

SUPREME COURT JEFFERSON COUNTY

Motion Practice Rules for Justice McClusky

All Supreme Court actions are processed in accordance with the Uniform Rules for the New York State Trial Courts (22 NYCRR 202) and the Civil Case Management Rules of the Fifth Judicial District.

Appearance. Foreclosure and Tax Certiari matters shall be on submission. Any party seeking oral argument should contact the Court. All other matters shall be by appearance. A party is free to waive his/her appearance and non-attendance shall not be held against that party. Any appearing party shall be given the opportunity to be heard.

Return Date. Use of assigned calendar days for motions in the Fifth Judicial District calendar for Jefferson County matters is preferred. In an exceptional circumstance, with prior Chambers approval, a Submitted Motion may be Noticed for a return date provided by Chambers. If Judge McClusky has been assigned to your case, then you may fill in the motion date based on his motion calendar. If a Judge has not been assigned, please leave the motion field blank. You will receive a letter notifying you of the motion date.

Oral Argument Date. The return date for a Motion is the date for oral argument for all matters unless the parties, with the Court's approval, sets another date.

Orders to Show Cause. Oral argument is required on all Orders to Show Cause seeking emergency relief, with personal appearances of parties and/or counsel as specified by the Court in the Order to Show Cause. The return date for an Order to Show Cause shall be determined by the Court at the time papers are submitted for consideration.

Special Proceedings. Oral argument is required on all Article 78 proceedings, and all contempt proceedings.

Failure to Appear. Failure of a party to appear for oral argument will be deemed a submission by that party. The appearing party will be given an opportunity to argue their position. The motion will be decided upon based on the papers submitted and oral argument, if any.

Adjournments. Upon consent of all counsel and pro se litigants, the Court will normally grant a first request for an adjournment of a motion or Order to Show

Cause unless, in the discretion of the Court, there is a specific reason not to do so, in which instance the Court will so advise the litigants. Uniform Rule 202.8(e) is applicable to adjournment procedures. The party seeking the adjournment must obtain the consent of opposing parties and notify the Court Clerk at least twenty-four (24) hours before the return date. Confirmatory letters to all counsel are preferred. A written request for adjournment will not be entertained by the Court unless the party seeking the adjournment has first attempted to obtain consent from all other parties in the action. Parties seeking an adjournment that is not on consent must provide good cause why the adjournment should be granted. A condition of granting an adjournment for a motion or Order to Show Cause is that responding papers **MUST** be filed with the Court **one week** prior to the adjourn date.

Filing of Papers. Except with the express permission of the Court, all motion papers and Orders to Show Cause, including Notices of Motion, Notices of Petition, proposed Orders, affidavits or affirmations in support, affidavits or affirmations of good faith and memoranda of law, must be filed with the County Clerk, who will deliver them to the Court Clerk. All papers must be typewritten, double-spaced, securely bound, entirely legible and all exhibits labeled. Motion papers and related correspondence must reflect the Index Number assigned to the action. If it is anticipated that papers will not be received prior to the court date the parties must fax copies to the Court so they can be reviewed before oral argument.

Certification. All papers must be certified as non-frivolous and signed by counsel to the extent required by Section 130-1.1-a of the Rules of the Chief Administrator.

Papers Required in Particular Motions

1. **Pendente Lite relief.** In any matrimonial action seeking pendente lite relief where a party's Statement of Net Worth is annexed as an exhibit, one courtesy copy of the Statement of Net Worth must be separately provided, if not already filed with the Court. Upon disposition of the motion, all papers and exhibits are filed with Jefferson Clerk, and the courtesy copy of the Statement of Net Worth filed is the only such copy available for use by the Court thereafter.

2. **Motions for Summary Judgment and Similar Relief.** On any motion seeking summary judgment under CPLR 3212, dismissal of a complaint, a cross-claim or counterclaim under CPLR 3211 or 3212, or the striking of a pleading under CPLR 3124 and CPLR 3126, copies of all pleadings filed as of the date of the motion must be provided to the Court as exhibits by the moving party.

3. **Motions to Renew or Reargue.** On any motion seeking leave to renew or reargue a prior determination under CPLR 2221, copies of all papers submitted on the prior motion, including all exhibits, must be provided to the Court by the moving party.

4. **Motions to Amend, Supplement or Correct Pleadings.** On any motion seeking to correct pleadings under CPLR 3024 or to amend or supplement pleadings under CPLR 3025, copies of all pleadings filed as of the date of the motion must be provided to the Court as exhibits by the moving party, along with the proposed amended, supplemented or corrected pleadings.

5. **Applications Seeking Injunctive Relief.** In any Order to Show Cause presented to the Court or motion which seeks a temporary restraining order or preliminary injunction or the vacatur or modification of injunctive relief, copies of the summons and complaint commencing the underlying action or proceeding, and any filed responsive pleadings, must be provided by the moving party.

6. **Discovery Motions.** All motions involving issues of discovery under CPLR Article 31 must contain an affidavit or affirmation of good faith as required by Uniform Rule 202.7.

Decisions and Orders

1. **Written Decisions and Orders.** In certain instances, a Decision and Order may be reserved and rendered in written form following the full submission of the motion. The Decision and Order, with all supporting and opposition papers, will be filed by the Court with the County Clerk. A copy of the Decision and Order will be mailed to all counsel and pro se litigants upon filing.

2. **Oral Decisions and Orders.** With many motions, the Court will render a Decision and issue an Order orally from the Bench, or by letter to counsel. In such instances, the prevailing party shall submit an Order for Court signature, approved as to form by other parties. If there is disagreement over the contents of the proposed order, the matter shall be submitted to the Court with a Notice of Settlement on a date obtained from the Court Clerk. If the parties desire, a transcript may be ordered and attached to a “so ordered” Order. If a party submits on the papers, it will be the party's obligation to obtain the transcript of any Decision issued by the Court.

3. **Notice of Entry.** It is the responsibility of the prevailing party to provide other parties with a Notice of Entry of an Order or Judgment determining a Motion or Special Proceeding, notwithstanding that an Order or Judgment may have been filed by the Court with a written Decision.