlement. Counsel representing an insured defendant must discuss the case with defendant's insurance adjustor and have authority to settle. If the CPT-ADR Part Justice directs, plaintiff(s) and defendant(s) may be required to appear in person or by video conferencing at a conference in order to consent to any settlement (22 NYCRR §202.26[a]). No answering services or per diem counsel are permitted to attend CPT-ADR conferences.

Additional CPT-ADR conferences, if necessary, shall be calendared at the conclusion of the first CPT-ADR conference. Correspondence regarding scheduling of CPT-ADR conferences, only as expressly permitted herein, shall be filed and transmitted to other parties via the NYSCEF system.

The final CPT-ADR settlement conference scheduled by the CPT-ADR will be the parties' last clear chance to settle the case prior to trial. The parties are cautioned that without approval of the assigned IAS Justice, there will be no further CPT-ADR conferences held in the

CPT-ADR Part prior to the trial date (22 NYCRR §202.29). In no event shall CPT-ADR conferences result in an adjournment of the trial date or any date in a court order unless directed by the court (22 NYCRR §202.10). In the event that a case referred to the CPT-ADR cannot be resolved, the case will be referred to the Trial Assignment Part for the scheduling of a trial.

**B. Stipulations of Discontinuance and Settlement;
Applications for a Compromise Order**

When an action is settled, discontinued or otherwise disposed of and a cause of action has not been asserted on behalf of an infant or a person judicially declared incompetent or for defendant's wrongful act, neglect or default that caused decedent's death, counsel or self-represented parties must promptly file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed (22 NYCRR §202.28).

Applications for a Compromise Order are handled centrally in the CPT-ADR Part. All such applications shall be referred by the IAS Justices to the CPT-ADR Part.

If a cause of action is asserted on behalf of an infant or person judicially declared incompetent or for a defendant's wrongful act, neglect or default that caused decedent's death, the parties must file a stipulation of settlement subject to a compromise order as set forth below. (A sample stipulation of settlement is located on the Ninth Judicial District's website at https://www.nycourts.gov/LegacyPDFS/courts/9jd/PDFs/Stipulation_Settlement-Infant-Compromise-Order.pdf under "FORMS".)

If a stipulation of discontinuance or stipulation of settlement (subject to a compromise order or wrongful death order) is not filed via NYSCEF prior to a scheduled conference before the IAS Part or in the CPT-ADR Part, the parties must appear on the scheduled conference date to report the status of any such settlement.

If a cause of action of an infant or a person who has been judicially declared incompetent has been settled, the parties must file a stipulation of settlement subject to an infant compromise order or an incapacitated person compromise order pursuant to CPLR §1207. The CPT-ADR Part will then place the case on the CPT-ADR calendar for the filing of an Order to Show Cause for an Infant/Incapacitated person compromise with the supporting documents and information required by CPLR §1208, 22 NYCRR §202.67 and the CPT-ADR Part's Rules and Instructions for an Infant/Incapacitated Person Compromise (located at https://www.nycourts.gov/LegacyPDFS/courts/9jd/PDFs/Sample_order_to_show_cause_ICO.pdf). The Order to Show Cause will direct service on all interested lien agencies.

If an action is settled that alleges that defendant's wrongful act, neglect or default caused decedent's death, the parties must file a stipulation of settlement subject to a compromise order pursuant to EPTL §5-4.6 ("wrongful death compromise"). The parties must specify in the

stipulation if the application for the wrongful death compromise will be made in the CPT-ADR Part or the Surrogate's Court.

If the parties elect to make an application for a wrongful death compromise in CPT-ADR Part, the case will be placed on the CPT-ADR Part calendar for the filing of an Order to Show Cause for a Wrongful Death Compromise pursuant to EPTL§5-4.6 with supporting documents and information required by 22 NYCRR §207.38 (a), (b)(1)-(6), and (d). The Order to Show Cause will direct service on all interested lien agencies. The CPT-ADR Part will not allocate the settlement proceeds between causes of action for wrongful death and the decedent's conscious pain and suffering, and shall direct plaintiff(s) to file a petition for allocation and distribution of the net settlement proceeds in the Surrogate's Court (after the payment of any liens on the estate, including funeral costs) (see EPTL§5-4.6 [a][1]-[2]). The case will then be placed on the CPT-ADR Part calendar for the filing of the decree of the Surrogate Court as to allocation and distribution of the net settlement proceeds.

All questions, requests for adjournments or other inquiries regarding a matter pending in the CPT-ADR Part shall be addressed to the CPT-ADR clerk. No inquiries shall be directed to the assigned IAS Justices' chambers.

C. Presumptive ADR/Mediation

The parties are strongly encouraged to use the Westchester County Supreme Court's General Civil Mediation Program.

Information regarding the General Civil Mediation Program may be found at https://www.nycourts.gov/LegacyPDFS/COURTS/9jd/westchester/generalCivilMediation/Mediation_program.pdf

The rules governing the General Civil Mediation Program can be found at https://www.nycourts.gov/LegacyPDFS/courts/9jd/civilCaseMgmt/Rules/ADRrules_westchester.pdf.

However, as set forth in the rules, unless otherwise directed by the Administrative Judge, all deadlines and proceedings, including discovery, motion practice and trials, shall not be extended or stayed during mediation.

VI. TRIAL ASSIGNMENT PART

Presiding: HON. LEWIS J. LUBELL, J.S.C.
Personnel: Meagan Gorton, Trial Ready Part Clerk
Room: 1000
Phone: (914) 824-5392
E-mail: TAPWestchester@nycourts.gov

A. Trial Calendar

A call of the trial calendar will be held promptly at the time assigned to each case in the Trial Assignment Part (TAP) before the TAP Justice. Trial counsel for all parties must appear and be ready to commence trial (and, in cases in which juries have been demanded, to select a jury) or schedule a trial date. No requests for adjournments will be granted, absent unusual and exigent circumstances. Sanctions and/or costs may be imposed on counsel who are not present upon the call of the TAP Calendar. Failure to proceed may result in the striking of the case from the trial calendar, vacating the Note of Issue, dismissal of the complaint or the striking of the answer, or other remedies, including, but not limited to, those set forth in CPLR 3404 and 22 NYCRR § 202.21 and § 202.27. Counsel are cautioned that where the Note of Issue is stricken, no case will be restored to the trial calendar without the filing of a new Note of Issue.

B. Rules Regarding Actual Engagement of Counsel

Attorneys are reminded of the rules regarding actual engagement of counsel (Section 125.1 [g] of the Rules of the Chief Administrator: attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she must produce substitute trial counsel or an affidavit of engagement no later than 72 hours prior to the appearance in TRP or the commencement of the trial. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed). Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced.

C. Trial

Any cases which are not sent out for trial (or jury selection) will be deemed ready and passed to the next available date as directed by the TAP Justice. The TAP will endeavor to send all cases to jury selection, beginning with special preference cases, and then by oldest cases as determined by the date of filing of the Note of Issue. In the event that counsel fail to proceed to select a jury, or timely appear before the assigned IAS Trial Justice, the action may be dismissed or a default taken or other sanction imposed, as appropriate under the circumstances. Every effort will be made to assign the trial to the IAS Justice who had the case previously. However, the TAP Justice shall have discretion to assign the trial to any IAS Justice based upon the needs of the Court.

D. Settlement

The parties are cautioned that the all too common practice of appearing at the trial calendar and representing that a settlement has been made will no longer be accepted. Counsel or self-represented parties must file a stipulation of discontinuance via NYSCEF before the case is marked settled and disposed.

The parties will be permitted to file a stipulation of discontinuance via NYSCEF 72 hours prior to the scheduled trial date and may submit a courtesy copy of the same to the TAP by e-mail to TAPWestchester@nycourts.gov. In the event that the stipulation of discontinuance is filed 72 hours prior to the scheduled trial date, the parties will not be required to appear on the scheduled trial date. If a stipulation of discontinuance is not timely filed, the parties must appear on the scheduled trial date to report to the TAP Justice the status of any such settlement. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement related issues such as liens, the matter may be taken off the Trial Calendar and referred back to the IAS Justice to ensure that discontinuance is effectuated in accordance with CPLR 2104, CPLR 3217 and CPLR 8020 (c).

E. Motions in the TAP Part

1. Adjourments. Any party seeking an adjournment must file via NYSCEF a letter application for a conference at least 14 days prior to the scheduled trial date. Upon the filing of such an application, the TAP will endeavor to schedule a conference without delay in order to consider the application. However, counsel are advised that the filing of such an application does not guarantee a conference or an adjournment.

2. Motions. All motions, other than applications for an adjournment, shall be made by Order to Show Cause and may be referred to the IAS Justice for decision. Counsel are cautioned to make such motions in a timely manner. Motions made on the eve of trial without good cause for the delay may be denied by the TAP Justice.