

TRIAL PART RULES
HON. KAREN MAY BACDAYAN – PART R, ROOM 602
EFFECTIVE NOVEMBER 26, 2024

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I. APPEARANCES

- **ALL APPEARANCES ARE PRESUMPTIVELY IN PERSON**, and the court will not permit hybrid appearances for settlement conferences -- one litigant on Microsoft Teams and the other in person -- *unless* a prior arrangement has been made with the court's approval, or an order has been issued by the court pursuant to a formal ADA request. An ADA request can be made on the court's website: <https://ww2.nycourts.gov/ACCESSIBILITY/counties/ADAbycounty-kings-civil-housing.shtml>
- If an attorney is unable to appear **in person**, they must **arrange for knowledgeable substitute counsel with authority to settle and/or the ability to proceed to trial as scheduled**.
- Failure to comply with the immediately preceding bullet point may be considered a **default** and may result in dismissal of the petition without prejudice upon the second or third request for adjournment in the court's discretion. **If applicable, counterclaims will be severed pursuant to CPLR 407.**
- **For represented parties, a motion to vacate a default filed by an attorney must be made by order to show cause (see IV below), pursuant to CPLR 5015, and must be served and filed within 60 days of the dismissal date or will be denied as untimely, and must include:**

For represented petitioners, in addition to a reasonable excuse, all documents (pre-marked with sworn authentication or certification) necessary to establish their prima facie case.

For represented respondents, in addition to a reasonable excuse, all documents (pre-marked with sworn authentication or certification) intended for submission at trial to prove the elements of their defenses and counterclaims.

II. PROCEDURE UPON TRANSFER FROM THE TRIAL EXPEDITER

- Upon transfer to Part R, the court attorney or judge will conference the case. **Parties must know the procedural posture, the number of motions made, the disposition of every motion, the facts, and their theory of the case.**
- At the conclusion of the conference with the judge or court attorney on the day of transfer, should there be no settlement, the court in its discretion will either issue a CPLR 409 (a) order to both petitioner and respondent and adjourn the proceeding for a pre-trial conference, or will set a trial date (see Section III. Trials, bullet-point 2), depending on the complexity of the issues. **Clients are encouraged to be present at pre-trial conferences.**

- In general, no trial date for nonpayment proceedings will be set until petitioner provides the court with **1)** a copy of the fully executed lease agreement in effect at the time the proceeding was commenced, and **2)** a printed, up-to-date, zero-balance breakdown exclusive of fees and extraneous charges if applicable.

III. TRIALS

- Trials/inquests/hearings are all conducted in-person, unless a proper request has been made and granted, which may be done so at the court's sole discretion.
- In all two-attorney cases, in consultation with the court, the court will issue an order at the end of the pre-trial conference setting forth a trial date and requiring to the extent possible a stipulation of evidence, pre-marking all exhibits (with foundational or evidentiary objections reserved without prejudice to either party), a stipulation of uncontested facts, and a witness list.
- The parties are responsible for presenting evidence. If a party seeks to introduce media, that party must bring their own computer, USB drive and HDMI cable. The court will not look at attorney's or litigant's phones.

IV. DEFAULTS – HOLDOVERS, NONPAYMENTS AND ILLEGAL LOCKOUTS

- Both parties must arrive in the trial part within 15 minutes of receipt of the transfer order from Part X, or they may be held in default.
- Defaults and dismissals for **trials and pre-trial conferences** will be taken by the court 30 minutes after the scheduled trial/pre-trial conference time.
- Defaults for **illegal lockouts** will be taken 60 minutes after the scheduled default.

If petitioner defaults in an illegal lockout, the proceeding will be dismissed without prejudice.

If respondent defaults in an illegal lockout, upon proof of proper service, the court may hold an immediate inquest and issue a decision/order.

- **For petitioners**, failure to timely appear on any scheduled court date in Part R will result in either an adjournment, or dismissal without prejudice for failure to timely appear. (*See* Section I, bullet-point 4.) **IF AN ATTORNEY CHECKS IN FOR TRIAL AND DOES NOT RETURN FOR TWO HOURS WITHOUT INFORMING THE COURT ATTORNEY, THE ATTORNEY MAY BE HELD IN DEFAULT.**
- **For respondents**, failure to timely appear on any scheduled court date in Part R will result in either an adjournment, or 1) for nonpayment proceedings, a possessory and/or monetary judgment if a zero-balance breakdown is provided excluding extraneous charges; or 2) for holdovers, an immediate inquest if petitioner is prepared to proceed. If not, the proceeding will be adjourned for inquest. **If petitioner requests a second adjournment for inquest, the proceeding may be dismissed without prejudice in the court's discretion.**

- V. **ANSWERS** - If an answer has not been filed prior to transfer to the trial part, it will be deemed a general denial. **THIS RULE APPLIES TO ATTORNEYS AS WELL AS PRO SE LITIGANTS.**

VI. MOTIONS/ORDERS TO SHOW CAUSE

- **ALL MOTIONS MUST BE NOTICED BY ORDER TO SHOW CAUSE OR THEY WILL BE RETURNED FOR CORRECTION OR NOT CONSIDERED.**
- The court presumes that **all motion practice was concluded in the resolution part** and will take a statement to such effect on the record. No motions are to be served or filed without leave of court. **Any** motion appropriate for resolution in the resolution part will be returned to the resolution part for disposition in the discretion of the resolution part judge,
- Whenever reliance is placed upon a decision or other authority not readily available to the court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers. (22 NYCRR 202.8a.) If a copy of the entire case is not submitted, the court will not consider said purported authority.
- **DO NOT SUBMIT A SINGLE PDF with affirmations and exhibits included for papers submitted on a motion.** Each e-filed document must have its own, respective document number (e.g., Doc # 15, Notice of Motion; Doc #16, Memorandum of Law; Doc #17, Attorney Affirmation; Doc #18, Affidavit; Doc #19, Exhibit A; and Doc #20, Exhibit B). For the convenience of the court, if the motion is supported by a memorandum of law, the memorandum should precede the attorney affirmation and attached exhibits.
- **If any discrepancy arises between the relief sought in the order to show cause and the relief sought in the supporting papers, the notice of motion controls.**
- Any order to show cause filed electronically on NYSCEF must be uploaded before 4:15 PM of the day of its filing, in order to provide the court time to consider the merits of the *ex parte* relief sought.

VII. INQUESTS

- If a respondent does not appear on a calendared trial date -- whether *pro se* or represented -- the court will hold an inquest. If petitioner is unable to proceed with the inquest, the proceeding will be adjourned. If petitioner requests a second adjournment for inquest, the proceeding will be dismissed without prejudice. (See Section IV. Defaults, bullet-point 5.)

VIII. ADJOURNMENTS

- For proceedings where both sides are represented by counsel, attorneys are expected to have communicated with opposing counsel prior to any scheduled appearance.
- Parties may not stipulate to their own adjournment dates. **Every adjournment must be conferenced with the court.** Applications must be made on the record on the return date.
- **Attorney affidavits of otherwise engagement must be in the form required by 9 NYCRR § 125.1 (Engagement of counsel) or provide a compelling excuse with supporting documentation if applicable for being unable to appear. If the court cannot verify the other**

proceeding with which counsel is engaged, the proceeding may be dismissed without prejudice.

- Parties are advised that the trial part must frequently hear illegal lockout cases that take precedence which may necessitate last minute rescheduling of trial matters. Parties will be notified as soon as possible but may be subject to rescheduling depending on the needs of the Court.

IX. E-MAILING THE COURT – KI-HOUSING-602@nycourts.gov

- **If you are emailing the court about information available in these rules, the email may not be answered.**
- All emails to the court **must contain in the subject line the caption of the case, the index number of the case, and the next court appearance date and time of the case.**
- *Ex parte* communications of any kind are strictly prohibited, and the court will not respond to any *ex parte* requests by e-mail.

X. STIPULATIONS

- All proposed stipulations of settlement must be submitted for review by the court. For in-person appearances, parties must remain in the courthouse and available to the part until a proposed stipulation has been reviewed and “so ordered.” Failure to remain available until a stipulation has been reviewed and “so ordered” may result in adjournment of the case.
- Any “Jane Does” or “John Does” must be addressed in every stipulation.
- If repairs are an issue, a list of alleged repairs, access times and dates, and completion dates must be included or alleged repairs will be added by the court if the tenant raises during allocution and repairs were listed in a prior stipulation or raised in the Answer. Workers must arrive no later than 11:00 a.m.
- If during allocution, the tenant indicates s/he does not receive written receipts for payments in person, the court will ask Petitioner to add, or add on its own accord if Petitioner is not available in the courtroom, that receipts will be provided as is required by RPL 235-e.
- **Every stipulation consenting to a judgment must contain an earliest execution date (“EED”) or the warrant clerk will likely refuse to issue a warrant.** No service of a marshal’s notice prior to the EED is allowed unless specifically stated by the court or agreed between two attorneys.

These rules are subject to change without notice