

## **JUSTICE WILLIAM A. KELLY**

### **PART RULES: CRIMINAL TERM**

1 South Main Street – Suite 200  
New City, New York 10956

Part Telephone: (845) 638-5315

Part Clerk: Katherine Sullivan

Chambers Telephone: (845) 638-5386 fax: (845) 708-7236

Law Clerk: Brian Coffey

Secretary: Rena Kiernan

#### **1. General**

Counsel who appear must be fully familiar with the case and able to discuss the case in detail. Counsel who appear 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.

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

#### **2. Adjournments**

Requests for adjournment must be made in writing and faxed to 845-708-7236. Requests shall include a valid reason for the adjournment. Counsel who are actually engaged in trial should send an affirmation of actual engagement containing the name of the case, the trial judge, the Court and part, and an estimate of when the trial will conclude.

If an adjournment is granted, all parties will be notified by the part clerk.

Please note: Requests for adjournment of a sentence must be

made at least 5 business days before the scheduled date of sentence.

Do not contact chambers regarding appearance dates or adjournments.

### **3. Arraignment**

All parties shall be prepared to conference the matter. The People are to make firm plea offer, or otherwise firmly state their position.

### **4. DR**

The defendant must enter a guilty plea or proceed to trial. Failure to enter a guilty plea on the DR will constitute a rejection of the offer. The offer, and any commitments by the Court, are withdrawn.

Any offer different from that made at the arraignment conference must be conveyed to counsel no less than three business days prior to DR. Negotiations will not be conducted on the DR date.

Drug court or DTAP cannot be offered after DR. If drug court or DTAP is accepted, if necessary, a single adjournment of up to two weeks may be requested to facilitate screening/placement of defendant.

### **5. Pleas**

Restitution must be agreed to prior to entry of a guilty plea. Except in extraordinary circumstances, if the people have not ascertained the amount of restitution by the DR date, the People's offer will be deemed to have been withdrawn and/or the offer rejected.

Waiver of appeal: unless otherwise expressly agreed to, or if the defendant pleads guilty to the entire indictment, a waiver of appeal shall be executed as part of the guilty plea.

Covered cases: The Court will not dismiss accusatory instruments

pending in the local justice courts. It is the obligation of the parties to move the local courts to dismiss those instruments.

## **6. Motions**

Appearances are not required. All motions are to be submitted, unless otherwise directed by the Court. Oral argument is discouraged. Oral argument may be requested by noting "Oral Argument Requested" immediately over the indictment 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.

Reply affidavits will not be considered, unless the Court otherwise directs. If new issues are raised in the response to the motion, 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.

### Omnibus motions

All pre-trial motions shall be filed at the same time and within forty five (45) days of arraignment. Further, all motions should be included in the same set of moving papers and returnable on the same date.

Omnibus motions shall not contain a motion to compel discovery and inspection or to compel a bill of particulars unless a demand for same was properly and timely served upon the People.

If an omnibus motion contains a motion to inspect and dismiss pursuant to CPL 210.30, the people's response must be accompanied by a transcript of the Grand Jury proceeding, or the allegations in the defendant's motion shall be deemed admitted.

Motions shall be served by the date set forth by the Court during the arraignment conference, and shall be made returnable on the date

directed by the Court.

All motions shall be made returnable on a Wednesday.

In the event a motion has been withdrawn, counsel is to **immediately** advise the Court by faxing to the Court a letter of withdrawal.

Pro se motions will be rejected if the defendant is represented by counsel.

## **7. SCI**

Procedure: Call part clerk to schedule a conference date. Call chambers at least two days prior to conference and provide chambers with the defendant's name and age, the crime charged in the SCI, the defense attorney and the local court where the charges are pending or originated.

## **8. Bail Applications**

Unless otherwise directed by the Court, bail applications will ordinarily be heard on Wednesday afternoons. When the Court is sitting as duty judge, applicants must call the part clerk to arrange the bail application. In all cases, applicants must advise the Court of the charges pending and the nature of relief sought. In all cases, the People are to provide the Court with a copy of the defendant's criminal history. All parties are to be familiar with the facts of the cases.

The Court will not grant an ROR, or a change in bail conditions, based solely on the consent of the parties. In cases where there is consent, the Court shall be informed of a legal basis for the release or modification.

## **9. Trials**

### **a. Trial Dates.**

Cases are subjected to advancement for hearing and/or trial at any time after the DR date. Parties shall maintain their readiness for trial. Parties must be knowledgeable of their witnesses' availability at all times after DR.

**b. Subpoenas.**

All counsel are reminded that they may sign trial subpoenas duces tecum and subpoenas ad testificatum as officers of the Court pursuant to *CPL 610.20*, except when subpoenas sought by defendant are directed to a state or local government agency. In such cases they must be "So Ordered" by the Court pursuant to *CPLR Section 2306* and *2307*.

"So Ordered" subpoenas are not available for Grand Jury proceedings or trials where a subpoena may be issued by the parties.

**c. Pre-Trial Requirements.**

Rosario:

At hearings and trial, the People shall provide to the Court Rosario material for each witness in a separate folder. Additionally, the People shall provide a list of all Rosario material provided which shall be marked into evidence as a Court exhibit.

Witnesses:

The People are to provide list of witnesses prior to jury selection

Exhibits:

To the extent practicable, exhibits are to be pre-marked.

Copies of the documentary exhibits intended to be offered or utilized are to be provided to the Court.

Copies of any transcripts to be utilized are to be provided to the Court and counsel

Requests to charge:

The charge will be drawn from the Criminal Jury Instructions (CJI). To the extent possible, a written list of requested charges is to be

submitted and exchanged prior to opening statements. Immediately upon the end of testimony in the case, a complete written list is to be submitted and exchanged. A pre-charge conference will then be held upon disputed requests to charge.

Unless counsel seek a deviation from the pattern charge, or additions to the pattern charge, only the CJI 2nd 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).

Motion in Limine:

Any motions for the Courts consideration in limine must be delivered to the Part Clerk and served upon adversary counsel not later than five business day prior to the scheduled date of the trial, except as to issues that cannot be reasonable anticipated prior to trial. Unless otherwise directed by the Court, motions *in limine* and opposition papers to such motions shall not exceed ten (10) pages in length. If more than one motion *in limine* is contemplated by a party, each such motion shall be separately bound and is subject to a separate page limit.

**10. Sentences**

All pre-sentence memoranda, letters regarding sentence and any other material either party wants the Court to consider must be received by chambers no less than two business prior to the date of sentence.

Pre-sentence reports will be available to counsel on the Monday preceding the sentence. Counsel shall contact the part clerk to view a

report.

Requests for adjournment of a sentence must be made at least 5 business days before the scheduled date of sentence.