

HON. JEFFREY ARLEN SPINNER
Judge of the County Court
Acting Justice of the Supreme Court
Acting Judge of the Family Court
Supreme Court Of The State Of New York, County of Suffolk
IAS Part 21, Criminal Courts Building, Courtroom 1
210 Center Drive, Riverhead, New York 11901
Chambers: (631) 852-2309 Telecopier: (631) 852-3226 Courtroom: (631) 852-2231
Principal Law Clerk: **ROBERT DeGREGORIO, ESQ.**
Confidential Secretary: **ERIN MICHAEL KAY**
Senior Court Clerk: **ROBERT RUSSO**

The following shall comprise the rules of practice and procedure for all matters pending before Supreme Court, Part 21. The intent of these rules is to ensure fair and expeditious handling of all matters that are before the Court for the benefit of both the litigants and their respective attorneys.

COURT STAFF:

The Court staff includes the Justice, Principal Law Clerk, Confidential Secretary, Senior Court Clerk, Senior Court Officers and Court Reporter. All of these persons constitute a necessary and indispensable part of the Court, and they enable the Court to function fairly and effectively, for the benefit of both litigants and counsel. All members of the staff must be treated with civility, courtesy and respect. Strict adherence to the rules set forth in 22 NYCRR Part 700 ["Decorum"] and 22 NYCRR Part 1200 ["New York State Standards Of Civility"] is mandatory. Unprofessional conduct will not be countenanced.

DEFINITIONS:

Designated Motion Dates - All motions made in cases assigned to Justice Spinner shall be calendared for submission on either the FIRST or THIRD Wednesday of each month. In the event that the First or Third Wednesday falls on a legal holiday or a day otherwise pre-empted by the Justice's schedule, then the Designated Motion Date for submission of motions that would have appeared on the calendar for that Wednesday shall be calendared for the next available Wednesday (the SECOND or FOURTH Wednesday of that month, unless same is also an unavailable date).

Parties - For the purposes of these rules, parties shall mean counsel of record and/or *pro se* litigants.

TRO/Stay Return Date - Where a Temporary Restraining Order (TRO) or a stay has been imposed in an Order pending the return date of an application, return date shall mean the date upon which all parties are scheduled to appear for argument thereof, and same shall not be, nor be considered, an adjourn date. In instances where the return date assigned was not an available Designated Motion Date (as defined herein above), and the Court Calendar Department or Chambers therefore administratively carries the return date forward to a proper date, the TRO or stay shall automatically be continued to that rescheduled return date, without the requirement of notice to any party. It is the responsibility of all parties to inquire as to the scheduling or rescheduling of such matters.

GENERAL CIVIL PART RULES

MOTION PRACTICE:

Return Dates

Parties are urged to consult with Chambers in advance of scheduling any motion return date in order to determine available Designated Motion Dates (as defined herein above). In the event that an application is made returnable on a day other than an available Designated Motion Date, same will be administratively continued to the Court's next available Designated Motion Date.

Unless an adjournment is granted by the Court (in accordance with these Rules as set forth herein below) all motions appearing on the Court's Designated Motion Date calendar shall be marked as submitted on that date.

Motion Conferences

Effective September 1, 2009, the Court will no longer convene a mandatory conference on all motions. Instead, after a motion has been submitted it shall be reviewed and, in the event the Court deems a conference necessary, same will be scheduled on a date convenient to the Court, due consideration being given to the availability of the parties.

Appearance of all parties is required at any Motion Conference, and they must be prepared to discuss the matter in an effort to narrow the issues, as well as to explore possible resolution of the case.

Where it is determined by the Court that a discovery motion has been filed cannot be resolved, the matter may be referred to the District Administrative Judge for the appointment of a Referee or Judicial Hearing Officer to supervise discovery.

Post-Note Motion Conferences

All Post-Note of Issue motions must be conferenced with the Court on an available Designated Motion Date. Appearance of all parties is required at all such conferences, prepared to discuss the matter in an effort to narrow the issues, as well as to explore possible resolution of the case.

Adjournments

Adjournments of pending motions must be done upon consent of all parties. In accordance with the express provisions of 22 NYCRR § 208.8(e), adjournments may not extend the original return date of the motion beyond SIXTY days.

All requests for adjournment must be made by stipulation executed by all parties. Said stipulations must contain the full caption of the action, the original return date of the motion and the adjourn date

requested (which must be an available Designated Motion Date). Parties are urged to communicate with Chambers prior to submitting such a stipulation. Stipulations must be received by Chambers not later than 4:00 p.m. of the Tuesday immediately preceding the return date, and may be forwarded either by mail or facsimile. In the event that an application for adjournment is denied, such denial will be communicated to all parties by Chambers sufficiently in advance of the scheduled return date.

In the unlikely event that consent of all parties is not forthcoming, the Court will entertain an oral application for adjournment on the date that the motion is returnable. The party seeking adjournment must notify all parties of his or her intent to orally apply for the adjournment. Likewise, where consent for an adjournment is unreasonably withheld, the Court reserves unto itself the right to unilaterally impose an adjournment consistent with the interests of justice to a date convenient to the Court and the parties cooperating in the request for adjournment.

Submission of Papers

All papers must be submitted in accordance with the express provisions of the CPLR. The Court will not consider any papers (opposition, cross-motion, reply, etc.) which appear to have been inappropriately interposed. All motion papers (including motions, opposing papers, affidavits, etc.) must be submitted through the Special Term Clerk's Office, Supreme Court, 1 Court Street, Riverhead, New York 11901. The Court will consider all papers properly submitted on notice and forwarded to Chambers by the Special Term Clerk's Office.

Submission of a cross-motion with a stated return date that is beyond the return date of the original motion will not serve to adjourn the original motion, although the Court may elect, in its discretion, to adjourn the original motion.

All motions and cross-motions submitted for Court consideration must be accompanied, at the time of submission, by a proposed Order. All Orders To Show Cause matters must likewise be submitted with a proposed Order at the time movant's Reply to opposition is filed. All opposition to any of the aforesaid must contain a proposed Order. Proposed Orders submitted after filing of a motion, Order to Show Cause or opposition must be made on notice to all parties, but do not require formal service.

Chambers or courtesy copies of papers are neither expected nor required, and are discouraged.

Oral Argument on Motions

All motions shall be decided upon the submission of papers, unless oral argument is specifically requested. Any party may make such a request, which must be done in writing, on notice to all other parties, and received by Chambers not later than seven (7) days before the stated return date. All such requests shall be made in accordance with the provisions of 22 NYCRR § 202.8(d). In the event the Court declines to entertain oral argument, all parties will be notified by Chambers in advance of the return date.

Temporary Restraining Orders & Stays

Where a Temporary Restraining Order ("TRO") or a stay has been imposed pending the return date (as

defined herein above) of an application, all parties must appear on the stated return date. The stay or TRO will not continue beyond the stated return date absent further order of the Court, unless the Order imposing said TRO or stay specifically states that it shall remain in effect pending determination of the motion or action.

Where a matter is returnable on a date other than an available Designated Motion Date, it will be administratively carried to the Court's next available proper date. In such event, the return date will be deemed to be the rescheduled date (as per the Definitions herein above), which shall not be deemed to be an adjournment, and the TRO or stay shall continue in effect until that later date.

In the event continuation of a stay or TRO is sought, the requesting party must make application at the call of the calendar. The Court reserves the right to *sua sponte* continue a TRO or stay, if consent is unreasonably withheld under the circumstances or if the interests of justice so dictate.

CALENDAR MATTERS:

Scheduling

All conferences (Pre-Trial, Compliance, Certification, Settlement, Post Note of Issue, etc.) and all calendar matters (Hearings, Inquests, Infant Compromises, etc.) shall be initially scheduled for an available Designated Motion Date (as defined herein above). Hearings and Inquests will be scheduled by Chambers in such a manner as to accommodate the schedules of all parties, with consideration given to avoiding unnecessary waiting time and inconvenience to any parties. Motion and/or Status conferences shall also include such considerations, but may be scheduled by the Court for dates other than Designated Motion Dates.

Hearings and Inquests in civil matters assigned to Part 21 shall be scheduled by Chambers. Absent permission of the Court, no inquest may be scheduled unless a Note of Issue has been filed.

Appearances

Attorneys Of Record & Pro Se Parties are required to attend all scheduled court appearances unless they have been relieved or otherwise excused by order of the Court or have otherwise been formally substituted.

Preliminary Conferences on matters that are assigned to Part 21 are returnable before, and are handled by, the Differentiated Case Management Part of the Supreme Court, located in Room A362 of the Supreme Court, located at 1 Court Street, Riverhead, New York. Preliminary Conference Orders shall thereafter submitted to Part 21 for signature.

All other conferences and calendar matters are handled by, and are returnable before, this Court at IAS Part 21, Courtroom 1, Criminal Courts Building, 210 Center Drive, Riverhead, New York.

Appearances are required for all scheduled conferences, and the Court requires the presence of parties with knowledge of the facts of the matter before the Court, who are vested with authority to enter into

binding dispositions on behalf of their respective clients. Failure to appear without proper cause may subject the non-appearing party to default or non-suit, as well as potential other sanctions, as provided for by 22 NYCRR § 202.27 and 22 NYCRR §§ 130-1.1 and 130-2.1

Calendar call commences at 9:30 a.m.. Parties are required to check in with the Senior Court Clerk in the Courtroom and indicate their readiness to proceed. If any party is also required to attend proceedings in another Part at the same time, the Senior Court Clerk and adversaries, if any, should be so advised, in order to extend appropriate latitude and courtesy to all parties.

Whenever there are motions pending on a matter that appears on any Conference Calendar, same shall first be discussed with, and reviewed by, Robert DeGregorio Esq, Principal Law Clerk.

Adjournments

Adjournments of conferences and other calendar matters shall not be granted without good cause and then only for a reasonable period of time. Adjournment applications shall be made in accordance with the procedures set forth under "Motion Practice" above.

TRIALS:

Trials, both jury and non-jury, are assigned to Part 21 on a random basis by the Calendar Control Part of the Supreme Court. The Court will conduct trials on all days, and will continue trials in progress day to day, except that no trial proceedings shall be held on Tuesdays (Foreclosure Conference Calendar Day) and the two Designated Motion Dates per month, which comprise the Court's designated calendar days.

The Court will hold a Trial Conference with parties immediately prior to the commencement of the trial. Parties shall provide the Court with the following items at or before the conference:

- (1) a set of marked pleadings and any amendments thereto;
- (2) all bills of particulars that have been served;
- (3) a list of witnesses for each side;
- (4) in the case of any expert witnesses, all of the information mandated by the provisions of CPLR 3101(d)(1)(i); and
- (5) a list of pre-marked exhibits.

The Court requires proposed jury charges and a verdict sheet to be submitted by parties immediately in advance of the close of testimony, in order that a Charge Conference be held regarding the same.

At the Trial Conference, the Court will explore the matter with parties and will also discuss settlement of the pending case. Parties must be authorized to negotiate and enter into binding settlements on behalf of their respective clients.

The Court will neither postpone nor adjourn any matter scheduled and ready for trial, absent drastic and emergent circumstances (such as death or hospitalization which affects the parties). In the event that a party fails, without good cause, to proceed on a scheduled trial, appropriate sanctions may be imposed

upon the defaulting party, including but not limited to costs and counsel fees in favor of the opposing party and assessment of costs of assembling the petit jury.

COMPROMISE APPLICATIONS:

All applications for compromise of a claim on behalf of an infant or other incapacitated party must be served upon all parties and submitted through the Special Term Clerk's Office, Supreme Court, 1 Court Street, Riverhead, New York 11901. All such submissions must be in full compliance with 22 NYCRR § 202.67 and CPLR §§ 1206, 1207 and 1208.

Petitions must contain the name, address and attorney (if any) for any statutory or other lienors, together with the amount of their claims, if any. Medical reports must be in the form of an affirmation or affidavit, and must not be dated more than six months prior to the date that the application is submitted to Special Term. Such reports must be fully detailed and indicate the nature and extent of the injuries, whether or not a full recovery has been had and the nature and extent of future limitations and/or treatment, if any.

In the Order Approving Compromise, counsel shall leave appropriate blanks for the Court to insert the computation and the depository for the infant's funds, as applicable (counsel should not take it upon themselves to designate the depository for the funds, as this is the province of the Court).

Once the submissions have been approved as complete by the Special Term Clerk's Office, the Court will schedule the appearance date. Both the applicant and the infant must be present at the compromise hearing, unless the Court grants an exception due to extreme and extenuating circumstances.

SEX OFFENDER REGISTRATION RE-CLASSIFICATION PART RULES

Justice Spinner also sits as County Court Part 8 which hears the Sex Offender Registration Re-Classification matters pursuant to both Article 6-C of the Correction Law and the authority of *Doe v. Pataki*, 3 F3d 69 (2d Cir 2008).

These matters are calendared for designated Tuesdays at 9:30 a.m. by the Clerk of the County Court. All appearances shall be in Courtroom 1, Criminal Courts Building, 210 Center Drive, Riverhead, New York. Written notification of the date and time of appearance is given by the Court to the involved parties, whose presence is required, unless waived in writing or as otherwise directed by the Court.

Defendants shall appear with counsel who are prepared to proceed in the matter. In the event that a Defendant is unable to retain counsel, the Court may, after inquiry on the record, assign counsel if the Defendant is otherwise eligible, or may adjourn the matter.

The Court shall require the submission of a Risk Level Assessment Instrument as well as an updated rap sheet.

RESIDENTIAL MORTGAGE FORECLOSURE CONFERENCE
PART RULES:

Effective January 1, 2009, Justice Spinner will be presiding over a specialized Residential Mortgage Foreclosure Conference Part. In accordance with the provisions of CPLR § 3408, those mortgage loans in foreclosure which are deemed "sub-prime," "high cost" or "non-traditional" (as defined by RPAPL § 1304 and Banking Law § 6-1), and which encumber owner occupied 1-4 family dwellings, shall be referred to this Part for conference.

It shall be the obligation of counsel for the foreclosing mortgagee to advise the Court, in writing, as to whether or not the loan in foreclosure falls within the statutory parameters which would require a conference. The reference to the Residential Mortgage Foreclosure Conference Part shall occur prior to the random assignment of the case to an IAS Justice.

In addition, only as to matters already assigned to Justice Spinner (IAS Part 21), upon written application by any mortgagor-defendant, the Court will convene a settlement conference, regardless of the stage to which the action has proceeded and without regard to whether or not the loan falls within the purview of CPLR § 3408.

The purpose of the conference shall be to engage in settlement discussions with regard to the rights, responsibilities and obligations of all parties to the loan transaction. The Court will explore the issues of avoiding the potential loss of the borrower's home, review and evaluation of amicable resolution of the matter, including possible modification and workout of the indebtedness due the lender, and any other purpose deemed necessary and/or appropriate by the Court. Upon the request of the parties, or its own initiative, the Court may adjourn the conference, continue the matter or stay prosecution of the action

The appearance and/or participation by the Defendant-Mortgagor shall not constitute an appearance in the action nor shall it be deemed to be a waiver, in whole or in part, of any defenses, jurisdictional or otherwise, that the Defendant-Mortgagor may have to the action. Any and all statements made, whether oral or written, and any and all information exchanged at the conference, shall be solely for the purposes of resolution and settlement, and shall not be deemed to be admissions of any party with respect to the underlying action.

Any Defendant who appears *pro se* shall be deemed to have moved to proceed as a poor person and the Court shall determine whether such permission should be granted. The Court may evaluate the matter to determine whether or not counsel should be assigned. In the event that counsel is appointed, the Court will adjourn the conference in order to facilitate the appearance by counsel.

At each scheduled conference Plaintiff shall appear, either in person or by counsel. If appearing by counsel, such attorney shall be vested with authority to negotiate and to enter into a binding settlement and to ultimately dispose of the matter. The failure of Plaintiff and/or counsel to appear at a scheduled conference without good cause shall be dealt with in accordance with the provisions of 22 NYCRR § 130-2.1, and may subject Plaintiff and/or counsel to appropriate remedial action, including but not

limited to default, non-suit, dismissal with prejudice and monetary sanctions.

At least three business days prior to the scheduled conference, Plaintiff's counsel shall provide the Court (Chambers) with copies of the foreclosure search, which shall include a copy of the deed vesting title in the mortgagor, the Note and Mortgage and any assignments thereof, the mortgage loan application, the Truth-In-Lending Disclosure Statement, the HUD-1 Settlement Statement and the loan payment history. The Defendant-Mortgagor shall bring, to the extent available, copies of all notices received relative to the mortgage loan, a list of all payments made, documents that show monthly income and expenses, as well as any information that may be helpful at the conference.

Conferences will be scheduled by the Court for each Tuesday at 2:30 p.m. , Courtroom 1, Criminal Courts Building, 210 Center Drive, Riverhead, New York.

PART 21
CALENDAR DATES
FOR 2009

August 19

August 26

September 9

September 23

October 7

October 21

November 4

November 18

December 2

December 16

**UNLESS OTHERWISE SPECIFICALLY
DIRECTED TO APPEAR**