

INDIVIDUAL PART RULES

Revised June 5, 2012

HON. FRANCIS A. NICOLAI
Supreme Court of the State of New York
Putnam County Courthouse
20 County Center 2nd Floor
Carmel, New York 10512
Tel. (845) 208-7890
Fax (845) 228-9617

Commencing February 1, 2012, matters before the Honorable Francis A. Nicolai of the Supreme Court, Putnam County, shall be conducted pursuant to the following information, practices, rules and procedures:

STAFF

Lisa Florio, Principal Law Secretary
845-208-7890
Mary Anne LoPriore and Gale McCue, Secretary
845-208-7834
Karen O'Connor, Chief Clerk
845-208-7854
Debra McClay, Part Clerk
845-208-7852
Mary Traynor, Court Reporter
845-208-7849

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.

B. *Telephone Calls.* **Telephone calls** to the Court staff are permitted only in urgent situations requiring immediate attention that cannot otherwise be attained by correspondence. (See Section II. E. on Adjournments)

II. COURT CONFERENCES

A. *General Rules.* All conferences with the Court are conducted promptly at 9:30 a.m. in the Putnam County Courthouse, unless otherwise directed. Counsel and pro se litigants are expected to appear for all conferences on time and must be fully familiar with the action(s) on which they appear. Attorneys are to appear with their clients for all conferences in

matrimonial actions, unless such appearances are dispensed with by the Court on prior written request, on notice to the adversary and any attorneys for the children.

B. *Preliminary Conferences.* Preliminary Conferences shall be conducted: (1) after a written Request For Judicial Intervention (“RJI”) 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. Matrimonial actions will be conducted in accordance with uniform Rule 202.16 and DRL § 236(B)(4). Preliminary Conferences of medical, dental and podiatric malpractice actions will be conducted in accordance with Uniform Rule 202.56(b). All Counsel and pro se litigants are expected to take most seriously the Court’s discovery schedule and deadlines, and non-compliance shall only be excused if explained by extenuating circumstances.

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, to enable the Court to direct a date on which a Note of Issue shall be filed and to schedule dates for a Pre-Trial Conference and trial. 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.

D. *Pre-Trial Conferences.* The Court shall conduct a Pre-Trial Conference with all counsel and pro se litigants on a date that shall ordinarily be within thirty (30) days preceding the trial date. It is expected that Counsel attending Pre-Trial Conferences shall be fully familiar with the action and be authorized to discuss: (1) all factual and legal issues presented by the litigation; (2) settlement demands or offers; and (3) trial procedure and witness scheduling. Counsel must also be authorized to enter into settlements on terms agreeable to the parties and to the Court.

E. *Adjournments.* **NO TELEPHONE REQUESTS WILL BE CONSIDERED. THE PREFERRED METHOD OF REQUESTING AN ADJOURNMENT IS VIA E-MAIL TO THE PART CLERK, DEBRA MCCLAY AT damccly@courts.state.ny.us. REQUESTS CAN BE FAXED TO 845- 228-9617 IF E-MAIL IS UNAVAILABLE.** Applications for adjournments must be made in **writing** *actually received* by the Court at least twenty-four (24) hours in advance of the scheduled conference, and must be copied to all Counsel and pro se litigants. The letter must address: (1) good cause why an adjournment is sought; (2) whether the adversary party(ies) consent or object to the application; and (3) at the option of the sender, an approximate suggested time period or an exact date for which the adjournment is sought. The Court will then notify the applying party or counsel whether the request has been granted or denied. That party shall then notify in writing all adversary parties with copy to the Court of the adjournment date and time, if granted.

III. MOTIONS AND ORDERS TO SHOW CAUSE

A. *General Rules.* The Court will entertain motions on submission, whether brought by Notice of Motion or by Order to Show Cause, at 9:30 a.m. on any Friday the Court is in session. The return date for an Order To Show Cause shall be determined by the Court at the

time papers are submitted for consideration and executed. There shall be no oral argument heard on any motions or Orders to Show Cause unless directed by the Court. In the event the Court wishes to hear oral argument on a motion, as permitted by Uniform Rule 202.8(d), all Counsel and pro se litigants shall be provided with reasonable prior notice of the date and time scheduled for such purpose at which parties are expected to appear in Court.

APPEARANCES ARE REQUIRED ON THE RETURN DATE FOR ANY MOTION OR ORDER TO SHOW CAUSE SEEKING AN ORDER OF CONTEMPT.

B. Filing of Papers Applicable To All Motions. Except with the express permission of the Court, all motion papers and Orders to Show Cause, must be typewritten, double-spaced, securely bound, entirely legible and all exhibits labeled with tab markings. Deposition transcripts included as exhibits must be full pages only. The Court may refuse to accept any such paper which does not conform to the foregoing. **Courtesy copies are not** to be submitted.

C. Motion Adjournments. Upon consent of all Counsel and pro se litigants, the Court typically will grant an adjournment of a motion or Order to Show Cause; however, no more than three adjournments of any single motion will be permitted. The party seeking the adjournment must obtain the consent of adversary parties and notify the Part Clerk of the requested adjourned date at least twenty-four (24) hours before the return date. If the adversary's consent is not obtained, the procedure for seeking adjournment of a Court Conference outlined in section II.E above shall be followed. Motion adjournments shall be confirmed in writing to the Court and all adversary parties.

D. Discovery-Related Motions . Counsel must consult with one another in a good faith effort to resolve all disclosure disputes. (See Uniform Rule 202.7). If counsel are unable to resolve a disclosure dispute in this manner, the procedures set forth above regarding motion practice must be followed before a motion may be filed. The Court will not conference disclosure disputes.

E. Summary Judgement Motions. All Summary Judgement Motions must be made within 60 days of filing the Note of Issue.

F. Applications for Temporary Injunctive Relief or Stays: Counsel and pro se litigants shall follow the directives of Uniform Rule 202.7(f) with respect to such application. The failure to supply the requisite affirmation will result in the request for injunctive relief or stay being stricken from the application, or rejection of the papers.

*******IMPORTANT*******

IV. DECISIONS AND ORDERS

A. The parties are responsible for obtaining copies of all written Decisions, Judgments, Orders, So-Ordered stipulations or other documents submitted for the Court's

signature. Courtesy copies will be furnished only when Chambers is

provided with a stamped, self-addressed envelope .

Parties who do NOT furnish stamped, self-addressed envelopes will nevertheless be

**BOUND BY ALL DATES, OBLIGATIONS & APPEARANCES
directed in Orders, Motions and Decisions.**

V. TRIALS AND HEARINGS

A. Prior to commencement of a trial, counsel shall provide the Court with the following, as relevant:

- 1) marked pleadings in accordance with CPLR Rule 4012;
- 2) pre-trial memoranda of law as to any known disputed legal issues that must be determined by the Court;
- 3) a list of witnesses for each party;
- 4) requests to charge. The charge will be drawn from the Pattern Jury Instructions (PJI). A complete list of requested charges is to be submitted. Unless counsel seek a deviation from the pattern charge or additions to the pattern charge, only the PJI numbers need be submitted. Where deviations or additions are requested, the full text of such requests must be submitted, together with any supporting legal precedents.
- 5) verdict sheet. Counsel shall jointly prepare a verdict sheet. The verdict sheet is to be typed and in final form for presentation to the jury. If agreement cannot be reached, then each side shall present a proposed verdict sheet. If it is feasible, such proposals shall also be submitted on a computer disc in the format convertible to Word Perfect 8.0
- 6) in matrimonial actions, updated net worth statements (with the latest available supporting documents such as income tax returns, W-2's, brokerage statements, retirement plan statements), statements of proposed disposition as required by uniform Rule 202.16(h), and any forensic reports, appraisals and evaluations.

B. *Motions in Limine.* Any motions for the Courts's consideration *in limine* must be filed with the County Clerk and served upon adversary Counsel no later than seven (7) days prior to the scheduled date of the trial, except as to issues that could not have been reasonably anticipated within that time frame.

VI. SETTLED AND DISCONTINUED CASES:

Counsel shall immediately notify the Court of a case disposition. Following the initial notification, counsel shall submit a copy of the stipulation of discontinuance to chambers so that the matter may be marked off the calendar.