

JUSTICE ARTHUR M. DIAMOND

IAS Part 9 Rules

**1) Conferences**

Counsel shall appear at 9:30 a.m. for all scheduled conferences.

Any counsel who appears for a conference shall be knowledgeable, and familiar with the case file.

If counsel will be delayed in arrival for a scheduled conference, then counsel shall immediately notify both opposing counsel and the court of the tardiness.

**2) Civil Motions (Non-Article 81)**

Generally no appearance is required on motions and Order to show cause unless an adjournment is not consented to by all the parties.

Any paper relating to motions required to be submitted shall be brought to the clerk's office at Room 186.

Counsel must request a conference with the court before submitting motions to compel discovery, or preclusion of evidence at trial, or dismissal of the action based upon failure to comply with discovery demands..

Appearances are required on all contested Order to Show Causes for withdrawal of counsel.

No oral arguments on motions permitted except as directed by the court.

Motions brought pursuant to CPLR sections 3211, 3212, or 3213 shall not automatically stay disclosure.

**3) E-FILED Motions**

All Attorneys shall provide a hard copy to chambers of all motions, opposition papers, and reply papers submitted by **E-FILE** by submitting to room 186.

**4) Temporary Restraining Order**

Counsel submitting an order to show cause requesting a temporary restraining order must notify the court to schedule a date and time for submission and oral argument. Notice to opposing party must be given in writing at least 24 hours prior to the scheduled date and time.

**5) Adjournments**

Motions and conferences cannot be adjourned to a specific date without the consent of all the parties,

and the express consent of the court.

#### **6) Settled Actions**

If a pending action has been settled, then plaintiff's counsel shall notify chambers by telephone, and in writing that the matter has been settled prior to the next conference date.

#### **7) Submission of Judgments and Motions**

Counsel shall not mail motions or judgments directly to chambers. They are to be properly filed with the clerk.

#### **8) Trials**

On the first date of trial, counsel shall provide the court with a copy of all pleadings, bill of particulars, CPLR §3101 (d) notices, proposed jury charges and verdict sheets prior to opening statements. Counsel shall also inform the court of any motions *in limine* prior to opening statements.

Any medical records being offered into evidence longer than 25 pages must be Bate stamped. Counsel must also provide two Bate stamped copies to the court, one for the witness who is testifying, and one for the Judge.

**Malpractice Departures:** In cases involving claims of professional negligence, on the next trial session after a party rests, or such other time as the Court may direct, each party [plaintiff] shall furnish the court and counsel for all parties with a list of departures from the standards of good and accepted practice which that party asserts were testified to by its expert witness or witnesses. Where the testimony has been transcribed, page references will be required.

#### **9) Communications with Chambers**

No ex parte communications shall be permitted with the court. No letters shall be mailed or faxed to chambers without the express permission of the court.

#### **10) Service of Process in Election Law Cases**

Judge Diamond's position regarding personal service of the order to show cause and verified petition upon respondents by serving a person of suitable age and discretion with over night mailing pursuant to CPLR §308 (2) , and personal service by nail and mail with over night mailing pursuant to CPLR §308 (4) to effectuate service within the fourteen (14) day statute of limitations period required by Election Law §16-102, is not available on the last day. The Appellate Division of the

Second Department has held that service on the last day by mail, certified or otherwise, is inadequate and ineffectual to institute a proceeding under the Election Law because it is not reasonably calculated to give timely notice to the respondent. (*Kaplan v. Bucha*, 207 A.D.2d 509 [2<sup>nd</sup> Dept. 1994]; *Matter of Buhlmann v. LeFever*, 83 A.D.2d 895 [2<sup>nd</sup> Dept. 1981]; *Matter of Butler v. Gargiulo*, 77 A.D.2d 939; *Matter of Loucky v. Buchmanan*, 49 A.D.2d 797 [4<sup>th</sup> Dept. 1975]). Accordingly, the court will not be ordering personal service under CPLR §308 (2) and (4) on the last day of the fourteen day period because the requisite mailing on the last day of the statute of limitations period does not give timely notice.

Furthermore, even though the court has the discretion to authorize alternative personal service under CPLR §308 [5] on the last day of the statute of limitations period (See, *Matter of Grimaldi v. Board of Elections of the State of New York*, 95 A.D.3d 1644 [3<sup>rd</sup> Dept. 2012]), a party seeking said relief still has to allege facts in the application showing that personal service under CPLR 308 (1), (2) , and (4) is impracticable. (*Cooper -Fry v. Kolket*, 245 A.D.2d 846 [3<sup>rd</sup> Dept. 1997]; This impracticability standard is not as stringent a standard as “due diligence” under CPLR §308 (4), nor does it require a showing that actual attempts to serve a party under each and every method provided in the statute has been undertaken. (*State Street Bank and Trust Company v. Coakley*, 16 A.D.3d 403 [2<sup>nd</sup> Dept. 2005]). However, the movant must allege sufficient facts showing that personal service under CPLR §308 (1),(2), and (4) is impracticable (*see, Astrologo v. Serra*, 240 A.D.2d 606 [2<sup>nd</sup> Dept. 1997] evidence that party sold his residence and business and is now believed to be living in Italy established alternative service). A statement of facts setting forth actual prior efforts to effectuate service is also acceptable. (*Markoff v. South Nassau Community Hosp.*, 91 A.D.2d 1064 [2<sup>nd</sup> Dept. 1983]). Conclusory assumptions that conventional service cannot be made is insufficient. (*Cooper-Fry v. Kolket*, supra).

Without factual allegations to support a request for alternative service stated clearly by the movant, the court will not direct alternative service in the order to show cause on the last day of the statute of limitations