

HON. DAVID S. ZUCKERMAN, J.S.C.

Contact Information:

Address: Orange County Courthouse
285 Main Street
Goshen, NY 10924

Courtroom: Courtroom #1

Chambers Phone: (845) 762-5938

Principal Law Clerk e-mail: jmechman@nycourts.gov

Part Clerk e-mail: lpkeatin@nycourts.gov

Clerk Phone: (845) 762-5925

Judge Zuckerman's Staff:

Principal Law Clerk: J. Raymond Mechmann, Jr., Esq.

Confidential Secretary: Enrique Mieses

Part Clerk: Lynne Keating

Motion Return Day: At the discretion of the moving party.

Motions are on submission only, unless the Court directs otherwise.

Orders to Show Cause are also on submission only, unless the Court directs otherwise.

PLEASE NOTE: The court encourages and is available to facilitate settlement of all matters. Accordingly, in any case assigned to this Part, where all parties consent, they may contact Chambers to request a conference for the purpose of resolving motions pending before the court or settling the entire matter. Nonetheless, even if the parties agree to attend a court conference, this shall not serve to delay the submission date of any discovery or motion nor as a stay of the proceedings.

Part Rules:

The following Part Rules are effective as of **April 15, 2024**, in all non-criminal proceedings assigned to the Hon. David S. Zuckerman, J.S.C.:

I. General Rules

- A. **Conferences:** Preliminary Conferences ~~and Compliance in accordance with the Westchester Supreme Court Civil Case Management Rules, effective December 6, 2021 (Civil Case Management Rules). The Civil Case Management Rules are available~~ ~~at~~ <https://ww2.nycourts.gov/courts/9jd/civilCaseMgmt.shtml>. ~~regarding discovery~~ scheduling will normally, but not exclusively, be conducted virtually with counsel (or the parties, where one or more are unrepresented) unless counsel and/or the parties can

stipulate to the Discovery Schedule on the Part Preliminary Conference Stipulation. Compliance Conferences to monitor compliance with the Discovery Schedule will normally, but not exclusively, be held virtually.

B. Appearances by Counsel with Knowledge and Authority: All counsel who appear before the court must be familiar with the case and be fully authorized to enter into agreements as to both substantive and procedural matters on behalf of their clients. Attorneys appearing “of counsel” to the attorneys of record and self-represented parties shall be held to the same requirements. Failure to comply with this rule may be regarded as a default and dealt with appropriately. All counsel and self-represented parties must be on time for all scheduled appearances.

C. Settlements and Discontinuances: If an action is settled, discontinued, or otherwise disposed of, counsel and self-represented parties shall immediately inform the court by letter, along with a copy of the Stipulation of Discontinuance, and, in an e-filed case, by filing the Stipulation via NYSCEF. In a non e-filed case, the Stipulation of Discontinuance must be filed with the County Clerk, with a copy provided to Chambers. The court will not mark any matter settled unless these directions have been complied with.

D. Papers by Fax: The court does not accept papers of any kind by facsimile transmission without prior court approval.

E. Conduct of Parties and Counsel: It is expected that all parties and counsel shall conduct themselves appropriately in all in-court and out-of-court (virtual) proceedings and in their communications with each other and to the court. Personal attacks upon parties, counsel or the court will not be tolerated and may result in imposition of sanctions.

F. Ex Parte Communications: *Ex parte* communications are strictly prohibited except upon consent of all counsel, with respect

to scheduling matters, presentation of orders to show cause for signature, or where otherwise permitted by law.

G. Communications with Represented Parties: Counsel are directed to inform their clients that under no circumstances shall any represented party engage in any conversation or exchange any communication with the court and its staff (*see* CPLR § 321[a]).

H. Scheduling: Counsel and any self-represented party should address questions about scheduling appearances or adjourning appearances to the Part Clerk via e-mail at lpkeatin@nycourts.gov. Requests for adjournments of appearances should normally not be made any later than 12 noon on the last business date prior to the appearance date.

II. E-Filing Rules and Protocol

A. E-Filing Rules and Protocol: Counsel for all parties shall familiarize themselves with the statewide E-Filing Rules (*see* §§ 202.5-b and 202.5bb of the Uniform Rules for the New York State Trial Courts, available at www.nycourts.gov/efile).

B. E-Filing Questions

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@courts.state.ny.us.

Specific questions about local procedures should be addressed to the Office of the Chief Clerk, Orange County Supreme and County Courts, at 845-762-5916.

B. Electronic Filing: All documents filed in mandatory e-filed cases, except those 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, including proposed orders, judgments and letters must be electronically filed.

III. Motion Practice Rules

A. Working Copies: This Part does not require working copies unless otherwise directed in a particular matter. In the event that the Part requires a working copy, the working copy shall have the Confirmation Notice generated by the NYSCEF system, showing that the documents have been e-filed, firmly fastened thereto as a cover page.

B. Orders to Show Cause for Cases Assigned to this Part: Orders to show cause shall comply *inter alia* with §202.8-d of the Uniform Rules for the New York State Trial Courts regarding the need for emergency relief or a stay, or that a statute requires application by Order to Show Cause. Reply papers are not permitted. Unless indicated otherwise, a court appearance is not required on the return date of all orders to show cause. If an appearance is required, the order to show cause will so indicate and oral argument will be heard on the return date.

C. Discovery Disputes for Cases Assigned to this Part: Prior to seeking judicial intervention, counsel and/or unrepresented parties shall communicate with each other and attempt to resolve or limit any discovery issues. The court endeavors to resolve discovery disputes promptly, usually by conference, which may be held telephonically, virtually or in person. A discovery conference may be obtained by submitting a letter application, not exceeding one (1) page in length, to the Part Clerk via e-mail at lpkeatin@nycourts.gov.

Motions addressing discovery disputes may not be made without a prior conference with the court. With respect to cases in which a

discovery motion accompanies the Request for Judicial Intervention (which results in assignment to this court), no opposition papers shall be served until there has been a conference with the court, which may be obtained by submitting a letter application, not exceeding one (1) page in length, to the Part Clerk via e-mail. The application for a discovery conference may be made by any counsel or unrepresented parties and must be submitted within eight (8) days of service of the motion. Failure to request a discovery conference may result in summary denial of the motion.

D. Requests for Temporary Injunctive Relief for Cases Assigned to this Part: When an order to show cause seeks temporary injunctive relief, including, but not limited to, a stay or a temporary restraining order, counsel for the moving party or any self-represented party shall demonstrate compliance with §§202.7(f) and 202.8-e of the Uniform Rules for the New York State Trial Courts regarding notice to affected parties.

E. Summary Judgment Motions: Summary Judgment motions must be filed within sixty (60) days of the filing of the Note of Issue.

F. Timing and Form of Papers: All Responsive Papers must be filed no later than 9:30 a.m. of the date on which the paper is due. All motion papers submitted to the court, including orders to show cause, must be legible, and should be typewritten and double-spaced, with all exhibits labeled (and, in the case of hard copies, affixed with tab markings). Motion papers and all correspondence must indicate the index number assigned to the action. Motions not conforming to these requirements may be rejected by the court.

G. Papers Required on Particular Motions:

1. Dispositive Motions: For any dispositive motion, the moving party shall include copies of all pleadings filed as of

the date the motion is filed. The failure to comply with this requirement may result in summary denial of the motion.

2. Motions for Leave to Renew or Reargue: On any motion seeking leave to renew or reargue a prior motion, the moving party must submit copies of all papers submitted on the prior motion. The failure to comply with this requirement may result in summary denial of the motion.

3. Motions for Leave to Amend, Supplement, or Correct Pleadings: On any motion for leave to amend, supplement, or correct a pleading, in addition to the proposed amended, supplemental, or corrected pleading, the moving party shall submit copies of all pleadings filed as of the date of the motion. The failure to comply with this requirement may result in summary denial of the motion.

4. Motions for Injunctive Relief: On an order to show cause which seeks injunctive relief, copies of the summons and complaint or petition commencing the underlying action must be provided by the moving party. The moving papers shall set forth compliance with Rule 202.8-d of the Uniform Rules for the New York State Trial Courts. Failure to comply with this requirement may result in summary denial of the order to show cause.

5. Default Motions: On any motion for a default judgment, proof must be presented that a military status investigation of all individual (non-corporate) defendants has been conducted after the time for each such defendant to appear or answer, as applicable, has passed. In addition, to be sufficient, the military status investigation must include, at a minimum, proof of a search conducted through the Department of Defense, which may be performed through that agency's internet site, <https://scra.dmdc.osd.mil/scra/#/home> .

H. Reply Papers: Counsel and self-represented parties shall not set forth factual claims or legal arguments in reply papers that were not previously set forth. New factual claims and legal arguments not directly in response to factual claims or legal arguments offered in opposition to a motion or cross motion will not be considered by the court in determining a motion or cross motion.

I. Sur-Reply and Post-Submission Papers: Counsel and self-represented parties are reminded that the CPLR does not provide for submission of sur-reply papers, however denominated, or presentation of papers or letters to the court after the return date of a motion. In addition, motion practice by correspondence is not permitted. Any opposing counsel or self-represented party who receives a copy of such materials submitted in violation of this rule shall not respond to same.

J. Settled Motions: In the event that, before the motion return date or before a decision has been rendered, the parties settle, withdraw, or otherwise resolve a motion, or part of a motion, they shall immediately inform the court by notifying the Part Clerk via e-mail at lpkeatin@nycourts.gov. In addition, a document detailing the withdrawal, settlement, or other resolution of the motion shall be filed via NYSCEF or, in a non-e-filed case, with the County Clerk.

K. Motion Decisions and Orders:

1. Written Decisions: In most instances, following full submission of a motion, the court will issue a written decision and order. Typically, the decision and order will be e-filed through NYSCEF. E-filing parties must serve documents in hard copy on parties who have not recorded their participation in e-filing and e-file proof of such service.

2. Bench Decisions: In certain instances, the court will render a decision from the bench. Any party seeking a written order shall submit to the court a proposed order supported by a copy of the transcript of the proceedings at which the bench decision was rendered. The signed order will be e-filed by the court through NYSCEF. E-filing parties must serve documents in hard copy on parties who have not recorded their participation in e-filing and e-file proof of such service.

IV. Trial/Hearing Practice Rules

- A. Trial Preparation:** Prior to commencement of any trial or hearing, counsel shall ascertain the availability of all witnesses and subpoenaed documents. Counsel for any party or any self-represented party who has issued subpoenas for the production of records shall request that the Part Clerk obtain all subpoenaed documents from the file room upon reporting to the Part for trial.
- B. Motions in Limine:** The parties shall make all motions in limine no later than ten business days prior to the scheduled trial date and the motions shall be returnable on the scheduled trial date, unless otherwise directed by the court. Opposition papers, if any, shall be served and filed no later than two business days before the return date of the motion, unless otherwise directed by the court. Failure to abide by these deadlines may result in summary rejection of the motion or opposition. Motions in limine should not be used as vehicles for summary judgment motions.
- C. Interpreters and Special Services:** At least three days prior to commencement of any trial or hearing, counsel and any self-represented party shall advise the Part Clerk if the services of a foreign language interpreter are required for any party or witness, or if any special services are required for any party or witness who

suffers from any disability. Counsel shall provide, as needed, any easels, shadow boxes, blackboards, white boards, or any other trial aid. Projection equipment, screens, and/or extension cords shall likewise be provided by counsel.

D. Submissions Prior to Trial: At least three days prior to the date scheduled to begin a bench trial or for jury selection, all counsel shall submit the following to the Court:

1. Marked pleadings and bills of particulars,
2. A statement of the estimated length of trial,
3. A list of all witnesses whom counsel plans to call at trial,
4. A list of all exhibits the party expects to use or refer to at trial, indicating whether such exhibits are stipulated for admission into evidence or are marked only for identification,
5. A written stipulation governing all facts that are not in dispute,
6. In all matrimonial actions, an updated net worth statement and a statement of proposed disposition,
7. A copy of any statutory provisions upon which any party intends to rely, and
8. All expert witness reports and disclosures exchanged between the parties.

Failure to comply with this provision may result in sanctions, striking pleadings, and/or preclusion of evidence.

E. Marking of Exhibits: Counsel and any self-represented party shall pre-mark all exhibits for identification. Any exhibits whose admission is agreed upon by the parties shall be pre-marked for admission.

Failure to comply with this provision may result in preclusion of evidence.

F. Conference: Immediately preceding commencement of the trial, the court shall conduct a conference with all counsel and self-represented parties to discuss preliminary matters and the possibility of settlement. At this conference, counsel must have full authority to settle, or be able to immediately reach the person with such authority by telephone. Additionally, all counsel and self-represented parties shall be prepared to:

1. Advise the court as to all anticipated disputed issues of law and fact, and provide the court with citations to all statutory and common-law authority upon which they will rely,
2. Stipulate to undisputed facts and the admission of documents, records and other exhibits, for which no evidentiary objection will be made,
3. Alert the court to any anticipated *in limine* motions or evidentiary or legal issues they believe will arise during the trial,
4. Provide the court with a copy of all prior decisions and orders in the case that may be relevant to any *in limine* applications or evidentiary or legal issues,
5. Discuss scheduling, as well as the number of witnesses to be called at trial, any anticipated issues regarding the attendance at trial of any party, attorney or witnesses, and any other practical problems the court should consider in scheduling,
6. Alert the court as to any anticipated requests for a jury instruction relating to missing witnesses or evidence, and

7. Alert the Court as to any anticipated request pursuant to CPLR Article 16 for apportionment of liability as to an allegedly culpable non-party.

G. Copies of Transcripts: Immediately prior to commencement of the trial, all transcripts of testimony that may be used either to refresh a witness' recollection or for cross-examination shall be provided to the court. If any part of a transcript of an examination before trial or other recorded proceeding will be read as evidence-in-chief, the proponent of the transcript shall provide a complete copy of it to the court immediately prior to commencement of the trial, with citations to the page and line numbers for all portions to be read.

H. Addressing the Court: Any counsel or self-represented party who is presenting an argument or otherwise addressing the court, including making objections, shall stand while doing so, unless the court directs otherwise. If it is believed that argument on an objection is necessary, to avoid any inappropriate influence on the jury, any counsel or self-represented party may ask permission to approach the bench for a sidebar conference to discuss the matter.

I. Courtroom Behavior: All remarks and all requests, such as for read-back of testimony or the assistance of a Court Officer, shall be directed to the court. Comments shall not be made to opposing counsel or self-represented parties. Personal attacks upon parties, counsel or the court will not be tolerated and may result in the imposition of sanctions. Do not attempt to speak over an adversary; only one person shall speak at a time. If a significant discussion with an adversary is required, permission to approach the bench for a sidebar conference should be requested. Do not address the jury except during jury selection, opening statement and summation.

J. Use of Exhibits: Do not show anything, including an exhibit or proposed exhibit, to a witness without first showing it to all opposing counsel and self-represented parties. If any counsel or self-represented party believes this procedure will compromise his or her trial strategy, he or she shall first request a pre-offer ruling outside the presence of the jury.

K. Summation Exhibits: Any counsel or self-represented party who intends during summation to use any type of demonstrative exhibit not marked into evidence must advise the court and all other counsel and self-represented parties of that intention at the pre-charge conference. Failure to comply with this rule may result in an order precluding use of the exhibit during summation.

L. Examination of Witnesses: Do not approach a witness on the stand during questioning without the court's permission. In the absence of such permission, counsel shall not come closer to the witness stand than the line created by the front of the table occupied by plaintiff's counsel. Questioning counsel or a self-represented party shall allow the witness to complete his or her answer to a question before asking another question. Do not interrupt a witness in the middle of an answer unless it is totally unresponsive, in which event a ruling from the court shall be requested. If an objection is made during the examination of a witness, opposing counsel shall not make further inquiry of the witness until the court rules on the objection.

M. Jury Charges: In all jury trials, a complete list of requests to charge shall be submitted to the court immediately prior to commencement of trial, with copies provided to all other counsel and self-represented parties. If a requested charge is drawn from the current Pattern Jury Instructions (PJI), only the PJI number need be submitted. Where deviations from, or additions to, the PJI are requested, or where an instruction has a space for facts or other information to be filled in, the full text of such requests or insertions

must be submitted in writing, together with any supporting legal precedents. In addition, such proposals shall be prepared in Word format and e-mailed to the Judge's Principal Law Clerk at lpkeatin@nycourts.gov. At the final charge conference, if marshaling of the evidence is required as to a particular jury charge, counsel and all self-represented parties shall provide the Court with the proposed facts they seek to be presented to the jury.

N. Verdict Sheet: At the commencement of the trial, counsel for the parties and any self-represented parties shall jointly prepare a verdict sheet. If agreement cannot be reached, each party shall present a proposed verdict sheet which shall be served upon all other parties. The verdict sheet shall be in a final, typewritten form, which may be used given by the court to the jury. In addition, the proposed verdict sheet(s) shall be submitted in Word format and e-mailed to the Judge's Principal Law Clerk Ray Mechmann at jmechman@nycourts.gov.

Check-in: At the start of each day of trial or hearing, all counsel and self-represented parties shall check in with the Part Clerk.

O. Food and Beverage: Absent the court's permission obtained in advance, no counsel or party shall bring any food or beverage into the courtroom, except coffee or tea in a covered container or bottled water.

V. Artificial Intelligence A. Counsel and any self-represented party must disclose to the court if any portion of their written submission to the Court was generated by any form of artificial intelligence and if so, what portion thereof utilized this form of technology.