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**HONORABLE VINCENT W. VERSACI
ACTING SUPREME COURT JUSTICE**

**INDIVIDUAL PART RULES
(Adopted July 1, 2015)**

These Part Rules are for matters assigned to Hon. Vincent W. Versaci as Acting Justice of the Supreme Court. These rules are not intended to supplant, but instead to supplement and highlight those set forth at 22 NYCRR Part 202. If any issue is not specifically addressed herein, counsel is directed to the relevant Uniform Rule or the Civil Practice Law and Rules for appropriate direction.

PRELIMINARY CONFERENCES

- (a) A party may request a preliminary conference any time after issue has been joined. The Court will endeavor to schedule a preliminary conference within forty-five (45) days after a Request for Judicial Intervention ("RJI") requesting a preliminary conference has been filed. The Court may also schedule a preliminary conference *sua sponte* at any time after an RJI has been filed.
- (b) The Court will notify counsel/self-represented litigants that the Court has scheduled a preliminary conference via an Order Directing Preliminary Conference. Unless otherwise directed by the Court, personal appearance by counsel/self-represented litigants is mandatory. Any scheduling conflicts are to be resolved well in advance of the day that the case is on the Court's calendar. **NO EX PARTE COMMUNICATIONS WILL BE ACCEPTED.**
- (c) If prior to the preliminary conference, counsel/self-represented litigants are able to enter into a stipulated schedule for the completion of discovery, a signed Stipulation may be submitted to Chambers with a joint request that the preliminary conference be removed from the Court's calendar. If the Stipulation is acceptable to the Court, it will be So Ordered, and appearances will not be required. However, **appearances are required in all matrimonial, products liability, and medical, dental and podiatric malpractice actions.**
- (d) Following the preliminary conference, the Court will issue a Preliminary Conference Order or direct counsel to prepare such Order, and send it to all counsel/self-represented litigants. Provided within the Preliminary Conference Order will be a discovery schedule which shall establish the deadlines for the completion of all discovery and a date for a compliance conference.
- (e) Once the Preliminary Conference Order has been issued or a Discovery Stipulation has been So Ordered, no modifications are permitted except by written order of the Court granted upon the written request of counsel/self-represented litigants.

DISCOVERY MATTERS

- (a) Counsel/self-represented litigants must confer with one another in a good faith effort to resolve all discovery disputes. 22 NYCRR 202.7
- (b) No discovery motion may be made without the express permission of the Court.
- (c) The Court will make itself available to facilitate resolution of any and all discovery disputes without formal motion practice. In the event of a discovery dispute, the complaining party shall organize a mutually convenient date and time for a conference call with counsel for all parties/self-represented litigants and the Court. If the dispute cannot be resolved during that conference call or thereafter, the complaining party may proceed with formal motion practice.

MOTIONS/ORDERS TO SHOW CAUSE

- (a) General Rules. The Court **suggests** that prior to making any motion (including motions regarding Discovery/Disclosure issues), that the potential movant request a conference with the Court and opposing counsel to discuss the issue for purposes of avoiding unnecessary motion practice. The request for conference should be in writing, on notice to all parties, indicating that counsel is contemplating filing a motion, briefly summarizing the subject of the potential motion, including the relief sought and the basis for the relief, and that the potential movant has attempted to resolve the matter without judicial intervention and was unable to do so.
Upon receipt, the Court will either schedule a conference call, or an in-court conference date. **PLEASE NOTE**, this procedure does not preclude the party requesting the conference from later making a motion relating to the subject addressed at the conference, but simply provides the Court the opportunity to resolve the dispute without the need for motion practice. Failing resolution of the disputed matter, the party seeking relief may proceed with the motion.
- (b) Oral Argument. Unless oral argument has been requested by a party and permitted by the Court, or is directed by the Court, **ALL MOTIONS SHALL BE DEEMED SUBMITTED ON THE PAPERS AS OF THE RETURN DATE.** Where there is to be a hearing or oral argument, a specific date, time and place will be scheduled at the Court's direction; it may not necessarily take place on the original return date.
- (c) Notice of Motion. **All motions should be made returnable at 9:30 a.m. on any weekday except Wednesdays.** The movant should select a return date that allows for timely service of the motion papers and all answering papers pursuant to CPLR Rule 2214(b) and Court Rules promulgated thereunder. However, the Court encourages that counsel be courteous to one another by filing and serving motions and answering papers as far in advance of the selected return date as possible so as to give both the Court and counsel sufficient time to review and prepare as necessary.

Please do not serve Notices of Motion without indicating a return date on the face of the Notice. Blank Notices are unacceptable and may be returned to the moving party.

NOTE: If a motion is filed in a matter that is already scheduled for a conference, the motion should be made returnable at the date and time of such conference.

- (d) Orders to Show Cause. An Order to Show Cause is to be used in lieu of a notice of motion only for good cause in "proper cases" (CPLR 2214(d); see also Practice Commentaries and C2214:25 and C2214:26). If you choose to use an Order to Show Cause, please indicate your reason for deviating from use of a notice of motion. The

Court kindly requests that you not request to wait while an Order to Show Cause is being reviewed. **Please note, except where the law permits otherwise, requests for Temporary Restraining Orders should be on notice to opposing counsel/self-represented litigants and the Attorney for the Child(ren), if applicable, as required under 22 NYCRR 202.7(f).**

- (e) **Supporting Papers and Opposing Papers.** All documents required to decide the application must be attached to the motion or the opposing papers. It is not sufficient that documents may be on file with the Clerk of the Court or the County Clerk's Office, as these documents are not readily accessible by the Court. If documents have already been filed with the County Clerk's Office, copies of those documents must be attached to the moving papers or the opposing papers.

If the opposing papers consist of a cross-motion, the cross-motion should be made returnable on the same date and time as the initial motion, and shall comply with the provisions of CPLR Rule 2215 and Court Rules promulgated thereunder.

- (f) **Reply Papers.** Reply papers shall not set forth new factual claims, legal arguments, expert affidavits, or requests for relief that are not within the scope of the initial moving papers.
- (g) **Sur-Reply Papers.** The CPLR does not recognize the existence of Sur-Reply Papers, accordingly, this Court will not accept or consider any sur-reply or post-reply papers or materials, whether submitted as formal motion papers or correspondence, absent a party receiving express permission from the Court in advance. See, CPLR 2214(c).
- (h) **Motions to preclude expert testimony.** Any motion by a party to preclude or limit expert testimony under the expert disclosure part of these Part Rules or pursuant to CPLR 3101(d) must be made as soon as practicable. Where a party seeks summary judgment based in whole or in part upon a motion to preclude or limit expert testimony, both the motion to preclude or limit and the motion for summary judgment shall have the same return date.
- (i) **Motions *in limine*.** For all other motions *in limine*, please refer to the "Pretrial Conference" section of these Part Rules.
- (j) **Summary Judgment Motions.** Summary Judgment motions must be timely made pursuant to CPLR §3212(a), but no later than 120 days after the filing of the Note of Issue, unless otherwise expressly authorized by the Court upon good cause shown.
- (k) **Adjournments.** Please refer to the "Adjournments" section of these Part Rules.

PRE-TRIAL CONFERENCES

- (a) Within 45 days of the filing of a Note of Issue, the Court shall schedule a pretrial conference. PLEASE NOTE: If the Defendant files a Demand for Jury Trial, counsel shall also provide a copy of the Demand directly to Chambers.
- (b) At the pretrial conference, the Court shall schedule a date certain for trial of all outstanding issues. The Court will also explore referring the case to a referee, or to arbitration, if appropriate.
- (c) **Expert Witness Disclosure.** At the pretrial conference, the Court shall establish a deadline for the exchange of expert witness information pursuant to CPLR §3101(d)(1) which shall, in no event, be later than ninety (90) days before trial for the party bearing the burden of proof on that issue. The opposing party must serve its disclosure within forty-five (45) days of trial. Any amended or supplemental expert disclosures shall be allowed only with leave of the Court upon good cause shown. **The statutory stay of disclosure upon the service of a dispositive motion (CPLR 3214[b]) shall not apply to the service of these expert responses.** Unless the Court directs otherwise, a party who fails to comply with this Part Rule will be precluded from offering the testimony and opinions of the expert for whom a timely

- response has not been given.
- (d) The Court will explore limitation of issues for trial, including any application that counsel anticipates making to limit or preclude testimony or other evidentiary matters. If an evidentiary issue cannot be resolved by the Court at the pretrial conference, a motion *in limine* briefing schedule shall be established. The return date of that briefing schedule, including any adjourned return dates, shall be at least thirty (30) days before the trial date. The intent of this rule is to avoid *in limine* applications on the eve of, or during, the trial of a matter. Failure to bring an *in limine* application before the Court in a timely manner may result in summary denial of the application.
 - (e) Counsel should be prepared to discuss settlement at the pretrial conference and should have full authority from their respective clients.

CHARGE CONFERENCES (FOR JURY TRIALS ONLY)

- (a) The Court will endeavor, when possible, to conduct a preliminary charge conference to be held approximately one (1) week prior to the commencement of jury selection. In complex matters, the Court reserves the right to schedule the preliminary charge conference for a date more than one (1) week prior to jury selection.
- (b) At the preliminary charge conference, unless otherwise directed by the Court, each party shall provide the Court and opposing counsel/self-represented litigants with the following items:
 - (i) marked pleadings as required by CPLR 4012, including bill(s) of particular, and any exhibits incorporated by reference in the pleadings;
 - (ii) a list of all proposed exhibits. Materials such as deposition transcripts that a party reasonably anticipates will only be used on cross-examination or to refresh the recollection of a witness do not need to be included in the exhibit list. In the event the parties cannot agree on what portions of an EBT transcript are admissible, the party opposing admissibility must provide the Court at a date to be determined prior to trial with a written memorandum setting forth the legal basis for the objection, with citations;
 - (iii) a list of probable trial witnesses;
 - (iv) all relevant expert reports;
 - (v) a complete list of suggested jury charges. The charges will be drawn from the Pattern Jury Instructions ("PJI"). Unless counsel seeks a deviation from or an addition to the pattern charge, only the PJI numbers need be submitted. Where deviations or additions are requested, the full text of such requests must be submitted, together with any supporting legal precedents. Upon request, counsel shall promptly submit the proposed revision or addition to the pattern charge to the Court in an electronic format convertible to Word Perfect. Amendments to the suggested jury charges will be ruled on at the final charge conference following the close of evidence;
 - (vi) a proposed verdict sheet. The proposed verdict sheet shall be jointly prepared by counsel and presented to the Court in a typed final form for presentation to the jury. If agreement cannot be reached, then each side shall present a proposed verdict sheet. Upon request, counsel shall promptly submit the proposed verdict sheet to the Court in an electronic format convertible to Word Perfect;
 - (vii) A Statement of Contentions of the party; and
 - (viii) Pre-trial memoranda of law as to any disputed legal issues that were not known to counsel at the pretrial conference and therefore not addressed as part of the motion *in limine* briefing schedule issued by the Court at the pretrial conference.

- (c) At the preliminary charge conference, counsel for all parties shall also be prepared and shall have the requisite authority:
 - (i) to stipulate to undisputed facts and the admissibility of clearly admissible documents and records;
 - (ii) to discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial;
 - (iii) to alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling;
 - (iv) to alert the Court as to any anticipated requests for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.

TRIALS (BENCH OR JURY)

- (a) On the day of trial, trial counsel should appear at the time scheduled and report to Chambers. A conference with the trial Justice will be held to discuss the facts and issues in the case, the length of the trial, witness scheduling problems and other matters counsel may wish to raise. Counsel should be prepared to dispose of the case or immediately proceed to trial.
- (b) Trial Adjournments. Once scheduled, a trial shall not be adjourned for any reason other than the actual engagement of counsel as provided for in §125.1 of the Rules of the Chief Administrator of the Courts, or upon good cause shown. Any application for an adjournment based upon actual engagement of counsel must be supported by an affirmation establishing the requisite grounds set forth in 22 NYCRR §125.1. Requests for trial adjournments should be requested as far in advance of trial as possible.
- (c) Mandatory Submissions. (Bench Trials only). The following must be provided to the trial Justice on the day of trial:
 - (i) marked pleadings;
 - (ii) list of all proposed exhibits;
 - (iii) witness list;
 - (iv) any expert report not previously provided;
 - (v) statement of contentions;
 - (vi) pre-trial memoranda of law; and
 - (vii) proof of filing the note of issue.

For Jury Trials, please refer to the “Charge Conferences” section of these Part Rules.

NOTE: Providing these materials at the outset of or prior to the trial aids the trial Justice significantly in trial preparation and, for that reason, strict compliance is insisted upon. Of course, submission of this material in advance of trial is always appreciated and is a practice which the Court encourages.

- (d) Conduct of Trial.
 - (i) Pre-Marking Exhibits. Trial exhibits should be pre-marked with the stenographer the morning of the trial and/or during recesses. If there are numerous exhibits (40+), please contact the assigned stenographer to arrange a convenient time to pre-mark exhibits. You can find out who the assigned stenographer is by calling the Chief Clerk’s Office at (518) 285-8401.
 - (ii) Daily Copies. If daily copies will be requested, you should advise the Chief Clerk’s Office of that fact. This is because sometimes two reporters will need to be scheduled to cover a trial where daily copies are required.
 - (iii) Return of Trial Exhibits. At the conclusion of the trial, all trial exhibits shall

be returned to the parties. Absent an order of the trial Justice, the Chief Clerk will not retain any trial exhibits.

ADJOURNMENTS

- (a) Requests for adjournments of a scheduled trial or hearing will be reviewed under the "Trials" section of these Part Rules.
- (b) Requests for adjournments of conferences and motions must be in writing sent via facsimile and mail to receive Court approval. All requests must be made on notice to all parties. Please indicate whether the request is with or without the consent of opposing counsel. Even if a requested adjournment is on consent of all counsel, the request must also be approved by the Court before it will be deemed granted. The Court will promptly notify the parties of its ruling on the adjournment request.
- (c) A request to adjourn a conference must be faxed to this Court at least 48 hours prior to the scheduled appearance.
- (d) Unless good cause is shown, no more than two adjournments of a motion date shall be permitted on any matter.
- (e) A written adjournment request must:
 - (i) identify the current date of the scheduled conference or motion return date;
 - (ii) identify the number of adjournments that have previously been requested, if any;
 - (iii) state whether the request is made on consent of all counsel; and
 - (iv) identify the proposed adjourned date for the conference or motion.

SETTLED AND DISCONTINUED CASES

Counsel shall immediately provide the Court with written notice whenever a case has been settled or otherwise disposed. Upon execution by all parties, Counsel shall file a Stipulation of Discontinuance with the County Clerk's Office and send a copy of the Stipulation of Discontinuance to Chambers, along with proof of filing in the County Clerk's Office.

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FOR CONTESTED MATRIMONIAL ACTIONS ONLY

IN ADDITION TO THE ABOVE PART RULES, AND THE COURT'S STRICT ADHERENCE TO THE REQUIREMENTS OF 22 NYCRR §202.16, THE FOLLOWING RULES SHALL ALSO APPLY TO ALL CONTESTED MATRIMONIAL ACTIONS ASSIGNED TO THE HONORABLE VINCENT W. VERSACI:

PRELIMINARY CONFERENCES

- (a) A mandatory preliminary conference will be scheduled and held within 45 days of the date of filing an RJI. An Order Directing Preliminary Conference will be sent by Chambers to all counsel/self-represented litigants, notifying the parties of the scheduled conference.

- (b) No later than ten (10) days prior to the Preliminary Conference, counsel/self-represented litigants shall deliver the following documents to Chambers:
- (i) the client's statement of net worth;
 - (ii) the client's most recent pay stub and income tax return;
 - (iii) a signed copy of the retainer agreement;
 - (iv) statement of client's rights and responsibilities; and
 - (v) a copy of all pleadings.
- (c) At the preliminary conference, counsel/self-represented litigants shall be prepared to discuss all issues identified in the Order Directing Preliminary Conference.

ATTENDANCE

Unless otherwise directed by the Court, personal appearance by counsel **and their clients** is mandatory on all contested matrimonial matters including, but not limited to, preliminary conferences, compliance conferences, pre-trial conferences, trials and all other Court-ordered appearances. Counsel should be prepared to dispose of the case, argue the motion (in the case of motion practice) or immediately proceed to trial if the case is placed on the trial calendar.

EXCHANGE OF PAPERS

The following papers, which are also identified in the Order Directing Preliminary Conference, shall be exchanged between the parties at least ten (10) days prior to the preliminary conference:

- statements of net worth, **which shall also be delivered to Chambers, along with a signed copy of the retainer agreement, no later than ten (10) days prior to the preliminary conference;**
- all paycheck stubs for the current calendar year and the last paycheck stub for the immediately preceding calendar year;
- all filed State and Federal income tax returns for the previous three (3) years, including both personal returns and returns filed on behalf of any partnership or closely held corporation of which the party is a partner or shareholder;
- all W-2 wage and tax statements, 1099 forms and K-1 forms for any year in the past three (3) years in which the party did not file State and Federal income tax returns;
- all statements of accounts received during the past three (3) years from each financial institution in which the party has maintained any account in which cash or securities are held; and
- the statements immediately preceding and following the date of commencement of the matrimonial action pertaining to: (A) any policy of life insurance having a cash or dividend surrender value; and (B) any deferred compensation plan of any type or nature in which the party has an interest including, but not limited to, Individual Retirement Accounts, pensions, profit-sharing plans, Keogh plans, 401(k) plans and other retirement plans.

MOTIONS/ORDERS TO SHOW CAUSE

The same rules shall apply as set forth above in the "Motions/Orders to Show Cause" section of these Part Rules.

In addition, any application regarding child support must be accompanied by a completed Child Support Worksheet.

COMPLIANCE CONFERENCES

Counsel attending the conference must be fully familiar with and authorized to settle, stipulate or dispose of such actions. Unless otherwise directed by the Court, counsel **and**

their clients must appear at the compliance conference.

NOTE OF ISSUE AND STATEMENTS OF PROPOSED DISPOSITION

In preparation for trial, and in accordance with 22NYCRR§202.16(h), the Plaintiff shall file a note of issue and certificate of readiness at least thirty (30) days prior to the trial date. The Plaintiff shall also serve and file with the note of issue, a statement of proposed disposition, along with proof of service thereof upon the Defendant. Within twenty (20) days of such service, but no later than ten (10) days prior to the trial date, the Defendant shall serve and file a statement of proposed disposition. A copy of each party's statement of proposed disposition shall be forwarded to Chambers simultaneous with the service and filing of same.

PRE-TRIAL CONFERENCES

All cases scheduled for trial must have a pre-trial conference at least one week prior to the scheduled commencement of trial. All motions *in limine* must be presented at this time and counsel should be prepared to discuss all evidentiary issues. At the pre-trial conference, counsel shall provide his or her adversary and the Court with the following items, to the extent such items have not already been exchanged between the parties: (a) marked pleadings; (b) statement of proposed disposition; (c) child support worksheet (if applicable); (d) maintenance worksheet (if applicable); (e) updated net worth statement; (f) list of all proposed exhibits; (g) witness list; (h) any expert report not previously provided; (i) pre-trial memoranda of law; and (j) proof of filing the note of issue.

ADJOURNMENTS

The same rules shall apply as set forth above in the "Adjournments" section of these Part Rules.

In addition, please be advised that **absolutely no requests for adjournments of preliminary conferences beyond the 45 day period (from assignment) will be entertained.**

TRIALS

The same rules shall apply as set forth above in the "Trials" section of these Part Rules.

(a) **Mandatory Submissions.** In addition to the items listed above under the "Trials" section of these Part Rules, the following additional items must be provided to the trial Justice on the day of trial, if not previously provided at the pretrial conference:

- (i) statement of proposed disposition;
- (ii) child support worksheet (if applicable);
- (iii) maintenance worksheet (if applicable); and
- (iv) updated net worth statement.

(b) **Custody/Visitation Trials.** Counsel are reminded that cases involving custody and/or visitation must be tried on a consecutive day-to-day schedule.