

INDIVIDUAL PART RULES

HON. VICTOR G. GROSSMAN

Supreme Court of the State of New York

Dutchess County Courthouse

10 Market Street, 1st floor, Room 106

Poughkeepsie, New York 12601

Chambers Telephone (845) 431-1814

Fax (845) 431-1743

(revised 1/25/2017)

Commencing January, 2017, matters before the Honorable Victor G. Grossman of the Supreme Court, Dutchess County, shall be conducted pursuant to the following information, practices, rules and procedures:

STAFF

Lisa R. M. Wolland, Principal Law Clerk

(845) 431-1814

Rose Stern, Secretary

(845) 431-1814

Michael Thompson, Chief Clerk

(845) 431-1707

Beatrice Rivera, Deputy Chief Clerk

(845) 431-1706

Debra Brewster, Part Clerk

(845) 431-1724

I. COMMUNICATIONS WITH THE COURT

A. *Correspondence.* Correspondence to the Court shall, without exception, be copied to all adversary Counsel and *pro se* litigants. Correspondence between Counsel and/or *pro se* litigants shall not be copied to the Court unless there is some specific judicial purpose to be served by transmitting copies to the Court. Faxes and letters addressing substantive non-procedural matters, such as adjournments, will not be considered by the Court absent prior approval, and shall be treated as having been denied without further action by the Court.

B. *Telephone Calls.* Telephone calls to the Court staff are permitted only in urgent situations requiring immediate attention that cannot be attained by correspondence (See Rule III[I] Adjournments).

C. The Court does **NOT** permit litigation by way of letter correspondence to the Court, or by way of being copied with letter correspondence by and between Counsel. Any such submission shall be rejected by the Court without further action or consideration.

D. *Fax transmissions.* Unless specifically approved by the Court in advance, the Court does not accept legal papers of any kind by fax transmission. Faxed communications shall not to exceed 3 pages unless prior permission is obtained from the Court or Court's staff.

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

II. E-Filing Rules and Protocol

A. *E-Filing Protocols.* Counsel and self-represented litigants shall familiarize themselves with the statewide E-Filing Rules (§§202.5-b and 202.5-bb of the Uniform Rules for the New York State Trial Courts, available at www.nycourts.gov/efile) and the Dutchess County and Supreme Courts E-Filing Protocols. General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033, or efile@nycourts.gov

Specific questions about local procedures should be addressed to the Dutchess County and Supreme Court Clerk's Office at (845) 431-1707.

All documents in mandatory e-filed cases, except documents subject to the opt-out provision of §202.5-bb of the Uniform Rules for the New York State Trial Courts, or documents subject to e-filing in which consent is being withheld, are to be filed through the New York State Courts E-Filing System (NYSCEF). All submissions to the Court, except correspondence (see Rule I, supra), must be electronically filed.

B. *Working Copies.* Counsel and self-represented litigants MUST provide working copies of all legal papers which require judicial action (*e.g.*, motions, notices of settlement, *ex parte* applications and proposed orders). The working copy of a motion must include all documents filed in support of the motion, including exhibits WITH external tabs, as required by Rule IV(A)(5) below.

All working copies must be submitted to the Dutchess County and Supreme Court Clerk's Office, MUST include a copy of the NYSCEF Confirmation Notice, firmly fastened, and must comply with all the requirements of the Dutchess County and Supreme Courts E-Filing Protocols. The Confirmation Notice is generated when the case is e-filed and is available in the specific case file at www.nycourts.gov/efile. Working copies that do not include a NYSCEF Confirmation Notice will be rejected.

Working copies shall be mailed or hand-delivered so as to be received by Chambers no later than the return date or notice of settlement date, or as otherwise directed or permitted by the Court.

Counsel shall not submit working copies of letters to the Court that have been uploaded to the system where such correspondence has been faxed to Chambers in accordance with Rule I, supra.

C. *Hard Copy Submissions.* Hard copy submissions in e-filed cases will be rejected unless they bear the Notice of Hard Copy Submission - E-Filed Case required by Uniform Rule §202.5-b(d)(1). The form is available at www.nycourts.gov/efile.

III. COURT CONFERENCES

A. *General Rules.* All conferences with the Court are conducted promptly at 9:30 a.m. weekdays, in the Dutchess County Courthouse, unless otherwise directed. Counsel, including per diem covering Counsel, and pro se litigants, must appear on time, be fully familiar with the action(s) on which they appear, be authorized and prepared to discuss all factual and legal issues presented by the litigation and settlement demands or offers, and be authorized to enter into any agreement on behalf of their client. In matrimonial actions, attorneys are to appear with their clients for all conferences, unless such appearances are dispensed with by the Court on prior written request, on notice to the adversary and, if applicable, the children's attorney(s).

If counsel or a party is unable to appear on time due to unforeseen circumstances (i.e., delays due to inclement weather or road closures), he/she should contact opposing counsel and advise the Part Clerk or Court's staff by telephone as soon as possible. Tardy arrivals will not be tolerated.

Counsel scheduled to appear before this Court and another court must communicate that fact to Chambers prior to the date of appearance so the conflicting appearances can be reconciled. Counsel are not to rely on opposing counsel to advise the Court of their conflict at the time the case is called. In the event counsel does not advise the Court of a conflict, the Court may proceed in the absence of that attorney.

B. *Preliminary Conferences.* Preliminary Conferences shall be conducted within 45 days: (1) after a written Request For Judicial Intervention ("RJ") is duly filed with the Office of the Clerk in accordance with Uniform Rule §202.12(a); or (2) after an appropriate notice is filed in medical malpractice actions pursuant to Uniform Rule §202.56; or (3) after an appropriate notice is filed in matrimonial actions pursuant to Uniform Rule §202.16; or (4) upon a specific directive by the Court. Preliminary conferences in matrimonial actions will be conducted in accordance with Uniform Rule §202.16 and DRL §236(B)(4). Preliminary Conferences in medical, dental and podiatric malpractice actions will be conducted in accordance with Uniform Rule §202.56(b).

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, and 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 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 allegedly not compliant 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, and the claimed compliance or reason for noncompliance, on the other. The parties are **NOT** to copy the Court on correspondence between counsel concerning discovery issues unless specifically requested to do so by the Court. Similarly, any

scheduling issues for depositions, IME's, appraisals, etc. must be addressed by counsel, and must not wait until the Compliance Conference.

The parties are **NOT** to make any motion concerning discovery without having first attempted to resolve the issue. If counsel cannot resolve the discovery 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 Court by letter (see Rule I, supra), to advise of the nature of the dispute and the efforts that have been made to attempt to resolve it. The Court will either resolve the issue by letter or by scheduling a conference.

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.

C. *Compliance Conferences*. The purpose of the Compliance Conference is for Counsel and *pro se* litigants to report to the Court that pre-trial discovery has been completed, so the Court can direct a date on which a Note of Issue shall be filed, and can schedule Pre-Trial Conference and trial dates. Settlement discussions may also take place. Parties are not permitted to file a Note of Issue in any action unless permission to do so is granted by the Court.

Not later than twenty (20) days after the filing of a Note of Issue, the parties must enter into a Stipulation, setting forth agreed upon matters of fact, and the admissibility of documents where the accuracy and reliability of these documents are not in dispute, such as bank statements, closing statements, credit card statements, tax returns, benefit plans and real estate documents. Each party reserves all rights to raise issues and arguments, notwithstanding the admissibility of the document(s). The parties' failure to stipulate undisputed matters of fact or the admissibility of documents, thereby generating unnecessary trial time, shall be a factor in evaluating requests for the granting, or denying, of counsel fees, if otherwise authorized.

D. *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 also must 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 date of 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 §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.

E. *Pre-Trial Conference.* A Pre-Trial Conference with all counsel and self-represented parties will be conducted on the Monday of the week before the week of the trial.

On or before the Pre-Trial 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 §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; and
7. Memoranda of Law concerning any procedural, evidentiary, or other legal issue which the parties anticipate the Court will need to determine.

F. *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 email in Word Perfect format to the Court's Principal Law Clerk, not later than the Pre-Trial Conference. 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.

G. *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 the parties cannot agree to the questions to be posed to the jury prior to the Pre-Trial 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 email in Word Perfect format to the Court's Principal Law Clerk, as directed by the Court.

H. *Written motions in limine must be made returnable on the day of the Pre-Trial 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, the Court will decide such motions prior to commencement of jury selection.

I. *Adjournment of Conferences.* A request to adjourn a conference must be made in writing, by fax, to Chambers 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 or, if on consent, a date all parties are available. All such communications must be copied to all counsel and self-represented parties.

Where the adjournment sought is not on consent, the requesting party should fax a brief (no more than 2 pages) letter request to the Court (with a copy to all interested parties as required by Rule I[A], supra), 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 2 pages) provide their reasons for objecting to the requested adjournment in a reply fax if he/she 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 Court 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, and failure to do so may result in sanctions. The parties should not assume that the request for an adjournment has been granted unless specifically advised by the Court.

IV. Motions/Orders to Show Cause/Temporary Restraining Orders

A. General Rules.

1. Parties may move by Notice of Motion or Order to Show Cause, depending on the exigency of the relief sought. All motions and cross motions in matrimonial actions are to be made by Order to Show Cause. See Rule VII(F), infra.

Proposed Orders to Show Cause submitted for consideration by the Court must include a fax number to permit a conformed copy of the signed Order to be sent to the movant.

2. Written applications by Notice of Motion (or Notice of Petition, where applicable) must be made returnable on any day the Court is in session.

3. Absent express permission obtained in advance from the Court, briefs/memoranda of law are limited to 20 pages each, and affirmations and affidavits are limited to 15 pages

each. Papers exceeding these limitations may not be considered, or may be rejected, by the Court. Motion papers are limited to Moving Papers, Opposing Papers and Reply. **Sur-Reply papers are not permitted.**

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 requesting party's attorney 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, and failure to do so may result in sanctions. 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 (minimum 12-point type), double-spaced, securely bound and entirely legible. **All exhibits must be legible and labeled with external tab markings.** Plaintiffs shall designate exhibits by number; Defendants shall designate exhibits by letter. Exhibit lettering or numbering should not begin anew for subsequent papers submitted by the same party.

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

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

8. All counsel are to submit a self-addressed stamped envelope with their moving or opposition papers to allow a copy of the Decision and/or Order to be mailed to the party. The case's name and Index Number, and return date of the motion, should appear on the envelope.

9. Unless there are extremely unusual circumstances in which significant prejudice (set forth in detail in a supporting affidavit/affirmation) 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 or other emergency relief 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 sixty (60) days of the filing of the Note of Issue.

If a Summary Judgment motion is made prior to completion of discovery, the making of the motion is not to be deemed a stay of discovery. The parties shall 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 (2nd Dept. 2010).

C. Adjournments of Motions. A request to adjourn a motion must be made in writing and transmitted to Chambers by fax (see Rule I, supra), prior to the return date of the motion, copied to all counsel and self-represented parties.

All applications for adjournments must set forth: (1) the current return date; (2) the reason why an adjournment is necessary; (3) whether the opposing party(ies) consent(s) or object(s) to the application; (4) the length of the adjournment sought; and (5) the number of prior requests for adjournment and the dates previously set. 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 Court will advise the requesting party whether the adjournment is granted, and if so, the new return date for the motion. That party must immediately advise all other parties in writing, and if fails to do so, sanctions may be imposed.

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.

V. Judgments, Decisions and Orders

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 to be “So Ordered”. Proposed Orders or Judgments are not to be submitted by fax.

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.

All papers which are submitted for signature by the Court shall be identified on the signature page so that the document being signed by the Court can be identified. Example: Jones v. Jones, Index #/year, Type of Document (Judgment of Divorce, etc).

VI. Foreclosure Actions

All motions must include a Proposed Order which disposes of the motion or application for the Court’s signature. In addition to the general provisions included in such orders, the movant shall include the additional provisions as set forth below.

A. Order of Reference. All proposed Orders of Reference submitted to the Court must contain the following paragraphs:

ORDERED that the Referee is entitled to a fee of \$250 for the computation report; \$250 for any sale that is canceled on less than 24 hours' notice to the Referee; \$250 for any third-party closing and \$500 upon the sale; and it is further

ORDERED that the Referee shall complete and submit the computation report within 30 days of the date of the Order of Reference; and it is further

ORDERED that Plaintiff shall make application for Judgment of Foreclosure and Sale no later than 120 days of the date of this Order, unless extension is granted by the Court for good cause shown; it is further

ORDERED that this matter is scheduled for a conference at 2:00 p.m. on _____, 20___. The purpose of this conference is to determine whether the Referee has completed and submitted the computation report and whether Plaintiff has filed an application for Judgment of Foreclosure and Sale. Appearances by the parties and appointed Referee are required unless: (1) the Referee has completed and submitted the computation report; and (2) Plaintiff has filed an application for Judgment of Foreclosure and Sale.

B. *Substitution of Referee.* Requests to substitute a Referee must be made by letter to the Court, NOT by formal motion.

C. *Judgment of Foreclosure and Sale.* All proposed Judgments of Foreclosure and Sale submitted to the Court must contain the following paragraphs:

ORDERED that the Referee is entitled to a fee of \$250 for any sale that is canceled on less than 24 hours' notice to the Referee; \$250 for any third-party closing and \$500 upon the sale; and it is further

ORDERED that the Referee shall make a Report of Sale showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were made, and shall file the Report of Sale with the County Clerk of the County of Dutchess within thirty (30) days after completing the sale and executing the proper conveyance to the purchaser; and it is further

ORDERED that the Referee shall deposit the surplus monies, if any, with the Commissioner of Finance of the County of Dutchess within five (5) days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only on an Order of this Court signed by a Justice of this Court; and it is further

ORDERED that Plaintiff's counsel furnish the Foreclosure Action Surplus Monies Form to the appointed Referee prior to the foreclosure sale date; and it is further

ORDERED that within thirty (30) days of the foreclosure sale, the Referee shall complete the Foreclosure Action Surplus Monies Form, file the completed Form with the Dutchess County Clerk's office, and send a copy of the completed Form directly to

the Chambers of the undersigned. A fillable version of this Form can be found on the court's website at: <http://www.nycourts.gov/FORMS/SurplusMoniesFormFillable.pdf>; and it is further

ORDERED that this matter is scheduled for a conference at 2:00 p.m. on _____, 20__ . The purpose of this conference is to determine whether the foreclosure sale has occurred as ordered, the outcome of such sale and to make such further orders as the Court deems necessary. Appearances by the parties and appointed Referee are required unless: (1) a Report of Sale and a completed Foreclosure Action Surplus Monies Form has been filed and received by the undersigned one week prior to this date; or (2) the Referee notifies the Court in writing one week prior to this date that the sale is not going to occur prior to this date and requests a new date based upon when he/she believes the sale will occur.

That a description of the said mortgaged premises hereinbefore mentioned is annexed hereto and made a part hereof as Schedule A.

D. *Additional Provisions in Judgments of Foreclosure and Sale.* In addition to the foregoing provisions, the Judgment of Foreclosure and Sale shall provide that:

1. the foreclosure sale shall occur at 2:30 p.m., at the Dutchess County Courthouse, rear lobby, 10 Market Street, Poughkeepsie, New York 12601

2. the Referee, upon receiving the proceeds of the sale, shall deposit said proceeds in the Referee's IOLA account maintained for legal clients.

VII. Matrimonial Actions

A. *Preliminary Conferences.* The Court (or the Court's Principal Law Clerk), shall conduct a Preliminary Conference in accordance with 22 NYCRR §202.16(f). Counsel must be familiar and comply with the provisions of 22 NYCRR §202.16. Prior to the Preliminary Conference, the parties are required to 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. In the event either party fails to comply with this provision of the Part Rules, the Court may adjourn the conference and assess costs and fees against the non-compliant party. If both sides fail to comply, the Court may deem such non-compliance to be a withdrawal of the request for a conference and cancel same, requiring payment of a second fee or the Court may treat the failure as a default under Court Rule §202.27(c), which authorizes the Court to strike pleadings or impose other sanctions.

The Court expects the parties to stipulate to grounds if the action has been brought under DRL §170(7). In the event the action is predicated on DRL §170(7), and Defendant wishes to contest grounds, trial of that issue will be held on the date scheduled for the Preliminary Conference or as soon thereafter as the Court's schedule allows.

Counsel must have a substantive conference before the date set for the preliminary conference, either in person or telephonically, to determine the issues to be litigated. The scope of

discovery shall be discussed so that the Court can determine if the requested items are necessary, and/or to set dates for compliance with the discovery demands.

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

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

D. 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 Preliminary Conference, 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.

1. The Court (or the Court’s Principal Law Clerk) shall meet personally with the parties’ counsel, including a party not represented by counsel, and with the parties at the Preliminary Conference, and at any other conferences held by the Court (or the Court’s Principal Law Clerk). Unless agreed to by the parties personally in the presence of the Court (or the Court’s Law Clerk), the parties shall be personally present throughout all conferences.

2. During the Preliminary Conference, the Court (or the Court’s Principal Law Clerk), shall ascertain whether the granting of a divorce is contested. In the event the parties agree that the granting of a divorce will not be contested, a stipulation to that effect shall be entered into no later than thirty (30) days following the conclusion of the Preliminary Conference. If a Complaint or Answer has not been served, the Stipulation shall provide that the parties waive and relinquish any right either may otherwise have to discontinue the action as of right. In the event that a party opposes the granting of a divorce, then the Court (or the Court’s Law Clerk), shall adjourn the Preliminary Conference (except under DRL §170[7]), and: (1) if a Complaint or Answer has not yet been served, the Court (or Principal Law Clerk) shall provide a schedule for the service of all required pleadings; and (2) provide for the filing of a Note of Issue limited to the issue of divorce grounds, which filing date shall be no later than twenty (20) days after the service of the answer, or in the event an answer has been served, within twenty (20) days of the Preliminary Conference so that such trial may be promptly scheduled. In the event that a finding is made upon trial that divorce grounds exist, then the Court shall fix a date for the resumption of the Preliminary Conference.

3. During the Preliminary Conference, the Court (or Principal Law Clerk) shall provide appropriate direction to resolve any existing or anticipated disclosure disputes.

4. If a party or their counsel requests the appointment of an Attorney for the Child[ren], or request the appointment of a forensic evaluator for issues relating to a child, the party or parties making such request shall do so at the Preliminary Conference. The Court shall determine the application within ten (10) days of the Preliminary Conference, or at such other time as it appears necessary by written order.

5. *Experts and Reports.* No attorney shall be appointed for a child nor a child

forensic evaluation ordered, except upon order of the Court which shall be made: (a) upon a motion made by Order to Show Cause pursuant to these Rules; (b) as a result of a conference; or (c) as a result of a conference before the Court. No expert shall be appointed except upon evaluation of the requests made by a party or parties, the parties' Net Worth Statements and most recent tax returns, if applicable, or any recommendation by the Court. Nothing contained herein shall be deemed to limit or restrict the authority of the Court, in accordance with the law, to make any appointment, it being the purpose of this rule to simplify the process and reduce cost, expense, and burden to the Court and to the parties.

6. *Child Custody/Access Forensic Evaluator.* In any case in which a neutral forensic evaluator has been appointed by the Court to assist in custody or access determinations, the reports of evaluators appointed by the Court are **confidential**. These may be reviewed only by a party's attorney. The report(s) shall not be copied or disclosed to any person, except as permitted by this order or any other orders of this Court. Any attorney in the action, who wishes to receive a copy of the report, must first sign an affirmation that may be obtained from the Judge's Part Clerk. A party (client) may review the report, but may not possess a copy of the report. Self-represented litigants may arrange directly with the Judge's Part Clerk to review the report at the Courthouse. No device, capable of recording or photographing, is permitted in the room where the self-represented litigant is reviewing the report. Notes may be taken. If any party seeks to retain an expert other than the neutral forensic evaluator appointed by the Court, counsel may apply to the Court for permission to have the proposed expert receive a copy of the report. The expert will be required to sign a confidentiality agreement prior to receipt of the report.

Any counsel or party who violates these restrictions is subject to sanctions.

7. Counsel (including a party not represented by counsel) may stipulate at a Preliminary or other Conference to designate a specific person or firm to conduct a property evaluation and to the allocation of the expense thereof between the parties. If Counsel (including any party not represented by counsel) agree upon the evaluation as necessary and as to the allocation of expenses, but cannot agree upon a person or firm to conduct the evaluation, they may submit proposed names to the Court to order the designation. If the parties cannot agree upon the necessity for the evaluation or upon the allocation of responsibility therefor, an application shall be made, on notice to all parties, to the Court who shall determine the application. In addition, the requesting party shall include the proposed apportionment of responsibility between the parties, including the reasons therefor. Such statement shall be served upon all adverse parties, and any party opposing the application, in whole or in part, shall submit a statement, setting forth which part(s) of the application is opposed and the basis for such opposition. Nothing contained herein shall be deemed to limit or restrict the authority of the Court, in accordance with the law, to make any appointment, it being the purpose of this rule to simplify the process and reduce cost, expense, and burden to the court and to the parties.

E. *Compliance Conference and Pre-Trial Conference.* At the conclusion of the Preliminary Conference, the Court shall set a date for a Compliance Conference, which shall be held at least ten (10) days prior to the date by which disclosure is to be completed, for the purpose of confirming that all disclosure is complete or will be completed timely. The date for the Compliance Conference shall be set in the Preliminary Conference Order, and, if the date is thereafter adjourned, the adjourned date shall be set forth in an Order. **Any disclosure not completed in conformity with the Preliminary Conference Order, may be deemed waived or appropriate sanctions may be**

imposed against a party who failed to timely provide discovery.

F. *Motions.* As noted above in Rule IV(A)(1), all motions (including cross motions) in matrimonial actions MUST be made by Order To Show Cause. Both parties and counsel must appear on the return date of any motion brought, unless otherwise directed.

On the return date of any *pendente lite* motion, 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 so-ordered by the Court, the cost of which will be shared by the parties unless otherwise ordered.

Any *pendente lite* motion which does not include a Statement of Net Worth and calculations showing the manner in which the amount of any *pendente lite* support sought has been calculated will be denied.

G. *Trials.* In all matrimonial actions scheduled for trial, no later than two (2) weeks prior to that trial, the Court is to be provided with: (a) Statements of Proposed Dispositions 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.

Unless the parties obtain an extension of time from the Court, at the Pre-Trial Conference, counsel must submit to the Court the following documents:

1. marked pleadings;
2. a fully executed Stipulation of relevant facts that are not in dispute. The Court expects that no matter how contentious the case, there will be at least some facts that are not in dispute (*e.g.*, the date of marriage, the names and birth dates of children, the location of any residential real estate and the approximate date of acquisition, approximate cost, and the approximate balance on any mortgage);
3. an exhibit list and pre-marked exhibits. Only those items that are received in evidence will be marked by the reporter. Copies of all exhibits intended to be offered must be presented to the Court in a ringed notebook with a table of contents, with Plaintiff's exhibits numbered, and Defendant's exhibits lettered in the order in which they are generally intended to be used, with external tabs separating each exhibit. Counsel are to exchange their notebooks with proposed exhibits at least seven (7) business days prior to the Pre-Trial Conference. Failure to timely submit an exhibit list and proposed exhibits may result in preclusion. Counsel must either stipulate to the admission of the exhibits to be offered by the adverse parties or state the ground of any objection to admission of any such exhibit. Counsel must be prepared to argue to the Court at the Pre-Trial Conference, the admissibility of any exhibits to which an objection is taken. Counsel are advised that the failure to include an exhibit in the exhibit list and/or to participate in the exhibit exchange provided for herein, may result

in preclusion of that exhibit;

4. a List of Witnesses, including the address of each witness, the time anticipated for the witness' direct examination, and the general subject matter of his or her testimony. The failure to identify a witness may result in the preclusion of that witness' testimony.
5. a Joint Statement of Proposed Disposition. To the extent that the parties disagree on any item, Plaintiff's position should be set out first, followed by Defendant's position.
6. a Child Support Worksheet, if applicable; and
7. updated Statements of Net Worth.

All matrimonial trials and hearings will proceed day-to-day until conclusion. Counsel and/or the self-represented parties shall, to the extent not restricted by an order of protection, meet and confer in good faith to identify exhibits which will be stipulated into evidence.

The Court may, in its discretion, determine that issues relating to child decision-making and/or parenting time are to be bifurcated from the economic issues, with the issues relating to child decision-making and/or parenting time tried first.

VIII. Trials and Hearings

A. *Trial and Hearing 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, any witness' testimony who may be unavailable for trial.

The Court will respect Counsel's and parties' actual scheduled or anticipated vacation plans when setting a trial date. Neither Counsel nor a litigant shall schedule a vacation which conflicts with a scheduled trial date after the Court has set that trial date.

B. *Subpoenas.* Counsel are referred to CPLR §§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. Counsel are also reminded that they are designated agents for service of subpoenas on their clients under CPLR §2303-a.

All subpoenas seeking the production of medical (or other) records subject to the HIPAA 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 Part Clerk no later than the Pre-Trial 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 non-designated, unless the parties otherwise agree on the record prior to commencement of jury selection that the alternates will also be 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 during the trial except 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 prohibited. 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*. If a party intends to use a videotape at trial, that party shall 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.

IX. 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) been submitted to the County Clerk, shall be submitted to the Part Clerk so that the matter may be marked disposed of.

X. Substitution/Discharge of Attorneys

Except in cases where an attorney is replaced by another attorney on consent, any change or

withdrawal of counsel must be approved by the Court on a motion, brought by Order to Show Cause pursuant to CPLR §321.

The Court does not recognize the purported withdrawal by Counsel where such withdrawal would result in a party becoming self-represented (except where the party is an attorney) by the filing of a “Consent to Change Attorney” Form. The use of a “Consent to Change Attorney” Form to withdraw where a party becomes self-represented is specifically prohibited. Any attempt to do so will not be recognized by the Court.

XI. 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. The Court will not tolerate discourteous behavior (*i.e.*, constant interruptions, outbursts or ad hominem attacks).

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