

5/30/13

COURT RULES OF THE HONORABLE RICHARD MOTT, J.S.C.

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Hudson, New York 12534

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Chambers Phone Number:
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1.0 Applicability Of These Rules:

These Local Rules apply to **all** civil actions. There are additional rules for matrimonial (see, Rule 15.0, post) and foreclosure cases (see, Rule 17.0, post) . These rules seek to promote the efficient/impartial administration of justice and to be in harmony with controlling statutes and rules.

For the purposes of these rules only, filing requires two steps: filing written documents with the Court Clerk AND contemporaneously emailing to Chambers a copy of the document in pdf format.

2.0 Communications:

All communications with chambers must be by email. Every document filed with the Court Clerk including letters shall be contemporaneously sent by email to Chambers in pdf format. The email must have in its subject line the name of the case and its index number and show that it was also sent to all adversaries. **Documents that do not show contemporaneous service of all adversaries will be returned to sender without being read.** Any conferences must be requested by email. The request must provide available dates convenient to all counsel and state the subject matter of the conference.

2.5 Accommodations

Counsel must immediately inform Chambers whenever a party/witness requires the services of an interpreter and of the party's/witness's native language/dialect.

Counsel must immediately inform Chambers if a party/witness has any disability (hearing, sight, etc.) and of the appropriate accommodation requested.

3.0 Motions at a Glance:

Pre-Motion Conference: Required for all discovery and for all non-dispositive motions.

Motions By Email: Whenever any request for relief is made, in addition to the parties' obligations under law and the parties' filing the original document with the Clerk, a copy of the request/motion must be emailed to Chambers in pdf format, not by FAX.

Oral Argument: May be requested. Not generally held unless requested by the Court.

Article 78 motion terms do not require personal appearance on the return date.

Summary Judgment Motions require submission of an additional, separate Statement of Material Facts.

4.0 Notice of Appearance:

Within one week of written notification of assignment of Justice Mott, or written notification of a Preliminary Conference, whichever first occurs, each attorney must file a Notice of Appearance, which includes the attorney's name¹, firm affiliation, mailing address, telephone number, FAX number, email address, and acknowledgment that counsel is familiar with these Rules.

5.0 Preliminary Conferences:

Preliminary Conferences are scheduled pursuant to 22 N.Y.C.R.R. § 202.12(a) and for matrimonial cases pursuant to 22 N.Y.C.R.R. § 202.16(f).

The Court uses pre-trial scheduling orders in all cases. Once the case is assigned, an email will be sent scheduling the preliminary conference and providing a form for a Preliminary Conference Stipulation And Order. In cases in which the stipulation is filed at least one week before the conference date, the conference will not be held. If the form is not filed one week before the scheduled conference date, the conference will be held. **Whether or not the conference is held, each party must file at least one week before the conference date a short (no longer than 2 pages) case summary including any relevant legal authorities and any issues to be discussed at the conference, including anticipated discovery problems.** See, 22 N.Y.C.R.R. § 202.16(f).

IF THE CASE SUMMARY IS NOT TIMELY RECEIVED, THE COURT MAY UNILATERALLY RESCHEDULE THE CONFERENCE AND/OR TAKE SUCH OTHER ACTIONS AS MAY BE APPROPRIATE.

Every preliminary conference order will provide a date and time for the parties to appear at a compliance conference. The compliance conference will ensure that discovery is proceeding as scheduled.

6.0 Submission of Motion Papers, Orders and Judgments:

Motions are returnable any weekday. No appearances are required on the return date unless directed by the Court. All original papers including opposition and reply papers must be timely served on all counsel and filed with the Court Clerk. **All papers filed with the Court Clerk must contemporaneously be sent by email to Chambers in pdf format.** A courtesy copy of any motion papers should **never** be sent to Chambers. Any papers filed or served late may in the Court's discretion not be considered.

MOTION PAPERS MUST BE BOUND TOGETHER. THE COURT WILL NOT ACCEPT LOOSE MOTION PAPERS, AFFIDAVITS, AFFIRMATIONS OR EXHIBITS.

All affirmations, affidavits and memoranda of law must contain numbered pages. All affirmations and affidavits must have numbered paragraphs.

All exhibits required to decide an application must be attached. It is not sufficient that documents are on file with the

¹The name of the attorney provided must be the attorney who is familiar with and principally responsible for the case. If that attorney changes, counsel must immediately notify Chambers.

Court Clerk.

Sur-Reply papers are strongly discouraged and may not be considered. The Court will not accept papers filed after the final submission date of the motion.

All Memoranda of Law and every other explanation of a party's position must cite authorities, reflect brevity and specificity, and may not exceed twelve (12) pages, including a statement of facts, absent leave of Court.

7.0 Requests For Adjournments:

Counsel who wish to **adjourn the return date of a motion** must confer to determine whether the adjournment is on consent. If so, the party requesting the adjournment must file a letter at least two business days before the return date stating the new return date for the motion. In no case may a motion's return date be adjourned for more than two (2) weeks without leave of Court. If agreement is not reached, requesting counsel must file a request for adjournment of the motion return date at least two (2) business days before the return date.

If the parties agree to **adjourn a conference**, the party requesting the adjournment must file one week before the conference a letter informing Chambers of the adjournment and requesting a new date. This request should state the dates when counsel are unavailable within the next sixty (60) days. If agreement is not reached, counsel must file a request for adjournment at least one week before the conference. The request must state the reason for the adjournment. Chambers will notify the parties of the new date.

8.0 Discovery And Non-Dispositive Motions:

No discovery motion or non-dispositive motion may be filed unless (1) counsel personally confer to resolve the issue (see, 22 N.Y.C.R.R. § 202.7(c)) **and** (2) a conference with the court has been held in an attempt to resolve the dispute **and** (3) the Court authorizes the filing of the motion. At least one week before the conference, each party must email a short letter not exceeding two (2) pages outlining its position with respect to the dispute and stating the authorities for its position.

9.0 Summary Judgment Motions:

A dispositive motion including a motion for Summary Judgment may be made at any time, provided that prior thereto a preliminary conference has been conducted.

Every motion for Summary Judgment must contain a separate Statement of Material Facts. The Statement of Material Facts must state, in numbered paragraphs, each material fact about which the moving party contends there is no genuine issue. Each fact listed must provide a specific citation to the record where the fact is established. The record for Summary Judgment motion purposes includes pleadings, depositions, answers to interrogatories, admissions and affidavits. It does **not** include attorney affidavits or affirmations. **Failure of the movant to submit an accurate and complete record or Statement of Material Facts will result in denial of the motion.**

The opposing party must file a response to the Statement of Material Facts. This response must mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial must state a specific citation to the record where the factual issue arises. The non-movant's response may also set forth in separately numbered paragraphs any additional material facts that the non-movant contends are in dispute. The Court will deem admitted any properly supported facts in the Statement of Material Facts that the opposing party does not specifically controvert.

10.0 Orders to Show Cause:

An Order to Show Cause must be presented personally only by an attorney fully familiar with the case. If the case is unassigned under IAS, presentment must be to the Part I Judge. If the Order to Show Cause contains a request for a preliminary injunction, a temporary restraining order, or any other form of interim relief, 22 N.Y.C.R.R. § 202.7(f) must be followed to give adequate notice to the opposing party.

11.0 Motions In Limine

Such applications must be made as early as possible, but in no event less than seven (7) days before trial absent leave of Court.

12.0 Note Of Issue

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 will be scheduled for trial unless a note of issue has been filed.

Summary judgment motions must be made within sixty (60) days after filing the note of issue.

13.0 Final Conference (after discovery):

At the final pretrial conference, the Court will establish a deadline for exchange of expert witness information pursuant to CPLR § 3101(d)(1), which must, in no event, be more than ninety (90) days before trial for the party bearing the burden of proof on that issue. The opposing party must serve its disclosure within sixty (60) days of trial. Amended or supplemental expert disclosure is not permitted absent leave of Court. The statutory stay (CPLR § 3214(b)) upon service of a dispositive motion under CPLR § 3211 does **not** apply to the service of these expert responses. Unless the Court directs otherwise, a party who fails to comply with this rule is precluded from offering the testimony and opinions of the expert for whom a timely response has not been given.

At the Final Conference the Court will explore limitation of issues for trial, including referral of certain issues to a referee or to alternate dispute resolution if appropriate.

In all cases, final conferences will be scheduled by Chambers 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 Final Conference must be familiar with the case, have pertinent portions of the file with them and have authority to settle the case. Client(s) and a representative of the insurance carrier may be requested to attend. All counsel must confer prior to the date of the conference to discuss settlement, the resolution of any trial issues, and whether the parties will agree to alternate dispute resolution. Counsel are encouraged to videotape any witness or expert who may be unavailable for the scheduled trial. **Postponement of any trial after the Final Conference is strongly discouraged and will not be granted absent extraordinary circumstances.**

14.0 Orders and Judgments

Orders or judgments must be presented for signature within ten (10) days. Unless otherwise directed by the Court, the order must first be submitted for approval of its form and content to all counsel. The submitted order/judgment must be accompanied by a letter stating that all counsel have approved it as to form and content. The notice of settlement procedure provided in 22 N.Y.C.R.R. § 202.48(c) may not be used unless directed by the Court.

15.0 Special Instructions In Matrimonial Cases:

Notwithstanding this section, all of the other Court Rules apply in all respects to matrimonial actions.

No later than ten (10) days before a preliminary conference, **in addition to the documents otherwise required to be provided prior to a preliminary conference** (see Rule 5.0, ante), the parties must **exchange and file with Chambers**, the following documents:

- (A) retainer agreement,
- (B) net worth statement,
- (C) most recent pay stub and income tax return, and
- (D) all other items required to be filed by 22 NYCRR 202.16(f).

IF THE CASE SUMMARY IS NOT TIMELY RECEIVED, THE COURT MAY UNILATERALLY

RESCHEDULE THE CONFERENCE AND/OR TAKE SUCH OTHER ACTIONS AS MAY BE APPROPRIATE.

The parties **must** attend the preliminary conference and their attorneys must be prepared to discuss the topics listed in 22 NYCRR 202.16(f)(2).

The parties must attend the final conference.

17.0 Special Instructions for Owner Occupied Foreclosure Matters

Plaintiff is directed forthwith to advise the Court of all addresses to which Plaintiff has ever used to correspond with Defendants. If more than one address exists, Plaintiff is directed to provide forthwith additional notice of this preliminary conference to Defendants at all such addresses and provide Chambers with proof of such mailing no later than **ONE WEEK** prior to the conference.

NO LATER THAN ONE WEEK PRIOR TO A FORECLOSURE PRELIMINARY CONFERENCE, PLAINTIFF MUST PROVIDE CHAMBERS WITH THE NAME OF THE ATTORNEY WHO WILL APPEAR ON ITS BEHALF AT THE CONFERENCE AND TO CERTIFY THAT SUCH ATTORNEY HAS REVIEWED ALL RELEVANT DOCUMENTS, IS ENTIRELY FAMILIAR WITH THE CASE AND HAS UNFETTERED AUTHORITY TO ENTER INTO APPROPRIATE STIPULATIONS, ETC. AT THE CONFERENCE.

At least one week before a preliminary conference in foreclosure matters governed by CPLR § 3408, plaintiff must provide Chambers with the payment history, an itemization of the amounts needed to cure and pay off the loan, and copies of the mortgage and note. If plaintiff is not the owner of the mortgage and note, plaintiff must provide the name, address and telephone number of the legal owner of the mortgage and note. If the plaintiff is an assignee of the note and/or mortgage, plaintiff must provide a copy of the assignment.

The plaintiff must appear at the preliminary conference in person or by counsel, and if appearing by counsel, counsel must be fully knowledgeable of the case and authorized to dispose of it. If the plaintiff does not appear in person, a representative of the plaintiff must be available to plaintiff's counsel by telephone during the conference.

At the preliminary conference the defendant must provide the Court with proof of current income, i.e. two (2) most recent pay stubs, defendant's most recent income tax return and defendant's most recent property tax statements. If the defendant is not represented by counsel, the defendant should bring to the conference documents that show the amount and sources of defendant's income and a listing of all defendant's property with its value.

At the conference the parties must be prepared to discuss a resolution of the matter.

Whenever the defendant submits documents to the plaintiff in connection with a proposed resolution of the case, whether by loan modification, deed in lieu of foreclosure, or any other resolution of the matter requiring plaintiff's approval, the defendant must submit such documents by certified mail, return receipt requested, and must retain copies of all documents submitted, the proof of mailing, and the return receipt.

18.0 Settlement

Whenever a matter is settled, the parties must immediately notify Chambers of the settlement. Filing of a Stipulation of Discontinuance will NOT be deemed compliance with this Rule.

If counsel seeks to withdraw a motion in whole or in part, she/he must immediately advise Chambers of the withdrawal.

19.0 Change of Attorney

An attorney seeking to withdraw from a case must move by order to show cause whenever the granting of the application may result in a party's being self-represented. See, Rule 8, ante and CPLR 321. If a party is merely

changing attorneys, a stipulation may be used. New counsel must immediately advise Chambers of the change and comply with Rule 4.0. ante.

20.0 Bankruptcy.

If the filing of bankruptcy is claimed to impose a stay on any aspect of a pending matter, the party so asserting must immediately notify Chambers and counsel of the claim. The adversary must immediately notify Chambers whether she/he disputes the stay.

22.0 Trial Rules and Special Directives:

1. At Least Four Days Before Jury Selection: Counsel must

A. Provide Chambers with marked pleadings, as required by CPLR § 4012 (including bills of particulars), an exhibit list, a copy of any statutory provisions in effect at the time the cause of action arose upon which any party relies AND all expert reports relevant to the issues. Copies of discovery responses must be available.

B. Notify Chambers of all anticipated issues of law and fact, and email a **trial brief** containing citations to all statutory and common law authorities upon which counsel relies. **Trial briefs, which are required in all cases,** must not exceed twelve (12) pages, including a statement of facts, absent leave of Court.

C. All exhibits must be pre-marked. Counsel must confer and determine whether there are any stipulations with regard to any factual issues and the admission of evidence. Counsel must file a stipulation of undisputed facts and the admissibility of documents.

D. Provide Chambers with a copy of all prior decisions and orders which may be relevant to the trial,

E. Advise Chambers as to the number of witnesses to be called and the estimated length of the trial and any anticipated issues about trial attendance,

F. Provide Chambers with a list (without the charge) of all PJI jury requests. Non-PJI requests must be typed on separate sheets with appropriate sources and/or citations.

2. Experts must bring their entire file including all documents considered in arriving at their opinion(s). Failure to do so may result in such testimony being limited or stricken.

3. The Court may preside over a portion of or the entire jury selection process. Time limits on counsel may be imposed. Counsel must confine voir dire to the qualifications of the jurors. **THE COURT ONLY USES UNDESIGNATED ALTERNATES.**

4. Once the jury has been selected no one is to communicate with any juror verbally or non-verbally..

5. Counsel should stand when making an objection. After objecting, add only the words necessary to state a generic ground, e.g. "Hearsay" or "Bolstering." For further argument, request to approach the bench.

6. Counsels' remarks must be directed to the Court, not to opposing counsel. Counsel's discussions with his/her adversary must be outside the presence of the jury.

7. Counsel must cooperate to prepare a verdict sheet. If not possible, the parties must submit separate proposed verdict sheets following the suggested forms in the PJI. Each question must be on a separate page.

8. In non-jury cases, each party must file post-trial proposed findings of fact and conclusions of law.

