



NEW YORK STATE UNIFIED COURT SYSTEM

Hon. C. Randall Hinrichs
Suffolk County District Administrative Judge

Hon. John J. LEO, J.S.C.

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Suffolk County Supreme Court Tax Certiorari & Condemnation Part Rules for Attorneys and Self-Represented Litigants

General

- **Communications with the Court**
 - **Ex Parte**
 - Neither counsel nor parties shall initiate *ex parte* communications with the Court concerning substantive matter. Letters, emails or fax transmissions sent to the Court will not be considered unless there is an indication that a copy has been sent to all parties.
 - **Telephone Conferences**
 - Telephone conferences must be prearranged with chambers. The requesting party, or the party as directed by the Court, shall be responsible for setting up the conference call, providing a conference call telephone number and notifying all parties.
- **Adjournments**
 - Counsel are responsible for obtaining copies of the Court calendars prior to the appearance date.
 - **Conference Calendar**
 - **On Consent:**
 - To request an adjournment on consent of all parties for matters appearing on the conference calendar, please direct your request via email to Wendy Walsh at wwalsh@nycourts.gov and “cc” Gina Satiro at gsatiro@nycourts.gov. You will no longer need to fax over requests, instead please scan in your requests and email them to us.
 - Please note that you may receive notifications of calendar calls for settled cases. Your appearances are not required. It is merely a control calendar for the Clerk to follow up on the outstanding settlement documents in order to close out that index number. Once a case is settled it gets removed off the conference calendar on to a settlement calendar.
 - **No Consent:** All adjournment requests that are not on consent of the opposing party must be in writing and on notice to all parties.
 - **Trial Calendar**
 - Counsel must appear on the scheduled date unless excused by the Court. Consent adjournments will not be granted absent the express permission of the Court.
 - If a case has been scheduled for trial at least two months in advance and an attorney scheduled to try the case is actually engaged on trial elsewhere, he or she must provide substitute trial counsel. If neither trial counsel nor substitute counsel is ready for trial on the scheduled date, the court in its discretion may impose sanctions (22 NYCRR 125.1(g)).
 - **Motions**
 - Counsel must appear on the scheduled date unless the parties have agreed to adjourn the

motion.

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Calendaring Procedure

- A proceeding will not be heard by the Court until it is placed on the calendar except as set forth herein.
- **Condemnation**
 - To place a condemnation matter on the calendar only an RJI is required to be filed. 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 scheduled conference with counsel to determine dates for discovery, including the date for the exchange of trial appraisals. Upon completion of discovery and the filing of a note of issue, a trial date will be set by the Court.
 - Discovery, (i.e. deposition), is not permitted except in special circumstances on application on notice to all parties.
 - Counsel should attempt to resolve issues with opposing counsel if he or she deems it appropriate. In an attempt to resolve disputed issues, counsel may request a telephone conference with the Court.
- **Tax certiorari**
 - A proceeding will be heard by the Court in the following manner:
 - By letter application made by either party on notice to all parties under the index number on the master petition (if for severance, also include reference to the new index number).
 - Counsel should attempt to resolve issues with opposing counsel if he or she deems it appropriate. In an attempt to resolve disputed issues, counsel may request a telephone conference with the Court.
 - Note, only for a request for a conference to apply for severance and/or extend the time to file a Note of Issue for a specific tax year, a new index number must be purchased for the parcel/tax year prior to the conference.
 - Letter application on notice to all parties is acceptable for an issue raised by a Respondent’s counsel that would require first purchasing an index number and RJI in order to be heard by the Court on the matter.
 - Letter application on notice to all parties is acceptable for duplicate filing issues that are not resolved prior to placing the matter on the Court calendar.
 - After an application for a preliminary court conference.
 - After a preliminary court conference, for a scheduling conference, which can be done by letter application on notice to all parties.
 - After a preliminary court conference, for a pre-trial conference.
 - The following paperwork must be electronically filed when calendaring cases for purposes of obtaining a preliminary court conference:
 - A Notice of Petition and Petition with affidavit of service and an index number for the individual petition (not the index number from the master petition).
 - A fully executed severance stipulation, or an Order granting severance, or a copy of the transcript where severance is granted after an oral application, for each tax year placed on the calendar.
 - Respondent’s counsel shall not **unreasonably** refuse to execute a severance stipulation and shall execute and return the fully executed severance stipulation within ten (10) business days of receipt thereof.
 - A fee-paid RJI with an affidavit of service for each tax year placed on the calendar.
 - A Good Faith Affidavit with a schedule attached outlining the issues to be discussed at the preliminary court conference, for each tax year placed on the calendar (template available).
 - Counsel for all parties shall appear on the first scheduled conference date to address the issues raised in the schedule attached to the Good Faith Affidavit.
 - Note, for electronically filed cases, the clerk’s office requires a hard copy of the payment

confirmation page for both the index number and RJI, a hard copy of the electronic filing confirmation page, and a hard copy of the RJI. Copies of the notice petition and petition are not required.

- If a **scheduling conference** is necessary, after preliminary conference, either party or both parties may request a scheduling conference by letter application on notice to all parties.
- The following paperwork must be electronically filed when calendaring for purposes of placing the proceeding on the **trial calendar for a pre-trial conference**:
 - All documents necessary for obtaining a preliminary court conference.
 - A Note of Issue with Certificate of Readiness and affidavit of service for each tax year to be placed on the trial calendar.
 - Proof of service on opposing party of a Verified Income and Expense Statement (or statement that the property is not income producing) for each tax year to be calendared.
 - An RPTL §718 stipulation or an Order granting extension of the deadline to file a Note of Issue for each tax year placed on the calendar (a copy of the transcript where the extension is granted after an oral application, is sufficient) to the extent it is required to preserve any tax year.
 - Note, for electronically filed cases, for each tax year to be placed on the calendar, the clerk's office requires a hard copy of the payment confirmation page for both the index number and RJI, a hard copy of the electronic filing confirmation page for the RJI, a hard copy of the RJI, the original and three hard copies of the Note of Issue and Certificate of Readiness with affidavits of service, a hard copy of the electronic filing confirmation page for the NOI and Certificate of Readiness and affidavits of service, and a hard copy of the Good Faith Affidavit with the electronic filing confirmation page.
- A party may request a pre-trial conference at any point after the preliminary court conference.
- The preliminary conference will yield dates for the exchange of trial appraisals, submission of pre-trial order and/or memorandum, and for trial.

Preliminary Conference

- At any point after filing an RJI, on any scheduled conference date, or a date requested by the parties and confirmed by the Court, the parties shall appear for a preliminary conference.
- The parties may request additional preliminary conferences as needed and determined in each proceeding.
- During the preliminary conference the Court may:
 - Address any discovery issues and/or set a motion schedule for discovery issues;
 - Discuss any other issues that the parties may raise, including requesting an order by the Court severing a case from the Master Petition in order to place the case on the trial calendar, consolidating proceedings, or timing of NOI filing;
 - Schedule a date for appraisal exchange at the request of one or both parties;
 - The appraisal exchange may be facilitated by the Court or without Court intervention based on requests of the parties.
 - Schedule a date for filing the NOI, a scheduling conference, and any other dates the Court deems necessary and appropriate.

Scheduling Conference

- At any point after a preliminary conference, or after filing a Note of Issue, or during any scheduled conference date, or a date requested by the parties and confirmed by the Court, the parties shall appear for a scheduling conference.
- During the scheduling conference the Court shall:
 - Schedule a date for appraisal exchange at the request of one or both parties if it has not already occurred;
 - The appraisal exchange may be facilitated by the Court or without Court intervention based on requests of the parties.
 - Schedule a date for a pre-trial conference, to be scheduled no sooner than 60 days before the trial date.
 - Schedule a date for trial.
 - Address any outstanding issues as necessary.

Motions/Applications

- **Format**
 - Applications for Severance and/or Extension of Time to file a Note of Issue (RPTL § 718)
 - May be made orally, on letter notice to all parties of the intended date and time of oral application.
 - Transcripts of the decisions shall be ordered and used for placing the matters on the conference and trial calendars.
 - All other motions should be made in writing on notice to all parties.
 - Oral applications for other relief may be permitted in the Court's discretion and on notice to all parties.
 - Courtesy copies of all electronically filed documents must be provided to the Court in addition to a USB flash drive of the motions and responsive papers in Word-Perfect or Microsoft Word. Do not attach any exhibits to the flash drive.
- **Memoranda of Law**
 - Where unique or novel issues of law are presented, or at the request of the Court, counsel shall submit memoranda of law in support of their respective positions.
- **Appearances/Oral Argument**
 - Appearance of counsel is required for all motions on the return date unless previously arranged with chambers.
 - The Court may require oral arguments at its discretion on the return date. Counsel are advised to inquire with chambers if argument is required prior to appearing.
- **Settled issues**
 - Prior to making a motion, counsel should attempt to resolve issues with opposing counsel if he or she deems it appropriate. In an attempt to resolve disputed issues, counsel may request a telephone conference with the Court. Any pre-trial issue resolved by telephone conference or otherwise must be memorialized by a written stipulation.
 - Upon settlement of a pending motion, counsel shall immediately notify chambers.
- **Timing of Motion**
 - Motion to sever
 - Any time prior to placing matter on trial calendar.
 - Motion to consolidate
 - Any time.
 - Must buy index number for each tax year to be consolidated.
 - Motion to strike
 - Before trial (preferable).
 - Note, this may result in additional motion practice to allow for amendments to appraisals and the Court will accept motions to amend in accordance with 22 NYCRR § 202.59 and 22 NYCRR § 202.60.
 - During trial.
 - But see, 22 NYCRR § 202.59 and 22 NYCRR § 202.60 for motions to amend.
 - Post-trial.
 - If preserved and permitted during trial.
 - Motion to amend
 - Before trial
 - In accordance with 22 NYCRR § 202.59 and 22 NYCRR § 202.60.
 - During trial.
 - In accordance with 22 NYCRR § 202.59 and 22 NYCRR § 202.60.
 - Motions in limine
 - Based on a schedule as determined in each proceeding and/or as set forth in any pre-trial conference or in the Pre-Trial Order.
 - Written applications may be required by the Court.

Appraisal Exchange

- The parties must confirm the date and time of appraisal exchange in advance of the appraisal exchange date.
- On the scheduled appraisal exchange date, counsel for the parties must appear and provide a copy of the

- appraisal for the Court, and a copy of the appraisal for the opposing party.
- The original of the appraisal must be provided to the clerk's office for filing.
- The Court does not need courtesy copies of the appraisal and/or other reports at the time of the exchange.

Pre-Trial Conference

- At the scheduling conference or during any preliminary conference, the Court shall set a date for a pre-trial conference, which shall be no sooner than 60 days before trial, and copies of the below shall be brought to the part on the date of the pre-trial conference:
 - **Joint Pre-Trial Order (in Court-approved format, see below)**
 - **Legal Memoranda**
 - Counsel for each party shall provide the Court with legal memoranda addressing all contested legal issues in the Pre-Trial Order and anticipated evidentiary problems.
 - **Motions in limine** (if previously directed by the Court)
 - Each party shall file and provide to the Court courtesy copies of the above on a USB Flash Drive.
- Note, any adjournment of the pre-trial conference does not adjourn the filing of the Pre-Trial Order. A copy of the Pre-Trial Order, any motions in limine (if applicable) and legal memoranda shall be brought to the pre-trial conference.
- **Joint Pre-Trial Order (form available)**
 - The Pre-Trial Order controls the subsequent course of the proceeding unless the order is modified by consent of the parties and/or the Court, or by order of the Court to prevent manifest injustice. The Pre-Trial Order shall be submitted with a full, un-abbreviated caption. Each of the following topics shall be addressed in a separately labeled schedule:
 - The full caption of the action.
 - The names, addresses (including firm names), and telephone, cell phone and fax numbers of all trial counsel.
 - A brief statement by petitioner as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction.
 - A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matters, but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
 - A statement of the estimated number of trial days needed.
 - Any stipulations or statements of fact or law that have been agreed to by all parties.
- **Witnesses**
 - A list of names and addresses of all witnesses, including possible witnesses who will be called only for impeachment or rebuttal purposes and so designated, together with a brief narrative statement of the expected testimony of each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown. In addition, for expert witnesses, the area of expertise must be listed. The parties shall list and briefly describe the basis for any objections that they have to any witnesses designated by any party.
- **Exhibits**
 - A schedule listing exhibits to be offered in evidence and if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. Parties are expected to resolve all issues of authenticity, chain of custody and related grounds, before trial. Parties are not to interpose meritless objections. All exhibits must be pre-marked for the trial and exchanged with the other parties at least ten (10) days before trial. Where exhibits are voluminous, they should be placed in binders with tabs.
 - Each exhibit shall be identified and described. Petitioner's exhibits shall be identified by numbers, Respondent's exhibits shall be identified by letters.
 - Only listed exhibits will be received in evidence, except for good cause shown.

- The Attorneys who will try the case for each party shall sign and date the Pre-Trial Order.
 - All Attorneys who will conduct the trial shall be at the pre-trial conference.
- **Motions in limine (as required)**
 - Based on dates as determined in each proceeding and/or as set forth at the pre-trial conference.
 - Oral.
 - In writing on notice to all parties.

Trial

- **One week prior to trial**
 - Each party shall file and provide courtesy copies to the Court of legal memoranda addressing all contested legal issues including evidentiary issues or in any case where such party believes it would be useful, a legal memoranda.
 - Each party shall file and provide to the Court courtesy copies of the pre-marked proposed exhibits on a USB Flash Drive.
 - It is preferable that appraisals and other lengthy exhibits have electronic bookmarks within each file for ease of reference by the Court.
- **Confirmation of trial date**
 - Three business days prior to any scheduled trial, counsel must call chambers of the assigned justice to confirm the court's availability for trial. Failure to be ready to proceed on a scheduled trial date may result in a dismissal of the cause of action. Trial dates for tax certiorari and condemnation proceedings are typically not adjourned.
- **Post-trial submissions**
 - Each counsel shall prepare and submit a post-trial Memorandum of Proposed Findings of Fact and Conclusions of Law. Legal arguments are to be supported by relevant case law and contain proper legal citations.
 - Each party shall file and provide to the Court courtesy copies of the post-trial submissions on a USB Flash Drive.
- **General Decorum**
 - A trial or hearing is a rational and civilized inquiry to seek a just result. Counsel are expected to conduct themselves with dignity and decorum at all times, which includes appropriate dress (suits and neckties for men) and courtroom behavior. Disruptive tactics or appeal to prejudice are not acceptable.
 - Colloquy between counsel on the record is not permitted-all remarks are to be addressed to the Court.
 - Vigorous advocacy does not preclude courtesy to opposing counsel and witnesses and respect for the Court. Calling attorneys, witnesses or parties by first names on the record is not appropriate.
 - Do not engage in activity at counsel table or move about the courtroom while opposing counsel is arguing or questioning witnesses, or in other ways cause distraction. Neither counsel nor client while at counsel table should indicate approval, disapproval, or other reactions to a witness's testimony or counsel's argument.
 - If you have a question or problem, talk to the Judge's courtroom clerk or the law secretary.
 - When one lawyer is making a motion or application either before or at trial, all other lawyers should be seated, and the same is true when another is answering such motion or application. Do not attempt to interrupt your adversary's argument unless the Court asks you a question- then rise, answer it, and resume your seat until your adversary is finished.
 - If an objection to a question has been sustained (other than on the ground of "form"), do not attempt to circumvent the Court's ruling by repeating the question using other words.
 - You are bound by written stipulation or those made in open Court whether made by you or by predecessor counsel unless you have been relieved therefrom by order of the Court.
 - Histrionics, mini-summation, comments on testimony of a witness during questioning, repetitious questions, procrastination, delaying tactics, rearguments following Court rulings (except at recesses), *etc.*, will not be tolerated.
 - Prior to trial, the attorneys should attempt to stipulate to the testimony of all *pro forma* witnesses, *e.g.* if the secretary of XYZ Corporation were called to testify, he would testify that Exhibit A was kept in the ordinary course of business, *etc.*, is admissible.

- Repetitious cross-examination by successive (or even the same) attorney(s) on the same subject area is inappropriate and will not be permitted except for good cause shown in exceptional circumstances.
- **Rules and Procedures**
 - **Opening statements**
 - An opening statement is simply an objective summary of what counsel expects the evidence to show. No argument or discussion of the law is permissible.
 - **Question of witnesses**
 - Conduct the examination from the lectern located at the far end of the jury box. Ask permission to approach the witness when necessary and return to the lectern as soon as practicable. Treat witnesses with courtesy and respect, do not become familiar, do not address witnesses by their first names, and do not shout at a witness.
 - As brief, direct, and simply stated questions. Cover one point at a time. Leading questions may be used for background or routine matters.
 - Cross-examination should consist of brief, simple, and clearly stated questions. Cross-examination should not be a restatement of the direct examination and should not be used for discovery (i.e. it is not like taking a deposition).
 - Only one lawyer for each party may examine any one witness and may object as to questions asked of that witness on cross.
 - **Objections**
 - Do not make a speech or argument, or summarize evidence or suggest the answer to the witness. If argument is desired, ask for an opportunity to argue the objection at sidebar.
 - Where an evidentiary problem is anticipated, bring it to the Court's attention in advance to avoid interrupting the orderly process of a trial.
 - It is the responsibility of counsel to see that all exhibits counsel wants included in the record are formally offered and ruled on, and that all of the clerk's copies of exhibits are in the hands of the clerk. Take nothing for granted.
 - **Conduct of trial**
 - The Court expects counsel and the witnesses to be present and ready to proceed promptly at the appointed hour-normally starting at 9:30 a.m. A witness on the stand when a recess is taken should be back on the stand when the recess ends.
 - Bench conferences should be minimized. Raise anticipated problems at the start or the end of the trial day or during a recess.
 - Have a sufficient number of witnesses available in court to fill the time available. Running out of witnesses may be taken by the Court as resting your case.
 - Trials normally are conducted from day to day. Do not assume that the court will recess on any given day at any given time or times unless prior arrangements have been made with the Court and counsel.
 - Counsel are expected to cooperate with each other in the scheduling and production of witnesses. In civil cases, in particular, witnesses may be taken out of order where necessary. Effort should be made to avoid calling a witness twice (as an adverse witness and later as a party's witness).
 - **Post-trial motions**
 - As needed and as provided in the CPLR.

Post-trial Judgment

- Where a proceeding has resulted in a decision after trial, any post-trial judgments are to be submitted as directed in the decision or order.
- The proposed judgment shall include:
 - Where the trial decision or order applies to more than one tax year, the judgment shall:
 - List all index numbers and calendar numbers issued of proceedings settled by the order and identify the consolidated index number (if applicable); and
 - Where the decision pertains to more than one index number, contain a decretal paragraph directing that a copy of the judgment be filed under the index number of each of the proceedings settled by that judgment if they are not consolidated.
 - Contain a provision in the proposed order requiring the Suffolk County Comptroller to pay interest.
 - An affidavit of service stating that the above had been served on opposing counsel.

- A copy of the underlying trial decision attached to the judgment as an exhibit.
- All judgments shall be submitted on Notice, and include Notice of Settlement.

Settlements

- Where a proceeding has been settled prior to the trial date or any other court date, in lieu of appearing in court, chambers must be notified in advance of the appearance.
- **Submission of proposed orders in accordance with the Administrative Order of the Administrative Judge of Suffolk County Order No. 51-19 (Hon. C Randall Hinrichs)**
 - All proposed orders settling tax assessment review proceeding(s) are to be electronically filed to the Court for signature in two separate pdf files.
 - One pdf file shall include the following:
 - A copy of the fully executed stipulation of settlement;
 - If severance is not included in the stipulation of settlement, a copy of the severance stipulation or an Order granting severance for each tax year placed on the calendar (a copy of the transcript where severance is granted after an oral application, is sufficient);
 - A copy of the 74(b) Assessor's affidavit;
 - An Affirmation of Regularity stating that all parties, including any intervenor, having been notified of the proposed settlement have agreed to, or not opposed, the settlement;
 - An Affidavit of No Sale i.e. an affidavit that the property has not been sold within the last twelve months and is not under a contract to be sold, (or that full disclosure was made to the Assessor if there is such a contract or sale);
 - An affidavit of service stating that the above had been served on opposing counsel;
 - Notice of Settlement, if not otherwise waived.
 - The second pdf file shall include the following:
 - A proposed order of settlement conforming to the Rules of Court;
 - Where an order of settlement applies to more than one tax year, the order shall:
 - List all index numbers and calendar numbers issued of proceedings settled by the order; and
 - Where it includes more than one index number, contain a decretal paragraph directing that a copy of the order be filed under the index number of each of the proceedings settled by that order.
 - Contain a provision in the proposed order requiring the Suffolk County Comptroller to pay interest if the refund is not paid within **ninety** days after service of the order upon him or her.
 - The two pdf files must be uploaded to each index number/proceeding covered by the settlement.
 - The originals of the above are to be sent in hard copy to the Court Clerk, attention Wendy Walsh.
- **Outstanding Motions**
 - Motions pending at the time a case is marked settled by the Court will be deemed withdrawn unless explicit provision is made for their continuance.