

Part Rules & Calendar Procedure

Tax Certiorari /Condemnation Part (Ninth Judicial District)

Honorable Bruce E. Tolbert
Justice of the Supreme Court

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Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, N.Y. 10601

Court website:

www.nycourts.gov

APPEARANCES

All appearances are to be at the Richard A. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York. Trials are held in Courtroom **1601**; calendar calls and conferences shall commence in Courtroom **1601**

Tax Certiorari (Article 7) Matters Generally

Article 7 (Tax Cert) Petitions are to be filed with the County Clerk of the County where the index number is purchased. There are to be no appearances before this Court on the return date of the Petition.

Article 7 Petitions do not appear on a calendar for appearance until and unless a Request for Judicial Intervention (RJI) and a Note of Issue (NOI) are filed.

Condemnation (Eminent Domain) Matters Generally

To place a Condemnation matter on the calendar only an RJI is required. Within 30 days of the filing of a claim in a condemnation matter the claimant is directed to send a copy of the Notice of Claim to this Part. The Court will then hold a Scheduling Conference with counsel to determine dates for discovery, including the date for the exchange of trial appraisals. Upon the completion of discovery and the filing of a Note of Issue, a trial date will be set.

Calendar Calls

Upon the filing of an RJI and NOI in a Tax Certiorari matter, or an RJI in a Condemnation matter, said matter will be placed on a calendar call for an initial appearance. Calendar call listings may be viewed on the Court website.

Appearances at calendar calls are required. If you are unable to appear, you should inform both the Court and your adversary. Matters appearing on calendar calls for the first time are adjourned 30 to 90 days for a Preliminary Conference (PC). However, if a matter has other companion cases already on track, in all likelihood, it will be adjourned to the same date as the other matters.

Calendar calls are held in Courtroom **1601** and commence at **9:30** a.m.

Preliminary Conference (PC)

All conferences from the calendar call forward are called Preliminary Conferences (PCs). Calendars may be viewed on the Court website.

PCs are held in Courtroom **1601** at **10:00** a.m.

Do not call, write or fax the Court regarding an adjournment of a PLC. If you are unable to attend a PC, you may advise your adversary of the adjourned date you

prefer and the Clerk will, to the extent possible, accommodate your request at the time the calendar is called. If neither side appears, the PC will be adjourned. The adjourned dates shall appear on the Court website.

Trial Scheduling Conference (SC)

A party may request a Trial Scheduling Conference (SC) at any point after the first PC. That request must be in writing and on notice to all other parties who have appeared and must be accompanied by a copy of the RJI, NOI and Petition for each tax year in question. A separate request should be submitted for each individual property. The Clerk will notify the requesting party of the date and time of the SC. The requesting party will in turn notify all other parties of the SC date in writing with a copy to the Court.

The SC will yield dates for the Exchange of Trial Appraisals (ETA), Pre-Trial Conference (PTC), submission of Pre-Trial Memorandum (PTM) and for trial. These dates will be *So Ordered* by the Court and a copy of the Scheduling Order will be mailed to all parties who have appeared.

Any adjournment requests for Trial Scheduling Conferences require an email to the Principal Law Secretary and the Clerk and all adversaries. The email **MUST** include a copy of the most recent Scheduling Order.

Trials

Trials are held in Courtroom **1601** and commence promptly at **10:00** a.m.

Photocopies of trial exhibits and other documents are to be made outside the courthouse. All exhibits must be pre-marked prior to the commencement of trial. A list of all exhibits to be offered by each party shall be provided to the Court at the commencement of the trial. Should the exhibit list be amended during the trial, a copy of the updated or amended list shall be provided to the Court.

All witnesses, including but not limited to assessors, appraisers, experts, and fact witnesses, who maintain and/or possess a file and/or documents relevant to their testimony and/or the subject matter of the trial, hearing, or other matter before the Court, shall bring their entire and complete file and/or any and all relevant documents with them to Court on the date of their testimony and on any dates on which their testimony continues. Any party whose witness fails to appear with his or

her complete file and/or any and all relevant documents as detailed above, will bear any and all costs associated with the adjournment of the trial, hearing, or other proceeding as may be necessary to secure the witness' file and/or relevant documents.

Trial appraisals, pre and post trial memoranda, expert lists are to be submitted as follows: An original and two (2) copies are to be delivered to this Part on or before the ETA or PTM date, as the case may be. Each pleading is to be labeled on its face so as to distinguish which is the original and the copy. Counsel are directed to mutually exchange trial appraisals, pre and post trial memoranda, and expert reports if any, without the assistance of the Court.

Adjournment of So Ordered Dates

All Court ordered discovery and trial dates are to be strictly complied with and no adjournments will be granted, except with specific permission of the Court, for good cause shown. Failure to comply may result in the imposition of sanctions, including the striking of pleadings and/or preclusion of evidence. All adjournments must be requested from **the Court and are subject to the Court's approval.**

MOTIONS

Submission of Papers

All pleadings, i.e. Petitions, RJIs, NOIs, Motions, Stipulations, Settlement Orders and Judgments must be submitted to the Calendar Clerk of the County where the index number is purchased and the action is filed. Said Calendar Clerk will process the papers and send them to this Part for determination. However, correspondence regarding a matter already calendared in this Part should be sent directly to the Chambers of the Hon. Bruce E. Tolbert at the Westchester County Courthouse. Should you need to contact the Calendar Clerk's office of a particular County, the telephone numbers are as follows:

Westchester:	(914) 824-5300
Rockland:	(845) 638-5387
Orange:	(845) 291-3111
Putnam:	(845) 225-3641
Dutchess:	(845) 486-2260

Motion papers are to be submitted in the following form: **an original and one (1) courtesy copy**. Each set of papers should be labeled on its face as to distinguish which is the original and which is the copy.

Motions are to be on submission of papers only; no appearances required. Should the Court deem oral argument necessary, the parties will be notified of the date and time by the Clerk.

Orders to Show Cause will be conformed by fax.

Items are not to be faxed to the Court without prior approval.

Motion Return Dates

Motions are to be made returnable on Fridays.

Adjournment of Motion Return Dates

Requests for motion adjournment are to be directed by email to the Principal Law Clerk and the Clerk. Adjournments on consent are generally granted.

Confirmation must be by letter addressed to the Court with a copy to opposing counsel.

An adjournment without consent may be granted, but it must be requested in person on the motion return date. Adequate advance notice should be given to the Court and opposing counsel.

Settlement Orders, Stipulations & Judgements

Settlement orders, Stipulations and/or Judgments **must** be accompanied by a copy of the RJI (and NOI, if any) for each index number listed.

A conformed copy of an Order or Judgment will be sent back to the submitting party only when it is accompanied by a stamped, self-addressed envelope.

A conformed copy of an Order or Judgment filed with the County Clerk of Westchester County will bear a "Filed & Entered" stamp noting the date of

filing and entry of the original. For other counties you will have to contact the County Clerk of the particular County for that information.

All Consent Judgments for the Judge's signature must include in each attorney's signature block an email address for that attorney. Counsel shall not attach bluebacks to Consent Judgments and only one copy is needed.

Rule Pertaining to Pending Orders and Settlements:

In the event all required settlement approvals have not been obtained within 3 months from the date that Petitioner's counsel submitted a Consent Judgment to Respondents' counsel, Petitioner's counsel is encouraged to send a reminder notice to counsel for all potential refunding entities that a conference will be scheduled to address the status of the formal approval if formal approval is not obtained within 1 month from the date of the reminder notice. Petitioner's counsel is instructed not to copy Chambers on the reminder notice.

If formal settlement approval has not been obtained within 4 months after the submission of a Consent Judgment to Respondents' counsel, Petitioner's counsel may send an email to Chambers requesting a conference to address the status of formal settlement approval. Counsel for all refunding entities must be copied on Petitioner's counsel's email.

All emails pursuant to these procedures shall include the case name and only the most recent index number indicated in the Consent Judgment that is associated with the proceedings. Emails shall not include multiple matters.

The Court will schedule an initial conference to address the status of formal approval by the refunding entities. At the initial conference the Court will determine if a second conference is needed, and the Court may order the individual(s) that are responsible for the formal approval of the Consent Judgment by the respective refunding entity to appear at the second conference.

Such conferences shall, where possible, be scheduled to coincide with existing municipal Court appearance days of the week.

During the initial period that these procedures are implemented, and until April 15, 2019, Petitioner's counsel shall refrain from contacting Chambers concerning any unapproved Consent Judgments that were submitted to Respondents before March 22, 2019, and that have been outstanding for less than six months, in order to allow Respondents' counsel sufficient time to obtain approvals for cases that may already exceed the four month threshold.

All Consent Judgments submitted for the Judge's signature must include in each attorney's signature block an email address for that attorney. Counsel shall not attach bluebacks to Consent Judgments and only one copy is needed.

Special note re: Tax Cert Settlement/Judgement Orders: The County Attorneys for all the counties of the Ninth Judicial District reserve the right to review tax cert Judgment Orders before they are signed by the Court. The Clerk of the Part will send the Judgment Order to the County Attorney for review.

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