

[Revised: 1/29/16]

INDIVIDUAL PART RULES

HON. MARY H. SMITH
Supreme Court of the State of New York
Westchester County Courthouse
111 Dr. Martin Luther King Jr. Boulevard
White Plains, New York 10601
Chambers Tel.: (914) 824-5431
Fax : (914) 824-5885

Commencing January 3, 2011, the Individual Part Rules of Justice Mary H. Smith of the Supreme Court, Westchester County, shall be conducted pursuant to the following information, practices, rules and procedures:

STAFF

Deborah Cohen, Esq., Principal Law Clerk

No telephone calls, except for emergencies

McCallion L. Campbell, Esq., Assistant Law Clerk

914-824-5431

Terrence Flanagan, Part Clerk

914-824-5366

FAX: 914-824-5885

email: tjflanag@nycourts.gov

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. **Postage no longer is available to the Court, and therefore this Part no longer will mail to counsel courtesy copies of Decisions and Orders. However, any counsel submitting a stamped, self-addressed envelope, shall receive a courtesy copy.**

B. Telephone Calls. Due to increase of motion work, no telephone calls to the Court staff are permitted except for emergency situations requiring immediate attention that cannot otherwise be attained by correspondence. All telephone calls will be answered by the Court Clerk, Terrence Flanagan, at 914-824-5366. He may also be reached by email: tjflanag@nycourts.gov.

II. A. E-FILING RULES AND PROTOCOL

All parties should familiarize themselves with the statewide E-Filing Rules (Uniform Rule §§ 202.5-b and 202.5-bb - available at www.nycourts.gov/efile) and the Westchester County E-Filing Protocol available at- www.courts.state.ny.us/courts/9jd/efile/WestchesterCountyJointProtocols.pdf

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 relating to local procedures should be addressed to the **Civil Calendar Office at (914) 824-5300.**

B. ELECTRONIC FILING

Motions in civil actions and related filings, including proposed Orders and Judgments, assigned to Justice Smith must be filed through the New York State Courts E-Filing system (NYSCEF).

C. WORKING COPIES

THIS PART REQUIRES THE SUBMISSION OF “WORKING COPIES” OF ELECTRONICALLY FILED DOCUMENTS. See Uniform Rule § 202.5-b(d)(4). Working copies of motions, proposed Orders to Show Cause and proposed Orders, Judgments and related Affidavits of Service shall be delivered to Terence Flanagan, the Part Clerk, within three (3) business days following the electronic filing **BUT in no event later than 9:30 a.m. on the calendar return date.** UNDER NO CIRCUMSTANCES SHALL WORKING COPIES BE FURNISHED TO CHAMBERS VIA FACSIMILE. Any such received submissions shall be disregarded.

All working copies submitted to this Part must include a copy of the NYSCEF Confirmation Notice firmly fastened as the front cover page of the submission and comply with other requirements set forth in the Westchester County Protocol. **WORKING COPIES WITHOUT THE CONFIRMATION NOTICE WILL NOT BE ACCEPTED.**

D. HARD COPY SUBMISSIONS

This Part will reject any hard copy submissions in e-filed cases unless those submissions 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. 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 of course be determined by the Court at the time papers are submitted for consideration and executed. Although counsel may request oral argument, no oral arguments will be heard on any motions unless directed by the Court. In the unusual instance when 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.

B. Orders to Show Cause: Unless a party is seeking relief which includes a Temporary Restraining Order or relief wherein this Court statutorily is required to set service, all applications shall be made by Notice of Motion. At the discretion of this Court, a proposed Order to Show Cause not in compliance herewith may be rejected.

C. Temporary Restraining Orders. Moving counsel must submit adequate proof of compliance with 22 NYCRR 202.7(f). Failure to do so will result in a denial of the requested TRO.

D. Working Copies of Papers Applicable To All Motions. All motion papers and Orders to Show Cause, must be typewritten, double-spaced, paginated, securely bound, entirely legible and all exhibits labeled with tab markings. Deposition transcripts included as exhibits must be single, front-faced pages only. The Court may reject any such paper which does not conform to the foregoing.

E. 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 attempt to obtain the consent of adversary parties and notify Mr. Flanagan, the Part Clerk, at 914-824-5366, of the requested adjourned date at least twenty-four (24) hours before the return date. Granted motion adjournments must be confirmed in writing by the requesting party to the Court and all adversary parties. No adjournment shall be so marked in the absence of this Court's receipt of a confirmed adjournment letter. If answering or reply papers are missing on the return date without proper notification to the Court, the Court will assume no such submissions exist, and will render a decision based upon the submissions then presently before it.

IV. DECISIONS AND ORDERS

The parties are responsible to obtain copies of all written Orders, Motions

and Decisions. Courtesy copies will be furnished only when chambers is PROVIDED WITH A STAMPED, SELF-ADDRESSED ENVELOPE.

V. TRIALS AND HEARINGS

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

- 1) Marked pleadings and Bill of Particulars 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) All previous judicial decisions, including appellate decisions, on the case.
- 4) A list of witnesses for each party;
- 5) 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.
- 6) 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.

B. Motion in Limine. Any motions for the Courts’s consideration *in limine* must be delivered to the Part Clerk and served upon adversary counsel not later than one (1) day prior to the scheduled date of the trial, except as to issues that cannot be reasonably anticipated prior to trial.

VI. FORECLOSURE ACTIONS:

By directive of the State Chief Administrative Judge, Judgments of Foreclosure and Sale **MUST** be entered within one year after entry of the Order of Reference. Further, all foreclosure actions must be calendared by this Part within six months after the signing of the Judgment of Foreclosure and Sale for purposes of determining whether the sale has occurred and, if so, the outcome, specifically regarding the handling of surplus monies, if any, and whether any other Orders are necessary to finally conclude the matter.

VII. 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 formally marked off the calendar.