

FIFTH JUDICIAL DISTRICT COURT RULES

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I. ENTRY INTO SYSTEM

Actions and proceedings are assigned to the justices of the court upon the filing of a Request for Judicial Intervention with the Clerk of the Court (County Clerk) pursuant to 22 NYCRR 202.6.

Assignment of cases is made by the Supreme and County Court Clerk's Office. In those counties where there is more than one justice, assignments will be made pursuant to a method of random Individual Assignment System (IAS) authorized by the District Administrative Judge (DAJ). The DAJ may authorize a transfer of any action or proceeding from one justice to another according to the needs of the court and when, upon request of the assigned justice, the DAJ deems it inappropriate for the assigned justice to continue handling a particular action.

II. ALL PURPOSE JUSTICE

In each of the counties in the Fifth Judicial District, a justice will be assigned to an All Purpose Part for each term. Except as otherwise provided in these rules, the All Purpose Justice will be responsible for handling ex parte matters including name changes, default judgments, applications for attorney fees, infancy settlements, foreclosures, and mental hygiene calendars. The All Purpose Justice will take emergency applications brought by Order to Show Cause if the originally assigned justice is unavailable, as discussed in Section IV of these rules.

In Onondaga County, foreclosures and infancy settlements are assigned from the Individual Assignment System rotation. In Oneida County, foreclosures are assigned from the Individual Assignment System rotation and infancy settlements are heard by the All Purpose Justice. In Oneida County, Kendra's Law applications are heard by the All Purpose Justice. In other counties, Kendra's Law applications are assigned IAS.

III. MOTION PROCEDURE

Unless excused by the assigned justice, or his/her designee, the moving party must appear on the return date of any motion or petition where oral argument is required. For those justices who do not require oral argument, the assigned justice at his/her discretion may determine that such motion be orally argued, and will so advise the parties. Please see Requirements for Oral Argument http://www.nycourts.gov/courts/5jd/Rules_Motion_Appearances.pdf for information with respect to the judges' preferences for appearance for oral argument. Where all parties to a motion or petition request oral argument, oral argument will be granted unless the court determines it is not necessary. For a motion relating to disclosure or to a bill of particulars, see also Section VII (Preliminary Conferences).

All justices in the Fifth Judicial District have designated return dates for motions. These dates are set forth on the annual schedule which is distributed throughout the district. Copies are available in the Supreme and County Court Clerk's Office in each county.

All cases are required to be assigned to an Individual Assignment justice before a motion or petition may be made returnable in an action. If the case has not yet been assigned to a justice, the moving party, upon obtaining an index number from the County Clerk, will deliver the original motion papers, a Request for Judicial Intervention (RJI) with proof of payment of the filing fee, and the Motion Note of Issue in duplicate to the Supreme and County Court Clerk's Office in the county of venue, for assignment to a justice. Once the case has been assigned, counsel for the moving party will select a return date from one of that justice's available return dates. If the case is received by mail at the Supreme and County Court Clerk's Office, the assignment clerk will place the motion on the nearest available motion return date for the assigned justice. The moving party will then serve the motion papers containing the assigned justice's name and return date upon all of the parties. The Supreme and County Court Clerk's Office will submit the motion papers to the assigned justice. The moving party will deliver the affidavit of service to the assigned justice.

The answering party(ies) will serve copies of all affidavits and briefs as required by CPLR 2214 upon opposing counsel and will deliver the originals of such documents to the Supreme and County Court Clerk's Office for delivery to the assigned justice. The Court Clerk's Office will be unable to accept answering papers filed less than two business days prior to the return date of the motion without prior written approval from the assigned justice.

Stipulations made by the parties of a **first** adjournment of the return date of a motion must be directed to the part clerk assigned to the justice in Onondaga or Oneida Counties, and to the Chief Clerk in Herkimer, Jefferson, Lewis and Oswego Counties. Such stipulations will be effective unless the court otherwise directs; in that case, the parties will be so notified.

If the request is for a subsequent adjournment, or where all the parties do not agree to an

adjournment, a request for the adjournment must be made to the assigned judge's chambers, with notice to the other party(ies). The court will notify the requesting party whether the adjournment has been granted. Stipulations or requests for adjournment will be in writing, unless the justice or the justice's designee finds that circumstances justify the stipulation or request not being made in writing.

Pursuant to CPLR 3212(a), motions for summary judgment must be filed no later than one hundred twenty (120) days after the date of filing of the Trial Note of Issue. Permission to file such motions thereafter must be obtained from the assigned justice for good cause shown.

IV. ORDERS TO SHOW CAUSE/SPECIAL PROCEEDINGS

For **new** cases, an index number and Request for Judicial Intervention must be purchased from the Clerk of the Court (County Clerk) prior to assignment (see Section I). Once the case is assigned, the original papers are delivered to the assigned justice for signature. After the papers are signed, copies are conformed by the filing attorney for service, the original signed order and supporting papers are filed with the County Clerk, and a certified copy of the papers are delivered to the Supreme Court Clerk's Office for data entry and delivery to the assigned justice. Please note that the Court Clerk's Office has one (1) business day to process the papers. Therefore, unless there is a situation which requires immediate attention (see below), attorneys should not expect an immediate assignment and signature.

For previously assigned cases, applicable fees are paid to the County Clerk, and the papers are processed and submitted to the assigned justice by the Supreme Court Clerk's Office.

In an emergency situation, (i.e. a temporary restraining order, temporary order of protection, emergency medical treatment, etc.), the papers will be processed immediately, and forwarded to the assigned justice. If the assigned justice is unavailable, the All Purpose justice will handle the initial application. Any subsequent proceedings with respect to the case will be handled by the assigned justice.

If a return date on the Order to Show Cause is required which is earlier than the next regular motion return date for the assigned justice, the All Purpose justice will obtain an alternate date from the assigned justice's chambers.

V. PRELIMINARY CONFERENCES

The assigned justice will schedule a preliminary conference as set forth in 22 NYCRR 202.12(a). Attorneys appearing at the conference must have full authorization to act on behalf of their clients.

At the conclusion of the conference, a scheduling order will be signed by the assigned justice.

VI. TRIAL RULES

Trial rules for counties or individual judges within the Fifth Judicial District are available on the Fifth Judicial District website or by contacting the Chief Clerk in the county of venue.

Web links to individual rules may be found at <http://www.nycourts.gov/courts/5jd/fifth.shtml>. Hard copies of trial rules may be obtained at the Supreme and County Court Clerk's Offices in the Fifth Judicial District.

VII. TAX CERTIORARI

All tax certiorari cases brought under Article 7 of the Real Property Tax Law will be assigned to a designated justice, except in Onondaga County, where they will be assigned to the Tax Certiorari Part. The calendar of cases for which a Trial Note of Issue has been filed will be called monthly. All attorneys and self represented litigants are required to be present at that time, unless excused in advance by the court. Tax certiorari calendar calls and conferences may be held by a Judicial Hearing Officer.

VIII. TRANSFERS

Once an action has been assigned to a justice, the District Administrative Judge or, in his absence, the Deputy District Administrative Judge, must approve any transfer of that action to another justice.

Please see the section on Integrated Domestic Violence Courts for specifics with respect to removal of cases to that Court.

When required, cases filed in the Fifth Judicial District may be heard by justices from courts outside the Fifth Judicial District, by Administrative Order of the Deputy Chief Administrative Judge for Courts Outside New York City.

IX. CRIMINAL CASES

Criminal cases filed in a county in the Fifth Judicial District are assigned to an Individual Assignment Judge in that county. Any transfers of cases for the purpose of trial or other disposition must be approved by the District Administrative Judge.

X. MATRIMONIAL CASES

Matrimonial actions will be assigned in the same manner as any other civil proceeding with the exception of those counties that have a Dedicated Matrimonial Part.

Rules for matrimonial actions for the Dedicated Matrimonial Parts in Onondaga and Oneida Counties may be found at http://www.nycourts.gov/courts/5jd/Rules_Matrimonial.pdf Copies of the rules are also available at the Supreme and County Court Clerk's Office in Onondaga and Oneida Counties.

Rules for Justice McGuire may be found at http://www.nycourts.gov/courts/5jd/Rules_McGuire.pdf.

XI ASBESTOS CASES

A separate set of rules for asbestos cases in the Fifth Judicial District may be found on the Fifth Judicial District website http://www.nycourts.gov/courts/5jd/Rules_Asbestos.pdf. Copies may be obtained by contacting the Chief Clerk in the individual county.

XII INTERPRETATION OF RULES

Any questions which should arise with respect to the interpretation of these rules should be directed to the District Administrative Judge for the Fifth Judicial District.

XIII SPECIALTY PARTS

A. INTEGRATED DOMESTIC VIOLENCE COURT

Cases in Onondaga County shall be eligible for the Integrated Domestic Violence part (IDV) when there are simultaneously pending:

1. (i) a criminal case involving domestic violence and (ii) a case in Supreme Court or a case in Family Court or both, in which the defendant or complaining witness in the criminal case or both is a party thereto,

2. (i) a case in Family Court and (ii) a case in Supreme Court in which a party in the case in Family Court is a party thereto, provided that there are sworn allegations of domestic violence in either case, .

3. a case which would have been IDV eligible had it been pending simultaneously with one or more earlier-filed IDV eligible cases already disposed of in an IDV Part.

4. a criminal case in the county in which the outcome thereof may affect the interests of a party to a case pending in the IDV Part in the county.

The Administrative Judge shall determine whether or not a transfer of the case to the Supreme Court, for disposition in the IDV Part thereof, would promote the administration of justice. If the Administrative Judge determines that it would, he or she may order such transfer, in which event the case shall be referred for disposition to the IDV Part, all original papers shall be sent thereto, and all further proceedings shall be conducted therein. Once a case is transferred to IDV court, it remains in IDV court.

If the Administrative Judge determines that such a transfer would not promote the administration of justice, he or she shall cause all papers and other documents in the case to be returned to the court from which they were received, where all further proceedings in such case shall be conducted in accordance with law.

Notwithstanding the foregoing, where the case is a criminal case and the defendant is held by the local criminal court for the action of a grand jury empaneled by a County Court, only copies of the papers and other documents filed with such court shall be delivered to the office of the Administrative Judge; and the Administrative Judge may at any time order a transfer of the case to the Supreme Court provided he or she determines that such a transfer would promote the administration of justice. The original papers and other documents filed with the local criminal court shall be delivered to the County Court as required by section 180.30(1) of the Criminal Procedure Law.

B. COMMERCIAL PART - ONONDAGA COUNTY

The statewide commercial part rules may be found on the Unified Court System website at <http://www.nycourts.gov> and in the New York State Court Rules at 22 NYCRR 202.70.

The local rules for the commercial part may be found at <http://www.nycourts.gov/courts/comdiv/onondaga.shtml>