

**Supreme Court -Westchester County
Rules for Foreclosure Parts**

Presiding:

HON. SAM D. WALKER, JSC
Coordinating Judge for Foreclosure Matters
Ninth Judicial District

Court Attorney-Referees:

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SECTION 1
GENERAL PROVISIONS

A. Purposes

By Order of the Honorable Kathie E. Davidson, Administrative Judge of the Ninth Judicial District, these Rules have been established for foreclosure actions commenced in Supreme Court, Westchester County, effective January 1, 2020.

These Rules are designed to improve the case management of foreclosure actions, consistent with the Excellence Initiative announced by the Chief Judge of the State of New York, Hon. Janet DiFiore. The Excellence Initiative seeks 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 fair and efficient manner to all that enter our courts. These rules are intended to promote the just and timely settlement of foreclosure actions and reduce backlogs.

B. Overview

These Rules shall apply to the following Parts:

Foreclosure Settlement Conference Part ("FSCP") - This Part handles all settlement conferences pursuant to CPLR 3408 and related proceedings, including but not limited to "good faith" hearings whose basis arises while a case is pending in FSCP.

Foreclosure Mandatory Appearance Part ("MAP" or "MAP-FC") - After the FSCP releases an action without a discontinuance, the MAP will handle all further proceedings including but not limited to discovery, trial certification and trial scheduling orders.

Foreclosure Trial Part ("FTP") - If no party timely files a dispositive motion, or if the Court denies all dispositive motions, a trial will be scheduled in the FTP.

C. Equitable Powers

All parties are directed to proceed in good faith in all foreclosure actions. In view of the equitable nature of foreclosure actions, the Court will apply all applicable statutes, rules and regulations, and equitable principles of substantial justice consistent with law. All parties are guided to conduct themselves so as to avoid the appearance of unclean hands, bad faith, unreasonable delay and other potential grounds for equitable relief.

D. Mandatory Electronic Filing; Papers

As of January 17, 2012, residential foreclosure actions in Westchester County must be commenced utilizing the New York State Courts Electronic Filing (NYSCEF) system 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. Foreclosure actions are subject to mandatory e-filing.

Counsel and unrepresented or pro-se parties should refer to the statewide e-filing rules (Uniform Rule §§ 202.5-b and 202.5-bb – available at www.nycourts.gov/efile). Counsel and the parties may also access the Westchester County E-Filing Protocol available at <http://www.courts.state.ny.us/courts/9jd/efile/WestchesterCountyJointProtocols.pdf>. General questions about e-filing may be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov. Questions relating to local e-filing procedures may be addressed to the Civil Calendar Office at (914)824-5300. Unrepresented parties should note that they are not required to participate in the NYSCEF system.

The foreclosure parts do not require working copies unless otherwise directed by the Court in a particular matter. Decisions and/or orders issued will be scanned by court staff into the NYSCEF system, which will immediately transmit notice of the event via the NYSCEF system to all parties and a link to the decision and/or order. In the case of orders, this notice does not constitute service of notice of entry by any party.

E. Contents of Complaints

Each complaint in a residential foreclosure action should include the following:

1. that it involves a residential one-to-four family owner-occupied property;
2. whether the mortgage is considered subprime, high-cost or nontraditional;
3. whether plaintiff served each homeowner with a 90-day notice pursuant to RPAPL 1304 at such homeowner's address of record, and whether such notice was served timely pursuant to such statute;
4. whether plaintiff registered such RPAPL 1304 notice with the Department of Financial Services pursuant to RPAPL 1306, and whether such registration was timely pursuant thereto;
5. that plaintiff is holder in due course of the note and mortgage as of the commencement date; and

6. whether plaintiff is the original holder or acts pursuant to a current and valid assignment of the note and mortgage.

Plaintiffs are encouraged to attach to residential foreclosure complaints true and complete copies of all papers allegedly supporting the complaint such as notes, mortgages, assignments, endorsements, filings thereof with the Office of the County Clerk, notices required by statute or the mortgage instrument, powers of attorney and attorney affirmations of regularity.

When applicable, upon filing the affidavit of service of the summons and complaint with the County Clerk, each plaintiff must file a Request for Judicial Intervention for a Settlement Conference in Residential Foreclosure Actions pursuant to CPLR 3408.

F. Appearances and Substitutions

Except as the Court may otherwise authorize in writing, all counsel, housing counselors, parties and witnesses shall appear in person. On written application for good cause shown made at least two business days in advance of the scheduled appearance, the Court may allow a party, counsel, housing counselor, witness or other representative to attend a proceeding by telephone.

Represented parties must appear by counsel of record; no “co-counsel” appearances shall be recognized. Counsel must file a proper Notice of Appearance at least three (3) business days prior to a scheduled appearance. Substitutions of counsel must be executed by the client(s) if a natural person or otherwise by a duly authorized representative of the clients(s). Trial counsel must be designated by the date of the trial scheduling order. Counsel are reminded that the Court will enforce 22 NYCRR [Rules of the Chief Administrative Judge] section 125.1(g) relating to actual engagement of counsel.

All parties must arrive on time for all proceedings. Defaulting or late arriving counsel, absent adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to proceedings may summarily be subject to sanctions and/or costs.

All appearing parties, counsel and housing counselors must be fully authorized to dispose of the case. Attorneys appearing per diem must have immediate telephone and electronic mail access to attorneys of record. Plaintiff attorneys must have immediate telephone and electronic mail access to a representative of plaintiff or plaintiff’s servicer fully authorized to bind plaintiff and respond to case-related questions from the Court. Violations hereof may result in a finding that such party is unready to proceed. Where a per diem attorney is not fully ready to proceed, the Court may enter an Order banning future per diem appearances.

The defendant shall appear in person or by counsel. If the defendant appears pro se, the Court shall advise the defendant generally of the nature of the action and his or her rights and duties, but will not render legal advice to litigants.

G. Adjournments

Requests for adjournments of conferences scheduled in the FSCP may be made only by email, mail or fax to the attention of the clerk of the FSCP; the Court will not consider a request made by telephone. The request must be received by the Court no less than two (2) full business days prior to the date for which the conference is scheduled. The Court will not consider a request received in violation of this deadline. Any request must indicate the name of attorney/housing counselor/party by whom the request is submitted, and must include: the title and index number of the action, that the request is on consent of all parties, a date to which the parties agree the conference may be adjourned, and that copies of the request have been sent to all parties.

Applications for adjournments of conferences scheduled in the MAP will be entertained only at the call of the calendar, and will not be entertained by mail, fax, e-mail or by telephone. The parties must make every effort to notify their adversaries in advance of their intention to seek an adjournment.

There is no guarantee that a request for adjournment will be granted or that, if granted, the conference will be adjourned to the date requested. The Court will neither respond to a request for adjournment nor confirm whether an adjournment has been granted. Parties requesting an adjournment should check E-Courts, on the Unified Court System website, the day after making the request to confirm whether the adjournment has been granted.

H. Stays

The Court will not suspend or delay proceedings based on unsubstantiated representations relating to stay eligibility. Stays will proceed only in accordance herewith.

In the case of a defendant's death, competent proof of death must be filed, upon which the action will be stayed pending appointment of the decedent's administrator or executor, or another substitute party, pursuant to CPLR 1015 and CPLR 1021. Competent proof of death shall include a death certificate, Surrogate's Court filing or otherwise as the Court may direct.

Before the Court will mark a case stayed for reasons other than a death, the proponent of such stay must file written proof demonstrating its basis such as military status (50 USC §§ 3901 *et seq.*; Military Law §§ 300 *et seq.*), bankruptcy (11 USC § 362[a]) or other qualifying court order (CPLR 2201). In the event of a bankruptcy, counsel shall file on NYSCEF a proper case record from PACER (the U.S. District Court electronic filing system) or such alternative proof as the Court may direct. NYSCEF filings must properly redact confidential personal information (*see* Uniform Rule 202.5[e]).

During a stay, the Court may require the plaintiff to appear and report the status of proceedings to bring about substitution in accordance with law, or to take such other actions as necessary to bring about the lifting of such stay.

I. Settlements; Trial Modifications and Short Sales

The Court actively encourages parties to settle foreclosure actions at all phases of proceedings. The FSCP and its implementing rules support active settlement negotiations. Parties should be aware, however, that upon release from the FSCP, actions will not be stayed for ongoing settlement negotiations. After referral to MAP, parties are encouraged to continue negotiating potential settlement possibilities, but must be prepared to litigate the action in accordance with the law and these Rules.

Before the Court will mark a case settled and disposed, counsel or self-represented parties must file a stipulation of discontinuance/notice of discontinuance or a motion to discontinue. Especially after release from the FSCP, oral representations relating to settlement negotiations or pending settlements will not delay, adjourn or otherwise affect the scheduling of proceedings.

An increasingly common practice is for parties to conclude certain trial modification agreements or other conditional settlements after release from the FSCP. As noted above, while the Court actively encourages settlement, the pendency of a conditional settlement will not stay an action. If an action is proceeding timely, the Court may allow a brief adjournment during the pendency of a trial modification or short sale: such adjournment is not automatic and should not be assumed. Applications for adjournments should be backed by documentary proof and submitted to the clerk timely as with any other adjournment request.

J. “Loss Mitigation”

The Court will not consider a representation that an action is on “loss mitigation” review absent documentation including a detailed and particularized affidavit from an individual having personal knowledge of the file that such “loss mitigation” review is in full compliance with all applicable federal regulations.

This Court will carefully examine any proffer that a file is on “loss mitigation” review. Any party making such a proffer should be prepared to prove, among other things:

1. The particular basis for such “loss mitigation” review;
2. Whether such “loss mitigation” review was initiated by plaintiff, defendant or otherwise;
3. The date on which such “loss mitigation” was sought and when it commenced;
4. The date on which such “loss mitigation” review is projected to be completed;

5. Whether such “loss mitigation” review is the first one for this file, and if not, all relevant facts and circumstances attending each prior “loss mitigation” review; and
6. All other relevant facts and circumstances for such “loss mitigation”

Such proof shall be in the form of a contemporaneous affidavit by a duly authorized representative of plaintiff having and attesting to personal knowledge of the file, and must offer and prove particularized facts relating to such file. Counsel shall transmit such affidavit along with an affirmation that counsel personally reviewed the same along with all evidence in support thereof and concludes that the same supports a non-frivolous proffer of lawful loss mitigation.

Any such proffer shall be subject to review and confirmation by the Court, including but not limited to the affiant’s appearance before the Court, production of evidence before the Court, and close supervision of loss mitigation proceedings. Documentation evidencing “loss mitigation” shall be properly redacted prior to filing the same via NYSCEF.

Violations hereof may be subject to penalties including but not limited to tolling of interest, assessment of attorney’s fees and potential contempt proceedings.

SECTION 2

FORECLOSURE SETTLEMENT CONFERENCE PART (“FSCP”)

A. Introduction

All residential foreclosure actions pending in Westchester County for which the CPLR 3408 conference process is required but has not been completed will be referred to the FSCP. All residential foreclosure actions involving a home loan as defined by RPAPL 1304, in which a defendant is a resident of the underlying property, are subject to this settlement process (*see generally* CPLR 3408).

Defendant(s) are strongly encouraged to seek assistance from a housing counseling agency and/or legal representation prior to attending the settlement conference. To the extent possible, a housing counselor may be available at the conference for consultation.

B. Mandatory RJIs and Conference Scheduling

“At the time that proof of service of the summons and complaint is filed with the county clerk, plaintiff shall file with the county clerk a specialized request for judicial intervention (RJI), on a form prescribed by the Chief Administrator of the Courts, applicable to residential mortgage foreclosure actions covered by this section” (Uniform Rule 202.12-a[b]). Promptly thereafter, the Court will schedule an initial “settlement conference to be held within 60 days after the date of the filing of the RJI” (Uniform Rule 202.12-a[c][1]). When an action is assigned to the FSCP, the Court

will upload to NYSCEF a letter advising all parties of the initial conference date. Unrepresented defendant borrowers who opted out of NYSCEF will receive a copy of the scheduling letter by first-class U.S. Mail.

The Court will make all determinations as to whether a residential foreclosure action is subject to the mandatory settlement conference process under CPLR 3408 and Uniform Rule 202.12-a. Absent the filing with the RJI of an affidavit from the defendant(s)/borrower(s) affirming that the property at issue is not owner-occupied or demonstrating that the action is not otherwise eligible, an initial FSCP conference will be scheduled and any motion filed with the RJI may be summarily denied.

The regular conference calendar for the FSCP is called in the Westchester County Courthouse, courtroom 1803, on Monday, Tuesday, Thursday and Friday, at 9:30 a.m. Parties and/or their representatives must check in with the clerk in courtroom 1803, and cases are called for conference in the order in which both sides have advised the clerk of their appearance. Settlement conferences are conducted in person by Court Attorney-Referees in conference rooms adjacent to courtroom 1803.

Parties or their attorney must appear for an initial conference. Attorneys who have not formally appeared consistent with these Rules may not be permitted to participate in the conference. Prior to the initial conference, plaintiff's counsel must complete a "Foreclosure Settlement Conference Intake Form," copies of which will be provided at check-in.

C. Settlement Proceedings

All statements made whether oral or written, and all information exchanged, at a FSCP conference shall be solely for the purposes of settlement and shall not be deemed admissions of any party with respect to the underlying action.

FSCP settlement discussions will include but are not limited to: determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing the home; evaluating potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to; and other purposes the Court may deem appropriate.

Plaintiff should attend each FSCP conference prepared to discuss the servicer of the loan, loan amount, reinstatement amount, payoff amount, and any investor restrictions applicable to the loan. Plaintiff may be asked to provide evidence of the status of defendant's modification paperwork. Plaintiff should be aware that a case may be adjourned at the Court's discretion for plaintiff to demonstrate compliance herewith. Plaintiff also must provide the Court with the following information: whether an answer has been served and whether a previous action had been filed relating to this loan and, if so, the status and disposition of such action.

Defendant must appear at the settlement conference prepared to discuss the following:

whether the property is residential or commercial, defendant's financial status, the cause of defendant's alleged mortgage default, whether the property is defendant's primary residence, and whether defendant desires to retain the property. Defendant shall be required to provide proof to the Court if requested, and to plaintiff in order to evaluate the possibility of a loan modification.

D. Answers and Defenses

A defendant who fails to interpose an answer to the complaint as of the date of the first FSCP conference "shall be presumed to have a reasonable excuse for such default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived, within thirty days of initial appearance at the settlement conference. The default shall be deemed vacated upon service and filing of an answer" (CPLR 3408[m]).

Defense motions for leave to serve a late answer, or to amend an answer, are subject to the general CPLR 3408(n) bar on motion practice and will not be in order until the action is released from the FSCP consistent therewith. In accordance with law, time during this statutory motion bar will not be considered on any such later-filed motion. Defendants wishing to interpose late answers are encouraged, however, to file any such motions promptly upon release from the FSCP.

A pro se defendant does not waive jurisdictional defenses by appearing in the FSCP.

E. Motion Practice

Pursuant to CPLR 3408(n) and Uniform Rule 202.12-a(c)(7), no motions concerning the underlying residential foreclosure action may be filed with the RJI or while an action is pending in the FSCP. Motions filed prior to FSCP assignment will be held in abeyance while the action is pending in the FSCP (*see id.*). Motions filed in violation hereof may be summarily denied.

If an issue arises during FSCP proceedings relating to compliance with CPLR 3408, Uniform Rule 202.12-a or these Rules – including an alleged lack of good faith – either party may apply to the assigned Court Attorney-Referee for further proceedings.

F. Settlements; Trial Modifications

An action assigned to the FSCP is deemed "settled" when it is resolved by satisfaction, reinstatement or permanent modification of the subject loan, or by the closing of title following an agreed upon short sale or deed-in-lieu transaction. "A [residential foreclosure] plaintiff must file a notice of discontinuance [of the underlying action] and vacatur of the *lis pendens* within ninety days after any settlement agreement or loan modification is fully executed" (CPLR 3408[g]; *see* Uniform Rule 202.12-a[c][8]). Thus, a settled action cannot be marked settled until a notice of discontinuance or stipulation of discontinuance and vacatur of the *lis pendens* has been filed with, and all applicable fees remitted to, the Westchester County Clerk. Rather, at the conclusion of the FSCP conference at which the parties confirm that they reached a settlement, the case may be referred to MAP for the

filing of a notice or stipulation of discontinuance, or a motion to discontinue.

All parties should review section 1(I) of these Rules relating to settlements and trial modifications. While the Court encourages reasonable settlement efforts, the Court will not allow long delays merely because a trial modification or other conditional settlement is pending.

At the conclusion of the conference at which a non-settled action is released, the Court Attorney-Referee will assign the underlying foreclosure action to the MAP. All parties who have served an answer are required to advise the Court Attorney-Referee whether discovery is outstanding or whether discovery shall be demanded upon release from the FSCP. Any party seeking discovery shall promptly file a Request For Preliminary Conference, and to the extent not previously served, serve discovery demands. Discovery which is not timely pursued may be deemed waived. In all other circumstances, the Court Attorney-Referee will direct the plaintiff to proceed with litigation and will schedule a status conference for compliance with the directive in the Mandatory Appearance Part.

SECTION 3 **MANDATORY APPEARANCE PART (“MAP or MAP-FC”)**

A. Introduction

The MAP will provide intensive management of residential foreclosure actions released from the FSCP whether with a proposed settlement until entry of a stipulation of discontinuance, or without settlement for further proceedings pursuant hereto. MAP proceedings will closely supervise the timely completion of discovery, filing of Notes of Issue, making and determination of dispositive motions and the scheduling of trials.

B. Conference Scheduling; Appearances

Calendars for the Mandatory Appearance Part are called in courtroom 800, on Thursdays at 2:00 p.m.

Where a MAP appearance is scheduled for the sole purpose of superintending plaintiff's making of a motion or other filing, plaintiff can avoid such MAP appearance if plaintiff makes such motion or filing at least two (2) full business days before the scheduled appearance.

Plaintiff otherwise must appear at all MAP calendar calls. If plaintiff fails to appear when required at a MAP calendar call, the Court may assess penalties including dismissal (*see* Uniform Rule 202.27).

A defendant need not appear if such defendant executed a stipulation of discontinuance or confession of judgment. There will be no adjournments of actions appearing on a MAP Calendar.

Defendants/borrowers need not appear for actions referred to the MAP after settlement in the FSCP. If plaintiff fails to appear for an action referred to the MAP, the action may be dismissed pursuant to 22 NYCRR 202.27(b) and (c).

All questions or inquiries regarding a matter pending in the Mandatory Appearance Part shall be addressed to the Mandatory Appearance Part Clerk. No inquiries shall be directed to the Justices' IAS chambers.

C. Adjournments

Adjournments of actions appearing on a MAP calendar will not ordinarily be granted. Adjournment requests must be submitted in strict compliance with section 1(G) of these Rules. Adjournment applications on consent will be entertained only at the call of the calendar and will not be entertained by any other means.

D. Discovery; Preliminary Conference and Trial Readiness Orders

A Court Attorney-Referee will supervise all discovery proceedings, if any, in MAP. Discovery must proceed in compliance with this section. A party failing to appear at a MAP calendar call may be deemed to waive discovery in such action.

Discovery not pursued timely may be deemed waived. Any party pursuing discovery shall file a Request for Preliminary Conference which 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 (*see* Uniform Rule 202.12[a]). All parties must follow Preliminary Conference Orders: ongoing settlement discussions or lack of diligence will not constitute good cause for violations thereof. Upon the completion or waiver of discovery, the Court Attorney-Referee shall issue a Trial Readiness Order.

E. Discovery Motions and Pre-Motion Conferences

Any motion relating to discovery – including but not limited to motions pursuant to CPLR 3124 or CPLR 3126, and motions to vacate Trial Readiness Orders and Notes of Issue in contemplation of further discovery – shall proceed consistent herewith.

No motion (including cross-motion) relating to discovery will be in order unless the Court first held a Preliminary Conference, entered a Preliminary Conference Order, and held a pre-motion conference relating to the motion subject. The parties must attend such conferences and attempt in good faith to resolve all discovery disputes without motion practice. Violation of a Preliminary Conference Order, frivolous motions, or other motions in violation of this Rule, may result in the imposition of costs or other sanctions on the offending party (*see* Uniform Rule 202.12[f]).

Nothing in these Rules shall prevent or limit a party from making any discovery-related motion deemed appropriate. However, to foster the just, timely and cost-effective resolution of discovery disputes, pre-motion conferences shall be held to accord the Court an opportunity to resolve issues before motion practice ensues. If a party deems discovery-related motion practice to be necessary, such party shall in writing seek a pre-motion conference. If such pre-motion conference fails to resolve the issue, the Court Attorney-Referee will issue a briefing schedule and the proponent of such motion may so move by Order to Show Cause consistent with such briefing schedule, returnable in the MAP. Failure to move within the time allowed by such briefing schedule may result in a waiver of the issues that were to be raised by the motion. Failure to oppose a motion within the time allowed by such briefing schedule may result in the motion being decided without consideration of opposition. Any motion not filed consistent with the Uniform Rules and these Rules will not be addressed by the Court and will result in an immediate conference.

Unless otherwise directed by Order of the Court, the statutory stay in CPLR 3214 for dispositive motions made pursuant to CPLR 3211, 3212 or 3213 is superseded by these Rules. The parties are cautioned that they will be expected to complete all discovery as ordered and that discovery shall not be stayed or otherwise extended due to the pendency of other motions.

F. Notes of Issue

The Note of Issue and Certificate of Readiness shall be filed within 20 days after service and entry of the Trial Readiness Order. The Court will not accept a stipulation to vacate a Trial Readiness Order or Note of Issue. Applications to vacate a Trial Readiness Order or Note of Issue shall proceed by written request for pre-motion conference within 20 days of service of the Note of Issue (*see* Uniform Rule 202.21[e]), then, upon issuance of a briefing schedule, by Order to Show Cause. Any such application made after this 20-day period shall be denied except in unusual circumstances recognized by Uniform Rule 202.21(d).

If a plaintiff fails to timely file a Note of Issue in accordance herewith, the plaintiff must appear at successive calendar calls and may be served with a CPLR 3216 Notice to Resume Prosecution. A plaintiff that persistently fails to file a Note of Issue without good cause may be assessed penalties including tolling of interest. Where a plaintiff fails to resume prosecution timely, the action is subject to dismissal pursuant to CPLR 3216.

G. Substantive Motions

All motions and cross motions for summary judgment must be made within 45 days after the filing of the Note of Issue. Opposing papers, if any, must be served and filed within 30 days of service and filing of motion papers. Reply papers, if any, must be served and filed within 10 days following service of opposing papers. CPLR 3215 default judgment motions must be filed within one year of the date of default, excluding the time the action was pending in the FSP. No extensions will be granted: general delays or scheduling issues will not constitute good cause to extend these timetables.

The return date for a motion for summary judgment once made may not be extended for more than a total of 30 days. Any request for an adjournment of a summary judgment motion may be made in writing to the assigned IAS Justice. A proposed stipulation of the parties or order shall be filed with the Court when any request for an adjournment is made.

Untimely motions cannot be made timely by denominating them as cross motions. Failure to serve and file a motion or cross motion within the 45-day time period pursuant to these Rules and the Trial Readiness Order shall result in denial of the untimely motion or cross motion.

In no event will the Court adjourn a summary judgment motion after the time to move or submit opposition or reply papers expires. It is incumbent on counsel and *pro se* parties to ensure that the Court receives and approves any request to adjourn the return date of a summary judgment motion within the requisite time period.

Substantive motions do not require a pre-motion conference. If a substantive motion is filed prior to a scheduled MAP appearance, the Court may waive such appearance and adjourn the conference until the Court decides the pending motion. Plaintiffs are cautioned to file any applications as directed. Plaintiffs are cautioned that the failure to proceed may serve as a basis for a motion to dismiss for unreasonably neglecting to proceed.

Where no defendant timely answered the complaint and plaintiff failed timely to move for default judgment, the Court may “dismiss the complaint as abandoned, without costs, upon its own initiative” (CPLR 3215[c]).

Where the Court grants plaintiff summary judgment or otherwise appoints a referee to compute, such Order will refer the matter to MAP for further proceedings.

SECTION 4 **FORECLOSURE TRIAL PART (“FTP”)**

A. Trial Scheduling

If no party timely files a dispositive motion, or if the Court denies all dispositive motions, the Court Attorney-Referee will enter a Trial Scheduling Order and set a trial date. Trial dates will be no earlier than two months after the Trial Scheduling Order in accordance with the rules on actual engagement (*see* 22 NYCRR [Rules of the Chief Administrative Judge] § 125.1[g]).

B. Interpreters

If counsel or defendants *pro se* anticipate that any party or witness may require an interpreter, a request for an interpreter should be made at the time of scheduling the trial.

C. Trial Appearances; Adjournments

Attorneys designated as trial counsel must appear for trial on the date specified in the Trial Scheduling Order. If any such attorney is actually engaged on trial elsewhere, he or she must produce substitute trial counsel. If plaintiff's trial counsel or substitute trial counsel is unready to try the case on the scheduled date, the Court may dismiss the action or impose sanctions; if defense counsel or defendant *pro se* is unready to try the case on the scheduled date, the Court may strike the answer and enter default judgment (*see e.g.* CPLR 3404; Uniform Rules 202.21, 202.27). Attorneys are cautioned that rules regarding actual engagement (22 NYCRR [Rules of the Chief Administrative Judge] § 125.1[g]) will be strictly enforced.

Parties are cautioned that trial dates are firm dates. The pendency of settlement discussions, or the achievement of settlements in principle, will not constitute grounds to delay trial. Unless a stipulation of discontinuance is sooner filed, trial will proceed on the day specified in the Trial Scheduling Order. No adjournment requests will be granted absent unusual and exigent circumstances.

All questions, requests for adjournments or other inquiries regarding trials shall be addressed to the Foreclosure Trial Part clerk. No inquiries shall be directed to the IAS Justice's chambers.

D. Trials; Evidence

Court Attorney-Referees will preside over all trials in the Foreclosure Trial Part, serving in a hear and report capacity (or in a hear and determine capacity if the parties so stipulate pursuant to CPLR 4317[a]). Trials will continue day to day unless otherwise ordered by the Court.

All applicable rules of evidence will apply. Counsel and defendants *pro se* may object, argue and voir dire. The Court Attorney-Referee will sustain objections if a question is patently improper, a document offered into evidence is patently inadmissible, or proper foundation was not laid. The Court will make ultimate determinations of admissibility and weight on report of the Court Attorney-Referee and any related motion practice in accordance with law.

The Court will retain all items admitted into evidence both between sessions of trial and at the conclusion of proceedings, unless otherwise ordered by the Court.

E. Advance Preparation; Exhibits; Witnesses

All parties are requested to meet before the trial date to discuss potential exhibits and to consider such time-saving stipulations (e.g. marking and admitting potential exhibits) as they may determine. At the start of trial proceedings, parties should alert the clerk as to documents to

be marked for identification purposes. Unless explicitly authorized by the Court in writing or on the record at the start of trial, all witnesses must be physically present in the courtroom and ready to proceed.

F. No Ex Parte Communications

The Court Attorney-Referee will not entertain ex parte communications except where such communications would be permitted if made to a Justice of the Court.

G. Discontinuances; Consent Judgments

Once a trial begins, a stipulation to discontinue is effective only if so-ordered by the Court (*see* CPLR 3217[b]). In support of settlement, the parties may propose a confession of judgment to be so-ordered by the Court (*see* CPLR 3218).

Unless a stipulation of discontinuance or confession of judgment has been fully submitted, all parties must proceed on the trial date.

H. Post-Trial Proceedings Upon Report

The Court Attorney-Referee who conducted the trial shall file a report with proposed findings of fact and conclusions of law within 30 days after receiving the transcript of the trial proceedings (*see* CPLR 4320).

Any plaintiff motion to confirm or reject the report of the Court Attorney-Referee shall be brought within 15 days after such report is filed (*see* CPLR 4403). Any defendant motion to confirm or reject the report of the Court Attorney-Referee shall be brought within 30 days after such report is filed (*see* Uniform Rule 202.44[a]). If no party timely moves as specified above, the Court, on its own motion, shall issue its determination (*see* Uniform Rule 202.44[b]).

I. Proceedings Upon References to Compute

If the Court orders judgment to plaintiff (whether following a dispositive motion or after trial), the Court will set one or more appearance dates in MAP, no less than four months after entry of such order, to monitor compliance therewith and superintend further proceedings. Such further proceedings will include but not be limited to matters before the referee appointed to compute, and motions to confirm such report and enter judgment of foreclosure and sale. The Court may direct plaintiffs to file such motions, subject to enforcement by the Court.

THESE RULES ARE SUBJECT TO REVISION OR MODIFICATION BY THE COURT.