

JUSTICE WILLIAM A. KELLY¹

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1. GENERAL

Counsel who appear, including those who appear “of counsel,” must be fully familiar with the case and able to discuss the case in detail. Any counsel who appears must have authority to enter into any agreement, either substantive or procedural, on behalf of their clients. Counsel must be on time for all scheduled appearances and must bring sufficient material to allow meaningful discussion of unresolved issues to each Court appearance. Sanctions may be imposed for failure to comply with this rule.

There shall be no *ex parte* communications with the Court or Court personnel.

2. CONFERENCES AND APPEARANCES

Preliminary Conference – The attorneys are to provide the Court with a copy of the marked pleadings and are to be prepared to advise the Court with regard to any outstanding motions.

Compliance/Status Conference – Counsel must be prepared to discuss settlement at the compliance/settlement conference. It is expected that discovery Orders issued at the preliminary conference will be complied with. Failure to comply with the Order may result in a waiver of further discovery. Additional time to complete discovery will only be granted upon a showing of good cause for failure to complete discovery as previously ordered,

The parties and counsel must appear at matrimonial conferences. In

¹ Effective 3/13/09

Matrimonial Cases, Net Worth Statements are to be filed with the Court at least 3 days **prior** to the conference. Upon arrival at the preliminary conference, prior to having the case called, each side must complete a stipulation, provided by the Court, detailing the issues that have been resolved and those that remain open. If the grounds for divorce are not resolved at the preliminary conference, the matter will be set down for an immediate trial on grounds.

3. ADJOURNMENTS

Requests for adjournments, other than an adjournment of a motion, whether on consent or not, must be faxed to the Court Clerk at least 5 business days prior to the scheduled appearance. The fax must set forth the reasons for the request. The parties will be advised by the Clerk, no later than two days before the case is scheduled appearance, whether the request is granted.

The parties **may not contact chambers** regarding an adjournment or concerning future appearances.

4. DISCOVERY MATTERS

Discovery motions are discouraged. No discovery motion should be made prior to a preliminary conference having been conducted. Where a discovery motion is brought and no preliminary conference has been conducted, the Court shall schedule and hold a preliminary conference on the return date of such motion.

Counsel must consult with one another in a good faith effort to resolve all disclosure disputes. See Uniform Rule 202.7. If counsel are unable to resolve a disclosure dispute in the matter, before any formal motion may be made, the procedures set forth below must be followed.

5. MOTIONS

APPEARANCES ARE NOT REQUIRED ON THE MOTION RETURN DATE. ALL MOTIONS ARE ON SUBMISSION, UNLESS OTHERWISE DIRECTED BY THE COURT.

Motions for summary judgment must be filed no more than 30 days after the filing of the note of issue and made returnable no more than 45 days after the filing of the note of issue.

Oral argument may be requested by noting "Oral Argument Requested" immediately over the index number on the Notice of Motion. If the Court, in its discretion, requires such argument, the movant's attorney will be so advised and will be required to notify all parties.

Sur-replies will not be considered, unless the Court otherwise directs. If new issues are raised in the reply, or if there has been a change in the law while the motion is pending, counsel are to advise chambers, in writing, of the request to submit additional affidavits or memoranda. Other papers, including letters which are sent after the submission of the motion, will not be considered.

No courtesy copies of motions are to be submitted.

Self-addressed, stamped envelopes must be provided by all parties with all motions. Order/judgments must also have self-addressed, stamped envelopes and a copy if a conformed copy is requested.

In the event a motion has been resolved by a withdrawal or settlement of the case, counsel are to advise the Court by promptly faxing to the Court a letter of withdrawal or a Stipulation of Settlement or Discontinuance.

Orders to Show Cause

Upon the issuance of an Order to Show Cause, a copy of the Order will be faxed to counsel for the movant. If a further copy to be conformed is not included, the Court will not copy or otherwise supply a conformed copy.

Unless a TRO is included in the Order to Show Cause, **APPEARANCES ARE NOT REQUIRED.**

Upon an application for an Order to Show Cause seeking a temporary restraining order or other emergency relief, the application shall contain, in

addition to the other information required by this section, an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by the giving of the notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date, and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application.

6. MOTION ADJOURNMENTS

Requests for adjournments, whether on consent or not, must be faxed to the Court Clerk at least 5 business days prior to the return date of the motion appearance. The fax must set forth the reasons for the requested adjournment. When a adjournment is on consent, unless the parties are informed otherwise, it may be presumed that the request is granted. However, no more than two adjournments, aggregating a total of 60 days, will be granted.

Failure to follow this procedure will result in a forfeiture of the right to submit papers. Counsel should therefore retain the written confirmation that the fax was timely received by the Court.

7. TRIALS

Trials are scheduled to proceed day by day until completed.

A. Subpoenas. All counsel are reminded that they may sign trial subpoenas duces tecum and subpoenas ad testificatum as officers of the Court pursuant to *CPLR Section 2302*, except when subpoenas are directed to documents of libraries, hospitals, and municipal corporations and their departments and bureaus, in which cases they must be “So Ordered” by the Court pursuant to *CPLR Section 2306* and *2307*. Subpoenas for documents possessed by libraries, hospitals and municipal corporations may only be So Ordered upon motion served upon the intended recipients of the subpoenas with at least one (1) day’s notice pursuant to *CPLR Section 2307*. “So Ordered” subpoenas must then be served upon intended recipient at least twenty-four (24) hours before the time fixed for the production of documents, unless such notice is waived by the Court due to emergency circumstances as

permitted by *CPLR Section 2307*. Motions for “So Ordered” subpoenas should be delivered to the Part Clerk at the Courthouse, and will be addressed by the Court promptly when time sensitive. Subpoenas will be “So Ordered” if they appear on their face to relate to evidence that is at least minimally material and relevant to the action, and benefits of the doubt shall ordinarily be resolved in favor of the party seeking the “So Ordered” subpoena. The Courts issuance of “So Ordered” subpoenas should not be viewed by parties as collateral estoppel on the issue of admissibility at trial of the documents to which such subpoenas relate.

B. Interpreters. In the event that any party requires the services of a translator during trial for foreign languages or services for the hearing impaired, the Court is to be notified of same no later than the Pretrial Conference so that appropriate arrangements can be made by the Court in advance of the trial date.

C. Pre-Trial Requirements.

Trial notebook

No later than five (5) business days prior to the scheduled trial date, counsel shall each provide to the other and submit to the Court a trial notebook which shall consist of:

- 1) marked pleadings in accordance with CPLR Rule 4012;
- 2) the joint statement of the relevant facts that are not in dispute;
- 3) pre-trial memorandum of law as to any known disputed legal issues that must be determined by the court. Counsel to annex copies of any cases on which he relies;
- 4) a list of witnesses for each party;
- 5) a list of all exhibits to be offered by each party;
- 6) copies of the exhibits intended to be offered by counsel, pre- marked with plaintiff’s exhibits numbered sequentially and defendant’s exhibits lettered sequentially;
- 7) requests to charge. The charge will be drawn from the Pattern Jury Instructions (PJI). A complete list of requested charges is to be submitted.

Unless counsel seek a deviation from the pattern charge, or additions to the pattern charge, only the PJI numbers need be submitted. Where deviations or additions are requested, the full text of such requests must be submitted (in writing and on computer disk in Word Perfect 8.0 format), together with any supporting legal precedent(s). Additionally, to the extent that a requested pattern charge requires a factual statement or a statement of contentions, the text of the statement must be submitted (in writing and on computer disk in Word Perfect 8.0 format).

8) **verdict sheet.** Counsel shall jointly prepare a verdict sheet. The verdict sheet is to be typed in final form for presentation to the jury. If agreement cannot be reached, then each side shall present a proposed verdict sheet, along with a written explanation as to why agreement on the verdict sheet was not reached. If it is feasible, such proposals shall also be submitted on a computer disk in the format convertible to Word Perfect 8.0.

9) in matrimonial actions, updated net worth statements, statements of proposed dispositions as required by *Rule 202.16(h)* and any forensic reports, appraisals and evaluations.

The court may in its discretion relieve counsel from all or part of the trial notebook requirements upon a showing that the issues to be tried are sufficiently narrow that the trial notebook is not necessary or that the interest of justice otherwise justifies such relief. Such a request will be entertained only at the pre-trial conference.

D. Depositions

No later than five (5) business days prior to the scheduled trial date,

counsel shall each submit to the Court copies of their client's deposition and the deposition of any witness they intend to call at trial. Additionally, if a party intends to offer in whole or part the contents of a deposition, the entire deposition transcript must be supplied.

No later than five (5) business days prior to the scheduled trial date, counsel shall each provide to the other and submit to the Court a detailed list, including line and page numbers, of any deposition testimony they intend to offer at trial. Not later than one day prior to the scheduled trial date, each counsel shall provide to the other and submit to the court a detailed list of objections to opposing counsel's proffer.

E. Evidentiary Objections.

Not later than one day prior to the scheduled trial date, each counsel shall provide to the other and submit to the court a statement setting forth any objection to the exhibits identified in the list provided by opposing counsel and the specific basis therefor. Any exhibit as to which no objection is identified shall be admitted into evidence on consent. The failure to submit such a statement of objections on a timely basis may be deemed to be consent to the admission of all of the exhibits included in the trial notebook submitted by the opposing party.

F. Witnesses.

Any witness not identified in the witness list provided to opposing counsel, other than an impeachment or rebuttal witness, shall not be permitted to testify unless an adequate explanation is provided for the failure to identify such witness prior to trial. Parties, fact witnesses and expert witnesses

should be advised of the scheduled dates at the time they are set. Absent unanticipated, exigent circumstances, last minute claims of unavailability will not be recognized where the trial dates have been previously set. All witnesses should be on one-hour phone call notice so that their waiting time in court is minimized. Professional witnesses, such as doctors, nurses and social workers, and witnesses who are public employees, such as teachers, counselors and police officers, will be permitted to testify out of order to accommodate their employment schedules. School teachers should be scheduled after 3:00 p.m. so that it is not necessary for their employers to provide substitutes.

G. Exhibits.

Any exhibit not identified in the exhibit list provided to opposing counsel, other than an exhibit offered for the purpose of impeachment or rebuttal, shall not be admitted into evidence unless an adequate explanation is provided for the failure to identify such exhibit prior to trial. In addition to the copies of exhibits provided in the trial notebook, each party shall provide at trial one additional set of exhibits which will be used when counsel wishes to publish an exhibit to a witness.

8. SETTLEMENT OR DISCONTINUANCE

If an action is settled, discontinued, or otherwise disposed, counsel shall immediately inform the Court by submission of a copy of the stipulation or other document evidencing the disposition.