



# NEW YORK STATE UNIFIED COURT SYSTEM

Hon. C. Randall Hinrichs  
Suffolk County District Administrative Judge

**Hon. John J. LEO, J.S.C.**

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**REVISED -September 6, 2013**

## **SUFFOLK COUNTY SUPREME COURT DEDICATED MATRIMONIAL PART 51**

### **RULES FOR ATTORNEYS AND SELF REPRESENTED LITIGANTS**

#### **ADJOURNMENTS**

1. **On consent:** All consent adjournment requests, if granted by the court, must be confirmed in writing and indicate the reason for the adjournment, the index number, appearance date and proposed adjournment date.
2. **No consent:** All adjournment requests that are not on consent of the opposing party must be in writing and on notice to all parties.
3. **Law Guardian:** When applicable, notice to or the consent of the law guardian must be obtained before an adjournment application will be considered.
4. **Engagement of counsel:** Requests predicated upon engagement of counsel must be by affidavit or affirmation conforming with 22 NYCRR125.1(e) and must include:
  - a. the basis for the priority to be afforded the other appearance;
  - b. the name of the case in which the engagement is required, the nature of the proceeding, the court, and where known, the assigned jurist;
  - c. the date such engagement was incurred and whether the other court was made aware of the court date for which the adjournment is sought.
5. **Trials:**
  - a. Parties and counsel **must** appear on the scheduled date unless excused by the court. Consent adjournments will not be granted absent the express permission of the court.
  - b. If a case has been scheduled for trial at least two months in advance and an attorney scheduled to try the case is actually engaged on trial elsewhere, he or she must provide substitute trial counsel. If neither trial counsel nor substitute counsel is ready for trial on the scheduled date, the court may in its discretion impose

sanctions (22 NYCRR 125.1(g)).

4. **Motions:** Where the parties have stipulated to adjourn a motion, they must so advise the court prior to the return date. There shall be no more than three stipulated adjournments for an aggregate period of 60 days without prior permission of the court (22 NYCRR 202.8)(e). ALL MOTIONS SHALL BE ADJOURNED TO THE NEXT SCHEDULED CONFERENCE DATE ONLY, EXCEPT FOR GOOD CAUSE.

### **APPEARANCES**

1. **Appearance in court:** Except on return of motions, the appearance of both parties and counsel is **required** on all court dates unless waived by the court. Where the court has waived the absence of a party, he or she must be available by telephone.
2. **Arrival in court:** Upon arriving in the courtroom, counsel and self represented litigants shall report to the court officer. If attending to other matters in the court complex, counsel shall advise the officer with specificity as to the part(s) to be attended.
3. **Writs of Habeas Corpus:** On the return of a writ of *habeas corpus* involving custody or visitation disputes, the child(ren) must be brought to court unless their presence has been excused by the court or by agreement of all parties.

### **COMMUNICATIONS WITH THE COURT**

1. **Ex Parte:** Neither counsel nor parties shall initiate *ex parte* communications with the court concerning substantive matters. Letters or fax transmissions sent to the court will not be considered unless there is an indication that a copy has been sent to all parties.
2. **Telephone conferences:** Telephone conferences must be prearranged with individual chambers. The requesting party shall be responsible for setting up the conference.

### **PRETRIAL MOTIONS**

1. **Settled issues:**
  - a. Prior to making a motion, counsel should attempt to resolve issues with opposing counsel if he or she deems it appropriate. In an attempt to resolve disputed issues, counsel may request a telephone conference with the court. Any pretrial issue resolved by telephone conference or otherwise must be memorialized by a written stipulation.
  - b. Upon settlement of a pending motion, counsel shall immediately notify

chambers.

2. **Memoranda of Law:** Where unique or novel issues of law are presented, counsel should submit memoranda of law in support of their respective positions.
3. **Oral argument & hearing:** Oral argument of motions may be had upon prior arrangement and approval of the court. The Court may require oral arguments at its discretion.
4. For any undecided/pending motions the attorneys and the parties shall be ready for a hearing to present themselves and evidence at each and every court appearance.

### **POST JUDGMENT APPLICATIONS**

An application to the court for post judgment relief must be by formal motion.

1. **Service:** Orders to show cause for post judgment relief shall not provide for service on the opposing party's prior attorney unless the supporting papers state that said attorney has authority to accept such service. Service shall be required on the opposing party in the same manner required to initiate a special proceeding.
2. **Custody/visitation issues:** The moving papers must identify any previously appointed law guardian.

### **EX PARTE APPLICATIONS**

1. **Notification of application for temporary relief:** On any application for *ex parte* relief, the movant must identify counsel for the opposing party, if any, and must include a sworn statement that counsel or the self represented litigant was notified of the date, time and place the application would be made, except where the preservation of marital assets, child custody or the safety of the litigants could be compromised by such notification.
2. **Continuation of *ex parte* relief:** Where the consent of the opposing party cannot be obtained, oral applications to continue or vacate any *ex parte* relief contained in an order to show cause shall be made on the return date of the motion. All parties are required to appear for oral argument.
3. **Withdrawal of counsel:** An attorney moving for permission to withdraw as counsel **must** advise the court whether or not there are *pendente lite* or other motions pending, and if a hearing or trial has been scheduled that would be delayed by the granting of the attorney's application.
4. **Statement of Net Worth:** Attorneys shall have a current net worth statement with them at each court appearance.

5. **Temporary Maintenance Guidelines Worksheet:** In any pendente lite application seeking spousal maintenance the parties must complete a Temporary Maintenance Guideline Worksheet and it shall be annexed as an exhibit in support of/in opposition to any such application. The Temporary Maintenance Guideline Worksheet is available in Part 51, Court Room D-65 and is also available on the Court's website.

## **PRELIMINARY CONFERENCES**

1. All preliminary conferences must be conducted within **45** days of the filing of the **request for judicial intervention (RJI)** (22 NYCRR 202.16 (f)). No adjournments will be granted beyond that time period except for **good cause** shown.
2. **Net Worth Affidavits**
  - a) Pursuant to 22 NYCRR 202.16 (f) (1) as amended effective May 2001, the parties are required ten (10) days prior to the conference date, to exchange net worth affidavits, attorney's retainer statements, all paycheck stubs for the current calendar year, the last paycheck stub for the immediate preceding calendar year, all W-2 wage and tax statements, State and Federal income tax returns for the past three (3) years, and financial account statements, etc.
  - b) Statements of Net Worth and supporting financial documents are to be filed with the court at the preliminary conference.
  - c) Counsel and if unrepresented such party, shall have a copy of the Statement of Net Worth at the Preliminary Conference, and all court appearances.
3. **Appearances** Appearance at the preliminary conference is mandatory for all parties and counsel (22 NYCRR 202.16 (f)). Failure to appear for a preliminary conference or any subsequent conference, unless excused by the court, may result in costs or sanctions being imposed against the defaulting party.
4. **Preliminary conference order** At the close of the preliminary conference, the parties shall stipulate, in writing or on the record, as to all resolved issues and set forth a schedule of discovery for all unresolved issues which the assigned justice will then "so order". The Preliminary Conference Orders shall include date(s) certain for depositions of the parties. A date for trial shall be scheduled not later than **six months** from the date of the conference, unless the court determines that it is a complex case.
5. **Disclosure** All discovery proceedings must be completed and the **note of issue filed within six months from the commencement of the preliminary conference** unless otherwise shortened or extended by the court depending upon the circumstances of the case (22 NYCRR 202.16 (f)). Failure to file a Note of Issue as directed in the Preliminary Conference Order may result in dismissal pursuant to CPLR 3216. A statement of proposed disposition shall be filed and served

pursuant to (22 NYCRR202.16).

6. **Compliance** Any party who fails to comply with a preliminary conference order requiring discovery may be subject to the penalties prescribed in CPLR § 3126.

### **APPOINTMENT OF NEUTRAL EXPERT WITNESSES**

On its own initiative or on consent of the parties, the court may appoint a neutral expert witness. The court in its discretion shall make a direction as to which parties shall advance the expert witness' fee for production of the report and for testifying, subject to reallocation by the court upon application of either party.

- a) Where the parties stipulate to the appointment of a neutral expert, they may elect to be bound by the expert's opinion.
- b) Where the parties consent to the appointment of a neutral expert but have not elected to be bound by the opinion of the neutral expert, the stipulation must provide that the qualifications of the expert will not thereafter be challenged.
- c) The expert reports shall be submitted under oath by the expert who shall be present and available for cross-examination. (22 NYCRR 202.16 (g)).
- d) In the discretion of the court, the expert's written report may be used to substitute for direct testimony at the trial (see: PC Order, Part 14).

### **FILING PRIOR TO TRIALS**

1. Unless otherwise ordered by the Court, the following shall be filed on or before the pretrial conference and a copy shall be brought to the part on the date of the pretrial conference:
  - i. Joint Pretrial Order
  - ii. Legal Memoranda Counsel for each party shall provide the court with legal memoranda addressing all contested legal issues in the Pretrial Order and anticipated evidentiary problems.
  - iii. Motions in limine

**Please take notice adjournment of the Pretrial Conference does not adjourn the filing of the Pretrial Order.** A copy of the Pretrial Order , any motions in limine are and pretrial memorandums shall be brought to the Pretrial conference.

#### **A. Joint Pretrial Order:**

The Pretrial Order controls the subsequent course of the action unless the order is modified by consent of the parties and the court, or by order of the court to prevent manifest injustice. The Pretrial Order shall be submitted with a full, un-abbreviated caption. Each of the following

topics shall be addressed in a separately labeled schedule:

1. The full caption of the action .
2. The names, addresses (including firm names), and telephone, cell phone and fax numbers of all trial counsel.
3. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statement shall include citation to all statutes relied on and relevant facts as to citizenship.
4. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matters, but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
5. A statement of the number of trial days needed.
6. Any stipulations or statements of fact or law that have been agreed to by all parties.
7. Witnesses: A list of names and addresses of all witnesses, including possible witnesses who will be called only for impeachment or rebuttal purposes and so designated, together with a brief narrative statement of the expected testimony of each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown. In addition, for expert witnesses, the area of expertise must be listed. The parties shall list and briefly describe the basis for any objections that they have to any witnesses designated by any party.
8. Deposition Testimony: A designation by each party of those portions of deposition testimony intended to be offered into evidence, with any cross-designations and objections by any other party.
9. A designation by each party of deposition testimony to be offered in its case in chief, with any cross- designations and objections by any other party.
10. Exhibits:
  - (i) A schedule listing exhibits to be offered in evidence and,

if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. Parties are expected to resolve all issues of authenticity, chain of custody and related grounds, before trial. Parties are not to interpose meritless objections. All exhibits must be pre-marked for the trial and exchanged with the other parties at least (10) ten days before trial. Where exhibits are voluminous, they should be placed in binders with tabs.

(ii) Each exhibit shall be identified and described. Plaintiff's exhibit shall be identified by numbers, defendant's exhibits shall be identified by letters.

(iii) Only listed exhibits will be received in evidence, except for good cause shown.

11. The Attorneys who will try the case for each party shall sign and date the Pre-Trial Order.

12. All Attorneys who will conduct the Trial shall be at the Pretrial Conference.

B. One Week Prior to Trial

a. Each party shall file and provide courtesy copies to the Court of legal memorandum addressing all contested legal issues including evidentiary issues or in any case where such party believes it would be useful, a pretrial memorandum.

b. Each party shall file and provide two (2) courtesy copies to the Court of the proposed exhibits that are pre marked in a suitable binder.

2. **Statement of proposed disposition** In all Matrimonial matters, Statements of Proposed Disposition are required to be filed pursuant to 22 NYCRR 202.16(h).

3. **Confirmation of trial date** Three business days prior to any scheduled trial, counsel must call chambers of the assigned justice to confirm the court's availability for trial. Failure to be ready to proceed on a scheduled trial date may result in a dismissal of the cause of action.

4. **Marked pleadings** If grounds are to be tried, marked pleadings, in accordance

with CPLR § 4012 are to be filed with the court one week prior to Trial.

5. **Jury trials** Where either party has timely served and filed a demand for a jury trial and the case is ready for trial:
  - a. The assigned justice, depending on his or her availability, may elect to refer the case to the Supervising Justice of the Dedicated Matrimonial Parts, who upon consultation with the Calendar Control Part may refer the case for trial to a Supreme Court justice sitting in either Central Islip or Riverhead.
  - b. Once a verdict has been rendered, should grounds be established, the parties must report as soon as practicable to the original assigned justice to attend to the prompt disposition of the remaining ancillary issues including equitable distribution, custody and support.
6. **Non jury trials** In instances where a non jury case is scheduled for trial and the assigned justice is not available to hear the case on the date scheduled, the assigned justice may refer the matter to the Supervising Justice of the Dedicated Matrimonial Parts for reassignment.
7. **Post trial submissions** Each counsel shall prepare and submit a post-trial Memorandum of Proposed Findings of Fact and Conclusions of Law. Legal arguments are to be supported by relevant case law and contain proper legal citations.
8. **Hearings on Motions, Order to Show Cause**-Unless otherwise directed by the Court, the following shall be filed three (3) days before the date of commencement of any hearings scheduled on a motion or order to show cause;
  - A. A Pre-hearing Order shall be submitted with a full, un-abbreviated caption. Each of the following topics shall be addressed in a separately labeled schedule:
    1. The full caption of the action .
    2. The names, addresses (including firm names), and telephone, cell phone and fax numbers of trial counsel for the child.
    3. A statement of the number of hearing days needed.
    4. Any stipulations or statements of fact or law that have been agreed to by all parties.
    5. Witnesses: A list of names and addresses of all witnesses, including possible witnesses who will be called only for impeachment or rebuttal purposes and so designated, together with a brief narrative statement of the expected testimony of

each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown. In addition, for expert witnesses, the area of expertise must be listed. The parties shall list and briefly describe the basis for any objections that they have to any witnesses designated by any party.

6. Exhibits:

- (i) A schedule listing exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. Parties are expected to resolve all issues of authenticity, chain of custody and related grounds, before hearing. Parties are not to interpose meritless objections. All exhibits must be pre-marked for the hearing and exchanged with the other parties at least five days before the hearing. Where exhibits are voluminous, they should be placed in binders with tabs. Each exhibit shall be identified and described. Plaintiff's exhibit shall be identified by numbers, defendant's exhibits shall be identified by letters. Only listed exhibits will be received in evidence, except for good cause shown.

7. Signatures of the attorney for each party and date thereto.

B. Two Days Prior to Hearing

1. Each party shall file and provide two (2) courtesy copies to the Court of the proposed pre marked exhibits in a suitable binder.
  2. Each party shall file and provide courtesy copies to the Court of legal memorandum addressing all contested legal issues including evidentiary issues or in any case where such party believes it would be useful, a pretrial memorandum.
  3. In all cases, motions addressing any evidentiary or other issues which should be resolved in limine.
9. Orders To Show Cause with Request for Temporary Relief: For any Order To Show Cause submitted with a request for a temporary restraining order, the party requesting such an order shall have three copies of any exhibits that such moving party will be offering for evidence at a hearing, regarding the Temporary Restraining Order with them at the time of presentation the Order to Show Cause

for signature. Parties should be prepared to call witnesses and present evidence regarding any requests for a Temporary Restraining Order

#### 10. **General Decorum at Trials/Hearings or Oral Arguments**

- a. A trial or hearing is a rational and civilized inquiry to seek a just result. Counsel are expected to conduct themselves with dignity and decorum at all times, which includes appropriate dress (suits and neckties for men) and courtroom behavior. Disruptive tactics or appeal to prejudice are not acceptable.
- b. Colloquy between counsel on the record is not permitted-all remarks are to be addressed to the Court.
- c. Vigorous advocacy does not preclude courtesy to opposing counsel and witnesses and respect for the Court. Calling attorneys, witness or parties by first names on the record is not appropriate.
- d. Do not engage in activity at counsel table or move about the courtroom while opposing counsel is arguing or questioning witnesses, or in other ways cause distraction. Neither counsel nor client while at counsel table should indicate approval, disapproval, or other reactions to a witness's testimony or counsel's argument.
- e. If you have a question or problem, talk to the Judge's courtroom clerk or the law secretary.
- f. When one lawyer is making a motion or application either before or at trial, all other lawyers should be seated, and the same is true when another is answering an such motion or application. Do not attempt to interrupt your adversary's argument unless the Court asks you a question-then rise, answer it, and resume your seat until your adversary is finished.
- g. If an objection to a question has been sustained (other than on the ground of "form"), do **not** attempt to circumvent the Court's ruling by repeating the question using other words.
- h. You are bound by written stipulation or those made in open Court whether made by you or by predecessor counsel unless you have been relieved therefrom by order of the Court.
- i. Histrionics, mini-summation, comments on testimony of a witness during questioning, repetitious questions, procrastination, delaying tactics, rearguments following Court rulings (except at recesses), *etc.*, will not be tolerated.
- j. Prior to trial, the attorneys should attempt to stipulate to the testimony of all *pro forma* witnesses, *e.g.*, if the secretary of the XYZ Corporation

were called to testify, he would testify that Exhibit A was kept in the ordinary course of business, *etc.*, is admissible.

- k. Repetitious cross-examination by successive (or even the same) attorney(s) on the same subject area is inappropriate and will not be permitted except for good cause shown in exceptional circumstances.

## **TRIAL HEARING RULES AND PROCEDURES**

### **GUIDELINES FOR THE CONDUCT OF TRIALS AND PRETRIAL MOTIONS AND OTHER APPEARANCE MATTERS**

1. **OPENING STATEMENTS.** An opening statement is simply an objective summary of what counsel expects the evidence to show. No argument or discussion of the law is permissible.
  
2. **QUESTIONS OF WITNESSES.**
  - a. Conduct the examination from the lectern located at the far end of the jury box. Ask permission to approach the witness when necessary and return to the lectern as soon as practicable. Treat witnesses with courtesy and respect, do not become familiar, do not address witnesses by their first names, and do not shout at witnesses.
  - b. Ask brief, direct, and simply stated questions. Cover one point at a time. Leading questions may be used for background or routine matters.
  - c. Cross-examination should consist of brief, simple, and clearly stated questions. Cross-examination should not be a restatement of the direct examination and should not be used for discovery (i.e., it is not like taking a deposition).
  - d. Only one lawyer for each party may examine any one witness and may object as to questions asked of that witness on cross.
  
3. **OBJECTIONS.**
  - a. To make an objection, **rise**, say “objection,” and briefly state the legal ground (e.g., “hearsay,” “privilege,” “irrelevant”). **If you do not rise, your objection will be deemed waived and will be ignored by the Court.**
  - b. Do not make a speech or argument, or summarize evidence or suggest the answer to the witness. If argument is desired, ask for an opportunity to argue the objection at sidebar.

- c. Where an evidentiary problem is anticipated, bring it to the Court's attention in advance to avoid interrupting the orderly process of a trial.
- d. It is the responsibility of counsel to see that all exhibits counsel wants included in the record are formally offered and ruled on, and that all of the clerk's copies of exhibits are in the hands of the clerk. Take nothing for granted.
- e. Tapes are normally received in evidence; transcripts are normally not. Transcripts are marked for identification only and used as guides.

#### 4. **CONDUCT OF TRIAL.**

- a. The Court expects counsel and the witnesses to be present and ready to proceed promptly at the appointed hour-normally starting at 9:30 a.m. A witness on the stand when a recess is taken should be back on the stand when the recess ends.
- b. Bench conferences should be minimized. Raise anticipated problems at the start or the end of the trial day or during a recess.
- c. Have a sufficient number of witnesses available in court to fill the time available. Running out of witnesses may be taken by the Court as resting your case.
- d. Trials normally are conducted from day to day. Do not assume that the Court will recess on any given day at any given time or times unless prior arrangements have been made with the Court and counsel.
- e. Counsel are expected to cooperate with each other in the scheduling and production of witnesses. In civil cases, in particular, witnesses may be taken out of order where necessary. Effort should be made to avoid calling a witness twice (as an adverse witness and later as a party's witness).

### **SETTLEMENTS**

1. Where a case has been settled prior to the trial date or any other court date, in lieu of appearing in court, chambers **must** be notified in writing in advance that a stipulation has been executed by both sides resolving all outstanding issues. If a case has been settled by a stipulation, counsel will forward the first and last pages bearing the parties signatures to be submitted to the Court.
2. On any date that the case appears on the calendar and the parties are present, a stipulation of settlement may be placed on the record and "so ordered" by the court.
3. No case shall be marked as settled or disposed unless an oral stipulation has

been placed on the record or written notification is submitted to chambers confirming that a stipulation of settlement has been executed by both sides.

4. **Judgment submissions calendar** At the time of settlement, the case will be adjourned to a judgment submission calendar to assure that the judgment and supporting documents are timely submitted.
5. **Submission of proposed judgments**
  - a. Proposed judgments must be submitted within 60 days of the date the case was marked settled by the court unless extended by the court for good cause. Counsel for the submitting party must notify chambers in writing when the proposed judgment has been filed with the clerk's office. If the proposed judgment has not been submitted, all parties and counsel shall appear on the judgment submission date. Requests for extensions must be in writing and supported by good cause.
  - b. Proposed judgment submissions rejected for noncompliance with the Rules of the Chief Judge or any other deficiency must be resubmitted to the court within thirty (30) days of the notice of rejection. A failure to comply may result in restoration of the case to the calendar for appearance by all parties. Requests for extensions must be in writing and supported by good cause.
6. **Outstanding motions** Motions pending at the time a case is marked settled by the court will be deemed withdrawn unless explicit provision is made for their continuance.

#### **APPLICATIONS TO RESTORE CASES TO THE CALENDAR**

An application to restore a case dismissed or marked off the calendar and deemed abandoned pursuant to CPLR 3404 **must** be by motion unless the party was granted leave to restore on letter notice.