

**RULES OF THE
HON. ELENA F. CARIOLA
SUPREME COURT JUSTICE**



**Hall of Justice
99 Exchange Boulevard
Rochester, New York 14614
585.371.3719**

**Law Clerk: Christine Seppeler, Esq.
cseppeler@nycourts.gov**

**Secretary: Jennifer Palmesano
jpalmesa@nycourts.gov**

January 31, 2024

General Rules

I. Appearances and communication by Counsel

All counsel who appear in front of the Court must be fully familiar with the case and authorized to enter into agreements, both substantive and procedural, on behalf of their clients.

In e-filed cases, all counsel must register their appearance in the case in the New York State Courts Electronic Filing (NYSCEF) system and provide up-to-date contact information in NYSCEF. Counsel shall notify the Court immediately should their contact information change.

E-mail communication with the Court is not permitted. Counsel is free to communicate by email with the law clerk and secretary on a limited and as needed basis. With the exception of permissible *ex parte* matters, all parties must be included in email communications with the law clerk or secretary.

All written communication with chambers shall include the short caption and index number. For e-filed cases, the index number shall be in the proper NYSCEF format.¹

In e-filed cases, all formal correspondence to the Court (e.g., letters to the Court) shall be e-filed. There is no need to send courtesy paper copies to the Court or email copies to chambers' staff.

The Court will not accept correspondence requesting legal relief. A formal motion must be filed.

Simple requests, such as scheduling adjustments, or brief inquiries as to the Court's preference, may be made via email or telephone.

Do not send faxes to the Court.

II. Pretrial Conferences

Pretrial conferences are encouraged by the Court. A conference may be scheduled for cases assigned to Justice Cariola by contacting the Court to

¹ <https://iappscontent.courts.state.ny.us/NYSCEF/live/help/IndexNumberFormats.pdf>

request a conference, preferably by email to the law clerk and secretary, copying in all parties. Requests made by letter are also acceptable.² For cases not yet assigned, a conference may be requested by filing a Request for Judicial Intervention (RJI).³

Conferences are generally scheduled for fifteen (15) minutes.⁴ At all conferences counsel who appear shall be knowledgeable about the case, prepared to discuss the facts of the case, possible resolutions, pretrial discovery issues, and whether the use of Alternate Dispute Resolution is feasible. For non-e-filed cases, parties appearing at the first scheduled conference shall provide the Court copies of their pleadings forty-eight (48) hours prior to the scheduled conference. Copies of pleadings may be sent to csepple@nycourts.gov and jpalmesa@nycourts.gov.

A **Case Information Sheet** shall be prepared by the party requesting the preliminary conference and submitted- on notice to the opposing party – concurrently with the RJI for cases already assigned to Justice Cariola, or within seven (7) days of notification from chambers that the case has been assigned to Justice Cariola and the conference has been scheduled.

A copy of the **Case Information Sheet** is attached as Appendix A.

Conferences, unless informed otherwise by the Court, shall be conducted virtually using Microsoft Teams.⁵ The Court shall provide a link to the virtual conference, 48 hours in advance of the scheduled conference, using the email counsel has provided in NYSCEF, or in the RJI.

Requests for adjournment of the conference must be made on notice to all parties. Adjournment of scheduled conferences is in the discretion of the court.

The failure of counsel to attend the conference without a showing of good cause may result in the issuance of sanctions pursuant to 22 NYCRR §§ 130-2.1 and 202.27. A party's inability to utilize Teams does not constitute good

² For cases in which there are parties appearing *pro se*, or cases that are not e-filed, letter applications are required.

³ RJI's must include all contact information for all parties, including email addresses, if known.

⁴ Counsel who believes that a conference will take longer than fifteen (15) minutes should inform the Court of the need for additional time, and the issues that will be discussed at the conference.

⁵ For cases in which there are parties appearing *pro se* the conference may be in-person if the *pro se* parties do not have access to Microsoft Teams.

cause for tardiness or failure to appear. Should a party fail to appear, it is incumbent upon said party to reschedule the conference.

III. Discovery

Parties are expected to diligently engage in the discovery process. Counsel are reminded of the time periods contained in 22 NYCRR § 202.19 for completion of discovery and resolution of the case. A standard case will either be resolved, or a Note of Issue filed within 12 months of filing an RJI, 8 months for a qualified “expedited” case, or 15 months for a “complex” case; all cases must be disposed of within 15 months of filing the Note of Issue.

The Court, in its discretion, may issue a discovery scheduling order. Scheduling orders are normally issued at a pretrial conference but may be issued at any time upon consent of the parties. Parties are encouraged to develop a discovery schedule and request the Court issue a discovery scheduling order on consent of the parties. Should the parties agree to a discovery schedule, submission of a “so-ordered” letter is preferred, outlining the dates discovery shall be completed and the note of issue filed.

Parties shall strictly comply with the dates contained in the discovery scheduling order. Any request to amend a scheduling order must be done by the letter or email application, on notice to all parties, detailing (1) the discovery that has been completed to date; (2) the discovery that still needs to be completed; (3) the reasons for the delay; and (4) the positions of all parties on the request for the amendment. Such requests shall be made at least five (5) days prior to the expiration of the scheduling order.

Counsel must consult in good faith to resolve all discovery disputes. (22 NYCRR § 202.7.) If, after good faith efforts, the parties are unable to resolve the dispute, the party seeking disclosure is encouraged to schedule a pretrial conference with the Court prior to bringing a motion to compel discovery or for sanctions.

IV. Motion Practice

A. General Procedures

Motion papers shall comply with CPLR 2101 and 22 NYCRR § 202.7. The movant must specify in the notice of motion or order to show cause the exact relief counsel seeks.

Every paper filed in court, other than an exhibit or printed form, shall contain writing on one side only, and shall contain print no smaller than 12-point, on 8 ½ x 11 inch paper, bearing margins no smaller than one inch. The print size of footnotes shall be no smaller than 10-point.

Counsel must attached copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion, especially on motions pursuant to CPLR 3211 and 3212.

Exhibits should be marked and legible. If a document referenced in an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion (such as with a deposition transcript), attach excerpts as exhibits and submit the full exhibit separately.

Photos should be in color and clear if you would like the Court to consider them. Photocopies that do not show relevant details will not be considered.

Return Dates. A 'Notice of Motion' shall be filed without indicating a return date. Upon receipt, the Court will set a return date and communicate to the parties by way of email. It may take up to ten (10) business days to assign a return date. Inquiries regarding updates about return dates are discouraged.

Briefing Orders. The Court will indicate a briefing order setting deadlines for the filing of opposition and reply papers by way of email to the parties. Email briefing orders sent by any chambers' staff shall have the same force and effect as though communicated directly by Judge Cariola. The Court reserves the right to amend the briefing order based upon requests from the parties or sua sponte. Failure to abide by the Court's briefing order may result in sanctions, including the preclusion of opposition or reply papers.

Length of Papers. Unless otherwise permitted by the Court for good cause, briefs or memoranda of law are limited to 25 pages each. Affidavits and affirmations shall be reasonable in length.

Sur-reply and Post Submission Papers. The CPLR does not provide for sur-reply papers, however denominated. Nor is the presentation of papers or letters to the Court after submission or oral argument of a motion permitted. Absent express permission in advance, such materials will be returned unread. Opposing counsel who receives a copy of materials submitted in violation of this Rule should not respond in kind.

In e-filed cases, the Court does not require a working copy. Please do not provide one.

Motion return dates, in e-filed cases, shall be provided by Justice Cariola's secretary. The movant must inform all parties of the return date.

Motions are generally heard on submission. Parties may request oral argument of the motion.⁶ Parties requesting oral argument shall submit a letter to the Court (or an email to the law clerk), on notice to all parties, outlining the need for oral argument. If oral argument is granted, the case will be calendared for oral argument during special term.

The Court conducts special term every other Wednesday of every month.

Requests to adjourn a motion shall comply with 22 NYCRR § 202.8(e).

Confidential Personal Information must be redacted or the motion papers will be returned. See NYCRR 202.5(e). This includes SSN, dates of birth, and names of infants contained in the attached medical records or reports, and account numbers in financial cases.

All other procedures outlined in 22 NYCRR §§ 202.8; 202.8-a; 202.8-b; 202.8-c, and 202.8-e shall be strictly followed.

B. Summary Judgment Motions

⁶ Motions to renew/reargue and motions for pro hoc vice admissions are done on submissions only.

Subdivision A of this Section shall be applicable to summary judgment motions.

All summary judgment motion papers shall comply with CPLR 3212.

A Statement of Material Facts is not required; however, the Court may direct the filing thereof pursuant to 22 NYCRR 202.8-g. Statement of Material Facts are discouraged unless directed by the Court.

C. Motion Orders and Decisions

Should a motion be unopposed, the movant shall provide a proposed order to the Court, via NYSCEF in e-filed matters, within fourteen (14) days of the motion return date.

Consent orders signed by all parties can be submitted as soon as possible, via NYSCEF in e-filed matters.

Bench decisions will direct a party to prepare an order on notice to all parties, with a date for compliance. Counsel will be directed to obtain and attach a copy of the transcript of the bench decision, and reference same in the order. Opposing parties shall have seventy-two (72) hours after the proposed order is submitted to note any objections or proposed language in the order.

Counsel may submit a proposed order with their motion papers in non-substantive motions (e.g., *pro hac vice* admissions), structured settlement sales, summary judgment motions in consumer credit cases, and in cases where the movant is seeking a default judgment.

V. **Settlement Conferences**

The Court is available to conduct settlement conferences. Should the parties wish to conduct a settlement conference, please contact chambers to request a conference date. The Court prefers that settlement conferences be conducted virtually unless the Court or the parties request and in-person settlement conference with all parties. It is mandatory that clients (or those with authority to settle) be present or available by telephone.

The parties, in requesting a settlement conference, consent to the Court receiving from each party, *ex parte*, their position on settlement.

At least forty-eight (48) hours prior to any scheduled conference (exclusive of weekends) each party shall submit, *ex parte*, their positions on settlement. Submissions shall be no longer than five (5) pages, exclusive of any submitted exhibits, and shall be emailed to the law clerk at cseppele@nycourts.gov.

VI. Trial Practice

Upon the filing of a Note of Issue, the Court shall schedule a conference (if one was not previously scheduled) to discuss the use of Alternate Dispute Resolution, scheduling dispositive motions, and a trial date.

At this conference, counsel must be prepared to provide dates of availability of their witnesses and clients for trial. Counsel must use good faith efforts to contact clients and witnesses in advance of the conference regarding their availability for trial.

Jury trials are scheduled to last one week. Counsel who believe that the case will need longer than one week should notify the Court of same prior to the conference date.

Upon scheduling a trial date, the Court will issue a trial order which will set forth specific rules for conducting pretrial matters and jury selection. An example of a trial order in a non-medical malpractice action is attached as Appendix B. An example of a trial order in a medical malpractice action is attached as Appendix C.

Counsel must confirm with their clients and witnesses their availability for the scheduled trial date and inform the Court within seven (7) days of the date the trial was scheduled if there is a conflict with the scheduled trial date. Such notification shall be by letter, on notice to all parties, and shall include proposed dates where their clients and witnesses are available. At least four proposed dates shall be provided.

VII. Case Disposition

If an action is settled, discontinued, or otherwise disposed of, Counsel shall immediately inform the Court. (22 NYCRR § 202.28.)

Should the case end with a stipulation of discontinuance, such stipulation must be filed with the Clerk (or e-filed) within 60 days of the notification to the Court that the case has settled or been discontinued. The Court will provide a control date by which the stipulation shall be filed.

Failure to comply with this provision will lead to the Court issuing an order directing the parties to file a stipulation of discontinuance within fourteen (14) days of the issuance of the order. Violation of that order may lead to the imposition of sanctions.

VIII. Uncontested Matrimonial Actions

The judgment roll should include the relevant documents as required by statute and court rules. Please see the “judgment roll checklist for attorneys” for guidance (see Appendix D).

The Court strongly encourages attorneys to follow the relevant language in the statewide forms for every form they utilize for the uncontested matrimonial:

[Uncontested Divorce Forms - NYCOURTS.GOV](https://www.nycourts.gov/uncontested-divorce-forms)

[Divorce Forms - NYCOURTS.GOV](https://www.nycourts.gov/divorce-forms)

Failure to cure Court-identified deficiencies may result in dismissal of the action after 90 days.

APPENDIX A

Brief Description of Defendant's Defenses and any Counterclaims:

(to be completed by Defendant(s)- please include a list of any counterclaims. Should any laws or regulations be alleged in the answer, please list those as well.)

Status of Discovery:

Status of Settlement Discussions:

(Please indicate if a demand has been made and whether or not it has been responded to.)

I have discussed with my client any Alternative Dispute Resolution options available through the court and those offered by private entities. My client:

- presently wishes to jointly engage a mediator at an appropriate time to aid settlement.**
- does not presently wish to jointly engage a mediator at an appropriate time to aid settlement.**

APPENDIX B

PRESENT: HON. ELENA F. CARIOLA
Justice of the Supreme Court

SUPREME COURT
STATE OF NEW YORK MONROE COUNTY

PLAINTIFF,

Plaintiff,

vs.

**DAY CERTAIN
TRIAL ORDER**

Index #

RJI Date:

DEFENDANT,

Defendant.

The parties having conferred between themselves and with the Court, it is now hereby **ORDERED:**

1. Trial Date:

The Day Certain trial date is _____, 202__ at 9:30 AM. Jury Selection will begin that day, immediately followed by Openings and Proofs.

When a matter has been set for trial pursuant to a Trial Order, it is a day certain and will not be adjourned or postponed without the written consent of the Court. In the event the designated attorney is not available or has a prior conflicting trial, then he/she is to secure replacement counsel pursuant to 22 NYCRR § 125.1(g). Notice is hereby given that failure to proceed will result in a default judgment or dismissal with prejudice.

A Pre-Trial Conference is scheduled for _____, 202__ at AM/PM.

The purpose of the conference is to set the trial schedule, review anticipated trial issues, entertain any pre-trial applications, and discuss potential settlement. All clients and adjustors shall be available by telephone.

2. Jury Verdict Sheet:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall provide written **Proposed Jury Verdict Sheets to the Court and opposing counsel in both hard copy form and via electronic mail to jpalmesa@nycourts.gov in MS Word or Wordperfect format**. Any objections thereto shall be made in writing no later than **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived. Supplemental Proposed Verdict Sheets may be permitted based on previously unknown or unanticipated developments or testimony at trial.

3. Requests to Charge:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall provide the Court and opposing counsel with written paragraph-specific references to Pattern Jury Instructions that said party requests be provided by the Court to the jury. Any objections thereto shall be made in writing no later than **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived. **Requests to Charge shall be provided to the Court and opposing counsel in both hard copy form and via electronic mail to jpalmesa@nycourts.gov in MS Word or Wordperfect format**. To the extent possible, parties are encouraged to rely on Pattern Jury Instructions as opposed to writing their own instructions. Supplemental Requests to Charge may be permitted based on previously unknown or unanticipated developments or testimony at trial.

4. Motions in Limine and Memorandum of Law:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall submit any **motions in limine and a memorandum that addresses each question of law or unique evidentiary issue that the party expects to arise at trial**. Responses and objections thereto shall be submitted **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived.

5. Witnesses:

If not disclosed previously pursuant to the Court's Scheduling Order, expert witnesses shall be disclosed by Plaintiff(s) **forty-five (45) calendar days** prior to the Pretrial Conference scheduled herein and by Defendant(s) **thirty (30) calendar days** prior to the Pretrial Conference scheduled herein. See CPLR § 3101(d)(1)(I). All other witnesses shall be disclosed to the Court and opposing counsel at least **ten (10) calendar days** prior to the Pretrial Conference scheduled herein. In addition, Plaintiff shall deliver a list with proposed dates and

times for witness testimony to the Court with copy to opposing counsel **five (5) days** prior to the commencement of jury selection and Defendant shall do the same **three (3) days** prior to the commencement of jury selection.

6. Deposition Designations:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall provide the Court and opposing counsel with Deposition Designations for any proposed testimony to be read pursuant to CPLR § 3117. Said Deposition Designations shall provide the name of the witness, page/line numbers and a transcript of the proposed testimony. Any objections thereto shall be made in writing and provided to the Court and opposing counsel no later than **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived. All objections must delineate the name of the witness, page/line number of the proposed testimony, and provide a specific basis for the objection with legal support if necessary. The failure to comply with this Order shall waive any trial objections to the proposed testimony, and result in the preclusion of any non-designated testimony.

7. Video-Recorded Testimony:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall provide the Court with a copy of any proposed video-recorded testimony along with a transcript thereof. Any objections thereto shall be made in writing and provided to the Court and opposing counsel no later than **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived. Each objection must delineate the page/line number and minute/second of the video testimony, and provide a specific basis for the objection with legal support if necessary. The failure to comply with this Order shall waive any trial objections to the proposed video testimony.

8. Exhibits:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein the parties shall provide a list of all proposed marked exhibits to the Court and opposing counsel. The parties shall consult to determine whether a stipulation may be entered by the parties governing the authenticity and admissibility of any exhibits.

9. Technology Requests:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein requests for any courtroom technology shall be made in writing via e-mail to

jpalmesa@nycourts.gov. No untimely technology requests will be accepted.

10. Jury Selection:

Jury Selection will be conducted in accordance with the Jury Selection Process Order provided to the parties by the Court.

Dated: _____, 202__
Rochester, New York

HON. ELENA F. CARIOLA
Justice of the Supreme Court

JURY SELECTION PROCESS ORDER
HONORABLE ELENA F. CARIOLA

A variation of the Struck Method is used. See 22 NYCRR § 202.33, Appendix E (C).

All obvious potential jurors “for cause” will be removed in consultation with counsel during opening remarks and general questioning of the entire panel. The Court Clerk will then seat **18** prospective jurors.

All additional removals “for cause” must be done during the attorney questioning process. Therefore, if you desire to remove a juror “for cause,” you **MUST immediately bring that to the Court Clerk’s attention**. If the “for cause” challenge is consented to or granted, the Court Clerk will re-seat a new juror immediately in the empty seat and questioning will continue. The remaining seated jurors will not re-numbered. **After voir dire is complete, no “for cause” challenges will be entertained**. See 22 NYCRR § 202.33, Appendix E (C) (3) & (5).

Plaintiff(s) and Defendant(s) will have approximately **45 minutes** each for *voir dire*. See 22 NYCRR § 202.33 (d). If an attorney feels that they need a few more minutes, please notify the Court Clerk so that she/he can call the Judge to advise.

Unless otherwise designated by the Court, there will be **two (2) alternates** that will be *designated* but *undisclosed*. Those alternates will be the seventh and eighth jurors seated. Therefore, there will be a total of eight (8) jurors seated for the trial.

Peremptory challenges will be done either in the jury room or courtroom. Unless the Court otherwise directs, each side will have a total of four (4) peremptory challenges because two (2) alternates are being used. See CPLR 4109; 22 NYCRR § 220.1 (d). Plaintiff(s) will exercise their challenge first, then Defendant(s), and then alternate back and forth until the peremptories are exercised or waived. An attorney who waives a challenge may not thereafter exercise a peremptory challenge. See 22 NYCRR § 202.33, Appendix E(C)(5). Once all challenges are exhausted or waived, the first eight remaining jurors will be seated - (6) deliberating jurors and two (2) alternates. See 22 NYCRR § 202.33, Appendix E (C) (6). The Court Clerk will then excuse the remaining jurors and swear in the eight (8) selected jurors.

The Court Clerk will call Chambers after the jury is sworn, and Chambers will advise as to when the trial will commence.

So Ordered,

/s/ **Honorable Elena F. Cariola**
Justice of the Supreme Court

APPENDIX C

PRESENT: HON. ELENA F. CARIOLA

Justice of the Supreme Court

SUPREME COURT

STATE OF NEW YORK MONROE COUNTY

PLAINTIFF,

Plaintiff,

**DAY CERTAIN
TRIAL ORDER**

vs.

Index #

RJI Date:

DEFENDANT,

Defendants.

The parties having conferred with the Court, it is now hereby **ORDERED:**

1. Trial Date:

The trial date is _____ 202__ at 9:30 a.m. Jury Selection will begin that day with Openings and Proofs as soon as practicable thereafter.

When a matter has been set for trial pursuant to a Trial Order, it is a day certain and will not be adjourned or postponed without the written consent of the Court. In the event the designated attorney is not available or has a prior conflicting trial, then she/he is to secure replacement counsel pursuant to 22 NYCRR § 125.1(g). Notice is hereby given that failure to proceed will result in a default judgment or dismissal with prejudice.

A Pre-Trial Conference is scheduled for _____, 202__ at a.m./

p.m. The purpose of the conference is to review the trial schedule and anticipated trial issues, entertain any pre-trial applications, and discuss potential settlement.

2. Jury Verdict Sheet:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall provide written **Proposed Jury Verdict Sheets to the Court and opposing counsel in**

both hard copy form and via electronic mail to jpalmesa@nycourts.gov in MS Word or Wordperfect format. Any objections thereto shall be made in writing no later than **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived. Supplemental Proposed Verdict Sheets may be permitted based on unanticipated developments or testimony at trial.

3. Requests to Charge:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall provide the Court and opposing counsel with written paragraph-specific references to Pattern Jury Instructions that said party requests be provided by the Court to the jury. Any objections thereto shall be made in writing no later than **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived. **Requests to Charge shall be provided to the Court and opposing counsel in both hard copy form and via electronic mail to jpalmesa@nycourts.gov in MS Word or Wordperfect format.** To the extent possible, parties are encouraged to rely on Pattern Jury Instructions as opposed to writing their own instructions. Supplemental Requests to Charge may be permitted based on unanticipated developments or testimony at trial.

4. Motions in Limine and Memorandum of Law:

No later than **fifteen (15) calendar days** prior to the Pretrial Conference scheduled herein each party shall submit any and all motions in limine. Responses and objections thereto shall be submitted no later than **ten (10) calendar days** prior to the Pretrial Conference scheduled herein. **The failure to comply with this Order shall waive any motions in limine or objections thereto.** No later than **fifteen (15) calendar days** prior to the Pretrial Conference scheduled herein each party shall submit a memorandum of law that addresses each question of law or unique evidentiary issue the party expects to arise at trial. Any request to adjust these time frames should be made to the Court in writing within **thirty (30) calendar days** of the issuance of this Order.

5. Witnesses:

If not disclosed previously pursuant to the Court's Scheduling Order, expert witnesses shall be disclosed by Plaintiff(s) no later than **ninety (90) calendar days** prior to the Pretrial Conference scheduled herein and by Defendant(s) no later than **sixty (60) calendar days** prior to the Pretrial Conference scheduled herein. See CPLR § 3101(d)(1)(I). All other witnesses

shall be disclosed to the Court and opposing counsel at least **ten (10) calendar days** prior to the Pretrial Conference scheduled herein. In addition, Plaintiff shall deliver a list with proposed dates and times for witness testimony to the Court with copy to opposing counsel **five (5) calendar days** prior to the commencement of jury selection and Defendant shall do the same **three (3) calendar days** prior to the commencement of jury selection. Any request to adjust these time frames should be made to the Court in writing within **thirty (30) calendar days** of the issuance of this Order.

6. Deposition Designations:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall provide the Court and opposing counsel with Deposition Designations for any proposed testimony to be read pursuant to CPLR § 3117. Said Deposition Designations shall provide the name of the witness, page/line numbers and a transcript of the proposed testimony. Any objections thereto shall be made in writing and provided to the Court and opposing counsel no later than **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived. All objections must delineate the name of the witness, page/line number of the proposed testimony, and provide a specific basis for the objection with legal support if necessary. The failure to comply with this Order shall result in the preclusion of any non-designated testimony and/or waive any trial objections to the proposed testimony.

7. Video-Recorded Testimony:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein, each party shall provide the Court with a copy of any proposed video-recorded testimony and transcript thereof if possible. Any objections thereto shall be made in writing and provided to the Court and opposing counsel no later than **seven (7) calendar days** prior to the Pretrial Conference scheduled herein, or will be deemed waived. Each objection must delineate the page/line number and minute/second of the video testimony, and provide a specific basis for the objection with legal support if necessary. The failure to comply with this Order shall waive any trial objections to the proposed video testimony.

8. Exhibits:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein the parties shall provide a list of all proposed marked exhibits (numbers 1-499 for plaintiff; numbers 500-1000 for defendant) to the Court and opposing counsel. The parties shall consult to determine

whether a stipulation may be entered governing the authenticity/admissibility of any exhibits.

9. Technology Requests:

Ten (10) calendar days prior to the Pretrial Conference scheduled herein requests for any courtroom technology provided by the court system shall be made in writing via e-mail to jpalmesa@nycourts.gov. No untimely technology requests will be accepted.

10. Jury Selection:

Jury Selection will be conducted in accordance with the Jury Selection Process Order provided to the parties by the Court. The parties shall notify the Court no later than **thirty (30) calendar days** prior to the Pretrial Conference scheduled herein if they seek to use a two-day jury selection process involving the completion of a case-specific Supplemental Jury Questionnaire on the first day, with voir dire and selection on the second day.

11. Supplemental Jury Questionnaire:

The Court will use a Standard Jury Questionnaire and, if deemed necessary by the parties, a Supplemental Jury Questionnaire. If a case-specific Supplemental Jury Questionnaire is to be used, the parties shall meet and confer to agree upon its content no later than **ten (10) calendar days** prior to the Pretrial Conference scheduled herein. All necessary copies of the Supplemental Jury Questionnaire shall be made by the parties and provided to the Court **three (3) calendar days** prior to the Pretrial Conference scheduled herein.

Dated: _____, 202__
Rochester, New York

HON. ELENA F. CARIOLA
Justice of the Supreme Court

JURY SELECTION PROCESS ORDER
HONORABLE ELENA F. CARIOLA

A variation of the Struck Method is used. See 22 NYCRR § 202.33, Appendix E (C). Jury selection will be supervised by the Court Clerk in consultation with the Court, unless otherwise requested by the parties.

All obvious potential jurors “for cause” will be removed in consultation with counsel either during the review of Jury Questionnaires or during opening remarks and general questioning of the entire panel. The Court Clerk will then seat **eighteen (18)** prospective jurors.

All additional removals “for cause” must be done during the attorney questioning process. Therefore, if you desire to remove a juror “for cause,” you **MUST immediately bring that to the Court Clerk’s attention**. If the “for cause” challenge is consented to or granted, the Court Clerk will re-seat a new juror immediately in the empty seat and questioning will continue. The remaining seated jurors will not re-numbered. **After *voir dire* is complete, no “for cause” challenges will be entertained.** See 22 NYCRR § 202.33, App. E (C) (3) & (5).

Plaintiff(s) and Defendant(s) will conduct *voire dire* during a time period set by the Court in consultation with the parties that allows the process to be completed in a timely fashion. See 22 NYCRR § 202.33 (d).

Unless otherwise designated by the Court, there will be two (2) alternates that will be designated but undisclosed. Those alternates will be the seventh and eighth jurors seated. Therefore, there will be a total of eight (8) jurors seated for the trial.

Peremptory challenges will be done either in the jury room or courtroom. Unless the Court otherwise directs, each side will have a total of four (4) peremptory challenges because two (2) alternates are being used. See CPLR 4109; 22 NYCRR § 220.1 (d). Plaintiff(s) will exercise their challenge first, then Defendant(s), and then alternate back and forth until the peremptories are exercised or waived. An attorney who waives a challenge may not thereafter exercise a peremptory challenge. See 22 NYCRR § 202.33, Appendix E(C)(5). Once all challenges are exhausted or waived, the first eight remaining jurors will be seated - (6) deliberating jurors and two (2) alternates. See 22 NYCRR § 202.33, Appendix E (C) (6). The Court Clerk will then excuse the remaining jurors and swear in the eight (8) selected jurors.

The Court Clerk will call Chambers after the jury is sworn, and Chambers will advise as to when the trial will commence.

So Ordered,
/s/ **Honorable Elena F. Cariola**
Justice of the Supreme Court

APPENDIX D

CASE NAME: _____
INDEX NO.: _____ CALENDAR NO.: _____ DATE: _____
PLAINTIFF'S ATTORNEY: _____ PHONE NO. _____
DEFENDANT'S ATTORNEY: _____ PHONE NO. _____
PRO SE PLAINTIFF: _____ PHONE NO. _____
ADDRESS: _____
PRO SE DEFENDANT: _____ PHONE NO. _____
ADDRESS: _____

- 1) **Statement as to whether oral proof will be offered AND Part 130 certification (all cases).**
- 2) **Summons or Summons with Notice (if served without complaint) (all cases).**
Summons with Notice must have: (must be time-stamped)
 a) nature of actions stated; **Filed:**
 b) list of all ancillary relief requested;
 c) grounds (DRL §170); **DRL 170(7)**
 d) statement that Plaintiff IS or IS NOT seeking spousal maintenance as payee OR prior written agreement addresses spousal maintenance;
- 3) **Admission of Service or Affidavit of Service or Affidavit of Defendant/stipulation (all cases).** Affidavit of Service must have: **Filed:**
 a) statement of how affiant knew the person served was defendant (DRL §232 (b), or photo of defendant: and
 b) physical description of person served (CPLR 306); and
 c) date, time and place of service; and
 d) name of person making the service
 e) proof of service of Notice of Guideline Maintenance (or acknowledgment of service of the Notice of Guideline Maintenance);
 f) proof of service of Notice of Automatic Order (or acknowledgment of service)
 j) Affidavit of Defendant: statement that Defendant IS or IS NOT seeking spousal maintenance as payee OR prior written agreement addresses spousal maintenance;
- 4) **Verified Complaint (all cases with a Summons),** containing: (must be time-stamped)
 a) completed verification (DRL §211); **Filed:**
 b) residency requirements; (DRL §230);
 c) grounds (DRL §170); **DRL 170(7)**
 d) ancillary relief requested;
 e) statement satisfying DRL §253 or indicating civil marriage makes it inapplicable;
 f) opposing party's military status;
 g) statement that no prior judgments or pending actions exist and relief has not been granted in prior action;
 h) allegation that both parties are over 18; and
 i) names and birth dates of unemancipated children, or that there are no children;
 j) statement that Plaintiff IS or IS NOT seeking spousal maintenance as payee OR prior written agreement addresses spousal maintenance;
- 5) **Verified Counterclaim (only for dual divorces or divorce in favor of defendant – must include items required for complaint - see above).** (must be time-stamped)

- ___ 6) **Stipulation or notice of withdrawal** (where one party has waived or withdrawn appearance and/or pleading) - signed and notarized
- a) admission of service/receipt of Notice of Guideline Maintenance AND Automatic Order;
 - b) admission of service/receipt of Notice Relating to Health Care of the Parties (DRL § 255)
 - c) statement that Plaintiff and Defendant ARE or ARE NOT seeking spousal maintenance as payee OR prior written agreement addresses spousal maintenance.
- ___ 7) **Affidavit of Regularity** (CPLR 3012, 3215) explaining how matter is in default or that opposing party has consented in writing (all cases);
- statement that Notice of Automatic Orders AND Notice of Guideline Maintenance were served on the Defendant or acknowledged by Defendant in Affidavit of Defendant;
- (if the matter is upon consent, need Affidavit of Defendant or stipulation)
(the Affidavit of Regularity should be dated on or after the Affidavit of Defendant or Stipulation).
- ___ 8) **DRL § 76-h affidavit** (whenever there are minor children, but not necessary if such allegations are contained in the complaint).
- ___ 9) **DRL § 253** sworn statement for each party taking divorce, **and** proof of service on defaulting party (unless ceremony was civil). (ex. if included in complaint and complaint served on Defendant)
- ___ 10) **Attorney fee affidavit** (if fees are requested), with description of work, time expended, usual rates for a those doing work, compensation already received, retainer agreement as to fees (22 NYCRR § 202.16).
- ___ 11) **Current Net Worth Statement** in substantial compliance with 22 NYCRR 202.16 (Appendix A-1) for each party taking divorce, with net worth statement for defaulting party if possible, but minimum is one complete Statement of Net Worth; must have the required attachments (W-2's, 1099's, recent tax return, recent pay stub, other income statement)
- ___ 12) Copy of **Request for Judicial Intervention** (all cases). (must be time-stamped)
- Matrimonial Addendum (if there are minor child(ren)) **Filed:**
- ___ 13) Copy of **Note of Issue and Statement of Readiness** (all cases). **Filed:**
- ___ 14) Applicable **Certified Supreme Court and/or Family Court Order(s)** (if incorporated by reference).
- ___ 15) **Separation Agreement OR Transcript of Oral Stipulation and Affidavit of Appearance and Adoption of Oral Stipulation**, plus all modifications by valid marital agreement (whenever they exist). NOTE: If applicable, every agreement or stipulation entered into after September 15, 1989 must have a provision stating that the parties have been advised of the Child Support Standards Act and that the basic child support obligation provided for therein would presumptively result in the correct of child support to be awarded
- NA 16) **County Clerk's Certificate of Filing Separation Agreement or Decree** (whenever conversion divorce is sought) (DRL § 170[6]).
- ___ 17) **Proof that any unrepresented party has received a copy of the Child Support Standards Chart** (where there are minor child[ren]).
- ___ 18) **Proof that any unrepresented party has received a copy of the Notice of Guideline Maintenance** (all cases)
- ___ 19) **Testimonial affidavit and/or oral testimony (transcript)** for each party taking divorce:
- a) establishing everything required to be alleged in complaint - see above (all cases);
 - b) enabling court to make the 13 factual findings regarding equitable distribution;
 - c) enabling court to make the 20 findings regarding maintenance, information for the guidelines calculation and reason(s) for deviation (if applicable); (DRL §236B[5] & [6]); (in all cases where there is no written agreement or oral stipulation specifically resolving these issues); if the Defendant has defaulted, at least an allegation as to defaulting spouse's income/income earning capacity;
 - d) enabling the court to make the child support findings set forth in 22 NYCRR 202.5 (b) - Appendix B modified as appropriate, including 10 factual findings regarding child support (DRL 240[f]) in cases where there are minor child(ren) and child support proposed deviates from the Child Support Standards

Act presumptive amount and percentages (NOTE: Do not just list factors and indicate they were considered); if the Defendant has defaulted, at least an allegation as to defaulting spouse's income/income earning capacity;

- e) supporting a finding that the custody arrangement proposed is in the child(ren)'s best interests (particularly in split custody situation) if there is no written custody agreement; and
- f) providing information to support a finding that the separation agreement/stipulation was fair and reasonable when made and is not now unconscionable (all cases with a separation agreement/stipulation).

___ 20) **Proposed Findings/Decision** (if J.S.C. took default testimony) or Referee's Report of Findings of Fact & Conclusions of Law (if referee took default testimony or will review testimonial affidavits) (all cases). Include findings as approved by 22 NYCRR 202.50 (b) – Appendix A-2, modified as appropriate, including factual findings as to maintenance, child support, child care, health insurance and payment of cost thereto (if child[ren]), health care expenses not covered by insurance, educational expenses, and the other findings based on the allegations required for testimony or testimonial affidavit (see above).

For conclusions of law include that the requirements of DRL §230, 236, 240, 253 and 255 have been met and that the plaintiff/defendant is entitled to a judgment of divorce/separation granting the incidental relief awarded in the judgment.

- a) statement that each party (whether represented or unrepresented) has been informed of the Notice of Guideline Maintenance pursuant to DRL §236(B)(6)
- b) if child support, a statement that the Court or the Support Collection Unit shall issue an income deduction order or an income execution simultaneously unless the parties have a written agreement for an alternative arrangement OR specified reason(s) that the Court finds to constitute good cause pursuant to DRL § 240(2)(b)
- c) For DRL 170(7): a statement that “all economic issues of equitable distribution of marital property, the payment or waiver of spousal maintenance, the payment of child support, the payment of counsel and experts' fees/expenses as well as custody/visitation with the minor children of the marriage have been resolved by the parties or determined herein by the Court and shall be incorporated into the judgment of divorce”.

___ 21) **Proposed Judgment/Decree** (all cases—see 22 NYCRR 202.50[b]-- Appendix A-2, including:

- a) terms setting forth provisions for custody, visitation, child support, child care, education expenses, health insurance and health care expenses not covered by insurance and income deduction order (in all cases where there are such provisions);
- b) terms for property division (both separate and marital)
- c) terms for maintenance:
 - (i) the terms of maintenance are pursuant to a settlement agreement/stipulation (detailed); OR
 - (ii) the guideline award for maintenance under the Maintenance Guidelines Law was zero OR neither party requested spousal maintenance; OR
 - (iii) detailed maintenance terms, including addressing payor maintenance cap AND whether the award followed the application of the Maintenance Guidelines Law or the Court adjusted the award of maintenance under the Maintenance Guidelines Law as unjust and inappropriate; AND
 - (A) If child support is also awarded, the statement that: “If maintenance is to be paid pursuant to this Judgment of Divorce, then, subject to the terms of DRL 240(1-b), upon termination of the maintenance award, the amount of child support payable shall be adjusted, without prejudice to either party's right to seek a modification pursuant to DRL 236(B)(9)(2).”
- d) statement required by 22 NYCRR 202.50 as to whether separation agreement/stipulation is to be incorporated and surviving or merged, or a combination thereof, that both parties are ordered to comply with the terms of the separation agreement/stipulation, and that the court and Family Court retain

jurisdiction for the purpose of making other maintenance, support, custody, visitation orders (all cases—edited as applicable);

- e) provision that both parties may resume the use of prior surnames (DRL § 240-a) (all cases);
- f) specific reference to any prior orders to be continued, incorporated, or modified (where applicable); and
- g) provision that party not taking divorce “shall be served with a copy of this judgment, with notice of entry, by the (party taking the divorce) within ___ days of such entry”.

- ___ 22) **Qualified Medical Support Order** (required when health insurance for child(ren) involved, but NOT if Medicaid or Child Health Plus or existing FC child support order).
- ___ 23) Completed **Itemization Sheet for Computation of Income** with information on both parties (Child Support Worksheet or set out in detail in a Stipulation/Agreement which complies with CSSA) and Support Collection Unit Information Sheet if child support to be collected through CSEU (if child support not to be paid through CSEU, i.e. directly, then must have New York State Case Registry Filing form)
- ___ 24) Completed **Child Support Summary Form** Supreme Court and Family Court (UCS-111).
- ___ 25) Compliance with **DRL § 255** (either in settlement agreement signed by both parties, separate addendum signed by both parties or Court to send DRL §255 notice to both parties via counsel, if applicable)
- ___ 26) Compliance with **DRL §240(1)(a-1)** (SORA and Registry check, notice to both parties via counsel, if applicable - only in cases where there are children under 18)
- ___ 27) **Certificate of Dissolution:** be sure to complete all boxes in the “Confidential Information Section” and sign at box