

**SUPREME COURT OF THE STATE OF NEW YORK
I.A.S. PART 19- SUFFOLK COUNTY
RULES & PROCEDURES**

**HON. CHERYL A. JOSEPH, A.J.S.C.
Supervising Judge, Matrimonial Parts**

Principal Law Clerk : Jill D. Weinberg-Daly, Esq
jdaly@nycourts.gov
Secretary: Valerie J. Battista
Court email: sufjoseph@nycourts.gov
Chambers : (631) 208-5645
Fax : (631) 853-3281

These rules are in addition to the Uniform Rules for New York State Trial Court and the Local Rules of Court.

I. ADJOURNMENTS

A. Conferences/Motions and Submissions:

1. Applications for adjournments of conferences, motions and/or submission shall be made by contacting Chambers, no later than 3:00 p.m. on the business day prior to the scheduled conference or motion return date by emailing the Court and uploading a letter to NYSCEF regarding the request. All applications shall be made after consultation with all attorneys on the file, **ON CONSENT OF ALL SIDES** and **PRIOR COURT APPROVAL**.

2. In the event all Counsel do not consent to the adjournment, an application shall be made by letter and if necessary, a conference with the Court no later than 3:00 p.m. on the day preceding the scheduled conference appearance or motion. Counsel requesting said adjournment shall coordinate an available time for the conference with their adversary and the Court. Please note, the Court in its discretion, may grant the adjournment over objection without the need for a conference.

3. ALL ADJOURNMENTS, which have been approved by the Court, **MUST be confirmed with a letter to the Court by email (to the Court and all parties) and uploaded to NYSCEF.** The letter shall include the parties' names and index number, that the adjournment request was granted, indicating if it was on consent or over opposing Counsel's objection, the initial scheduled date and the new return or conference date and time. If a conference date is adjourned, any motion also returnable that day, unless specifically indicated and agreed between Counsel and the Court, shall be adjourned to the next scheduled conference date. If the application is based on Counsel's actual engagement on another matter, an Affirmation of Actual Engagement in conformity with 22 NYCRR § 125 shall be submitted in lieu of a letter with the above information included, copied to all Counsel.

4. Counsel shall obtain available dates for adjournments from opposing Counsel prior to contacting the Court to request an adjournment. Counsel shall provide at least three (3) dates available adjournment dates to the Court when all parties and Counsel are available.

5. Fridays are "SUBMISSION" only. Generally, there will be no conferences scheduled for Fridays, except at the Court's discretion. A request to adjourn a divorce packet submission shall be made by letter to the Court. Failure for a request for an adjournment may cause the matter to be dismissed for failure to submit the packet pursuant to the submission order.

B. Preliminary Conference:

1. All Counsel and Parties SHALL attend the Preliminary Conference in person. No Preliminary Conferences shall be adjourned absent a compelling reason.(Counsel are directed to review 22 NYCRR § 202.16(f)). Counsel shall complete the Preliminary Conference form prior to appearing on the conference date. The forms are currently available in the courtroom and available on the Suffolk County web page and may be emailed on request.

2. Counsel are directed to comply with all Discovery, Certification and Note of Issue dates. Unless otherwise agreed to in a written, signed Stipulation and consent by the Court, discovery dates will not be extended. In the event Counsel cannot agree, Counsel are urged to contact the Court to schedule a conference call prior to making any formal motion. Certification and Note of Issue dates may not be extended absent approval of the Court.

II. MOTIONS

A. Pre-Motion Rules:

1. Except in an emergency situation or where an affirmation is presented

demonstrating a significant prejudice to the moving party by giving prior notice, Counsel are to contact the Court and request a virtual conference prior to the making of any motion in order to allow the Court to assist in a possible resolution

B. Submission of Motions:

1. All motions will be marked “Submitted” on the return date unless otherwise determined by the Court. Affidavits in Opposition and/or Affidavits in Reply must be submitted to the Motion Clerk or e-filed on NYSCEF **no later than 12:00 pm on the return date.**

2. **No opposition/reply papers received, submitted or e-filed to NYSEF after 12:00 pm on the return date will be accepted except for good cause shown made by letter request on notice to all parties.** Cross-Motions with Affidavits in Opposition to the original motion will be calendared on the return date of the original application. Counsel should ensure that the original motion is adjourned to the return date of the Cross-Motion for all papers to be considered. Counsel’s failure to file any motion or responsive papers by 12:00 pm on the return date shall not be a basis for a motion to renew or reargue.

3. All motions are submission only and no appearances are required unless otherwise directed by the Court.

4. Motions are to be served and filed in compliance with CPLR § 2214, 22 NYCRR Part 202.8-b and in accordance with the NYSCEF filing rules if all parties have consented to participate in the NYSCEF filing system.

5. All motions seeking *pendente lite* relief must be in compliance with 22 NYCRR § 202.16 to be properly considered.

6. There is no right to submit a Reply for applications brought by Order to Show Cause. Leave of the Court must be obtained **PRIOR** to the submission of a Reply.

C. Application for a Stay or Temporary Restraining Order:

1. Any Order to Show Cause seeking injunctive or emergency relief, including a stay or TRO, must be made in accordance with 22 NYCRR § 202.7 (f) or § 202.8-e. The moving party shall advise all sides and the Court as soon as practicable of Counsel’s intent to make the application.

2. Counsel SHALL NOT notice a specific time for a motion to be heard without first contacting Chambers regarding the Court’s availability. If an application is e-filed, there is no guarantee that it will be heard on the day of

filing. Upon review of the papers, the Court, if it deems appropriate, will contact the moving party and advise as to the Court's availability to hear oral argument regarding the temporary relief requested. All appearances on emergency or injunctive relief arguments are in person with all parties and Attorneys present. (Failure of Counsel to appear, absent a compelling reason on notice to the Court, shall be deemed a waiver of their right to participate.)

D. Interim, Partial or Full Settlement:

If all or part of a motion has been settled, Counsel shall forward an original Stipulation of Settlement to the Court along with a letter from the movant, on notice to all sides, indicating the return date of the motion and setting forth, in detail, what aspects of the motion have been settled and what issues remain to be decided. In the event the motion has been resolved in its entirety, the movant's letter shall indicate same and shall confirm that the motion is either marked "settled" or "withdrawn".

E. Judgment Submission packets

1. A sixty (60) day Order will be issued upon the settlement or trial decision of a matter. The submission packet should be filed on or before the initial submission date. If additional time is necessary, an adjournment request must be forwarded via NYSCEF and emailed to the Court requesting additional time to submit the final packet.

2. No more than two (2) adjournments will be granted to submit a judgment packet. The third request, except for good cause shown, will require a Court appearance of all parties and attorneys. Failure to appear may cause the action to be dismissed.

III. COURT APPEARANCES

A. All Court appearances are in person and all Parties and Counsel are expected to appear at all scheduled Court dates unless otherwise excused by the Court. All Counsel and parties are to appear timely and if running late, shall contact the Court and opposing Counsel as a courtesy, as soon as practicable.

B. All Attorneys and Pro Se litigants must check in with the Court Clerk. Counsel are requested to leave their cell phone numbers with the Court Clerk, in the event they are leaving the part.

C. Counsel who appear before Court, whether virtually or in person, must be familiar with the case they appear on and be fully prepared and authorized to discuss and enter a resolution to those issues before the Court. Failure to comply with this rule may be treated as a default under Rule 202.7 and may be

considered in a determination of any award of Counsel fees or expenses.

IV. VIRTUAL CONFERENCES

A. All Virtual Conferences are scheduled at time certain conferences. If Counsel is unavailable or late to said conference, the Court, in its discretion may adjourn the conference to a later time or date.

B. If a Virtual Conferences is to include the Parties, Counsel shall make certain, prior to said conference, that their respective clients have the necessary link and equipment (microphone and camera) to be included in the virtual conference.

IV. COMMUNICATION WITH CHAMBERS

A. All communication with Chambers by NYSCEF, letter or email (to sufjoseph@nycourts.gov , not directly to the Judge's email address) must be copied to all sides and shall include case caption, the full names of the parties, the date the matter next appears on the Court's calendar, and the index number. If all parties have consented to utilize NYSCEF, all communication to the Court shall also be uploaded to the NYSCEF case file.

B. The Court will not consider any *ex parte* communication on any issue. All communication to the Court should be on notice to all Counsel or parties.

C. Counsel **SHALL NOT** send copies of any correspondence between Counsel to the Court. Any such correspondence will be disregarded by the Court.

V. SANCTIONS

Any application for sanctions must be supported by the applicable statute under which the application is made.

VI TRIAL RULES: APPLICABLE TO ALL TRIALS AND HEARINGS

A. A Note of Issue and Statement of Proposed Disposition shall be filed prior to trial. The requisite fee with the County Clerk shall be paid and ensure that the Note of Issue and Statement of Proposed Disposition is submitted to the Matrimonial Clerk who will then assign a calendar number.

B. After a matter has been certified as trial ready, the Court shall set a date for a pre-trial conference. Counsel with knowledge of the case and the parties must attend. There will be no adjournments without the Court's consent. At the pre-trial conference, the Court shall provide for the submission or

scheduling of the following:

1. *In Limine* applications must be on notice to all parties returnable at least 5 days prior to the first scheduled trial date.
2. Counsel shall inform the Court whether there are any motions outstanding or issues referred to trial and copies of the motions shall be made available to the Court.
2. Annotated Statements of Proposed Disposition in which all of the criteria listed in the statute are provided and Counsel's position stated as to each such criteria for both equitable distribution and maintenance issues shall be submitted.
3. Exhibits: If the parties are not utilizing the Virtual Evidence Courtroom portal (VEC), the parties must pre-mark exhibits. A single combined exhibit list should be presented to the Court in advance of the proceeding. The Exhibit List must state each pre-marked exhibit number, or letter, and provide a brief description of the exhibit (Ex. "Exhibit 1 - Summons with Notice"). The list must indicate which exhibits can be admitted into evidence on consent. All other exhibits must be marked for identification only. As to those exhibits marked for identification, the Court will address their admissibility *In limine* or during the trial, as may be appropriate.

If utilizing New York State Electronic Filing System Virtual Evidence Locker ("NYSCEF VEC"), the exhibit list and exhibits must be uploaded to the VEC in advance of the start of the proceeding, pursuant to the trial scheduling order. *Please note that the VEC is a separate tab in NYSCEF. Exhibits are not to be uploaded to the Document List.*

5. Trial Notebook: If the Court has directed that a trial notebook be generated in a particular case, hard copies of exhibits must be received by the Court pursuant to the trial scheduling order. The exhibits must be bound together in a binder or book and separated by tabbed dividers indicating the exhibit number or letter. Two copies of the exhibit binder/book must be provided to the Court. The Parties and Counsel must appear in Court on the date of the proceeding with Exhibit Binders/Books identical to those provided to the Court. This will obviate the need to pass papers between Counsel, the Court, and Court staff during in-person proceedings. At the conclusion of the trial all exhibits not received into evidence will be removed from notebooks and returned to Counsel.

6. Prior to commencement of trial, Counsel shall have exchanged in accordance with CPLR and/or Court rules and submit to the Court:
 - a. A list of proposed witnesses.
 - b. A list of all expert witnesses with copies of their reports.
 - c. Marked pleadings must be submitted before opening statements.
 - d. Net worth statements updated within thirty [30] days of trial.
7. Parties are encouraged to Stipulate, in writing, to any and all relevant and material facts (“Stipulated Facts”) that are not and should not be in dispute. A statement of stipulated facts shall be provided to the Court, it relevant.
8. If Deposition transcripts are to be utilized, a copy of the witnesses' deposition transcript should be made available to the Court. Counsel for the parties shall consult prior to trial and shall, in good faith, attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read the questions and answers that are irrelevant to the point for which the deposition testimony is offered. Each party shall prepare a list of deposition testimony to be offered to which no objection has been made and a separate list of deposition testimony as to which objections have been made. At least one [1] day prior to trial, or such other time as the Court may set, each party shall submit its list(s) to the Court and other Counsel. The Court will rule upon the objections at the earliest possible time, after consultation with Unless the Virtual Evidence Courtroom is being utilized, both sides shall have available at least three [3] copies of all deposition transcripts and prior statements ([4] if there is an Attorney for the Child(ren)), which are expected to be read into the record or utilized on cross examination at the trial Counsel.
9. Unless the VEC is being utilized, both sides shall have available at least three [3] copies of all exhibits ([4] if there is an Attorney for the Child(ren)) which are expected to be introduced into evidence. If the Virtual Evidence Courtroom is being utilized, the parties must bring at least 2 copies of evidence for utilization by the witness.
10. Unless the VEC is being utilized, both sides shall have available at least three [3] copies ([4] if there is an Attorney for the Child(ren)) of any and all of the following:
 - a) relevant orders issued by another Court, such as final orders of custody, support, or temporary or permanent order of protection;
 - b) any order of this Court that refers issues raised in motion practice to trial of the action;

- c) any relevant "So-Ordered" Stipulations of this Court, as well as transcripts of Stipulations read into the record in open Court during the pendency of the action; and
 - d) any properly executed and acknowledged stipulation or agreement relating to material issues in this action.
11. Counsel are required to stipulate in writing to any and all relevant material facts that are not and should not be in dispute.
 12. On the date the trial is scheduled, Counsel are expected to be prepared to discuss settlement of all unresolved issues and to have complied with each of the trial rules set forth herein.
 13. All trials and hearings may continue day-to-day until completed, subject to the Court's availability.
 14. Objections should be stated without argument, except to state the grounds, (*e.g.*, hearsay, relevance, etc.). If further argument is appropriate, same will be invited by the Court. Speaking objections are prohibited.
 15. Closing Arguments/Summations: It shall be determined by the Court, in consultation with Counsel, whether oral closing arguments are to be made, or if a post-trial memorandum will be submitted. If oral arguments will be made, said arguments shall not exceed thirty [30] minutes and will be scheduled to begin immediately after the trial has concluded.

If a post-trial memorandum is required, said memorandum shall be submitted by both sides, as well as the Attorney for the Child(ren) simultaneously, said submission date to be determined by the Court. Post-trial memorandums shall contain the following clearly delineated sections:

- a) a chronological procedural history of the action, including copies of all relevant orders, written stipulations, and transcripts of stipulations placed on the record;
- b) a recitation of the issues to be determined;
- c) an in-depth summary of the testimony of each witness;
- d) a summary of the findings of any expert report received in evidence;
- e) a summary of the exhibits in evidence;
- f) a detailed recitation of Counsel's contentions as to the testimony

and exhibits in evidence; and applicable law.

Post-trial memorandums will be marked as Court Exhibits and shall be part of the record.

A copy of each Parties' post-trial memorandum shall be served on all other Parties, simultaneous with such filing with the Court. Responses to the post trial memorandums are prohibited and will not be considered.

16. Proposed Judgments of Divorce, and Findings of Fact and Conclusions of Law are to be submitted within sixty [60] days after the Court renders its decision. The submission of the Divorce Packet will NOT be adjourned unless expressly permitted by the Court for good cause shown.
17. Trial Counsel will be contacted when they may appear to obtain their respective copies of any exhibits.

VII MISCELLANEOUS

- A. **ATTORNEYS OF RECORD** - Attorneys who have appeared in the matter are to make all appearances until they are relieved by the Court or a fully executed Consent to Change Attorney form pursuant to CPLR § 321 has been filed with this Part and with the Clerk of the Court. All appearances by Counsel shall be in compliance with 22 NYCRR 202.16 (e)(2).
- B. **STAFF** - The Court functions through the aid and assistance of the courtroom and Chambers staff. They are expected to treat attorneys, litigants and the public in a dignified and civil manner. Likewise, they are to be treated in a civil and professional manner.
- C. Counsel and the Attorney for the Child(ren) are reminded that the Attorney for the Child(ren) acts in the role of Counsel for the child(ren). As such, the Attorney for the Child(ren) is bound by the same ethical and procedural rules as Counsel for the parties. *Ex-parte* communications between the Attorney for the Child(ren) and the Court will not be permitted.
- D. All Counsel are expected to familiarize themselves with Microsoft Teams, NYSCEF and the VEC.