

WESTCHESTER SUPREME COURT
DIFFERENTIATED CASE MANAGEMENT PROTOCOL
PART RULES
REVISED EFFECTIVE JANUARY 4, 2010

By Order of the Hon. Alan D. Scheinkman, Administrative Judge of the Ninth Judicial District, the Westchester Supreme Court Differentiated Case Management Protocol as set forth herein has been established for the handling of general civil litigation in Westchester Supreme Court. The protocol was developed in consultation with Hon. Ann Pfau, Chief Administrative Judge, Hon. A. Gail Prudenti, Presiding Justice of the Appellate Division, Second Department, and Hon. Michael V. Coccoma, Deputy Chief Administrative Judge, Courts Outside New York City, and has been revised in light of experience since September 14, 2009 in consultation with the Bar.

The realigned protocol is designed to promote active and effective case management consistent with the guidelines set forth in the Uniform Civil Rules for the Supreme Court. The realigned protocol will focus the use of judicial resources by concentrating the use of judges to trials and resolution of substantive motions. The protocol will be implemented through a comprehensive framework designed to provide intensive case supervision throughout the civil litigation process. As part of the protocol, four component Parts will operate to monitor the progress of cases from discovery to trial - a Preliminary Conference Part, a Compliance Part, a Settlement Conference Part and a Trial Ready Part. Excluded from the protocol are tax certiorari, contested matrimonial, Commercial Division, and Article 81 Mental Hygiene Law cases, which will continue to be handled in specialized parts.

The Westchester Supreme Court Differentiated Case Management Protocol took effect with the Tenth Term of 2009 on September 14, 2009. The following constitute the Rules of the Preliminary Conference Part, Compliance Part, Settlement Conference Part and the Trial Ready Part, as amended, and are effective as of the First Term of 2010 on January 4, 2010.

PRELIMINARY CONFERENCE PART RULES

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In accordance with 22 NYCRR §202.12 (a), a party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses and telephone numbers of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention (RJI) together with the request for a preliminary conference. The request shall be served on all other parties.

Preliminary conferences sought by parties pursuant to 22 NYCRR §202.12 will be scheduled through the Preliminary Conference Part (PCP) upon filing of a request for a preliminary conference with proof of service. If the case has not yet been assigned to an IAS Justice, the party must also submit an original and one copy of an RJI with proof of service; proof of purchase of the index number for the main action, if applicable, and payment of filing fees for all third-party actions. Similarly, if the case has been assigned to an IAS Justice, the party must submit proof of payment of the filing fees for any third-party action.

Pursuant to 22 NYCRR §202.12 (b), the preliminary conference will be held within 45 days of the filing of the RJI unless the Court orders otherwise. Any party may move to advance the date of a preliminary conference upon a showing of special circumstances (22 NYCRR §202.12 (g)).

The PCP will give notice by mail of the preliminary conference. The preliminary conference may be adjourned once by written request of all parties submitted at least two (2) days prior to the preliminary conference. The request for an adjournment may be made to the PCP by mail, facsimile or e-mail to PreliminaryConferenceWestchester@courts.state.ny.us and shall include two (2) proposed alternative dates for rescheduling the preliminary conference, which dates shall be no later than one month following the scheduled preliminary conference. The PCP will thereupon give notice to the parties of the adjourned preliminary conference date by mail, or by e-mail if the parties so request.

The parties are cautioned to arrive on time for the preliminary conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to preliminary conferences may summarily be subject to sanctions and/or costs.

Pursuant to 22 NYCRR §202.12 (c), the matters to be addressed at the preliminary conference shall include as appropriate, the simplification and limitation of factual and legal issues; the establishment of a timetable for the completion of all disclosure proceedings; the establishment of the method and scope of any electronic discovery; the addition of other necessary parties; settlement of the action; and removal to a lower court pursuant to CPLR §325.

Court attorney-referee(s) may conduct the preliminary conferences. Judicial

Hearing Officers may preside over the preliminary conferences as appropriate. At the preliminary conference, the PCP will confirm or modify the DCM track selected by the party who filed the RJI and will establish the schedule within the applicable DCM deadline for completion of pre-trial proceedings. Parties are reminded of the purpose and consequence of the DCM designations and that even if they designate a case as expedited, the case will not be expedited, unless the PCP confirms that an expedited DCM track is warranted.

At the conclusion of the preliminary conference, a preliminary conference order will be issued. Alternatively, in accordance with 22 NYCRR §202.12 and in the discretion of the JHO presiding, all directions of the Court and stipulations of counsel may be recorded by a reporter.

Where all parties can agree upon a discovery schedule, they may submit a preliminary conference stipulation to the PCP to be “so ordered”. In the event that the preliminary conference stipulation is submitted at least three (3) business days prior to the scheduled conference date and is determined to be acceptable, no appearance at the previously scheduled preliminary conference will be required.

A standard form to be used as the preliminary conference stipulation will be available in the PCP and online on the web site of the Ninth Judicial District. Parties will be permitted to submit same to the PCP by facsimile, mail or e-mail (fully executed, scanned pdf format only) to PreliminaryConferenceWestchester@courts.state.ny.us.

The preliminary conference stipulation submitted to be “so ordered” must be signed by all parties who have appeared in the action. If all parties are unable to come to an agreement as to the terms of the preliminary conference stipulation, the preliminary conference will be conducted as scheduled.

The preliminary conference stipulation must strictly comply with 22 NYCRR §202.19 and provide that all disclosure be completed within 8, 12 or 15 months in expedited, standard and complex cases, respectively as set forth in 22 NYCRR §202.19. The preliminary conference stipulation will be reviewed by the PCP to confirm that the DCM track selected by the party who filed the RJI and the schedule proposed by the parties is within the applicable DCM deadline for completion of pre-trial proceedings. The parties may agree in the preliminary conference stipulation to change the DCM track, subject to approval by the PCP.

By not later than the day prior to the scheduled preliminary conference, if the preliminary conference stipulation is acceptable and so ordered, the PCP will contact the parties to confirm the cancellation of the preliminary conference. If the proposed preliminary conference stipulation is not acceptable, the PCP will advise the parties that a preliminary conference is necessary. In the discretion of the PCP, a telephone conference with the parties may be held to address any issues with the preliminary conference stipulation that can be resolved without the necessity of a physical

appearance at a preliminary conference. In the event that matters cannot be resolved without a physical appearance, the in-person preliminary conference shall proceed on the scheduled conference date.

If the preliminary conference stipulation is not submitted, or is not submitted in a timely basis to allow proper review, the preliminary conference shall take place as scheduled. Untimely submissions will be rejected by the PCP, except in exigent circumstances as determined on a discretionary basis by the PCP. It is incumbent upon the parties to ascertain that the PCP has received a timely submission of the preliminary conference stipulation and that no appearance will be required at the preliminary conference. Parties should not assume that a preliminary conference has been cancelled in the absence of verification from the PCP.

Once a preliminary conference stipulation is so-ordered, a copy will be transmitted to counsel by mail or facsimile, or if an e-mail address is designated by the parties for such purposes, by e-mail. The parties are cautioned that preliminary conference orders are to be followed and it is expected that pre-trial proceedings will be completed on time, absent good cause. Lack of diligence will not be regarded as a sufficient excuse.

No motions (including cross-motions) relating to discovery may be interposed until a preliminary conference has been held in the PCP. The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. In the event that motion practice is necessary, a briefing schedule will be established by the court-attorney referee at the preliminary conference and the motion will be referred to the Compliance Part for disposition. Such motions shall be orally argued and the Compliance Part Justice may render a Bench decision or a written Decision, as appropriate. Motions relating to a failure to provide discovery or adhere to the preliminary conference order shall be heard in the Compliance Part (see Compliance Part Rules below). However, no such discovery motion (including a motion to dismiss predicated upon a discovery violation and including any discovery cross-motion) may be interposed until a pre-motion conference has been requested and held in the Compliance Part (see Compliance Part Rules below).

Failure to comply with the terms of a preliminary conference order, and making frivolous motions may result in the imposition of costs or other sanctions on the offending party (22 NYCRR §202.12(f)). Motions made after the preliminary conference has been scheduled and before a pre-motion conference has been held, may be denied unless there is shown good cause why such relief is warranted before the conference is held (22 §NYCRR §202.12(h)).

These PCP rules shall apply in medical malpractice actions only to the extent that they are not inconsistent with the provisions of 22 NYCRR §202.56. The PCP rules shall also apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR §3407 only to the extent that they are

not inconsistent with the provisions of CPLR §3407. In such cases, the request for a preliminary conference may be filed at any time after commencement of the action and shall be accompanied by the physician's affidavit as required by CPLR §3407 (22 NYCRR §202.12 (l)).

In the event that a dispositive motion accompanies the RJI rather than a request for a preliminary conference, the cases will be referred to the PCP for a preliminary conference and will also be assigned to an IAS Justice. In such circumstances, the procedures outlined above will not be initiated unless and until either: (a) the IAS Justice determines that discovery should proceed during the pendency of the motion; or (b) the motion is determined (and some part of the case survives the motion). However, the time that lapses during the pendency of the motion will be considered in determining the amount of time within which discovery is to be completed.

COMPLIANCE PART RULES

Presiding: **HON. ALAN D. SCHEINKMAN, JSC**
Administrative Judge, Ninth Judicial District

HON. JOAN B. LEFKOWITZ, JSC

Personnel: Catherine Richey, Conference Clerk
 Madeline Harris, Motion Clerk

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Phone: (914)824-5344 (Conferences); (914)824-5343 (Motions)

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To assure that a case stays on its designated DCM track, a compliance conference will be scheduled approximately ninety (90) days prior to the date fixed as the last day of discovery in the preliminary conference order. Notices of the compliance conference will be sent by mail to the parties.

The compliance conference may be adjourned once by written request of the parties submitted at least two (2) days prior to the compliance conference. The request for an adjournment may be made to the Compliance Part (CP) by mail, facsimile or e-mail to ComplianceWestchester@courts.state.ny.us, and shall include two (2) proposed alternative dates for rescheduling the compliance conference, which dates shall be no later than sixty (60) days prior to the last day of discovery set forth in the preliminary conference order. The CP will thereupon give notice to the parties of the adjourned compliance conference date by mail, or by e-mail if the parties so request. The parties are cautioned that any adjournment of the compliance conference will not excuse a

failure to provide discovery or failure to adhere to the preliminary conference order and that discovery shall proceed during the period of any adjournment.

The parties are cautioned to arrive on time for the compliance conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to compliance conferences may summarily be subject to sanctions and/or costs.

Compliance conferences will be conducted by court attorney-referees who will monitor the progress of discovery to completion and assure that discovery obligations and deadlines are enforced (and, where appropriate, adjusted) on a consistent basis. The court attorney-referees may, if discovery is not complete, and under limited circumstances, extend the time to complete discovery and adjourn the compliance conference to a later date, but the parties are cautioned that no further adjournments may be forthcoming. Requests for modifications to discovery schedules shall be addressed to the court attorney-referee(s).

Motions relating to a failure to provide discovery or failure to adhere to the preliminary conference order shall be made returnable and heard in the Compliance Part. However, no discovery or discovery compliance motion (including a motion to dismiss predicated upon a discovery violation) may be interposed until a preliminary conference has been held in the PCP and a pre-motion conference has been requested and held in the Compliance Part.

Pre-motion conferences may be requested by letter, transmitted to the CP by mail, facsimile or email to ComplianceWestchester@courts.state.ny.us. The parties will be expected to attend such conferences and attempt in good faith to resolve all discovery disputes. Nothing in these rules shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, to foster the just, expeditious and inexpensive resolution of discovery disputes, pre-motion conferences shall be held in order to permit the Court the opportunity to resolve issues before motion practice ensues. In the event that motion practice is necessary, a briefing schedule will be established by the court attorney-referee(s). Failure to make a motion within the time allowed by the briefing schedule may result in waiver of the issues that were to be raised by the motion. Failure to oppose a motion within the time allowed by the briefing schedule may result in the motion being decided without consideration of opposition. All motions will be orally argued and the CP Justice may render a Bench decision or a written Decision, as appropriate.

At the conclusion of the compliance conference if discovery is complete, the CP Justice shall issue a Trial Readiness Order pursuant to which plaintiff will be ordered to serve and file a Note of Issue and Certificate of Readiness within ninety (90) days (CPLR §3216). If plaintiff fails to file the Note of Issue and Certificate of Readiness as directed in the Trial Readiness Order within such time, the action will be deemed

dismissed without further order pursuant to CPLR §3216. Where all parties agree that discovery is complete and request the issuance of a Trial Readiness Order without the necessity of an appearance at a compliance conference, they may submit a stipulation to such effect to the CP to be “so ordered” and a Trial Readiness Order shall be issued.

The CP Justice shall establish the deadline for any post-note summary judgment motions in the Trial Readiness Order which shall provide that any motion for summary judgment by any party must be served within (1) 30 days following the filing of the Note of Issue, or (2) 120 days of the date of the Trial Readiness Order, whichever is later.

The CP Justice shall set a briefing schedule for the service of papers in opposition or support of summary judgment motions in the Trial Readiness Order, which shall provide that opposition papers must be served within 30 days of service of motion papers and reply papers, if any, must be served within 10 days following service of any opposition papers.

Failure of a party to serve and file the initiatory motion papers within the time allowed by the briefing schedule may result in a waiver of the motion for summary judgment. The Court may grant a request by a party for an adjournment of a deadline to serve and file initiatory, opposition or reply papers with respect to any summary judgment motion and accordingly, the return date of the summary judgment motion. Any request for an adjournment must be in writing submitted at least two (2) days prior to any such deadline. The time within which to make a summary judgment motion shall not be extended for more than 30 days from the original deadline. The return date for a motion for summary judgment once made may not be extended more than three (3) times and such return date may not be extended for more than a total of sixty (60) days. Any request for an adjournment may be made to the Compliance Part (CP), to the attention of the Motion Clerk, by mail, facsimile or e-mail to ComplianceWestchester@courts.state.ny.us.

Applications seeking to vacate a note of issue or to otherwise challenge readiness for trial shall be made within twenty (20) days of the service of the Note of Issue as required by 22 N.Y.C.R.R. §202.21(e). Applications made after the twenty (20) day period has expired shall be denied except in the unusual circumstances recognized by 22 N.Y.C.R.R. §202.21(d). Any such motion shall be made returnable and heard in the Compliance Part. However, no such motion shall be interposed until a pre-motion conference has been requested no less than two (2) days in advance.

Substantive motions made in the case through summary judgment will be decided by the assigned IAS Justice. Substantive motions do not require a pre-motion conference and, absent a specific order to the contrary from the IAS Justice, will be submitted without oral argument. Motions to be relieved as counsel, for pro hac vice admission, or for reargument of a decision and order rendered in the Compliance Part do not require a pre-motion conference. However, motions to be relieved as counsel

shall be made by Order to Show Cause returnable in the Compliance Part and shall be orally argued. The Compliance Part Motion Calendar shall be called generally every Monday at 2 p.m.

SETTLEMENT CONFERENCE PART RULES

Presiding: **HON. JOAN B. LEFKOWITZ, JSC**
 HON. LOUIS BARONE, JHO
 HON. W. DENIS DONOVAN, JHO

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There will be generally three (3) intensive settlement conferences held in the Settlement Conference Part to maximize the resolution of cases. Appearances at these settlement conferences are mandatory. Additional settlement conferences may be held at the request of the parties and in the discretion of the Settlement Conference Part to promote the just and expeditious resolution of a case through settlement.

Once a note of issue is filed, the case will be assigned to the Settlement Conference Part (SCP). Cases will be placed on the Settlement Conference Calendar for an initial settlement conference which will be scheduled, to the extent possible, 90 days following the filing of the Note of Issue. Cases will not be placed on the Settlement Conference Calendar unless the time within which to move for summary judgment has expired or any pending summary judgment motion has been determined.

The SCP will give notice by mail of the first settlement conference. The first settlement conference may be adjourned no more than two (2) times by written request of the parties submitted at least two (2) days prior to the scheduled settlement conference date. The request for an adjournment may be made to the SCP by mail, facsimile or e-mail to SettlementConferenceWestchester@courts.state.ny.us, and shall include two (2) proposed alternative dates for rescheduling the first settlement conference, which dates shall be no later than three (3) weeks following the previously scheduled settlement conference date. The SCP will thereupon give notice to the parties of the adjourned settlement conference date by mail, or by e-mail if the parties

so request.

The parties are cautioned to arrive on time for settlement conferences. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to settlement conferences may summarily be subject to sanctions and/or costs. Judicial Hearing Officers, IAS Justices or court attorney-referees will conduct a settlement conferences. Attorneys attending the first settlement conference must bring a copy of all documents relevant to the issues of liability and damages, be fully familiar with every aspect of the case, and be expressly authorized to engage in meaningful settlement negotiations. Attorneys must have evaluated the case prior to the settlement conference date and be prepared to negotiate in good faith to effectuate a reasonable settlement. Absent good cause, the plaintiff(s) and defendant(s) must be reachable by phone to consent to any settlement. No answering services will be permitted. Should counsel report that a further settlement conference will be futile and request that a trial date be set, a trial date will be set at the conclusion of the conference.

Except as set forth above, two months before trial, the parties will be required to appear at a mandatory second settlement conference in the SCP. The second settlement conference shall be calendared at the conclusion of the first settlement conference, except as set forth above. The SCP will also give notice by mail of the second settlement conference.

The second settlement conference may be adjourned no more than two (2) times, by written request of all parties submitted at least two (2) days prior to the scheduled settlement conference. The request for an adjournment may be made to the SCP by e-mail to SettlementConferenceWestchester@courts.state.ny.us, or by facsimile or mail and shall include two (2) proposed alternative dates for rescheduling the second settlement conference, which dates shall be no later than three (3) weeks following the previously scheduled second settlement conference. The SCP will thereupon give notice to the parties of the adjourned second settlement conference date by mail, or by e-mail if the parties so request. Except as set forth above, the date for trial will be fixed at the second settlement conference.

All trial dates will be no earlier than two months after the second conference. Attorneys are reminded of the rules regarding actual engagement of counsel (Section 125.1(g) of the Rules of the Chief Administrator: Attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she must produce substitute trial counsel. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed). Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced.

Approximately two weeks before the trial date, the case may be scheduled for a mandatory final settlement conference. This will be the parties' last clear chance to settle the case prior to trial before the IAS Trial Judge. The parties are cautioned that there will be no further settlement conferences held or adjournments permitted on the trial date.

Attorneys must have evaluated the case prior to the final settlement conference date and be prepared to negotiate in good faith to effectuate a reasonable settlement. Each attorney attending the final settlement conference must bring a complete file including the marked pleadings, medical reports and all other documents related to the issues of liability and damages. Moreover, counsel must be authorized to settle and/or make binding concessions. Absent good cause, the plaintiff(s) and defendant(s) must be reachable by phone to consent to any settlement.

A Certification Conference may be held approximately one week prior to the trial date. The parties are cautioned to arrive on time for the certification conference. Defaulting or late arriving counsel, in the absence of an adequate excuse, may be subject to sanctions and/or costs. Counsel who repeatedly fail to appear or arrive late to certification conferences may summarily be subject to sanctions and/or costs.

In lieu of an appearance at the Certification Conference, the parties will be permitted to stipulate to being ready to proceed to trial. In the event that a fully executed certification conference stipulation is submitted at least two (2) business days prior to the scheduled certification conference date, the parties will not be required to appear for the certification conference.

A standard certification conference stipulation form will be available in the SCP and online on the web site of the Ninth Judicial District. The parties may submit same to the SCP by e-mail to SettlementConferenceWestchester@courts.state.ny.us. (fully executed, scanned pdf format copies only). If or by facsimile or mail or the certification conference stipulation is not submitted, or is not submitted in a timely basis, the certification conference shall take place as scheduled. Untimely submissions will be rejected by the SCP. It is incumbent upon the parties to ascertain that the SCP has received a timely submission of the certification conference stipulation and that no appearance will be required.

TRIAL READY PART RULES

Presiding: HON. NICHOLAS COLABELLA, JSC

HON. ALAN D. SCHEINKMAN, JSC

Administrative Judge, Ninth Judicial District

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A call of the Trial Calendar will be held promptly at 9:30 a.m. in the Trial Ready Part (TRP) by the TRP Justice. Trial counsel for all parties must appear and be ready to commence trial (and, in cases in which juries have been demanded, to select a jury). No requests for adjournments will be granted, absent unusual and exigent circumstances. Sanctions and/or costs may be imposed on counsel who are not present upon the call of the TRP Calendar. Failure to proceed may result in the striking of the case from the trial calendar, vacating the Note of Issue, dismissal of the complaint or the striking of the answer, or other remedies, including, but not limited to, those set forth in CPLR 3404 and 22 NYCRR §202.21 and § 202.27. Counsel are cautioned that where the Note of Issue is stricken, no case will be restored to the trial calendar without the filing of a new Note of Issue.

Attorneys are reminded of the rules regarding actual engagement of counsel (Section 125.1(g) of the Rules of the Chief Administrator: Attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she must produce substitute trial counsel. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed). Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced.

Any cases which are not sent out for trial (or jury selection) will be deemed ready and passed to the following day or otherwise as directed by the TRP Justice. The TRP will endeavor to send all cases to jury selection, beginning with special preference

cases, and then by oldest cases as determined by the date of filing of the Note of Issue. In the event that counsel fail to proceed to select a jury, or timely appear before the assigned IAS Trial Judge, the action may be dismissed or a default taken or other sanction imposed, as appropriate under the circumstances.

Every effort will be made to assign the trial to the IAS Justice who had the case previously.

The parties are cautioned that the all too common practice of appearing at the trial calendar and representing that a settlement has been made will no longer be accepted. Counsel or self-represented parties must file a stipulation of discontinuance before the case is marked settled and disposed and submit a copy to the TRP stamped filed by the County Clerk indicating that the required fee was paid to the County Clerk (CPLR§2104, CPLR §3217, CPLR §8020[c])

The parties will be permitted to submit a copy of the stamped and filed stipulation of discontinuance to the TRP by facsimile, mail or by e-mail to TrialReadyWestchester@courts.state.ny.us. In the event that a copy of the stamped and filed stipulation is submitted no later than noon of the business day prior to the scheduled trial date, the parties will not be required to appear on the scheduled trial date. If a stipulation of discontinuance is not submitted, or is not submitted in a timely basis, the parties must appear on the scheduled trial date to report to the TRP Justice the status of any such settlement. It is incumbent upon the parties to ascertain that the TRP has received a timely submission of a stipulation and that no appearance will be required. E-mail may be used only to submit fully executed, scanned (pdf format) stipulations. In the event that the parties reach a settlement agreement on the record and require time to effectuate the filing of a stipulation of discontinuance or to address settlement related issues such as liens, the matter may be taken off the Trial Calendar and referred back to the Settlement Conference Part to ensure that discontinuance is effectuated in accordance with CPLR§2104, CPLR §3217, CPLR §8020[c].