

COURT RULES OF THE HONORABLE EUGENE P. DEVINE, J.S.C.

Courtroom Number: Albany County Courthouse, Room 38

Courtroom Phone Number: None

IAS Part Clerk: Varies from month to month. His/her identity can be obtained from Supreme Court Clerk (518-285-8989)

Law Clerk: Rebecca Clancy, Esq.
rclancy@courts.state.ny.us

Mailing Address: Supreme Court Chambers
Room 38
Albany County Courthouse
16 Eagle Street
Albany, New York 12207

Chambers Room Number: 38

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edevine@courts.state.ny.us

Chambers Phone Number: (518) 285-8959

Secretary: Mrs. Linda Maguire
lmaguire@courts.state.ny.us

Communications:

Chambers are open 8:00 a.m. to 4:00 p.m. Answering machine will take messages at other times. Scheduling of any conferences may be done with either secretary or law clerk and should be done by telephone, email or letter with available dates convenient to all counsel and a reason for the conference. Conferences are held each morning beginning at 8:15 a.m.

When the Judge is assigned to Part I of a Trial Term, scheduling of conferences for cases on trial calendar shall be by the Courtroom Clerk.

Motions at a Glance:

Pre-Motion Conference: None

Oral Argument: May be requested. Not generally held unless requested by the Court.

Article 78 motion terms do require personal appearance and oral argument unless the parties submit. A time limit for each party may be applied.

Submissions of Motion Papers, Orders and Judgments:

Motions are returnable any weekday. All original papers including opposition and reply papers shall be timely served on all counsel and filed with the Supreme Court Clerk, Room 102, Albany County Courthouse, Attention: Motion Clerk, after payment of the requested motion fee to the Albany County Clerk. A courtesy copy of any motions papers should not be sent to Chambers prior to the return date. Any papers filed or served late may not be considered.

Sur-Reply papers are discouraged and may not be considered. Memoranda of Law should reflect brevity and specificity.

Requests to adjourn motions: initially counsel shall confer to determine if adjournment is on consent. If so, a letter shall be delivered to the Motion Clerk, with a copy to Chambers, before the return date. If agreement is not reached, requesting counsel shall write the Court prior to the return date to request an adjournment. Adjournments are limited to sixty (60) days per 22 NYCRR 202.8(e)(1).

If motion is one specifically scheduled by the Court, a request for adjournment shall be made to the Court only.

If an order or judgment is submitted for signature with respect to an oral or written decision, the submitting party shall do so in a timely fashion. Unless otherwise directed by the Court, such order shall first be submitted for approval of its form and content to all other counsel. Once submitted for signature, it shall be (a) accompanied with a letter from the submitting counsel stating that all counsel have approved the same as to form and content, or (b) accompanied by a letter, copied to all counsel giving them 10 days to object or they shall be deemed to have given consent.

Discovery Motions:

No discovery motion may be filed unless counsel personally confer to resolve the discovery issue. (See 22 NYCRR 202.7) and the motions papers show compliance with that Rule.

Orders to Show Cause:

An Order to Show Cause **must** be presented by an attorney familiar with the case. If the case is unassigned under IAS, presentment should first be attempted to the Part I Judge. Personal presentment is requested rather than mailing to or leaving the proposed papers at Chambers. For

any Order to Show Cause that contains a motion for a preliminary injunction or Temporary Restraining Order, 22 NYCRR 202.7(f) must be followed to give notice to the opposing party.

Special Instructions for Matrimonial Motions and Matters:

For matrimonial motions, the parties shall request a conference with the Court to attempt to resolve any requests for pendente lite relief prior to filing a motion, if practicable. Motions for pendente lite relief shall be made no later than sixty (60) days before trial. Otherwise, matrimonial motions shall be governed by the general provisions regarding motions and/or by any scheduling order, if applicable. Appearances on non-contempt matrimonial motions will be scheduled by the Court as necessary.

Application for Adjournment:

Counsel shall initially contact other counsel to determine their position in respect to any adjournment, and if counsel consents, request three (3) convenient dates.

Any request should be made a reasonable time prior to the scheduled matter.

An adjournment of any conference may be requested by telephone, fax, mail or letter. The requesting counsel shall provide three (3) proposed new dates, and a reason for the postponement.

No adjournment shall be deemed granted until approved by the Court.

Preliminary Conferences:

Preliminary Conferences are scheduled pursuant to 22 NYCRR 202.12(a) and for matrimonial cases pursuant to 22 NYCRR 202.16(f).

The Court does use pre-trial scheduling orders for all cases. Once the case is assigned to the Court, a letter, together with a blank scheduling order, will be sent. The order may be completed and sent back to the Court. In that case, the order will be signed and there will be no conferences. If the completed order is not returned, by mail to Chambers within three (3) weeks of receipt, a conference will be scheduled. If the form is not returned, the conference will be held and each party shall submit to the Court a short (no longer than 2 pages) summary of the case before the conference outlining the case and any issues to be discussed at the conference. See 22 NYCRR 202.12(a).

In a contested matrimonial, a preliminary conference will be scheduled by letter. Clients must be present and counsel must file a statement of net worth and retainer agreement with the Court before the conference. All pertinent matters will be discussed at the conference in an effort to resolve and limit contested issues.

Contempt:

Upon the return date of a motion for contempt, the Court will hold a hearing at which all parties' attendance is required.

Note of Issue:

If a note of issue is not timely served and filed pursuant to a scheduling order and no party has requested an extension of that order, the Court will mark the case ready for trial, direct that a note of issue be filed and schedule a final conference. No case shall be scheduled for trial unless a note of issue has been filed.

Final Conference (after discovery):

In contested matrimonials, clients must attend. In all cases, final conferences will be scheduled by letter after the filing of a note of issue. Counsel should contact their client(s), witnesses and experts before this conference to determine their availability for trial.

PURSUANT TO THE UNIFORM RULES OF THE NEW YORK STATE TRIAL COURTS (§202.26), ALL PARTIES MUST BE PERSONALLY PRESENT AND ALL COUNSEL SHALL NOTIFY ALL INSURANCE CARRIERS INVOLVED THAT THEY MUST HAVE A REPRESENTATIVE PERSONALLY PRESENT WHO NOT ONLY HAS AUTHORITY TO SETTLE, BUT ALSO HAS THE ABILITY TO NEGOTIATE WITHOUT CONTACTING A SUPERIOR. THAT REPRESENTATIVE SHALL BE THE SENIOR MOST OFFICER WHO HAS PARTICIPATED IN EVALUATING THIS CASE AND WHO HAS THE "FINAL CALL" IN NEGOTIATIONS. NO TELEPHONIC APPEARANCES WILL BE ENTERTAINED.

Counsel attending the conference **shall be familiar** with the case, have pertinent portions of the file with them and **have authority** to discuss settlement. Client(s) and a representative of any insurance carrier **shall** be requested to attend. All counsel shall confer prior to the date of the conference discuss settlement, the resolution of any trial issues, and whether the parties will agree to a Judicial Hearing Officer to preside at the trial. Counsel are encouraged to videotape any witness or expert who is unavailable for the scheduled trial. Postponement of any trial after the pre-trial conference is discouraged and will not be granted except for extraordinary circumstances.

Appearances by telephone are now allowed.

Trial Rules and Special Directives:

1. Marked pleadings shall be presented to the Court before jury selection. Copies of the bills of particulars, discovery responses and expert reports should be available.

Experts who testify at trial shall bring with them to Court their entire file and all documents considered in arriving at their opinion(s). Failure to do so may result in an expert's testimony being limited or stricken.

2. Jury selection shall follow the Court Rules. The modified struck system shall be followed. The Court may preside over a portion of or the entire jury selection process. Time limits on counsel may be imposed. Counsel are to confine their voir dire questions to the qualifications of the jurors.
3. Any motion in *limine* should be in writing, timely served on all counsel a reasonable time before trial.
4. Exhibits should be pre-marked by the Court Reporter. Counsel shall also confer prior to trial to determine if the admission into evidence of any exhibits will be stipulated, and advise the Court of that prior to trial.
5. Trial briefs are suggested if intricate evidentiary or trial issues are anticipated.
6. A list (without the charge) of PJI jury requests must be available to the Court prior to trial. Other requests shall be typed on separate sheets with appropriate sources or citations. The Court's "boilerplate" charge is available to any counsel upon request. A charge conference will be held prior to summations.
7. Counsel shall stand to object during the trial and briefly state the ground(s) for the objection.

Argument on an objection will not be taken in front of the jury. Exceptions to any ruling need not be taken.
8. Verdict sheets: Counsel shall cooperate to prepare an agreed verdict sheet. If that is not possible, then the parties shall submit separate proposed verdict sheets following the suggested forms in the PJI (See PJI Supplement Vol 1, 2:275 and 2:301). Each question shall be on a separate page.

In non-jury cases, each party shall submit in duplicate post-trial proposed findings of fact and conclusions of law. A Memoranda of Law may also be requested.
9. Post Trial Motions: May be presented orally or in writing.
10. CPLR Article 50-B Motions: Should be submitted in motion form with notice to all parties.