

**Court Rules
of
The Honorable John T. Ellis, J.S.C.**

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Communications:

All communications to the Court shall be made in writing and on notice to all parties.

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 may be no more than 10 pages long.

Conferences, Generally:

Requests for conferences shall be done in writing and should give the reason for the conference and available dates convenient to all counsel. Requesting counsel shall initially contact all other counsel to determine their position with respect to the scheduling of a conference and for convenient dates available to all parties.

Conferences for Franklin County matters are held at Supreme Court Chambers, 36 Lake Street, Tupper Lake, NY, while conferences for Clinton County matters are held at Clinton County Government Center, 137 Margaret Street, Plattsburgh, NY. No conference will be scheduled before 9:30 A.M. or after 3:30 P.M.

Requests to Adjourn Conferences:

Initially, counsel shall contact all other counsel to determine their position with respect to an adjournment of a conference.

An adjournment of any conference may be requested by letter, on notice to other counsel. The requesting counsel shall provide proposed new dates, a reason for the adjournment, and opposing counsel's position with regard to such adjournment.

A request for an adjournment must be made at least 48 hours before the scheduled date of the conference.

Where counsel has requested an adjournment of a conference, and has not heard back from the Court with respect to such request, counsel is to appear at the conference at the originally scheduled time and place.

Appearances:

Counsel must make all scheduled appearances and conferences in person and on time. **Absent express permission obtained in advance from the Court, which shall be granted only upon a showing of good cause, requests to appear telephonically will be denied.** That notwithstanding, a request to appear telephonically must be made in writing, at least 72 hours before the scheduled time of the appearance, and must state the grounds for such request. In the event that the grounds for such request arose after the 72 hour deadline, counsel must make such request forthwith. **Generally, the Court does not consider excessive travel time or distance to be good cause to appear telephonically.**

Where counsel has requested to appear telephonically, and has not heard back from the Court with respect to such request, counsel is to appear at the conference as scheduled and in person.

Where the parties have agreed to settle, all scheduled appearances must be made unless a stipulation to discontinue, signed by all parties, is received by the Court at least 3 hours before the scheduled appearance. Please ensure this document is faxed to chambers within this time period and is followed up with a telephone call to chambers.

Submission of Motion Papers:

Motions are taken ON SUBMISSION ONLY unless a written request for oral argument is granted by the Court. The Court reserves the right to schedule oral argument for any motion that it determines would benefit from such appearance.

For motions taken on submission only, the movant is responsible for setting the return date. The movant can select any date as long as it complies with applicable statutory timing provisions. When oral argument is granted, the Court will set the date and time of the oral

argument, which will also serve as the return date and time for the motion.

An original copy of the motion papers, should be filed with the appropriate County Clerk - accompanied by the requisite filing fee, if applicable. **Do not submit a courtesy copy of motion papers to Chambers.** Papers should be timely served on all counsel in accordance with CPLR 2214 (b).

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.

In the event that papers are not timely served on all counsel, the Court reserves the right to adjourn the return date of the motion.

Requests to Adjourn Motions:

Initially, counsel shall confer to determine if the adjournment is on consent. If so, a letter (one copy only) shall be delivered to Chambers before the return date. If agreement is not reached, requesting counsel shall write the Court to request an adjournment. Adjournments are limited to sixty (60) days in accordance with the Uniform Rules for Trial Courts (22 NYCRR) § 202.8 (e) (1). If the motion is one specifically scheduled by the Court, a request for an adjournment shall be made to the Court only, on notice to the other parties.

A request for an adjournment must be made at least 48 hours before the scheduled 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.

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 or his Law Clerk

be held in an attempt to resolve the dispute. 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.

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.

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. 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]).

At the preliminary conference the Court will select a trial date for the matter.

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.

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:

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, 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.

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.

Settlement Conferences in Residential Foreclosures:

The homeowner must appear in person or by counsel. **The lender's counsel must appear in person and be fully authorized to engage in meaningful settlement discussions. No appearances by telephone will be permitted.**

The failure of the homeowner to appear at the conference may be considered a forfeiture of

the right to a settlement conference.

The homeowner must bring the following documents to the conference:

- (1) Current proof of income;

(If employed, bring your 2 most recent pay stubs. If self-employed, bring your profit and loss statement.)
- (2) recent bank statements;

(Bring statements from the last 2 months at least.)
- (3) list of monthly expenses;
- (4) recent mortgage statements;
- (5) property tax statements;
- (6) most recent income tax return; and
- (7) any written loan resolution proposals or information from previous workout packages.

The lender must provide the following to both the Court and the homeowner at least ten (10) days prior to the scheduled conference:

- (1) Copy of the pleadings;
- (2) the homeowner's payment history;
- (3) a copy of the payoff and reinstatement figures;
- (4) workout forms or packet, including loss mitigation contact information;
- (5) any written loan resolution proposals or information from previous workout packages; and
- (6) if plaintiff is not the owner of the Note and Mortgage, then the name and contact information for the owner of the Note and Mortgage must be provided.

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. A list (without the charge) of PJI jury charge requests must be sent to the Court at least one week before the start of the trial. Other requests shall be typed on separate sheets with appropriate sources or citations. A charge conference will be held prior to summations.
3. 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. 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 rseymour@nycourts.gov.
4. Prior to jury selection, counsel for the parties shall provide the Court with the following:
 - (a) marked pleadings;
 - (b) a list of witnesses;
 - (c) statement of contentions; and
 - (d) proposed verdict sheet.
5. 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.
6. Motions in limine should be in writing and made returnable at least two weeks before the date of the trial.
7. 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.
8. 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.

9. Trial briefs are suggested if intricate evidentiary or trial issues are anticipated.
10. The Court must be alerted as to any anticipated requests for a jury instruction relative to missing witnesses or evidence.
11. Counsel shall stand to object during the trial and briefly state the ground(s) for objection.
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 in duplicate 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 ahansen@nycourts.gov. Memoranda of law may also be requested.

Requests to Adjourn Jury Trial Dates

Absent extenuating circumstances (such as a death of an immediate family member, dismemberment, amputation, traumatic brain injury, etc.), requests to adjourn jury trial dates will be considered and rejected as appropriate.