

## **LOCAL COURT RULES OF THE HONORABLE LISA M. FISHER, J.S.C.**

**Chambers Phone Number:** (518) 625-3135

**Chambers Address:** Supreme Court Chambers  
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Catskill, New York 12414

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**Law Clerk:** Nicholas A. Battaglia, Esq.

**Secretary:** Kathleen D. DeCapita

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**The Court does not tolerate undignified or discourteous conduct. All parties and counsel are reminded and directed to New York Rules of Professional Conduct Rule 3.3 (f) (2), and specifically Comment 13.**

### **Rule 1 – SCOPE AND APPLICABILITY OF THESE RULES**

- (A) These Local Rules apply to all civil actions. There are additional rules for matrimonial and foreclosure matters which are governed in the Preliminary Conference Scheduling Order. These rules seek to promote the efficient and impartial administration of justice and to be in harmony with the controlling statutes and rules, including the rules of the Third Judicial District.
- (B) Files reassigned to Chambers, particularly at the time of trial, may place the parties in violation of multiple Local Rules by default (*i.e.*, trial submissions). If this is the case, please contact Chambers. Parties will not be penalized for these inadvertent violations.

### **Rule 2 – COMMUNICATIONS**

- (A) Communications should be made via e-mail to FisherChambers@nycourts.gov. For any decision-making requests (*e.g.*, adjournments, conferences, disclosure issues, etc.), the Court will ONLY entertain such requests via writing to Chambers' e-mail address at FisherChambers@nycourts.gov.
- a. **Do not fax voluminous documents to Chambers.**
  - b. **Do not fax and e-mail documents, ONLY e-mail the documents.**

- (B) All communication to the Court must be carbon copied to all parties; failure to do so will result in such document not being read, and a reminder to counsel to resend while simultaneously serving all parties. This requires e-mails to Chambers to be carbon copied to all counsel.
- (C) Documents that do not show contemporaneous service of all adversaries will be returned to the sender without being read.
- (D) If you do not know your adversaries' e-mail address, you may simultaneously serve via facsimile but must indicate such on your correspondence to the Court.
- (E) **Return Envelopes:** A party **must** submit a pre-paid, self-addressed return envelope to the Court anytime a party submits correspondence, orders, or documents to the Court which require the Court to return them back to the sender. For example, proposed orders, judgments (*i.e.*, default judgment or of divorce), or decisions on motions (*i.e.*, motions for summary judgment or order of reference). If you fail to do this, the Court will hold the documents for pick-up or until the proper envelope is received.

### **Rule 3 – REQUESTS FOR ADJOURNMENTS**

- (A) Prior to making an adjournment request of the Court, a party must contact all other counsel to determine their position with respect to same and obtain at least three (3) alternative dates amenable to all parties.
- (B) The requesting party should then contact the Court via e-mail with all three (3) dates along with the reason for the adjournment request, carbon copying all opposing counsel on the requesting e-mail.
- (C) **ULSTER COUNTY CASES:** Justice Fisher is always in Ulster County Supreme Court on Tuesdays. All requests for an adjournment must be on a Tuesday. Other dates are available but change weekly.
- (D) **Matters scheduled for oral argument or a conference on a motion cannot be adjourned on consent, and must be adjourned with leave from Court.**

### **Rule 4 – ACCOMMODATIONS**

- (A) Counsel must immediately inform the Court whenever a party, witness, expert, or counsel requires any accommodations. Including but not limited to requests for foreign

language or sign language interpreters, or accommodations for disabilities such as hearing, sight, walking, or any other accommodations.

**(B)** The Court will assist litigants with such requests, however, keep in mind that this process may take some time to achieve and should not be requested at the last moment before a conference or proceeding.

**(C)** To notify the Court of a request for accommodations, please contact the Court via telephone for further instructions. An e-mail correspondence to Chambers may also be issued, but it is best to first contact the Court via telephone first for accommodations.

#### **Rule 5 – NOTICE OF APPEARANCE**

Within one week of a written notification of assignment of Justice Lisa M. Fisher or written notification of a Preliminary Conference, whichever occurs first, each party's attorney must file via e-mail to the Court a Notice of Appearance which includes a list of the following:

- 1) All attorneys assigned to the file (partners, of counsel, and associates);
- 2) The name of the main secretary or paralegal assigned to the file;
- 3) The firm affiliation with mailing address, telephone number, facsimile number, and e-mail address of all individuals listed above; and
- 4) A written acknowledgment sent to Chambers that counsel is familiar with these Rules and the Rules of the Third Judicial District and, if not, will obtain a copy of said Rules and familiarize himself or herself with said Rules prior to any submissions.

#### **Rule 6 – CHANGE OF ATTORNEYS**

**(A)** An attorney seeking to withdraw from a case must move by Order to Show Cause whenever the granting of such application would render the party to be self-represented. The grounds for withdrawal under the ethical rules must be noted on the Order to Show Cause. All applications to be relieved of counsel which would render a party to be self-represented require personal appearances.

**(B)** If a party is merely changing attorneys from one to another, a stipulation may be used by the parties. Please properly file such stipulation pursuant to the CPLR and other rules and regulations to the County Clerk.

(C) **Notice to Court:** Any stipulation filed with the County Clerk must be simultaneously include an e-mail courtesy copy to Chambers.

**Rule 7 –PRELIMINARY CONFERENCES**

(A) **Statement of Contentions:** In order to ensure a productive and meaningful conference, initial court conferences require at least two (2) business days before the conference a statement addressing the following:

- i. The relevant facts;
- ii. Contentions of your party;
- iii. The status of disclosure;
- iv. Disclosure issues, anticipated or otherwise;
- v. Settlement demands or offers made; and
- vi. Any other relevant matters which you would like to discuss at the conference.

(B) **Copy of Pleadings:** Prior to the conference, each party should submit a copy of its Bill of Particulars to Chambers. This must be sent electronically to the Court at FisherChambers@nycourts.gov. A party may send electronically any other pleadings it wants the Court to review. Any electronic submissions to Chambers must be simultaneously carbon copied to all parties. Please do not mail or fax any pleadings to the Court—e-mail only.

(C) **Preliminary Conference Orders:** Prior to the Preliminary Conference, the parties should refer and personally discuss the topics of the Preliminary Conference Order. The parties should determine prospective dates which are mutually agreeable for all disclosure, including depositions. **APPEARANCES ARE NOT EXCUSED BY THE FILING OF A PROPOSED PRELIMINARY CONFERENCE ORDER PRIOR TO THE SCHEDULED CONFERENCE DATE; ATTORNEYS MUST BE PRESENT FOR THE PRELIMINARY CONFERENCE.**

(D) **If a deadline in any Order needs to be extended, the party requesting the extension must request the extension before the deadline expires.**

(E) Failure to comply with Preliminary Conference/Discovery Orders Order may result in the Court taking the appropriate actions under CPLR § 3126 and 22 NYCRR § 202.27, including striking the offending party' pleading.

**Rule 8 – EXPERT DISCLOSURE AND NOTE OF ISSUE**

**(A) Plaintiff’s Papers:** Pursuant to the Rules of the Third Judicial District, expert disclosure shall be served by the Plaintiff before or at the filing of the Note of Issue and Certificate of Readiness.

- i. The Note of Issue shall not be filed prior to completion of all disclosure. A Plaintiff filing the Note of Issue must simultaneously submit their expert disclosure.
- ii. The Court will **NOT** issue a trial date until the Note of Issue has been properly filed as outlined above. **NO EXCEPTIONS.** It is recommended that the Plaintiff provide the Court with a copy of the Note of Issue as soon as practicable.

**(B) Defendant’s Papers:** The Defendant’s expert disclosure shall be served on or before forty-five (45) days after service of Plaintiff’s expert disclosure. A motion for summary judgment prior to Defendant’s expert disclosure does **NOT** stay or otherwise delay this time period; Defendant must still comply by serving its expert disclosure within forty-five (45) days of Plaintiff’s expert disclosure. **NO STAYS WILL BE GRANTED.** Failure to comply may result in preclusion.

**(C) Experts at trial *must* bring their *entire* file and all documents they used to formulate an opinion. If they fail to do so, they may be limited or precluded from testifying at trial as to that issue—or at all—based on the prejudice to the opposing party and on the discretion of the Judge.**

**Rule 9 – MOTIONS AND ORDERS TO SHOW CAUSE**

**(A) Parties may file motions on any business day and set any return date they wish. All motions, even on default or *ex parte*, must have a notice of motion setting forth a return date, unless the application is brought by order to show cause.** No personal appearances are required on the return date unless directed by the Court or requested by a party. If requested, the Court will confirm via e-mail. If no confirmation is received from the Court, please contact Chambers.

- i. If a party is requesting oral argument, a party must request oral argument on their notice of motion. After the Court reviews the pending motion, the Court

may set an oral argument date if the Court deems it necessary under the NYCRR.

- ii. Requesting oral argument does not guarantee the Court will schedule oral argument. Only if the Court finds oral argument necessary will the Court schedule same.

(B) Orders to Show Cause may be submitted to the Court via e-mail or U.S. Mail, but for prompt attention should be presented in person to be signed and completed, then filed with the County Clerk. **It is requested that a party personally appearing to Chambers to have an Order to Show Cause signed first call Chambers to ensure Justice Fisher is not out of county.**

(C) **Disclosure Motions:** All disclosure-related motions *require* a conference *prior to filing*. Failing to have a conference prior to filing a disclosure motion, absent exigent circumstances, will automatically result in the dismissal without prejudice of the motion; this is a condition precedent to filing a motion. This includes a motion to compel, preclude, or protect.

(D) All motion papers must be numbered consecutively at the bottom of the page. All paragraphs in affidavits must be numbered. All motion papers must be printed on one-side only; **do not print pages (even exhibits) on both side of the paper.**

(E) All exhibits required to decide a motion or referred in motion papers must be attached. These exhibits *must* be tabbed and consecutively labeled alphabetically or numerically. **Separating exhibits with colored sheets is insufficient to fulfil this requirement.** All exhibits must be bound together and affixed to their respective motion document (*i.e.*, exhibits to expert affidavit must be bound with that affidavit; exhibits to an attorney affirmation must be bound with such affirmation).

- i. For exhibits consisting of any video recording, audio, or color photographs, you may submit an electronic courtesy copy to preserve the color and clarity. Please see subdiv. (F) (i), *infra*.

(F) **Proposed Orders:** All orders or documents (*i.e.*, special needs trust) submitted for Court signature **must be separated and standing alone**; it should not be stapled together as a part of a large motion or included as an exhibit to a motion.

**(G) Courtesy copies:** Courtesy copies may **ONLY** be submitted to Chambers electronically as a PDF, to [FisherChambers@nycourts.gov](mailto:FisherChambers@nycourts.gov). Simultaneously also send via carbon copy any electronic courtesy copies to opposing counsel. **Do not send hardcopy courtesy copies to Chambers.**

- i. For exhibits consisting of any video recording, audio, or color photographs, please follow normal submissions rules to the County Clerk. Please download videos to CD, not USB. Videos or color photographs may also be sent to Chambers electronically as a PDF to [FisherChambers@nycourts.gov](mailto:FisherChambers@nycourts.gov). Any audio recordings must be accompanied by a transcript. Simultaneously also send any electronic courtesy copies to opposing counsel. **Do not send hardcopy courtesy copies to Chambers.** Submitting a courtesy copy of a motion does not excuse a party from properly filing the original motion papers with the County Clerk's Office and the Court Clerk's Office.

**(H) Sur-replies:** Sur-replies are strongly discouraged and must be requested from the Court *prior* to its submission. Any Sur-reply where permission is not granted will be ignored.

**(I) Dispositive Motions** – All dispositive motions are required to be **filed** (not served, but filed with the County Clerk's office and timestamped) on or before 60 days after the filing of the note of issue, unless otherwise ordered.

**(J) NO MOTION SHALL BE ADJOURNED LESS THAN 90 DAYS BEFORE TRIAL.**

**(K) Foreign Jurisdiction Cases** – All motions or applications in matters applying a foreign or other jurisdiction's law(s), such as another State's law which may apply in the case or which controls due to a choice of law issue, must be supported with legal support and arguments from that jurisdiction. Do not assume the Court knows the foreign standard, and all standards must be broken down, cited to, and supported with legal arguments (*i.e.*, this is a New York court which does not know the Massachusetts standard of summary judgment; a motion for summary judgment applying Massachusetts law must clearly set forth the standard with legal support).

- i. All cited cases, statutes, and legal support must be downloaded and e-mailed to chambers on *every* motion applying a foreign jurisdiction's law.
- ii. Failure to comply will result in the automatic denial of the motion or application, with leave to properly re-file.

**(L) No Copying of Motions** – Chambers does not produce copies of any motions, pending or decided, for parties or litigants. Contact the County Clerk’s office or, if the County Clerk does not have a copy, contact the movant. Under no circumstances will the Court produce copies of any motion.

**Rule 10 –PART 1/SETTLEMENT CONFERENCES**

**(A)** Counsel attending Part 1 Settlement Conference must be fully familiar with the case and have settlement authority. Clients *must* be present at the Part 1 Settlement conference. For the purposes of this subsection, a client includes an insurance adjuster or representative with full knowledge of the file and full authority to settle.

- i. Undue Hardship Exception:** If a client has a severe hardship, such as an extremely painful medical condition, his or her party may contact the Court to request an undue hardship to participate by telephone. However, the party witness to appear by phone must provide the Court with a **landline phone number** prior to the appearance date. **No cellular lines will be permitted.** The Court reserves the right to request the presence of any party, including one with an undue hardship, even if the Court initially grants the exception.

**a.**An undue hardship shall not include a far travel distance to the Court.

**(B)** Local Counsel **CANNOT** be used for Part 1 settlement conferences in any matter without express, written permission of Chambers.

**(C) Statement of Contentions:** An updated statement of contentions must be provided ten (10) business days prior to the Part 1 Settlement Conference. It must address the requirements of Rule 7.0 (A) of these Local Rules, and it must address the following:

- i.** Length of trial;
- ii.** Anticipated evidentiary issues;
- iii.** List of known trial issues;
- iv.** Settlement demands or offers;
- v.** Evidence consented to which should be pre-marked; and
- vi.** Any other relevant matters you would like the Court to address.



**Rule 11 – PRE-TRIAL CONFERENCES AND TRIAL SUBMISSIONS**

(A) All trial submissions must be submitted in advance of the trial date. Submissions which must be submitted two weeks prior to the first day of trial/jury selection (unless ordered otherwise by the Court, *i.e.*, in a Trial Order) or at the Pre-trial Conference, whichever occurs first, include the following:

- i. Motions in *limine* of known issues;
- ii. A copy of all trial subpoenas (ad testificandum and duces tecum);
- iii. Jury instructions (PJI proposed jury instructions; via e-mail in Microsoft Word format);
- iv. Proposed Jury verdict sheets (via e-mail in Microsoft Word format;
- v. Evidence consented to by both parties which should be pre-marked prior to the start of trial. All Exhibits must be pre-marked;
- vi. Witness list;
- vii. List of all known evidentiary issues or issues that will arise at trial;
- viii. Medical records/paper records to the Court; and
- ix. Evidence list of all evidence to be offered by that party.

(B) Incomplete submissions of any items enumerated in subdiv. (A), may result in preclusion if material alterations are made, particularly as to the witness list and evidence list. Last minute amendments are not permitted without leave of Court. Deceptive practice will not be tolerated.

**Rule 12 – ISSUES AT TRIAL**

(A) All parties should draft the jury instructions together and submit to the Court two weeks prior to trial via e-mail in Microsoft Word format.

(B) All parties should draft the verdict sheet together and submit to the Court two weeks prior to trial via e-mail in Microsoft Word format.

(C) **Jury Selection:** Jury selection shall follow the Court rules. The modified struck system shall be followed. The Court may preside over a portion of or the entire jury selection process. Time limits on counsel may be imposed. Counsel are to confine their voir dire questions to the qualifications of the jurors.

- (D) It is customary for juries to be picked in the morning and the parties ready to deliver their opening statements after lunch, and possibly their first witness if time permits.
- i. It shall not be an excuse that a party is unable to proceed because a witness is unavailable on a certain date during the schedule days of trial. The Court will not wait for witnesses to become available and the Court will proceed with the time allotted for the trial. **There will be no gaps in time during the trial week to wait for the availability of a witness.**
- (E) Unless otherwise advised by the Court, trials shall commence at 9:15 AM to 4:30 PM, with a one hour break for lunch.
- (F) **Objections:** Counsel must stand to object during the trial and briefly state the grounds for the objection without elaboration, unless prompted from the Court. For instance: Objection—foundation; or Objection—leading. No speaking objections unless requested by the Court.

**Rule – 13 – POST-TRIAL SUBMISSIONS**

- (A) Post-trial motions must be presented in writing. A party may make an oral motion post-trial to preserve its rights, but must follow-up with a written motion.
- (B) All post-trial motions are required to be served on or before 30 days after receipt of the transcript, unless otherwise ordered by the Court.
- (C) **Non-Jury Trials:** Each party is required to submit a post-trial brief on or before 60 days after receipt of the transcript. The brief should mimic an appellate brief and include a findings of fact section and legal analysis/memorandum section. It is not required to give an issue presented, table of contents, or table of authorities, just a fact section and legal analysis section. The findings of fact **must** include citations to the transcript. Annexed thereto must be the party’s pleadings (complaint or answer, bill of particulars, notices to admit, etc.). If a party is using authorities that are not available on Westlaw, a copy of each case, statute, regulation, or other legal authority cited to must be provided to the Court—but only if the sources are not readily available or easily obtainable; when in doubt, check with chambers. A party may forward such legal authority via e-mail to [FisherChambers@nycourts.gov](mailto:FisherChambers@nycourts.gov).

(D) Non-Jury Trials: The parties may consent to submit written summations. Written summations are due 30 days from the date of the conclusion of the trial. There is no delay for the transcript with written summation because summation are typically given at the close of trial without the benefit of a transcript.

**Rule – 14 – SETTLEMENT**

Whenever a matter is settled, the parties must immediately notify Chambers of the settlement **and the settlement amount and/or terms**. Filing a Stipulation of Discontinuance will *not* be deemed compliance with this Rule. Even if a settlement is confidential, this Court requires the settlement amount to be provided to Chambers in confidence. This helps the Court assess other matters before it and to award reasonable compensation in similar matters. The Court will not breach the confidential nature of a settlement.

**Rule – 15 – BANKRUPTCY**

If the filing of bankruptcy is claimed to impose a stay on any aspect of a pending matter, the party so asserting must immediately notify Chambers and counsel of the claim. The adversary must immediately notify Chambers whether he or she disputes the stay.

**Rule – 16 – FORECLOSURE MATTERS**

(A) A party make a written request to the Court to appear by local counsel, however that party must advise the Court 48 hours in advance of the Court appearance of the name and phone number of the attorney appearing on their behalf. Any local counsel appearing on the party's behalf must have current, detailed information regarding the file to ensure a productive and meaningful conference.

(B) The premise behind allowing a party to appear by local counsel is to extend a courtesy to counsel located outside of the jurisdiction or with a scheduling conflict. Since the Court is extending this courtesy, the Court requires local counsel to be on time. Failure to appear on time will result in monetary sanctions pursuant to 22 NYCRR § 130-1.1.

(C) No telephone appearances will be allowed by local counsel.

(D) Proposed orders submitted for the Court's signature must be submitted as a separate document from the motion.

**Rule – 17 – TAX CERTIORARI MATTERS**

(A) The parties are allowed to submit a proposed disclosure order for signature in lieu of a conference so long as same provides for deadlines for the following:

- i. Filing of petitioner’s income and expense statement;
- ii. Deadline for petitioner to file an appraisal with the Court; and
- iii. Deadline for respondent to file an appraisal with the Court.

(B) Upon receipt of the last appraisal, the Court set a date for a settlement conference.

(C) If for some reason the parties need the assistance of the Court, they are always welcome to contact the Court for an earlier conference date (*i.e.*, one party is noncompliant with a deadline).