

**Court Rules
of
The Honorable Robert J. Muller, J.S.C.**

~ 2017 ~

Law Clerk: Jennifer P. Jeram, Esq.

Secretary: Ms. Elaine Madison

Mailing Address: Supreme Court Chambers
Warren County Courthouse
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Lake George, New York 12845

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Communications:

Chambers are open 9:00 A.M. to 5:00 P.M. Answering machines will take messages at other times.

Scheduling of any conferences may be done with the Secretary and should be done by telephoning with available dates convenient to all counsel. Letter requests for a conference should give the reason for the conference and available dates convenient to all counsel. Conferences are held in the morning beginning at 9:30 A.M. and may be scheduled, upon request, in either Essex or Warren County, depending upon the Court's availability.

Unless specifically requested, the Court does *not* wish to be copied on contentious correspondence between counsel. Rather, if assistance is needed in resolving an issue, counsel may either request a conference or file a motion.

Correspondence sent via facsimile shall *not* exceed 5 pages.

Motions at a Glance:

Pre-Motion Conference: None, except for discovery motions.

Oral Argument: May be held at the discretion of the Court.

Submission of Motion Papers:

Regularly scheduled Special Terms will be held in Warren County. The Special Term return dates are available at

[\[http://www.nycourts.gov/courts/4jd/mt-rules/muller-terms.pdf\]](http://www.nycourts.gov/courts/4jd/mt-rules/muller-terms.pdf).

All motions will be accepted on submission. Oral argument may be held at the discretion of the Court.

Motions in Essex County may be made returnable any weekday in accordance with CPLR filing requirements.

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. Original opposition and reply papers should be sent directly to Chambers. **Do not submit courtesy copies to Chambers.**

Absent express permission obtained in advance from the Court, which shall be granted only upon a showing of good cause, memoranda of law shall be limited to 30 pages (exclusive of cover page and table of contents), and affirmations and affidavits shall be limited to 25 pages. Papers submitted in violation of this rule may not be considered by the Court in deciding the motion, without prior notice to the party that submitted the papers.

Counsel and self-represented parties 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 parties who receive a copy of such materials submitted in violation of this rule shall not respond in kind.

Absent express permission obtained in advance from the Court, motion papers may *not* be submitted via facsimile.

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.

Requests to Adjourn Motions:

Adjournment requests shall be made to the Court in writing at least 48 hours (*exclusive of weekends and holidays*) before the scheduled return date of the motion.

The requesting counsel should confer with opposing counsel prior to making the request and specifically indicate if the request is on consent.

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

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.

Additionally, if the case is covered by a Preliminary Conference Stipulation and Order, such Order requires that – prior to motion practice – a conference with the Judge’s Law Clerk be held in an attempt to resolve the dispute. That conference shall be requested by letter for a date convenient to all counsel. Prior to the conference, each party shall provide the Court with a short letter outlining their position relative to the discovery dispute.

Contempt Motions:

Contempt motions must be commenced by Order to Show Cause with personal service required.

Orders to Show Cause:

For any Order to Show Cause that seeks a preliminary injunction or Temporary Restraining Order pending the return date, Uniform Rules for

Trial Courts (22 NYCRR) § 202.7 (f) must be followed by giving notice to the opposing party or, alternatively, submitting an affirmation to demonstrate that prejudice would result from the giving of notice.

Motions for Settlement of Infant Claims:

All motions for the settlement of infant claims shall be submitted in full compliance with CPLR 1208, following which the Court will schedule an appearance for the moving party/petitioner, as well as the infant and his or her counsel.

Counsel shall submit a proposed Order granting the application at least **five (5) days** prior to the scheduled appearance. The form for this proposed Order is available at [<https://www.courts.state.ny.us/courts/4jd/mt-rules/infant-settlement-order.pdf>].

Proposed Orders and Judgments:

If an Order or Judgment is submitted for signature with respect to an oral or written decision, the submitting party shall do so in a timely fashion. Unless otherwise directed by the Court, such order shall first be submitted for approval of its form and content to all other counsel. Once submitted for signature, it shall be accompanied with a letter from the submitting counsel stating that all counsel have approved the same as to form and content. 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 shall be used.

PLEASE PROVIDE A SELF-ADDRESSED STAMPED ENVELOPE FOR THE RETURN OF ALL SIGNED ORDERS, JUDGMENTS AND ORDERS TO SHOW CAUSE.

Special Instructions for Matrimonial Motions and Matters:

For matrimonial motions in cases 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.

The Checklist used by the Court in evaluating 211 papers is available at

[<http://www.nycourts.gov/courts/4jd/mt-rules/muller-Uncontested-Matrimonial-Checklist.pdf>]. Please ensure that all of the necessary documents have been submitted.

Preliminary Conferences:

Preliminary conferences in contested matrimonial cases are scheduled pursuant to the Uniform Rules of Trial Courts (22 NYCRR) § 202.16 (f).

Clients must be present and counsel must file a Statement of Net Worth and a Retainer Agreement with the Court prior to the conference. 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.

Preliminary conferences in all other civil cases are scheduled pursuant to the Uniform Rules of Trial Courts (22 NYCRR) § 202.12 (a).

Once the case is assigned to the Court, a letter will be sent scheduling the preliminary conference. A Preliminary Conference Stipulation and Order will be used which may be completed and returned to the Court before the conference. That form is available at [<http://www.nycourts.gov/courts/4jd/mt-rules/muller-order.pdf>]. In those cases, the conference will not be held. If the form is not returned, the conference will be held and each party shall submit to the Court a short (no longer than 2 pages) summary of the case before the conference date outlining the case and any issues to be discussed at the conference (*see* 22 NYCRR § 202.16 [f]).

In the event that the parties are unable to comply with the dates set forth in the Preliminary Conference Stipulation and Order and wish to stipulate to an amended Order, that form is available at [<http://www.nycourts.gov/courts/4jd/mt-rules/muller-order-amended.pdf>].

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 final conference. No case shall be scheduled for trial unless a Note of Issue has been filed.

In tax certiorari proceedings pursuant to RPTL article 7 wherein respondent has appeared, a letter will be sent scheduling a preliminary conference. A scheduling

Order will be used which may be completed and returned to the Court before the conference. That form is available at [<http://www.nycourts.gov/courts/4jd/mt-rules/scheduling-order-tax-certiorari-proceeding.pdf>]. In those cases, the conference will not be held. If the form is not returned, the conference will proceed as scheduled.

In tax certiorari proceedings pursuant RPTL article 7 wherein respondent has not appeared, a scheduling Order will automatically be generated by the Court and sent to the parties.

Compliance Conferences:

At least three days prior to the conference, each party shall have delivered to the Court a summary (no longer than two pages) of your contentions of the facts, liability, damage and defenses.

Final Conferences:

In contested matrimonials, clients must attend. In all cases, final conferences will be scheduled by letter after the filing of a Note of Issue. Counsel should contact their client(s), witnesses and experts before this conference to determine their availability for trial.

Counsel attending the conference must be familiar with the case, have pertinent portions of the file with them and have authority to discuss settlement. Clients or a representative of the insurance carrier may be required to attend. All counsel shall confer prior to the date of the conference to discuss settlement and the resolution of any trial issues. Counsel are encouraged to videotape any witness or expert who is unavailable for the scheduled trial. Postponement of any trial after the pre-trial conference is discouraged and will not be granted absent extraordinary circumstances.

Requests to Adjourn Conferences:

Adjournment requests shall be made to the Court in writing at least 48 hours (*exclusive of weekends and holidays*) before the scheduled date of the conference.

The requesting counsel should confer with opposing counsel prior to making the

request and specifically indicate if the request is on consent. The requesting counsel should also provide proposed new dates and a reason for the adjournment.

E-Filing:

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

Effective February 19, 2013, the following case types are subject to Mandatory E-Filing in Essex County:

- (1) Foreclosures, both residential and non-residential;
- (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.

Trial Rules and Special Directives:

1. Expert disclosure shall be provided by Plaintiff(s) 90 days before trial. Expert Disclosure shall be provided by Defendant(s) 60 days before trial.
2. Marked pleadings shall be presented to the Court before jury selection. Copies of the Bills of Particulars, discovery responses and expert reports should be available.
3. Jury selection shall follow one of the authorized methods contained within the Uniform Rules for Trial Courts (22 NYCRR) § 202.33, 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. Counsel are to confine their voir dire questions to the qualifications of the jurors.
4. Any motion *in limine* should be in writing and timely served on all counsel a reasonable time before trial.

5. 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 will be stipulated and advise the Court of that prior to trial. Upon the admission of an exhibit at trial, the proponent of the exhibit shall provide a complete copy of it to the Court.
6. 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.
7. Trial briefs are suggested if intricate evidentiary or trial issues are anticipated.
8. A list (without the charge) of PJI jury requests should be available to the Court 10 days prior to trial. Other requests shall be typed on separate sheets with appropriate sources or citations. The Court's "boilerplate" charge is available to any counsel upon request. A charge conference will be held prior to summations.
9. The Court must be alerted as to any anticipated requests for a jury instruction relative to missing witnesses or evidence.
10. Counsel shall stand to object during the trial and *briefly* state the ground(s) for objection.
11. Verdict sheets: 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 verdicts sheets shall also be submitted in Word Perfect format on a computer disc or via e-mail to emadison@nycourts.gov.
12. Post-trial motions may be presented orally or in writing.
13. Motions pursuant to CPLR article 50-B should be submitted in motion form with notice to all parties.

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

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 Perfect format on a computer disc or via e-mail to emadison@nycourts.gov. Memoranda of law may also be requested.

Summary Jury Trials:

The Court will conduct summary jury trials upon the stipulation of counsel. In conducting these types of trials, the Court utilizes the Summary Jury Trial Program in the Supreme Court, Eighth Judicial District. Information on this Program is available online at <http://www.nycourts.gov/COURTS/8jd/sjt.shtml#Manual>.

January 4, 2017.