

INDIVIDUAL RULES

HONORABLE CHARLES D. WOOD

Supreme Court of the State of New York
Dutchess Courthouse
10 Market Street
Poughkeepsie, New York 12601

Part Clerk Phone: 845-431-1754
Chambers Phone: 845-431-1752
Chambers Fax: 212-457-2882

All matters in Supreme Court, Dutchess County, in which Justice Charles D. Wood presides shall be conducted in accordance with the following rules, procedure and practices, which shall supplement the statutes and rules governing such practice.

I. STAFF

Michael V. Curti, Principal Law Clerk
Milena Schieb, Part Clerk
Barbara Seelbach, Secretary

II. COMMUNICATIONS WITH THE COURT

A. Correspondence. Correspondence to the Court must reflect the title and index number of the action, the return date and time of any pending motion and the trial date, if one has been established. Copies of all correspondence to the Court shall be provided to counsel for all other parties by the same means and at the same time as the correspondence is sent to the Court. Copies of correspondence between counsel shall not be provided to the Court unless the Court has so directed or the correspondence requests judicial action.

B. Telephone Calls. Telephone calls regarding conferences, trials and all non-emergency matters other than motions shall be directed to the part clerk. Telephone calls regarding motions shall be directed to Justice Wood's secretary. Telephone calls to Justice Wood's principal law clerk are permitted where provided by these rules and in the case of emergency situations requiring immediate attention that cannot otherwise be obtained by correspondence.

C. Faxes. The fax number for chambers is noted above. Any correspondence to the Court may be submitted by fax, provided that a copy of the correspondence identical to that faxed to the Court is simultaneously faxed or delivered to all counsel. It is not necessary to mail a copy of the faxed correspondence to the Court. Copies of papers that must otherwise be filed in original form with the

clerk of the Court, such as judgments, motions, opposition papers and replies, will not be accepted by fax. Faxed documents will not be signed by the Court. Counsel are encouraged to avoid faxes to chambers that exceed three pages in length.

D. E-mail. Although the Court is equipped with e-mail, communications will not yet be accepted by such means.

E. Ex Parte Communications. Ex parte communications are strictly prohibited except upon the consent of all counsel or with respect to scheduling matters or the presentation of orders to show cause for signature.

F. Substitutions of Counsel. Notices of substitution of counsel shall be filed with the part clerk, in addition to any other filing that is required. A “substitution of counsel” to a pro se litigant is a withdrawal of counsel that may be accomplished only in accordance with CPLR 321.

III. CONFERENCES

A. General Rules.

1. Attendance of Parties and Counsel required. The attendance of all counsel and parties, if self represented, is expected, unless such appearances are dispensed with by the Court on prior request made on notice to counsel, or pursuant to the Court Rules. The calendar will be called promptly at the scheduled time and the parties and counsel are expected to be prompt. To the extent possible, cases will be heard in the order in which all counsel and parties appear. Attorneys and self represented parties must check in with the part clerk immediately upon arriving. Appearances in other Court parts will be accommodated, provided that counsel first checks in with the part clerk and advises the part clerk where he or she can be reached.

2. Translators. Counsel should advise the part clerk not later than two days prior to any conference at which the services of a foreign language translator will be required for any party (or any special services will be required for any hearing-impaired party).

3. Counsel to be Familiar with Action. Counsel who appear must be fully familiar with the action on which they appear and must be authorized to enter into both substantive and procedural agreements on behalf of their clients. Attorneys appearing “of counsel” to any attorney of record are held to the same standard. Any failure to comply with this rule may be considered by the Court to be a default in appearing for the conference.

4. Transcripts. Parties may be required to purchase a copy of the transcript of conferences conducted in open Court, the cost of which will be divided equally between the parties unless otherwise agreed to by the parties or directed by the Court.

B. Preliminary Conferences.

1. Preliminary Conferences (Non Matrimonial Cases). A party may request a preliminary conference any time after issue has been joined. The Court will schedule a preliminary conference within forty-five (45) days after the request for judicial intervention has been filed. A form stipulation and order will be provided to the parties which shall establish a timetable for discovery within parameters set forth by the Court after determination as to whether a matter should be designated an “expedited” “standard” or “complex” case. If all parties sign the stipulation and return it to chambers prior to the scheduled conference, such form shall be “so ordered” by the Court subject to the Court’s review and approval, and unless the Court orders otherwise, appearances will not be required at the preliminary conference.

Once the stipulation has been “so ordered,” no modifications are permitted except by written order of the Court.

2. Preliminary Conferences (Matrimonial Cases). No later than ten (10) days prior to preliminary conference in any matrimonial action, each party shall file and serve copies of the following documents: 1) Retainer agreement; 2) Net worth statement; 3) Most recent pay stub and income tax return. Parties must be present at all preliminary conferences.

3. Adjournment of Preliminary Conference. Each party will be permitted one adjournment of the preliminary conference. The preliminary conference will not be permitted to be adjourned for more than a total of 30 days from the date on which it is initially scheduled. No further adjournments will be permitted. Deadlines for the completion of discovery will be established without regard to the date on which the preliminary conference is held.

C. Compliance Conferences, Pre-Trial Conference, Charging Conference.

1. Compliance Conference. The preliminary conference order shall provide a date and time for the parties to appear at a compliance conference. The purpose of the compliance conference is to report to the Court on the progress of pre-trial discovery and to address any issues that have arisen with respect to discovery. The Court may modify the discovery schedule at the compliance conference if the litigation or interest of justice so require and may impose appropriate sanctions against any party or counsel responsible for a non excusable failure to comply with the discovery schedule. The parties are cautioned that any adjournment of the compliance conference will not excuse a failure to provide discovery or failure to adhere to the preliminary conference order and that discovery shall proceed during the period of any adjournment. The parties are cautioned to arrive on time for the compliance conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to compliance conferences may summarily be subject to sanctions and/or costs.

2. Pre-Trial Conference. Within 45 days of the filing of a Note of Issue, the Court will schedule a Pretrial Conference. The Court will schedule a date certain for trial of all outstanding

issues. All counsel appearing before the Court should be prepared to discuss settlement and should have full authority for their representative clients.

3. Charging Conference. Within two weeks prior to trial, the Court will schedule a charging conference. With regard to jury trials, the parties shall submit their proposed charges from the Pattern Jury Instructions, Civil, Second Edition (hereinafter “PJI”). The proposed charges must include the appropriate reference number contained denoting where the charge may be found within the PJI. At the charging conference, the Court will also entertain any special jury instructions. Such special jury instructions must be in writing. At the charging conference, the parties shall also exchange and be prepared to discuss proposed verdict sheets.

4. Conference Adjournments. A compliance conference or pre-trial conference may be adjourned once, for a period not to exceed two weeks, by stipulation of the parties faxed to the part clerk by noon on the second Court day preceding the scheduled conference. The Court is reluctant to grant any further adjournments or any adjournments for longer than two weeks, even if on consent, but will entertain requests for such adjournments if made in writing and faxed to the part clerk not later than noon on the second Court day preceding the scheduled conference, accompanied by a statement setting forth (I) good cause why the adjournment is sought (including, if the adjournment is sought by reason of the engagement of counsel, an affirmation of engagement in accordance with part 125 of the Rules of the Chief Administrator) (ii) whether the adversary party and any court-appointed attorney (if any), consents or objects to the application, and (iii) a proposed date, agreeable to all parties, to which the adjournment is sought in the event that the adjournment is granted. All such communications must be copied to all counsel. The Court may, in the exercise of discretion, permit or refuse a conference adjournment in any instance. No request for an adjournment will be accepted. Counsel will be advised of the Court’s determination by telephone or by return fax. If the adjournment is granted, the party requesting the adjournment shall notify all counsel in writing, including Court appointed attorneys (if any), if one has been appointed. Charging Conferences may not be adjourned, absent a settlement.

5. Failure to Appear at a Scheduled Conference. The failure of any counsel or any party to appear for a scheduled conference may be treated by the Court as a default and shall be dealt within a manner permitted by the Uniform Rules by awarding reasonable attorney’s fees to the appearing party from a non-appearing party or counsel whose presence was not excused by the Court.

IV. MOTIONS

A. General Rules. Motions may be made returnable on Fridays. Any motion returnable on another day of the week will be automatically adjourned by the Court to the next succeeding Friday that the Court is in session. The return date for an order to show cause shall be determined by the Court. Motion papers must be accompanied by proof of payment to the County Clerk of all required fees. All affirmations, affidavits and memoranda of law must contain numbered pages. All citations must

be to an official state reporter, if available. All documents required to decide the application must be attached. It is not sufficient that the documents may be on file with the Clerk of the Court. The Court does not accept sur-reply papers or correspondence on motions, nor any papers filed after the final submission date of the motion. Motion papers, orders and judgments must be accompanied by a stamped, self-addressed envelope. Counsel must provide an additional copy of any order and judgment submitted to conform to the original. All motions will be decided by submission. Personal appearances on the return date are not required unless the Court specifically directs oral argument. Summary Judgment or other dispositive motions must be made within 60 days after filing the note of issue. Any motions seeking to exclude potential evidence shall be made in writing and shall be returnable at least 30 days in advance of trial. NO ADJOURNMENTS on a motion will be granted with a return date within thirty (30) days prior to the date of trial. Counsel shall immediately notify the Court when it becomes unnecessary to decide a motion.

B. Orders to Show Cause. Orders to show cause submitted for signature shall be presented to the office of the calendar clerk or as may be otherwise required by that office. Proposed orders to show cause may be rejected where the relief requested can be sought by notice of motion. A conformed copy of the order will be faxed to counsel for the moving party when signed. All inquiries concerning orders to show cause that have been submitted for signature should be directed to Justice Wood's secretary. Except in cases of exigent circumstances, no phone call regarding the status of an order to show cause should be made until 48 hours have elapsed from the time of submission. When the Court declines to sign an order to show cause, counsel will be so notified.

C. Requests from Temporary Orders of Protection. If the proposed order to show cause contains a request for a temporary order of protection, counsel should so advise the part clerk upon presentation of the proposed order to the office of the calendar clerk and should be prepared to be present, with his or her client, for an *ex parte* hearing at such time as the Court will direct during the 24 hours after presentation of the proposed order.

D. Discovery Disputes. No motion regarding discovery may be made without the prior approval of the Court. Pursuant to § 202.7 of the Uniform Rules, counsel must consult with each other in a good faith effort to resolve any dispute regarding discovery or compliance with discovery deadlines before requesting that the issue be resolved by the Court. In the event that counsel are unable to resolve such a dispute in this fashion, the party seeking relief from the demand or deadline, or to compel compliance shall immediately advise the Court of the dispute by faxing a letter not exceeding two pages in length. A copy of the letter shall be faxed to opposing counsel contemporaneously with the fax to the Court. Any response, by letter also not exceeding two pages in length, shall be made by fax, with a copy to opposing counsel, within 48 hours. Upon reviewing the submissions, the Court will schedule a telephone conference, a Court conference, or grant permission to make a written motion and set a briefing schedule therefor. Any such request shall be made within a reasonable time after the cause for the dispute arose. The failure to do so may result in the objection being deemed waived or the request being deemed abandoned and discovery being deemed complete as of the date on which discovery is required to be complete.

E. Filing of Papers Applicable to All Motions. All papers must be typewritten, double-spaced, securely bound with no sharp edges, entirely legible and bearing original signatures. All exhibits must be labeled with tab markings. Motion papers and all related correspondence must reflect the index number assigned to the action, the return date of any other pending motion and the trial date, if one has been established. Unless the Court orders, or a statute or the Uniform Rules require, otherwise, the filing of a motion does not relieve any party from attending any previously-scheduled conference or Court appearance, regardless of the nature of the relief sought, or from complying with any discovery deadline. Where the return date of a motion is adjourned, all answering affidavits, replies or other papers with respect to the motion will be required to be served on dates bearing the same relationship to the adjourned return date as the original service dates bore to the original return date, unless the Court orders or the parties agree otherwise. All moving papers, opposition papers and replies shall be filed with the Court not later than noon on the Friday preceding the return date of the motion.

F. Specific Requirements for Particular Motions.

1. Motions for Leave to Renew or Reargue. Any motion pursuant to CPLR 2221 seeking leave to renew or reargue shall be accompanied by copies of all papers submitted on the prior motion, including all exhibits. Failure to comply with this requirement shall result in the denial of the motion.

2. Motions for Leave to Amend, Supplement or Correct Pleadings. Any motion for leave to correct pleadings, pursuant to CPLR 3024, or to amend or supplement pleadings, pursuant to CPLR 3025, shall be accompanied by copies of all pleadings filed as of the date of the motion and the proposed amended, supplemented or corrected pleading. Failure to comply with this requirement shall result in the denial of the application.

3. Post-Judgment Motions. Any application for post-judgment relief must be by order to show cause. The proposed order to show cause should provide for service on the opposing party in the manner required for the commencement of a special proceeding, and shall not provide for service on the opposing party's prior attorney unless the supporting papers establish that such attorney has the authority to accept such service. Any post-judgment motion involving custody or visitation shall provide for the reappointment of and service upon any previously appointed attorney for the child.

4. Motions for Leave to Withdraw as Counsel. No appearance will be required on a motion pursuant to CPLR 321 for leave to withdraw as counsel if the motion papers are accompanied by an affidavit of the client attesting to his or her consent to the withdrawal and the opposing party does not object to leave being granted.

5. Cross Motions. Cross motions seeking no relief other than the denial of the relief requested in the motion will not be recognized as motions with respect to which a reply may be submitted.

6. Child Support Applications. Any application regarding child support must be accompanied by a completed Child Support Worksheet.

G. Motion Adjournments.

1. On Consent. Motions may be adjourned on consent no more than two times and for no longer than a total of 45 days. Counsel seeking the adjournment must notify Justice Wood's secretary of the requested adjournment date by facsimile not later than noon on the second Court day before the return date. The Court will then assign an adjourned date, giving due consideration to any specific date that has been agreed upon by counsel. No telephone requests for adjournments will be accepted. Counsel will be advised of the Court's determination by telephone or by return fax. Counsel seeking the adjournment will then be responsible to give notice of the adjourned date to all other counsel, including any Court appointed attorneys (if any), by facsimile.

2. Without Consent. A request for adjournment of a motion return date with respect to which consent has been refused shall be made by facsimile to Justice Wood's secretary not later than noon on the second Court day preceding the return dates. No adjournment request will be granted by the Court unless the party requesting the adjournment can show good cause for the adjournment. If the adjournment is granted, the Court will assign an adjourned date and Counsel seeking the adjournment will be responsible to give notice of the adjourned date to all other Counsel, including the law guardian, by facsimile.

H. Reply Papers. Reply papers shall not set forth new factual claims, legal arguments or requests for relief that were not within the scope of the papers that initiated the motion or the opposition papers.

V. TRIALS

A. Trial Dates.

1. Trial Dates are Firm. Trial dates established by the Court are to be considered firm, subject only to minor adjustments based upon the Court's availability. Counsel should be prepared to commence the trial at the scheduled time on the scheduled date. Counsel should check with the part clerk after 2:00 p.m. on the business day prior to the scheduled trial date to verify that the Court will be available to commence the trial as scheduled.

2. Adjournment of Trial Dates. Requests for adjournment of a trial date shall be made to the part clerk. Adjournments fo trial dates will not be granted except upon a showing of unusual and unanticipated circumstances. As required by §202.32 of the Uniform Rules, adjournments requested by reason of the engagement of counsel must be accompanied by the affidavit required by part 125

of the Rules of the Chief Administrator. Anticipation that the matter will settle is not considered a legitimate basis for adjournment. No adjournment will be granted within the three days prior to the scheduled trial date except upon exigent circumstances.

B. Trial Preparation.

1. Exchange of Expert Reports. Not later than 60 days prior to the scheduled trial date, counsel shall each provide to opposing counsel a copy of any report by an expert whom counsel expects to call to trial. Any report that was received by counsel within 60 days of the scheduled trial date shall be provided to opposing counsel within 10 days of its receipt by counsel.

2. Trial Notebook. Not later than five days prior to the scheduled trial date, counsel shall each submit a trial notebook, which shall consist of: (a) marked pleadings in accordance with CPLR Rule 4012; (b) the joint statement of the relevant facts that are not in dispute; (c) the list of witnesses whom the party expect to call at trial, stating the address of each witness and the general subject matter as to which each identified witness is expected to testify; (d) the list of all exhibits to be offered by such party in the form required by the Court (which may be obtained from the part clerk) (e) copies of the exhibits intended to be offered by counsel, pre-marked, with the plaintiff's exhibits numbered sequentially and the defendant's exhibits lettered sequentially; (f) in matrimonial actions, the updated net worth statement and statement of proposed disposition submitted at the settlement conference; (g) all expert reports, including reports of financial and psychological experts and appraisals; and (h) any other information that the Court has determined to be appropriate in the action. The Court may, in its discretion, relieve counsel from all or part of the trial notebook requirements upon a showing that the issues to be tried are sufficiently narrow that the trial notebook is not necessary or that the interests of justice otherwise justify such relief. Such a request will be entertained only at the pre-trial conference.

3. Evidentiary Objections. Not later than one day prior to the scheduled trial date, each counsel shall provide to the other and submit to the Court a statement setting forth any objection to the exhibits identified in the list provided by opposing counsel and the specific basis therefor. Any exhibit as to which no objection is identified shall be admitted into evidence on consent. The failure to submit such a statement of objections on a timely basis may be deemed to be consent to the admission of all of the exhibits included in the trial notebook submitted by the opposing party.

C. Witnesses.

1. Identification. Any witness not identified in the witness list provided to opposing counsel, other than an impeachment or rebuttal witness, shall not be permitted to testify unless an adequate explanation is provided for the failure to identify such witness prior to trial.

2. Scheduling. Parties, fact witnesses and expert witnesses should be advised of the scheduled dates at the time they are set. Absent unanticipated, exigent circumstances, last minute claims of unavailability will not be recognized where the trial dates have been long established. All

witnesses should be on one-hour phone call notice so that their waiting time in Court is minimized. Professional witnesses, such as doctors, nurses and social workers, and witnesses who are public employees, such as teachers, counselors and police officers, will be permitted to testify out of order to accommodate their employment schedules. School teachers should be scheduled after 3:00 p.m. so that it is not necessary for their employers to provide substitutes.

3. Subpoenas. Subpoenas duces tecum shall be made returnable to the part at 9:30 a.m. on the third Court day prior to commencement of trial. The part clerk will allow all counsel and pro se litigants to inspect the subpoenaed material prior to the trial in a manner that will ensure its evidentiary integrity.

4. Translators. Counsel should advise the part clerk one week prior to trial if the services of a foreign language translator will be required for any party or witness, or any special services are required for any hearing-impaired party or witness.

D. Exhibits. An exhibit not identified in the exhibit list provided to opposing counsel, other than an exhibit offered for the purpose of impeachment or rebuttal, shall not be admitted into evidence unless an adequate explanation is provided for the failure to identify such exhibit prior to the trial. In addition to the copies of exhibits provided in the trial notebook, each party shall provide at trial one additional set of exhibits which will be used when counsel wishes to publish an exhibit to a witness.

E. Transcripts and Post-trial Briefs. Unless the Court directs otherwise, the parties will obtain and provide to the Court, on or before the date set by the Court at the conclusion of the trial, a copy of the trial transcript and each party will submit a post-trial brief with respect to the issues raised at the trial, setting forth specific references to the relevant portions of the transcript and the documents in evidence and citing applicable law.

VI. DISPOSITION

A. Discontinuance. Counsel shall notify the Court immediately upon the discontinuance of an action. A copy of the notice or stipulation of discontinuance shall be submitted to the part clerk at the same time as it is filed with the County Clerk. No action shall be considered discontinued until the part clerk receives a copy of the notice or stipulation of discontinuance.

B. Settlement

1. Notification of Court. On any date that the case appears on the calendar and the parties are present, a stipulation of settlement may be placed on the record and “so ordered” by the Court. If an action is settled out of Court, counsel shall immediately inform the part clerk. Upon placing a stipulation on the record in open Court or receiving written confirmation that a stipulation of settlement has been executed by all parties, the action will be marked “settled” and placed on the judgment submission calendar.

2. Pending Conferences and Motions. Until an action is marked settled, counsel will be responsible for responding to all pending motions and counsel and the parties will be expect to attend all scheduled Court appearances. Once the action is marked settled, all pending **motions** will be deemed withdrawn, unless explicit provision is made for their continuance, and all pending Court appearances will be vacated.

VII. MENTAL HYGIENE LAW ARTICLE 81 PROCEEDINGS

1. Proceedings. All proceedings instituted pursuant to the Mental Hygiene Law §81 *et seq.* will be returnable on a Thursday morning at a date and time to be determined by the Court.

2. Orders to Show Cause. All proposed orders to show cause must conform with the requirements of Mental Hygiene Law §81.07. Proposed orders to show cause must contain separate decretal paragraphs for service as provided in Mental Hygiene Law §81.07 (d)(1) and (2).

3. Forms. Court evaluators and appointed attorneys must complete and file each of the following forms: 1) Notice of Appointment (UCS-830.1); 2) Statement of Approval of Compensation(UCS-830); 3) Certification of Compliance (UCS -830.3); 4) Affirmation of Legal Services.

Dated: Poughkeepsie, New York
February 2010

HON. CHARLES D. WOOD
Justice of the Supreme Court