

**Court Rules
of
The Honorable Martin D. Auffredou, J.S.C.**

~ 2017 ~

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Communications:

Chambers are open 9:00 A.M. to 5:00 P.M.

Correspondence sent via email shall not exceed 5 pages. Please do not submit correspondence via fax without prior Court approval.

All counsel¹ should be copied on correspondence sent to the Court.

Conferences:

Requests for conferences should be made, in writing, providing the reason for the conference and proposed dates convenient to all counsel.

Adjournment requests shall be made to the Court, in writing, before the scheduled date of the conference.

¹ Wherever the terms “counsel” and/or “attorney” are used herein, they are intended, and shall be deemed, to include self-represented litigants.

Counsel requesting the adjournment should confer with all opposing counsel prior to making the request and specifically indicate if the request is on consent. The requesting counsel should also provide proposed dates and times convenient to all counsel.

Preliminary Conferences:

Preliminary conferences in civil cases (other than matrimonial actions) are scheduled pursuant to the Uniform Rules of Trial Courts (22 NYCRR) § 202.12 (a) and (b). Counsel should submit a brief summary of the case no later than *48 hours (exclusive of weekends and holidays)* prior to the scheduled conference. The summary may be emailed to mdachambers@nycourts.gov.

A Preliminary Conference Stipulation and Order form (available at: <http://www.nycourts.gov/courts/4jd/motion-terms-rules.shtml>) may be completed and returned to chambers to be "so ordered" by the Court. Provided that the completed form and case summaries are received prior to the scheduled preliminary conference, the conference will be cancelled. However, if the signed stipulation and case summaries are not timely received, appearances will be required.

Compliance Conferences:

If a Preliminary Conference Stipulation and Order has been issued and the parties have complied with all of its terms, and each attorney submits a letter to that effect, to be received by the Court prior to the scheduled conference date, no appearances will be necessary.

Pre-Trial Conferences:

Pre-trial conferences will be scheduled after the filing of a Note of Issue. In addition, if a Note of Issue is not timely served and filed pursuant to a scheduling Order and no party has requested an extension of that Order, the Court will mark the case ready for trial, direct that a Note of Issue be filed and schedule a pre-trial conference.

Counsel should submit a brief summary of the case prior to the scheduled conference. The summary should include the parties' contentions, the status of any settlement negotiations and any anticipated evidentiary or other issues. The summary may be emailed to mdachambers@nycourts.gov.

Counsel should contact their client(s), witnesses and experts prior to the conference to determine their availability for trial. Pursuant to Uniform Rules of Trial Courts (22 NYCRR) § 202.26(e), counsel attending the conference must be fully familiar with the case and have authority to enter into binding stipulations, and the parties, their representatives and/or representative(s) of insurance carrier(s) may also be required to attend, in person or by telephone.

All counsel shall confer prior to the date of the conference to discuss settlement and the resolution of any trial issues.

Motions:

Regularly scheduled Special Terms will be held in Essex, Warren and Washington Counties. These Special Term return dates are available at: <http://www.nycourts.gov/courts/4jd/motion-terms-rules.shtml>.

Except in foreclosure actions, all motions shall be made returnable on a designated Special Term date. Motions made returnable on other dates will automatically be adjourned by the Court to the next Special Term date.

The Notice of Motion **must** clearly state either “Oral Argument Requested” or “On Submission Only.” If the Notice of Motion does not contain such language, the Court will decide the motion on submission only.

When oral argument has been requested, argument will be held on the designated Special Term date, beginning at 9:30 a.m. Oral argument may also be held at the discretion of the Court.

In foreclosure actions, motions may be made returnable any weekday and will be decided upon written submissions only, unless the Court specifically directs otherwise. Counsel shall submit a self-addressed, postage pre-paid envelope sufficient in size for the return of the original Order and/or Judgment of Foreclosure and Sale and the supporting papers.

Original motion papers should be filed with the appropriate County Clerk, accompanied by the requisite filing fee, if applicable. The Clerk will then forward the original to Chambers. Courtesy copies do not need to be submitted to Chambers.

Original opposition and reply papers should be sent directly to Chambers.

Counsel are reminded that the CPLR does not provide for the submission of sur-reply papers, however denominated, or the presentation of papers or letters to the Court after the return date of a motion, nor is motion practice by correspondence permitted. Any counsel or self-represented party who receives a copy of such materials submitted in violation of this rule shall not respond in kind.

Papers should be timely served on all counsel in accordance with CPLR 2214 (b). In the event that papers are not served in a timely manner, the Court reserves the right to adjourn the return date of the motion.

Discovery Motions:

No discovery motion may be filed unless counsel personally confer to resolve the discovery issue in accordance with the Uniform Rules of Trial Courts (22 NYCRR) §202.7 and, further, the motion papers demonstrate compliance with that section.

Prior to making a discovery motion, the parties shall also contact the Court's Principal Law Clerk, Jill E. O'Sullivan, Esq., in writing, to schedule a conference with her in an attempt to resolve the dispute, providing a date convenient to all counsel. Each party shall provide Ms. O'Sullivan with a short letter outlining its position relative to the discovery dispute before the conference.

Orders to Show Cause:

Please contact Chambers directly to schedule emergency matters requiring signing of an Order to Show Cause and provide an email address for counsel. Except where the law permits otherwise, requests for temporary restraining orders (TROs), should be on notice to opposing counsel and the Attorney for the Child(ren), if applicable, except in rare circumstances. All applications for temporary injunctive relief, including TRO requests, must comply with Uniform Rules for Trial Courts (22 NYCRR) § 202.7 (f).

Requests to Adjourn Motions:

Adjournment requests shall be made to the Court, in writing, before the scheduled return date of the motion.

Counsel requesting the adjournment should confer with opposing counsel prior to making the request and specifically indicate whether the request is on consent. An adjournment on consent, to the next Special Term date, may be granted by the Law Clerk or Secretary, but must be confirmed by letter submitted via email or regular mail.

Adjournments are limited to sixty (60) days in accordance with the Uniform Rules for Trial Courts (22 NYCRR) §202.8 (e)(1).

Proposed Orders:

A proposed Order may accompany motion papers. Unless otherwise directed by the Court, a proposed Order based upon an oral or written decision of the Court must be provided to all other counsel and/or parties for approval of its form and content before submitting it to the Court and proof of such service must accompany the proposed Order. Orders will not be signed without proof that all counsel and/or parties have had an opportunity to review the same. In the absence of approval as to form and content, the notice of settlement procedure provided in the Uniform Rules for Trial Courts (22 NYCRR) § 202.48(c) should be used.

An Order/decision should be rendered by the Court within sixty (60) days after a motion is marked fully submitted. If you do not receive an Order/decision within that time frame, please contact Chambers.

Except in foreclosure actions, the Court will file original Orders, with the moving papers, in the County Clerk's office. Counsel will be responsible to obtain the date of entry and/or time and date stamped copies of entered Orders for service with Notice of Entry.

Special Instructions for Matrimonial Actions:

Any proposed Findings of Fact and Conclusions of Law and Judgment of Divorce must comply with Uniform Rules of Trial Courts (22 NYCRR) § 202.50, including, effective August 1, 2017, 22 NYCRR § 202.50 (b) (3).

The proposed Judgment of Divorce must also include the parties' Social Security numbers (see DRL §240-a) and, if an order for child support is included, the minor child(ren)'s Social Security number(s) (see DRL §240-b).

Where the proposed Judgment of Divorce provides for continuation of Family Court Order(s), the date and docket number of the Family Court Order(s) must be included and copy(ies) of the Order(s) must be attached.

Contested Matrimonial Actions:

Preliminary conferences will be scheduled pursuant to the Uniform Rules of Trial Courts (22 NYCRR) § 202.16 (f).

The parties must be present and counsel must file a Statement of Net Worth, using the form approved by the New York State Office of Court Administration, and a Retainer Agreement with the Court ten (10) days prior to the conference. (See Uniform Rules of Trial Courts (22 NYCRR) §§ 202.16 (c) and (f) (1)). A Scheduling Order will be issued containing a return date for any *pendente lite* motions. All pertinent matters will be discussed at the conference in an effort to resolve and limit contested issues.

In actions not governed by a scheduling order, follow the general procedures applicable to the filing of a motion. If the case is governed by a scheduling order, that order will specify any motions which were requested at the time of the preliminary conference and provide a return date. If a party wishes to file a motion after the scheduling order is issued, permission of the Court must be obtained.

Effective July 1, 2017, all written applications must comply with Uniform Rules of Trial Courts (22 NYCRR) § 202.16-b.

Unless otherwise directed by the Court, Statements of Proposed Disposition shall be filed in accordance with Uniform Rules of Trial Courts (22 NYCRR) §202.16 (h) (3).

If a case is resolved by written stipulation of the parties, the case will not be removed from the calendar until the Court receives a signed copy of the stipulation.

Uncontested Matrimonial Actions:

Counsel and self-represented litigants are encouraged to visit the New York State Unified Court System’s website, which provides information and links to the official forms for use in uncontested matrimonial actions, at: <http://www.nycourts.gov/divorce/forms.shtml>.

Review of uncontested matrimonial actions and signing of Judgments in such actions will be expedited if all of the necessary documents (“211 papers”) have been submitted and conform, at least in substance, to the official forms. (See Uniform Rules of Trial Courts (22 NYCRR) §§ 202.21 (i) (2) and 202.50 (b) (2) and (3) and (c))

E-Filing:

***** APPLICABLE TO ESSEX COUNTY *ONLY* *****

The following case types are subject to Mandatory E-Filing in Essex County:

- (1) Foreclosure actions involving real property, excluding mechanic’s liens and in rem tax foreclosure;
- (2) Tax certiorari proceedings; and
- (3) Eminent domain proceedings.

Any parties involved in such cases must familiarize themselves with the statewide E-Filing Rules available online at www.nycourts.gov/efile. General questions about E-Filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov.

All cases required to be filed electronically are to be filed through the New York State Courts E-Filing System (NYSCEF). All submissions to the Court, including proposed Orders, proposed Judgments and correspondence must be electronically filed. Chambers does not require “working” copies of documents which have been electronically filed.

Trial Rules and Special Directives:

1. No case shall be scheduled for trial unless a Note of Issue has been filed.
2. Counsel are encouraged to videotape the testimony of any witness who is unavailable for the scheduled trial.

3. Plaintiff(s) shall provide expert disclosure no later than 60 days before trial. Defendant(s) shall provide expert disclosure no later than 30 days before trial. Any motion to preclude or limit an expert's testimony should be made as soon as practicable.
4. Where complex evidentiary or other trial issues are anticipated, trial memoranda may be submitted to the Court, but not less than ten (10) days prior to trial.
5. All motions *in limine* shall be in writing and shall be timely served on all counsel and filed with the Court not less than ten (10) days prior to trial.
6. Not less than three (3) business days before trial, counsel must provide the Court with the following: marked pleadings; a list of applicable PJI sections and any other requested jury charges; each party's contentions; and a proposed jury verdict sheet.

Counsel shall cooperate to prepare an agreed-upon verdict sheet. If that is not possible, then the parties shall submit separate proposed verdict sheets following the suggested forms in the PJI (*see* NY PJI 2:275, SV-1; NY PJI 2:301, SV-I). Each question shall be on a separate page. All verdict sheets shall be in a final, typewritten form that can be given to the jury. All verdict sheets shall also be submitted in Word or Word Perfect format, via e-mail to mdachambers@nycourts.gov.
7. Jury selection shall follow one of the authorized methods contained within the Uniform Rules for Trial Courts (22 NYCRR) § 202.33 (f), as the parties may agree. The Court may preside over a portion of, or the entire, jury selection process. Time limits on counsel may be imposed.
8. Exhibits should be pre-marked by the Court Reporter. Counsel shall also confer prior to trial to determine if the admission of any exhibits into evidence can be stipulated and advise the Court prior to trial. Upon the admission of an exhibit at trial, the proponent of the exhibit shall provide a complete copy to the Court.
9. Counsel shall stand to object during the trial and *briefly* state the ground(s) for objection.
10. Experts who testify at trial shall bring their entire file and all documents considered in arriving at their opinion(s) with them to Court. Failure to do so may result in an expert's testimony being limited or stricken.
11. The Court must be alerted as to any anticipated requests for a jury instruction relative to missing witnesses or evidence.
12. A charge conference will be held prior to summations, at which time counsel may

supplement or amend their previously submitted requests to charge.

13. Post-trial motions may be presented orally or in writing.
14. Motions pursuant to CPLR Article 50-B should be submitted in motion form on notice to all parties.

Non-Jury Trials – Proposed Findings of Fact and Conclusions of Law:

Unless otherwise directed by the Court, in non-jury cases, each party shall submit post-trial proposed findings of fact and conclusions of law. Citations within the proposed findings will be to the record. The proposed findings of fact and conclusions of law shall be submitted in writing **and** in Word or Word Perfect format, via e-mail to mdachambers@nycourts.gov. Memoranda of law may also be requested.

Settled or Discontinued Cases:

If a case has been settled or otherwise disposed, counsel shall promptly advise the Court, in writing, and ensure that a Stipulation of Discontinuance is promptly filed, prior to the next scheduled appearance before the Court. A copy of the filed Stipulation of Discontinuance shall be provided to Chambers.

Please contact Chambers if you have any questions concerning these Rules.

Revised 8/22/17