

HON. STEPHEN W. CASS
Acting Supreme Court Justice
Gerace Office Building, 2nd Floor
P.O. Box C
Mayville, New York 14757
PHONE: (716) 753-4337 / CHAMBERS FAX: (716) 753-4730

Principal Court Attorney:	Thomas W. White, Esq.	753-4678
Associate Court Attorney:	Marlene T. Sirianno, Esq.	753-4748
Court Clerk - Contested:	Lissa Wilson	753-4497
Court Clerk - Uncontested:	Judith M. Helman	753-4838
Secretary:	Cynthia Basinait	753-4337

MOTIONS/OTSC:

Mondays, beginning at 1:30 p.m. in Judge Cass' Courtroom; scheduled at one-half hour intervals with the time scheduled by Chambers. Emergency matters may be heard at other times specifically arranged with Chambers.

Orders to Show Cause must be presented by movant's attorney to one of the Court Attorneys for review prior to scheduling and signature. To schedule a motion date and time, contact Chambers. An original and copy must be submitted to the Court for scheduling and signature. Motions and Orders to Show Cause **will not** be placed on the Court's calendar unless and until the required motion fee is paid to the County Clerk's Office.

All answering papers and any other moving papers must be received by chambers by Thursday at 5:00 p.m. or a least one day prior to the return date and should include an original and copy.

Requests for TRO's should be on notice to opposing counsel and the Law Guardian, if known, except for rare circumstances.

Motions/OTSC's may not be adjourned without prior Chamber and opposing counsel approval. This can be done by calling chambers and securing a rescheduled date at least 24 hours in advance of the scheduled time. Motions must be adjourned to a specific date and time, and will not be adjourned generally. The party requesting the adjournment must send written confirmation of the adjournment and the rescheduled date to all parties and the Court.

SUBMISSION OF PROPOSED ORDERS/JUDGMENTS AND DIVORCE PACKETS:

1. Proposed orders should be sent directly to Chambers at P.O. Box C, Mayville, New York 14757 for review by one of the Court Attorneys prior to presentation for signature.

2. Proposed orders/judgments must be submitted with indication that the order or judgment has been sent to all opposing counsel, Law Guardian or pro se litigant and no objection has been received. Orders/judgments will not be signed without proof of opportunity of opposing counsel, Law Guardian or pro se litigant to review.

HON. STEPHEN W. CASS

3. Divorce Packets - All divorce packets, whether contested, uncontested and/or affidavit divorce packets should be sent directly to the County Clerk's Office. If the divorce is submitted on affidavit, please note the same in your cover letter.

MATRIMONIAL CASES:

1. Preliminary Conferences: 22 NYCRR 202.12(b) requires that a Preliminary Conference be held within 45 days of the filing of the RJI for a matrimonial action. Remember this time frame when requesting adjournments. Financial Affidavits (236B) and Retainer Agreements **MUST** be submitted to Chambers at least 48 hours prior to the Preliminary Conference.

2. Pre-Trial Conferences: Statements of Proposed Disposition must be submitted to the Court at least 48 hours prior to the Pre-Trial Conference.

3. If a case is resolved by stipulation of the parties, the matter **WILL NOT** be taken off the calendar until the Court receives a signed copy of the stipulation. Since this usually occurs on the eve of trial, stipulations may be faxed directly to chambers at 753-4730.

4. When Judgments of Divorce provide for the full continuation of Family Court orders (custody/visitation or child support), the Judgment must reference the Docket number(s) and Date(s) of Family Court orders, in separate decretal paragraphs and have copies of the orders attached.

5. When an oral default is put on the record, the transcript of the default must be filed in the County Clerk's office with the record; however, **DO NOT** attach the default transcript to the Judgment of Divorce.

6. When a stipulation of settlement is placed on the record or if the case is settled by written stipulation of the parties, a transcript of the oral stipulation or the written stipulation **MUST** be attached to the judgment of divorce. Where the case has been settled by oral stipulation, the Affidavit of Appearance and Adoption of Oral Stipulation **MUST ALSO** be attached to the Judgment.

7. When the court has rendered a written decision or bench decision, the written decision or transcript of the bench decision **MUST** be attached to the Findings of Fact and Conclusions of Law; and, directives of the Court must be detailed in decretal paragraphs in the Judgment of Divorce.

8. When a divorce is settled by stipulation which is incorporated into the Judgment of Divorce, the decretal paragraphs need not specify the provisions concerning equitable distribution. However, separate decretal paragraphs must specify provisions regarding custody, visitation, child support and maintenance.

9. CPLR 306-b: Where service of the Summons with Notice or Summons and Complaint has not been effected within 120 days of filing with the County Clerk's Office, you must obtain the Court's permission to extend the time for service for "good cause shown". This can be done on the papers without the necessity of counsel's appearance, on ex parte notice of motion and payment of the necessary motion filed fee.

HON. STEPHEN W. CASS

10. UCS-111 Forms: 202 NYCRR 202.50c requires that judgments submitted to the court **shall** be accompanied by a completed form.

11. Effective date of Child Support and/or maintenance in judgments and/or orders: Every proposed judgment of divorce or temporary order containing an order of support or maintenance **MUST** specify the effective date. If the parties entered into an oral stipulation placed on the record in court and the stipulation does not specify the effective date of any child support and/or maintenance orders, the effective date to be inserted in the proposed judgment or order will be the date the stipulation was placed on the record. If the matter is resolved by a written stipulation and there is no date specified in the stipulation, the effective date to be inserted in the proposed judgment or order will be effective the date the stipulation is fully signed by both parties. The best practice would be to specify the effective date in any stipulation, written or oral. If the child support and/or maintenance order is by decision of the Court, the decision will indicate the effective date and this date must be inserted in the proposed judgment. If orders are payable through the Support Enforcement Unit and the effective date is not specified in the Judgment, the Support Enforcement Unit will adhere to the dates specified in this paragraph.

12. Prior Family Court Orders: In some judgments, the language continues a prior Family Court order but with changes. This causes confusion in the future to have two orders in effect. In this case, attorneys should either specify that the Family Court order will continue in its entirety or set forth a new, complete order in the Judgment and specify the effective date of the new order, and terminating the prior family court order.

13. Direct Pay orders or through Support Enforcement Unit: Any proposed judgment of divorce should state whether child support is by way of direct pay or through the Support Enforcement Unit. If the order is by direct pay, counsel must file the necessary form with the State Case Registry in Albany, and provide the Court with a copy of the form and letter of filing. If payments are to be made through the Support Enforcement Unit, the proposed judgment must contain a provision directing the filing of a copy of the judgment with the Support Enforcement Unit.

14. Social Security Numbers: Every proposed Judgment of Divorce must contain the social security numbers of parties. In addition, pursuant to DRL 240-b, any proposed judgment with an order for child support, must contain the social security numbers of the minor children.

15. DRL Section 177 (health insurance notification) will be enforced. All stipulations after November 1, 2007 must contain a provision and Judgments of Divorce must contain a decretal paragraph in accordance with the statute.

TEMPORARY ORDERS OF PROTECTION:

1. If one form of relief requested in an Order to Show Cause is an order of protection **PRIOR** to the return date of the Order to Show Cause, counsel should have the client available at the time the Court signs the Order To Show Cause to present testimony on the issue. If the Order to Show Cause seeks an order of protection upon the return date of the Order to Show Cause, counsel should have the client available on the return date to present testimony on the issue. As a matter of course, mutual orders of protection will not be granted.

HON. STEPHEN W. CASS

2. If there is a pending criminal charge involving the same parties and domestic violence allegations arising in any of the local courts and/or county court the divorce action may be transferred to the IDV Court. Proceedings will continue in the matrimonial court until the case is accepted and transferred.

STATEMENT OF NEW WORTH:

1. **MUST** be in substantial compliance with the Statement of New Worth form contained in appendix A of the uniform rules. 22 NYCRR 202.16(b).
2. **MUST** complete all categories, marking “NONE”, “INAPPLICABLE” or “UNKNOWN” if necessary.
3. **MUST** attach pay stubs (3 pay periods), W-2 statements or previous year’s tax return.

QUALIFIED DOMESTIC RELATIONS ORDERS:

1. Those QDRO’s (or DRO’s) submitted with the Judgment of Divorce or within one year after entry **do not** require a motion. However, they do require either the opposing counsel’s approval (or litigant’s approval if pro se) or proper notice and default, with proof provided to the Court of same. Those presented greater than one year after entry require a formal motion, on notice, to the opposing party and his/her former attorney, with proof provided to the Court. A motion fee **is not** required.