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INDIVIDUAL PART RULES (Revised January 10, 2020)

These Part Rules are for matters assigned to Hon. Vincent W. Versaci as Acting Justice of the Supreme Court. These rules are not intended to supplant, but instead to supplement and highlight those set forth at 22 NYCRR Part 202. If any issue is not specifically addressed herein, counsel is directed to the relevant Uniform Rule or the Civil Practice Law and Rules for appropriate direction.

PRELIMINARY CONFERENCES

- (a) A party may request a preliminary conference any time after issue has been joined. The Court will schedule a preliminary conference within forty-five (45) days after a Request for Judicial Intervention (“RJI”) requesting a preliminary conference has been filed. The Court may also schedule a preliminary conference *sua sponte* at any time after an RJI has been filed.
- (b) The Court will notify counsel/self-represented litigants that the Court has scheduled a preliminary conference via written correspondence from Chambers. Unless otherwise directed by the Court, personal appearance by counsel/self-represented litigants is mandatory. Any scheduling conflicts are to be resolved well in advance of the day that the case is on the Court’s calendar. **NO EX PARTE COMMUNICATIONS WILL BE ACCEPTED.**
- (c) If prior to the preliminary conference, counsel/self-represented litigants are able to enter into a stipulated schedule for the completion of discovery, a signed Stipulation may be submitted to Chambers prior to or at the preliminary conference.
- (d) The Court will strictly adhere to the Alternate Dispute Resolution Plan of the Fourth Judicial District. Please refer to the Fourth District ADR Program Rules attached hereto.
- (e) Following the preliminary conference, the Court will issue a Preliminary Conference Order or direct counsel to prepare such Order, and send it to all

counsel/self-represented litigants. Provided within the Preliminary Conference Order will be a discovery schedule which shall establish the deadlines for the completion of all discovery and a date for a compliance conference.

- (f) Once the Preliminary Conference Order has been issued or a Discovery Stipulation has been So Ordered, no modifications are permitted except by written order of the Court granted upon the written request of counsel/self-represented litigants.

DISCOVERY MATTERS

- (a) Counsel/self-represented litigants must confer with one another in a good faith effort to resolve all discovery disputes. 22 NYCRR §202.7.
- (b) No discovery motion may be made without the express permission of the Court.
- (c) The Court will make itself available to facilitate resolution of any and all discovery disputes without formal motion practice. In the event of a discovery dispute, the complaining party shall organize a mutually convenient date and time for a conference call with counsel for all parties/self-represented litigants and the Court. If the dispute cannot be resolved during that conference call or thereafter, the complaining party may proceed with formal motion practice.

MOTIONS/ORDERS TO SHOW CAUSE

- (a) **General Rules.** The Court **suggests** that prior to making any motion (including motions regarding Discovery/Disclosure issues), that the potential movant request a conference with the Court and opposing counsel to discuss the issue for purposes of avoiding unnecessary motion practice. The request for conference should be in writing, on notice to all parties, indicating that counsel is contemplating filing a motion, briefly summarizing the subject of the potential motion, including the relief sought and the basis for the relief, and that the potential movant has attempted to resolve the matter without judicial intervention and was unable to do so.

Upon receipt of such request, the Court will either schedule a conference call, or an in-court conference date. **PLEASE NOTE:** This procedure does not preclude the party requesting the conference from later making a motion relating to the subject addressed at the conference, but simply provides the Court the opportunity to resolve the dispute without the need for motion practice. Failing resolution of the disputed matter, the party seeking relief may proceed with the motion.

- (b) **Original Motion Papers Must Be Filed with the County Clerk's Office Upon Submission.** All motions submitted for filing shall be accompanied by a Motion/Cross-Motion Endorsement Form and a motion fee of \$45.00 payable to the Schenectady County Clerk. When submitting motion papers, including any opposition papers and/or reply papers, the originals along with two (2) copies of

the papers must be delivered to the County Clerk's Office. Upon payment of the motion fee, if any, the original papers must be filed with the County Clerk's Office. Please have the County Clerk's Office stamp the two (2) copies with proof of filing of the original papers. The two (2) stamped copies, with proof of payment of the motion fee, if any, must be delivered to the Chief Clerk's Office for the Supreme and County Courts, who will then forward the copies to Chambers. **Exception:** For motions made by Order to Show Cause, the procedure is slightly different [see subparagraph (e) below].

- (c) **Oral Argument.** Unless oral argument has been requested by a party and permitted by the Court, or is directed by the Court, **ALL MOTIONS SHALL BE DEEMED SUBMITTED ON THE PAPERS AS OF THE RETURN DATE.**

Where there is to be a hearing or oral argument, a specific date, time and place will be scheduled at the Court's direction; it may not necessarily take place on the original return date.

- (d) **Notice of Motion.** All motions should be made returnable at 9:30 a.m. on any weekday except Wednesdays. The movant should select a return date that allows for timely service of the motion papers and all answering papers pursuant to CPLR Rule 2214(b) and the Court Rules promulgated thereunder. However, the Court encourages that counsel be courteous to one another by filing and serving motions and answering papers as far in advance of the selected return date as possible so as to give both the Court and counsel sufficient time to review and prepare as necessary.

Please do not serve Notices of Motion without indicating a return date on the face of the Notice. Blank Notices are unacceptable and may be returned to the moving party.

NOTE: If a motion is filed in a matter that is already scheduled for a conference, the motion should be made returnable at the date and time of such conference.

- (e) **Orders to Show Cause.** An Order to Show Cause is to be used in lieu of a notice of motion only for good cause in "proper cases" (CPLR 2214(d); see also Practice Commentaries and C2214:25 and C2214:26). If you choose to use an Order to Show Cause, please indicate your reason for deviating from use of a notice of motion. When submitting an Order to Show Cause, the original papers along with two (2) copies of the papers must be delivered to the County Clerk's Office. Upon payment of the motion fee, if any, the original papers and the two (2) copies, with proof of payment of the motion fee, if any, shall be delivered to the Chief Clerk's Office for the Supreme and County Courts, who will then forward the original papers and the copies to Chambers. **The Court kindly requests that you not wait while an Order to Show Cause is being reviewed.** Upon execution of the Order to Show Cause, or if the Court must hear argument from counsel before execution of the Order to Show Cause, the Court will notify you

forthwith. Once signed, the original Order to Show Cause and supporting papers will be returned to you for immediate filing with the County Clerk's Office. Proof of such filing should be submitted to Chambers before the return date of the Order to Show Cause.

Please note, except where the law permits otherwise, requests for Temporary Restraining Orders shall be on notice to opposing counsel/self-represented litigants and the Attorney for the Child(ren), if applicable, as required under 22 NYCRR §202.7(f).

- (f) **Supporting Papers and Opposing Papers.** All documents required to decide the application must be attached to the motion or the opposing papers. It is not sufficient that documents may be on file with the Clerk of the Court or the County Clerk's Office, as these documents are not readily accessible by the Court. If documents have already been filed with the County Clerk's Office, copies of those documents must be attached to the moving papers or the opposing papers.

If the opposing papers consist of a cross-motion, the cross-motion should be made returnable on the same date and time as the initial motion, and shall comply with the provisions of CPLR Rule 2215 and the Court Rules promulgated thereunder.
- (g) **Reply Papers.** Reply papers shall not set forth new factual claims, legal arguments, expert affidavits, or requests for relief that are not within the scope of the initial moving papers.
- (h) **Sur-Reply Papers.** The CPLR does not recognize the existence of Sur-Reply Papers, accordingly, this Court will not accept or consider any sur-reply or post-reply papers or materials, whether submitted as formal motion papers or correspondence, absent a party receiving express permission from the Court in advance. *See*, CPLR 2214(c).
- (i) **Motions to preclude expert testimony.** Any motion by a party to preclude or limit expert testimony under the expert disclosure part of these Part Rules or pursuant to CPLR 3101(d) must be made as soon as practicable. Where a party seeks summary judgment based in whole or in part upon a motion to preclude or limit expert testimony, both the motion to preclude or limit and the motion for summary judgment shall have the same return date.
- (j) **Motions *in limine*.** For all other motions *in limine*, please refer to the "Pretrial Conference" section of these Part Rules.
- (k) **Summary Judgment Motions.** Summary Judgment motions must be timely made pursuant to CPLR§3212(a), but no later than 120 days after the filing of the Note of Issue, unless otherwise expressly authorized by the Court upon good cause shown.
- (l) **Adjournments.** Please refer to the "Adjournments" section of these Part Rules.

PRE-TRIAL CONFERENCES

- (a) Within 45 days of the filing of a Note of Issue, the Court shall schedule a pretrial conference. **PLEASE NOTE:** If the Defendant files a Demand for Jury Trial, counsel shall also provide a copy of the Demand directly to Chambers.
- (b) At the pretrial conference, the Court shall schedule a date certain for trial of all outstanding issues. The Court will also explore referring the case to a referee, or to arbitration, if appropriate.
- (c) **Expert Witness Disclosure.** At the pretrial conference, the Court shall establish a deadline for the exchange of expert witness information pursuant to CPLR §3101(d)(1) which shall, in no event, be later than ninety (90) days before trial for the party bearing the burden of proof on that issue. The opposing party must serve its disclosure within forty-five (45) days of trial. Any amended or supplemental expert disclosures shall be allowed only with leave of the Court upon good cause shown. **The statutory stay of disclosure upon the service of a dispositive motion (CPLR 3214[b]) shall not apply to the service of these expert responses.** Unless the Court directs otherwise, a party who fails to comply with this Part Rule will be precluded from offering the testimony and opinions of the expert for whom a timely response has not been given.
- (d) The Court will explore limitation of issues for trial, including any application that counsel anticipates making to limit or preclude testimony or other evidentiary matters. If an evidentiary issue cannot be resolved by the Court at the pretrial conference, a motion *in limine* briefing schedule shall be established. The return date of that briefing schedule, including any adjourned return dates, shall be at least thirty (30) days before the trial date. The intent of this rule is to avoid *in limine* applications on the eve of, or during, the trial of a matter. Failure to bring an *in limine* application before the Court in a timely manner may result in summary denial of the application.
- (e) Counsel should be prepared to discuss settlement at the pretrial conference and should have full authority from their respective clients.

CHARGE CONFERENCES (FOR JURY TRIALS ONLY)

- (a) The Court will endeavor, when possible, to conduct a preliminary charge conference to be held approximately one (1) week prior to the commencement of jury selection. In complex matters, the Court reserves the right to schedule the preliminary charge conference for a date more than one (1) week prior to jury selection.
- (b) At the preliminary charge conference, unless otherwise directed by the Court, each party shall provide the Court and opposing counsel/self-represented litigants with the following items:
 - (i) marked pleadings as required by CPLR 4012, including bill(s) of particular, and any exhibits incorporated by reference in the pleadings;
 - (ii) a list of all proposed exhibits. Materials such as deposition transcripts that a party reasonably anticipates will only be used on cross-examination or to

- refresh the recollection of a witness do not need to be included in the exhibit list. In the event the parties cannot agree on what portions of an EBT transcript are admissible, the party opposing admissibility must provide the Court at a date to be determined prior to trial with a written memorandum setting forth the legal basis for the objection, with citations;
- (iii) a list of probable trial witnesses;
 - (iv) all relevant expert reports;
 - (v) a complete list of suggested jury charges. The charges will be drawn from the Pattern Jury Instructions (“PJI”). Unless counsel seeks a deviation from or an addition 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. Upon request, counsel shall promptly submit the proposed revision or addition to the pattern charge to the Court in an electronic format convertible to Word Perfect. Amendments to the suggested jury charges will be ruled on at the final charge conference following the close of evidence;
 - (vi) a proposed verdict sheet. The proposed verdict sheet shall be jointly prepared by counsel and presented to the Court in a typed final form for presentation to the jury. If agreement cannot be reached, then each side shall present a proposed verdict sheet. Upon request, counsel shall promptly submit the proposed verdict sheet to the Court in an electronic format convertible to Word Perfect;
 - (vii) A Statement of Contentions from each party; and
 - (viii) Pre-trial memoranda of law as to any disputed legal issues that were not known to counsel at the pretrial conference and therefore not addressed as part of the motion *in limine* briefing schedule issued by the Court at the pretrial conference.
- (c) At the preliminary charge conference, counsel for all parties shall also be prepared and shall have the requisite authority:
- (I) to stipulate to undisputed facts and the admissibility of clearly admissible documents and records;
 - (ii) to discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial;
 - (iii) to alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling;
 - (iv) to alert the Court as to any anticipated requests for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.

TRIALS (BENCH OR JURY)

- (a) On the day of trial, trial counsel should appear at the time scheduled and report to Chambers. A conference with the trial Justice will be held to discuss the facts and

issues in the case, the length of the trial, witness scheduling problems and other matters counsel may wish to raise. Counsel should be prepared to dispose of the case or immediately proceed to trial.

- (b) Trial Adjournments. Once scheduled, a trial shall not be adjourned for any reason other than the actual engagement of counsel as provided for in §125.1 of the Rules of the Chief Administrator of the Courts, or upon good cause shown. Any application for an adjournment based upon actual engagement of counsel must be supported by an affirmation establishing the requisite grounds set forth in 22 NYCRR §125.1. Requests for trial adjournments should be requested as far in advance of trial as possible.
- (c) Mandatory Submissions. (Bench Trials only). The following must be provided to the trial Justice on the day of trial:
 - (i) marked pleadings;
 - (ii) list of all proposed exhibits;
 - (iii) witness list;
 - (iv) any expert report not previously provided;
 - (v) statement of contentions;
 - (vi) pre-trial memoranda of law; and
 - (vii) proof of filing the note of issue.

For Jury Trials, please refer to the “Charge Conferences” section of these Part Rules.

NOTE: Providing these materials at the outset of or prior to the trial aids the trial Justice significantly in trial preparation and, for that reason, strict compliance is insisted upon. Of course, submission of this material in advance of trial is always appreciated and is a practice which the Court encourages.

- (d) Conduct of Trial.
 - (i) Pre-Marking Exhibits. Trial exhibits should be pre-marked with the stenographer the morning of the trial and/or during recesses. If there are numerous exhibits (40+), please contact the assigned stenographer to arrange a convenient time to pre-mark exhibits. You can find out who the assigned stenographer is by calling the Chief Clerk’s Office at (518) 285-8401.
 - (ii) Daily Copies. If daily copies will be requested, you should advise the Chief Clerk’s Office of that fact. This is because sometimes two reporters will need to be scheduled to cover a trial where daily copies are required.
 - (iii) Return of Trial Exhibits. At the conclusion of the trial, all trial exhibits shall be returned to the parties. Absent an order of the trial Justice, the Chief Clerk will not retain any trial exhibits.

ADJOURNMENTS

- (a) Requests for adjournments of a scheduled trial or hearing will be reviewed under

- the “Trials” section of these Part Rules.
- (b) Requests for adjournments of conferences and motions must be in writing sent via facsimile and mail to receive Court approval. All requests must be made on notice to all parties. Please indicate whether the request is with or without the consent of opposing counsel. Even if a requested adjournment is on consent of all counsel, the request must also be approved by the Court before it will be deemed granted. The Court will promptly notify the parties of its ruling on the adjournment request.
 - (c) A request to adjourn a conference must be faxed to this Court at least 48 hours prior to the scheduled appearance.
 - (d) Unless good cause is shown, no more than two adjournments of a motion date shall be permitted on any matter.
 - (e) A written adjournment request must:
 - (I) identify the current date of the scheduled conference or motion return date;
 - (ii) identify the number of adjournments that have previously been requested, if any;
 - (iii) state whether the request is made on consent of all counsel; and
 - (iv) identify the proposed adjourned date for the conference or motion.

SETTLED AND DISCONTINUED CASES

Counsel shall immediately provide the Court with written notice whenever a case has been settled or otherwise disposed. Upon execution by all parties, Counsel shall file a Stipulation of Discontinuance with the County Clerk’s Office and send a copy of the Stipulation of Discontinuance to Chambers, along with proof of filing in the County Clerk’s Office.

REAL PROPERTY TAX LAW (“RPTL”) ARTICLE 7 PROCEEDINGS

Upon receipt of a Petition filed pursuant to RPTL Article 7, the Court will send written correspondence to the attorneys of record, acknowledging receipt of the Petition and providing a return date for the Petition. No appearances are necessary on the return date as these cases are generally transferred to the Court’s Article 7 calendar.

The Respondents are not required to file an Answer to the Petition, as RPTL §712 provides that the allegations of the Petition shall be deemed denied.

22 NYCRR §202.59 applies to tax assessment review proceedings, filed in the County of Schenectady. Please note that pursuant to Subdivision (e) of §202.59, a Pretrial Conference will not be held until after the filing of a Note of Issue and Certificate of Readiness. The Note of Issue shall not be filed until all discovery has been completed by all parties. **Please note, a Pre-note Standards and Goals date will be set, however, the Court will direct the Petitioner to submit to the Court a status report regarding the matter by a date certain prior thereto. If the Court does not receive the status report by the date certain, a conference will be scheduled.**

Pursuant to the applicable statutes and rules, the Court takes the position that the prompt

prosecution of an RPTL Article 7 proceeding is the responsibility of the Petitioner. Until such time as a Note of Issue has been filed, the Court will take no further action.

In the event that judicial intervention is required with regard to the discovery process, or for any other reason prior to the filing of the Note of Issue, you should organize a mutually convenient date and time for a conference call with counsel for all parties/self-represented litigants and the Court. If the dispute cannot be resolved during that conference call or thereafter, you may proceed with formal motion practice pursuant to the rules and procedures pertaining to motion practice as contained within these Individual Part Rules.

FOURTH DISTRICT ADR PROGRAM RULES

A. Timing: Unless exempted, all civil cases will be assigned an "ADR Track" *at the first scheduled court appearance.*

B. Preliminary Conference Notice: In the Supreme Court, the preliminary conference notice will advise the parties about the Mandatory ADR Program, direct them to confer, in advance, about ADR and to come to the conference with a proposed plan. Counsel have a duty to discuss ADR with their clients.

C. Requests to Opt Out: Requests to opt out of this program will be addressed by the Assigned Judge at the first court appearance. Opt out will be granted only for good cause. Inconvenience, travel costs, attorney fees or other costs shall not constitute good cause. A party seeking such relief must set forth specific reasons why ADR has no reasonable chance of being productive.

D. Orders of Reference: At the time the ADR Track is established, a timetable will be set for scheduling and completion. Timing of the ADR intervention will be decided by the Assigned Judge. Generally, the first ADR intervention will occur within 12-16 weeks after the first court appearance as it is the intent of the program to have cases proceed to ADR as early as possible in the case. In some cases, ADR intervention may be deferred for a brief period to permit some expedited discovery, as deemed necessary in order to facilitate resolution through the ADR process. If the ADR option determined to be the most appropriate is settlement conferencing by the Court, no Order of Reference is necessary.

E. Selection of Neutral and Stipulations: The neutral, i.e., mediator, evaluator, arbitrator, referee, JHO, will be selected at the preliminary conference. The parties may stipulate to a neutral who is not a CDRC mediator, specially trained court employee, JHO or a member of the court roster of mediators or neutrals, but such will be subject to judicial approval.

F. Fee Waivers: A party who has not been granted poor person status under CPLR article 11, but believes is financially unable to pay all or part of the pro rata share of the neutral's fee, may move for a waiver of the fee requirement.

G. Scheduling Orders: In Supreme Court cases, at the preliminary conference, the Assigned Judge, in addition to setting the ADR Track, will also discuss pre-trial discovery and issue a scheduling order. Referral of the case to ADR will not delay or defer other established milestone discovery dates which are designed to move the case towards trial.

H. Conflict of a Selected Neutral: Upon receipt of an Order of Reference, the neutral will review the case for possible conflicts and notify the Assigned Judge and all parties immediately, whereupon another neutral will be assigned, after consultation with the parties. A neutral shall

disqualify in any cases in which a judge would be disqualified under prevailing ethical rules, including waiver and remittal.

I. Disqualification of a Neutral: After an Order of Reference is issued, if a party believes that a disqualifying conflict exists, he or she should first consult with the neutral. If the matter is not resolved within 14 days, an appropriate motion must be filed with the court seeking assignment of another neutral.

J. Unavailability of a Selected Neutral: If a selected neutral is or becomes unavailable to serve within the time period set forth in the Order of Reference, he or she shall notify all counsel, all unrepresented parties and the Court. A new neutral shall be selected by agreement of the parties or, if they cannot agree, by the Court.

K. Attendance at ADR Sessions: The attorneys who are expected to try the case for any represented party shall appear and participate in ADR and shall be accompanied by an individual with authority to settle the lawsuit. This includes the parties (if they are natural persons) or representatives of the parties that are not natural persons. These latter individuals may not be counsel (except in-house counsel). Attorneys for the parties shall notify other interested parties such as insurers and indemnitors, who shall attend. Only the Assigned Judge may excuse attendance of any attorney, party or party's representative

L. Good Faith: Parties and counsel shall participate in good faith, without any time constraints and put their best efforts towards settlement.

M. The ADR Process: The process may differ, depending upon whether the ADR option is arbitration, mediation or neutral evaluation.

- **Written Memoranda:** All parties should be prepared to provide a three-page limited confidential memorandum that includes the following information:
 - the name and the role of each person expected to attend the ADR session;
 - the name of the person who has full settlement authority;
 - the issues in dispute;
 - a concise summary of the party's claims or defenses as to each disputed issue;
 - the party's view of liability and damages;
 - the relief sought; and
 - suggestions as to how the matter might be resolved.

With the exception of settlement conferencing by the Assigned Judge, no portion of the confidential memorandum submitted by a party shall be disclosed to the Court or to the other parties (except by express agreement) and it shall remain privileged under CPLR 4547 and 3101.

- **Location:** All sessions will occur at the courthouse, unless otherwise agreed.
- **Confidentiality:** All ADR sessions are confidential and private. Evidence of any conduct or statements made during the session is inadmissible pursuant to CPLR

4547. No participant in the ADR process may communicate confidential information acquired during ADR sessions without the consent of the affected party. There shall be no stenographic recording, electronic recording – audio or visual – of the ADR session. With the exception of settlement conferencing by the Assigned Judge there shall be no communication between the Assigned Judge and the neutral regarding a case referred for ADR.

- Interpretation services: If interpretation services are necessary, they will be arranged through the Chief Clerk's Office and provided at no expense to the parties.

- Conclusion: The ADR session shall be concluded:

- by the parties' resolution and settlement of the dispute;
- by adjournment for a future session, as agreed by the parties and the neutral; or
- upon the neutral's determination that future efforts are no longer worthwhile because there is an impasse.

Agreements resolving all or some of the issues in dispute shall be reduced to writing and signed by the parties and submitted to the Assigned Judge.

Impasses will be reported to the Assigned Judge by the neutral. Requests for extension of time will be submitted to the Assigned Judge by the parties.

N. Compensation of Neutrals: All neutrals appointed from the Part 146 Court Rosters shall receive \$150/hour for the first two hours of the initial meeting. If necessary, the neutral may charge \$90/hour for up to two hours of preparation time for cases which require substantial preparation. If the session is cancelled by the parties less than 48 hours prior to the set time, they shall pay a \$150 cancellation fee. Any party who has been granted poor person status is relieved of his or her share of the neutral's fee. All other parties will continue to pay their pro rata share. Court employees who are assigned as neutrals will not be awarded any compensation for serving as mediators. JHO's who are assigned as neutrals will be paid by the court at the statutory daily rate.

O. Pro Bono Service: All neutrals who are on the Court's Part 146 roster must provide pro bono services as a neutral. The minimum service requirement is one pro bono case for every four fully compensated cases for which the neutral is selected.

P. Special ADR Counsel to Assist Self-Represented Litigants: At the preliminary conference, the Assigned Judge may assign a pro bono special ADR counsel to assist self-represented litigants in preparing for and participating in ADR. Appointment of a Special Counsel is in no way guaranteed. It is at the sole discretion of the Assigned Judge. If the ADR session does not result in settlement, the Assigned Judge shall issue an order relieving the Special Counsel of further representation duties and terminate the attorney-client relationship.