

# SUPREME COURT OF THE STATE OF NEW YORK

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## INDIVIDUAL PART RULES OF JUSTICE JOHN P. COLANGELO

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### I. Communications with the Court

**A. Correspondence:** Correspondence to the Court shall, without exception, be copied to all counsel and to self-represented parties who have appeared in the action. Correspondence between counsel and/or self-represented parties shall not be copied to the Court unless there is some specific request for judicial action to be served by transmitting copies to the Court. All correspondence must bear the full Title and Index Number of the action and state that a true copy of the correspondence was sent to all other counsel (or self-represented litigant(s) as the case may be) simultaneously with transmittal to the Court.

**B. Telephone Calls:** Except as set forth below telephone calls to the Court staff are permitted only in situations requiring immediate attention that cannot otherwise be obtained by correspondence.

**C. Fax transmissions:** Unless specifically approved by the Court in advance in a particular case, the Court does not accept legal papers of any kind by fax transmission.

**D. E-Mail:** E-mails to the Court and Court's staff should be concise and state the relief or action requested to be taken by the Court.

### II. Calendar Call & Conferences

**A. General Rules:** The Court's calendar will be called at 9:30 a.m. on Monday morning unless otherwise directed by the Court. Counsel and self-represented parties are expected to appear for all Court appearances on time. If counsel or a party is unable to

appear on time due to unforeseen circumstances (delays due to inclement weather or road closures, for example) he/she should contact opposing counsel and advise the Part Clerk or Court's staff by telephone as soon as possible.

**B. Ready Cases:** The Court will give priority, by advancing to top of the calendar, "Ready Cases". Ready cases are those cases where all attorneys and/or parties who appear for a scheduled conference are able to advise the Court that: (a) the entire matter has been settled or (b) all discovery is complete and the only remaining item is the setting of a Settlement Conference date. It is the responsibility of the attorneys/parties in a "Ready Case" to advise the Court Officer or Part Clerk prior to the commencement of the call of the calendar that the case is "Ready" so that the case can be called as soon as possible. Where there are multiple Ready Cases, they will be called in the order in which counsel advised the Part Clerk or Court Officer of that fact. Parties are discouraged from advising the Court staff that they have a Ready Case when, in fact, the case is not Ready.

**C. Who Must Appear:** Only counsel (or self-represented parties) who are fully familiar with a case are to appear for court appearances. Any person appearing for a scheduled conference will be presumed to be fully familiar with the action on which they appear and authorized to enter into binding agreements on all aspects of the case. (This means that counsel for the plaintiff(s) must be prepared to make a settlement demand and counsel for the defendant(s) must be prepared to respond to the demand.) Represented parties need not appear for conferences unless directed to do so by the Court. **Where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant as well as the name, claim number and phone number of the adjuster assigned to the matter.**

**D. Preliminary Conference:** The Court will schedule a Preliminary Conference within 45 days after a Request for Judicial Intervention (RJI) has been filed on a matter. The Part Clerk will forward to the party filing the RJI a letter setting forth the date on which the Preliminary Conference will be conducted. The party who files the RJI shall advise all other parties of the Preliminary Conference date in writing.

At the Preliminary Conference, the Court will set specific dates for completion of various items of discovery, the date by which all disclosure must be completed, the dates for a Compliance Conference and for a Settlement Conference. All counsel and self-represented litigants are expected to abide by and comply with the Court's discovery schedule and deadlines. No modifications of the dates set by the Court are permitted except by Order of the Court.

***Parties who have a discovery dispute are requested not to wait until the Compliance Conference to bring such dispute or complaint about non-disclosure to the Court's attention.*** Rather, counsel (or self-represented litigant) who believes that discovery is not being conducted in accordance with the Preliminary Conference (or other Court) Order is to discuss, in good faith, as required by Court Rule 202.7, the claimed non-compliance with the counsel or self-represented litigant who is claimed not to be complying with the Court Order. A pro forma letter does not constitute a good faith effort. There must be actual *substantive* communication between counsel, either telephonically or in writing, regarding the claimed failure to engage in discovery on the one hand or the claimed compliance or reason for noncompliance on the other. Exception: Where an Order of Protection prohibits one party from contacting another party, the party who believes that

discovery is not being complied with shall contact the Part Clerk without contacting the opposing party.

If counsel cannot resolve the issue between themselves after a good faith effort, then the counsel who believes that discovery is not being conducted in accordance with the Court's Order is to contact the Part Clerk to request an expedited conference with the Court. The parties are **NOT** to copy the Court on correspondence between counsel concerning discovery issues unless specifically requested to do so by the Court.

Counsel are generally referred to 22 NYCRR 202.12(c) concerning the conduct of the Preliminary Conference and the matters to be considered. Counsel in medical, dental and podiatric malpractice actions are referred to 22 NYCRR 202.56(b) and counsel in matrimonial actions are referred to 22 NYCRR 202.16 and D.R.L. § 236(B)(4) for other specific requirements in such cases.

**E. Compliance Conference:** The Court will conduct a Compliance Conference approximately two weeks after the date by which disclosure was to be completed as directed at the Preliminary Conference. At the Compliance Conference, the Court will determine whether discovery has proceeded as scheduled. The Court may conduct a settlement conference at this time. Counsel are to be fully familiar with the action as well as all settlement discussions that have previously taken place so that meaningful discussions can be held. As noted above, in all cases where a party is being indemnified by an insurer, appearing counsel must be able to advise the Court of the applicable policy limits afforded to the defendant as well as the name, claim number and phone number of the adjuster assigned to the matter. In a proper case, the Court may contact the claims adjuster by telephone or direct that the claims adjuster appear for a conference.

If the matter is ready for trial and a Note of Issue has not been filed, the Court will direct that a Note of Issue be filed.

**F. Settlement Conference:** The Court will conduct a Settlement Conference approximately 30 days after the Compliance Conference. Counsel attending the Settlement Conference must be fully familiar with the action and authorized to discuss all factual and legal issues presented by the litigation, settlement demands or offers, witness scheduling, and trial procedure – including for example, whether any party or witness will require a translator or accommodation for a physical challenge. Counsel must also be authorized to enter into binding settlements on terms agreeable to the parties and to the Court. The Court will explore limitation of issues for trial. (e.g. in an appropriate case, whether liability may be conceded or certain claims or defenses withdrawn).

On or before the Settlement Conference, counsel (or self-represented parties) must provide the Court and opposing counsel (or self-represented party) with the following:

1. Marked pleadings in accordance with CPLR Rule 4012, including copies of any exhibits incorporated by reference in the pleadings;
2. A copy of all Bills of Particulars (including Supplemental and/or Amended Bills of Particulars);
3. A copy of all medical narrative reports exchanged by the parties;

4. A copy of all expert disclosures served pursuant to CPLR 3101(d);
5. A list of probable trial witnesses; and
6. A copy of all prior Decisions or Orders on motions issued in the case .

Counsel are advised that, in an effort to foster open settlement discussions, the Court may meet with one side or the other apart from opposing counsel. Counsel are presumed to have consented to the Court doing so unless an objection is stated.

**G. Pre-Jury Selection Conference:** A Pre-Jury Selection Conference with all counsel and self-represented parties will be conducted on or before the Monday of the week preceding the week during which the trial is scheduled to commence.

On or before the Pre-Jury Selection Conference, counsel (and self-represented parties) must provide the Court and opposing counsel (or self-represented party) with the following, if not previously provided:

1. Marked pleadings in accordance with CPLR Rule 4012, including copies of any exhibits incorporated by reference in the pleadings;

2. A copy of all Bills of Particulars (including Supplemental and/or Amended Bills of Particulars);

3. A copy of all medical narrative reports exchanged by the parties;

4. A copy of all expert disclosures served pursuant to CPLR 3101(d);

5. A list of probable trial witnesses;

6. A copy of all prior Decisions or Orders on motions issued in the case;

7. Memoranda of law concerning any procedural, evidentiary, or other legal issue which the parties anticipate the Court will need to determine;

8. Requests to Charge. A complete list of requested jury charges, drawn from the Pattern Jury Instructions (PJI) of the then current year. Requests to charge must be submitted in writing and by e mail in Word Perfect format to the Court's Principal Law Clerk or Assistant Law Clerk as directed by the Court. Where the requested charge comes directly from the PJI, only the PJI title, section number and page number need to be provided. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted, together with any supporting legal authority.

9. Proposed Verdict Sheet. A proposed Verdict Sheet, jointly prepared by all parties, typewritten and in final form for presentation to the jury shall be submitted. If agreement cannot be reached between and among the parties as to the questions to be posed to the jury prior to the Pre-Jury Selection Conference, each party will present a proposed verdict sheet which will be served upon all the parties. Proposed Verdict Sheets must be submitted in writing and by e mail in Word Perfect format to the Court's Principal Law Clerk or Assistant Law Clerk as directed by the Court.

10. **Written motions in limine must be made returnable on the day of the Pre-Jury Selection Conference.** Such motions must be made on no less than seven (7) days notice to opposing counsel and/or self-represented parties. To the extent possible, it is the Court's intention to decide such motions prior to commencement of jury selection.

**H. Adjournment of Conferences:** A request to adjourn a conference must be made in writing, by fax or, **preferably by e mail** (one method only) to the Part Clerk at least twenty-four (24) hours in advance of the scheduled conference. All applications for adjournments must set forth: 1) the reason why an adjournment is necessary; 2) whether the opposing party(ies) consent(s) or object(s) to the application; and 3) the length of the adjournment sought. All such communications must be copied to all counsel and self-represented parties.

Where the adjournment sought is with the Consent of all other parties or attorneys, the Part Clerk will advise the party who submitted the letter request of the new date for the conference. That party will immediately advise all other parties in writing.

Where the adjournment sought is not on consent, the requesting party should fax a brief letter request (no more than 1 page) to the Court [with a copy to all interested parties as required by Rule 1A above] setting forth why the adjournment is necessary, the length of the adjournment sought and the reason offered by the non consenting party for his/her lack of consent. Opposing counsel or self-represented party may succinctly (no more than 1 page) provide their reasons for objecting to the requested adjournment in a reply fax if opposing counsel believes that his/her position has been stated incorrectly. No further communication concerning the request for adjournment will be permitted. The letter request and the response, if any, are NOT to be used to advocate a position on the substantive dispute and shall address only the reason that consent for the requested adjournment is being declined.

The Part Clerk will advise the requesting party if the requested adjournment has been granted. The requesting party shall advise all other parties to the action if the adjournment request was granted. The parties should not assume that the request for adjournment has been granted unless specifically advised by the Part Clerk.

### **III. Motions/Orders to Show Cause/Temporary Restraining Orders**

#### **A. General Rules**

1. Written applications by Notice of Motion (or Notice of Petition as the case may be) may be made returnable on any day the Court is in session.

2. Absent express permission obtained in advance from the Court, briefs/ memoranda of law are limited to 30 pages each, and affirmations and affidavits are limited to 25 pages each. Papers which exceed these limitations may be rejected by the Court. Motion papers are limited to Moving Papers, Opposing Papers and Reply. Sur-Reply papers are not permitted.

3. The return date for Orders to Show Cause will be determined by the Court

at the time papers are submitted for consideration and signed by the Court. Submitted Orders to Show Cause must include the submitting attorney's fax number to permit a conformed copy of the signed Order to be sent to the movant.

4. There will be no oral argument required on any motion or Order to Show Cause unless directed by the Court. Parties seeking Oral Argument of a motion or Order to Show Cause may request that oral argument be heard by stating "Oral Argument Requested" above the Index Number on the first page of the papers submitted. If the Court grants the request for Oral Argument, the Court staff will inform the attorney for the party who requested Oral Argument of the date and time for argument. It is the responsibility of that person to inform all other attorneys of the date and time set. A request for Oral Argument should not be construed as an automatic grant of same.

5. Except by permission of the Court, all motion papers and Orders to Show Cause must be typewritten, double-spaced, securely bound and entirely legible. All exhibits must be legible and labeled with external tab markings.

6. Citations to legal authority must use the official citations.

7. Deposition/Examination Before Trial transcripts included as exhibits must be single, front-faced pages only. Parties are requested not to submit manuscripts.

8. Courtesy copies of motion papers are not to be submitted, unless requested by the Court or Court's staff.

9. All counsel are to submit a self addressed stamped envelope with their moving or opposition papers to allow the Court to mail a copy of the Decision or Order to the party. The name and Index Number of the case and return date of the motion should appear on the envelope.

10. Unless there are extremely unusual circumstances in which significant prejudice (set forth in detail in a supporting affidavit) will result, opposing counsel are to be advised by telephone or fax at least 24 hours in advance of the date and time that any Order to Show Cause which includes a request for a Temporary Restraining Order is being presented to the Court. In a true emergency, the Court, in its discretion may dispense with the 24 hour notice requirement. If there has been no appearance by opposing counsel, the adverse party is to be provided with notice of the intention to submit an Order to Show Cause as provided by 22 NYCRR 202.7(f) and is to be advised that he/she has the right to be heard on the application.

The Court's staff is to be advised by telephone that a party intends to submit an Order to Show Cause for signature before counsel presents him/herself at the Court's Part or Chambers with the papers. The Court's staff may request that the presenting party fax a copy of the papers which are going to be submitted for signature prior to counsel appearing.

## **B. Summary Judgment Motions**

Summary Judgment motions must be made within ninety (90) days of the filing of the Note of Issue.

In the event that a Summary Judgment motion is made prior to completion of

discovery, the making of the motion is not to be deemed to be a stay of discovery. The parties are to continue to abide by any Order or Notice pertaining to discovery unless otherwise directed by the Court.

Unsigned deposition transcripts will not be considered on motions for Summary Judgment unless it is demonstrated that the transcript was forwarded to the deponent for his/her review and signature in compliance with CPLR 3116(a). (See *Marmer v IF USA Express Inc.* 73 AD3d 868, 899 NYS 2d 884 2<sup>nd</sup> Dept 2010).

### C. Adjournments of Motions

Motions may be adjourned on consent to any mutually agreeable date. No more than three (3) adjournments of any motion or cross-motion will be permitted. The total period of time that a motion may be adjourned shall not exceed 60 days. The party seeking the adjournment must notify the Part Clerk of the requested adjourned date at least twenty four (24) hours before the scheduled return date. Any request for an adjournment on consent must state the new return date agreed upon, the number of prior requests for adjournment and the dates previously set.

Where the adjournment sought is with the consent of all other parties or attorneys, the Part Clerk will advise the party who submitted the request of the new return date for the motion. That party will immediately advise all other parties in writing.

Where the adjournment sought is not on consent, the requesting party should fax a brief letter request (no more than 1 page) to the Court [with a copy to all interested parties as required by Rule 1A above] setting forth why the adjournment is necessary, the length of the adjournment sought and the reason offered by the non consenting party for his/her lack of consent. Opposing counsel or self-represented party may succinctly (no more than 1 page) provide their reasons for objecting in a reply fax if opposing counsel believes that his/her position has been stated incorrectly. No further communication concerning the request for adjournment will be permitted. The letter request and the response, if any, are **NOT** to be used to advocate a position on the substantive dispute and shall address only the reason that consent for the requested adjournment is being declined.

Unless the Part Clerk has conveyed that an adjournment has been granted, the parties should not assume that the request has been granted.

### D. Discovery Related Motions

In lieu of discovery motion practice, it is the policy of the Court to make itself and its staff available to resolve disputes related to pretrial discovery. Therefore, ***no discovery motion is to be made by any party unless authorized or directed by the Court.*** Instead, counsel should abide by the procedures set forth in Section IID above to resolve discovery disputes.

## IV. Decisions and Orders

Orders, judgments, counter-orders and/or counter-judgments, submitted for signature on notice will be returned unsigned unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR 202.48 has been included.

Proposed Orders or judgments are not to be submitted by fax unless specifically requested by the Court.

Where the Court issues a Bench Decision and a party desires a written Decision or Order, the party may submit a proposed Order to the Court together with the transcript of the proceedings at which the Bench Decision was rendered.

## **V. Matrimonial Actions**

**A. Preliminary Conferences:** Counsel must be familiar, and comply, with the provisions of 22 NYCRR 202.16. Prior to the Preliminary Conference, the parties will file and exchange those documents set forth in 22 NYCRR 202.16 (f)(1), including Net Worth Statements, pay stubs, W-2 statements, tax returns and statements of accounts.

Counsel are to inform their clients of the automatic orders created by DRL Section 236(B)(2)(b) as soon as the attorney-client relationship is formed.

As noted above, parties to matrimonial actions are to appear at all matrimonial conferences unless otherwise directed by the Court.

Upon receipt of a request for a Preliminary Conference in a Matrimonial Action, the Part Clerk will, along with a letter advising of the date of the PLC, mail a "Pendente Lite Stipulation and Order" and "STATUTORY CALCULATION FOR GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE PURSUANT TO DOMESTIC RELATIONS LAW §236 Part B(5-a)(c)" to be completed by counsel and/or the parties and for use by the Court at the Preliminary Conference.

**B. Matrimonial Pendente Lite Motions:** Both parties and counsel must appear on the return date of any pendente lite motion brought. The Court will conduct either a Preliminary Conference or conference on the motion, as appropriate. In the event a Bench Decision is issued on the motion, a copy of the transcript will be ordered by the Court, the cost of which will be shared by the parties unless otherwise ordered.

**C. Trials:** In all matrimonial actions in which a trial has been scheduled, no later than two (2) weeks prior to trial, the Court is to be provided with: (a) statements of proposed disposition as required by 22 NYCRR 202.16(h); (b) updated Net Worth Statements (with the latest available supporting documents, such as income tax returns, W-2's, brokerage and retirement plan statements); and (c) any forensic reports, appraisals or evaluations conducted in the matter. Failure to submit the required items may result in the Court determining the issues in favor of the party who complied with the Court Rules.

**D. Forensic Evaluator:** Counsel are reminded that the report(s) of any Court-approved Forensic Evaluator (or other expert) are NOT to be provided to the litigants.

## **VI. Jury Selection, Trials and Hearings**

**A. Trial dates:** Scheduled trial and hearing dates will be adhered to except for the most extraordinary good cause shown. Clients, fact witnesses, experts of all kinds (including physicians) are to be timely advised of the date set for trial by the Court within a reasonable period of time of the setting of such date to avoid last minute claims of

unavailability. The parties and their attorneys are encouraged to videotape, in accordance with the applicable rules and statutes, the trial testimony of any witness who may not be available for trial.

The Court will respect counsel's actual scheduled or anticipated vacation plans in setting a trial date. Counsel should not schedule a vacation which conflicts with a scheduled trial date after the trial date has been set by the Court.

**B. Subpoenas:** Counsel are referred to CPLR Sections 2306 and 2307 for guidance as to subpoenas directed to municipal entities such as libraries, municipal corporations and their departments and bureaus. The Court's issuance of a subpoena to such entities does not constitute a ruling as to the admissibility of the subpoenaed records.

All subpoenas seeking the production of medical (or other) records subject to the HIPPA Rules shall attach a duly executed authorization permitting the release of such records.

**C. Interpreters:** In the event a translator or interpreter is required at trial, counsel shall notify the Court and/or Part Clerk no later than the Pre-Jury Selection Conference so that timely and appropriate arrangements can be made.

**D. Personal Injury/Bifurcation:** Trials of personal injury actions, except those involving claims of wrongful death or medical/dental malpractice, will be bifurcated in accordance with 22 NYCRR 202.42.

**E. Jury Selection:** Juries will be selected using "White's Rules". (See 22 NYCRR 202.33) Jurors will be designated; alternate jurors will be designated unless the parties otherwise agree on the record prior to commencement of jury selection that the alternates will be non-designated.

**F. Jury Contact:** Counsel are not to read from any pleading, part of a pleading or other document during jury selection, nor may counsel refer to any specific amount of money being sought. Counsel are not to discuss any aspect of the law with the jury; instruction on the law is for the Court alone.

In jury trials, the parties and their attorneys are to stand (if physically able) whenever the jury enters or leaves the Courtroom. Non party witnesses are not to be in the Courtroom at any time during the trial, other than when the witness is testifying.

**G. Reading of Exhibits:** If counsel intends to use/read from any anticipated exhibit or item of demonstrative evidence during Opening Statements, counsel is to advise the Court of such intention prior to commencement of jury selection.

**H. Objections:** Objections to questions at trial are to be limited to the objecting party standing (if physically able) and stating "Objection" and no more than a one or two word statement as to the basis for the objection. Speaking Objections are not to be made. If the Court requires further explanation of the Objection, the Court will ask for further explanation or invite counsel to approach at side bar.

**I. Use of Videotapes:** Any party intending to use a videotape at trial is to submit

a copy of the videotape (or other video recording), and transcript of the proceedings, if applicable, to the Court at least 2 weeks prior to the scheduled trial date in order to allow the Court to rule on the admissibility of the videotape (or other video recording) and any Objections made during the video recording.

## **VII. Settled and Discontinued Cases**

Counsel must notify the Court by fax of the settlement or withdrawal of any action or proceeding immediately upon such settlement or withdrawal. A copy of the signed Stipulation of Discontinuance which has (or will be) submitted to the County Clerk shall be submitted to the Part Clerk so that the matter may be marked disposed.

## **VIII. Summary Jury Trial**

Parties wishing to resolve their cases more expeditiously may request a Summary Jury Trial ("SJT") in lieu of a traditional full trial. An SJT is a one or two-day proceeding that combines the flexibility and cost-effectiveness of arbitration with the structure of a conventional trial. During an SJT, the rules of evidence are relaxed but not eliminated. The trial is conducted in accordance with a comprehensive Pre-Trial Order in which the jury decides issues of fact and renders a binding verdict just as a jury would in a traditional trial. Upon request, the Court will provide the Rules Governing Summary Jury Trials and a Proposed Waiver/Consent to such procedure.

## **IX. Civility**

This Court values civility and courteousness. Parties are encouraged to refrain from histrionics, showmanship, gamesmanship and discourteousness. The Court expects that the Judge, his staff, the Part Clerk, the Court Reporter, the Court Officers and all attorneys and parties will be treated respectfully. Discourteous behavior (constant interruptions, outbursts or ad hominem attacks for example) will not be tolerated by the Court.

**These Rules are subject to revision or modification by the Court.**

