

**Court Rules
of
The Honorable Robert J. Muller, J.S.C.**

~ 2020 ~

Law Clerk: Jennifer P. Jeram, Esq.

Secretary: Ms. Elaine Madison

Mailing Address: Supreme Court Chambers
Warren County Courthouse
1340 State Route 9
Lake George, New York 12845

Telephone Number: (518) 480-6346

Email: ChambersRMuller@nycourts.gov

Communications:

Chambers are open 9:00 A.M. to 5:00 P.M. Answering machines will take messages at other times.

Scheduling of any conferences may be done with the Secretary and should be done by telephoning with available dates convenient to all counsel. Letter requests for a conference should give the reason for the conference and available dates convenient to all counsel. Conferences are held in the morning beginning at 9:30 A.M. and may be scheduled, upon request, in either Warren or Washington County, depending upon the Court's availability.

Unless specifically requested, the Court does *not* wish to be copied on contentious correspondence between counsel. Rather, if assistance is needed in resolving an issue, counsel may either request a conference or file a motion.

E-Filing:

All cases required to be filed electronically are to be filed through the New York State Courts E-Filing System (NYSCEF). All submissions to the Court, including proposed Orders, proposed Judgments and correspondence must be electronically filed.

Parties involved in e-filed cases shall familiarize themselves with the statewide E-Filing Rules available online at www.nycourts.gov/efile. General questions about E-Filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov.

With the exception of correspondence, the Court shall be provided with working copies of all documents filed electronically (*see* Uniform Rules for Trial Cts [22 NYCRR] § 202.5-b [d] [5]).

Motions at a Glance:

Pre-Motion Conference: None, except for discovery motions.

Oral Argument: May be held at the discretion of the Court. The Court does not have Special Term return dates.

Submission of Motion Papers:

Motions may be made returnable any weekday in accordance with CPLR filing requirements.

All motions will be accepted on submission with oral argument held at the discretion of the Court.

In those cases which are not e-filed, original motion papers should be filed with the appropriate County Clerk, accompanied by the requisite filing fee, if applicable. The Clerk will then forward the original papers to Chambers. Original opposition and reply papers should be sent directly to Chambers. **Do not submit courtesy copies to Chambers.**

In those cases which are e-filed, all motion papers should be filed via NYSCEF and, as indicated above, Chambers shall be provided with working copies of the same.

Absent express permission obtained in advance from the Court, which shall be granted only upon a showing of good cause, memoranda of law shall be limited to 30 pages (exclusive of cover page and table of contents), and affirmations and affidavits shall be limited to 25 pages. Papers submitted in violation of this rule may not be considered by the Court in deciding the motion, without prior notice to the party that submitted the papers.

Counsel and self-represented parties are reminded that the CPLR does not provide for the submission of sur-reply papers, however denominated, or the presentation of papers or letters to the Court after the return date of a motion. Nor is motion practice by correspondence permitted. Any counsel or self-represented parties who receive a copy of such materials submitted in violation of this rule shall not respond in kind.

Absent express permission obtained in advance from the Court, motion papers may *not* be submitted via email.

Papers should be timely served on all counsel in accordance with CPLR 2214 (b). In the event that papers are not served in a timely manner, the Court reserves the right to adjourn the return date of the motion.

Requests to Adjourn Motions:

Adjournment requests shall be made to the Court in writing at least 48 hours (*exclusive of weekends and holidays*) before the scheduled return date of the motion.

The requesting counsel should confer with opposing counsel prior to making the request and specifically indicate if the request is on consent.

Adjournments are limited to sixty (60) days in accordance with the Uniform Rules for Trial Courts (22 NYCRR) § 202.8 (e) (1).

Discovery Motions:

No discovery motion may be filed unless counsel personally confer to resolve the discovery issue in accordance with the Uniform Rules of Trial Courts (22 NYCRR) § 202.7 and, further, the motion papers demonstrate compliance with that section.

Additionally, if the case is covered by a Preliminary Conference Stipulation and Order, such Order requires that – prior to motion practice – a conference with the Judge’s Law Clerk be held in an attempt to resolve the dispute. That conference shall be requested by letter for a date convenient to all counsel. Prior to the conference, each party shall provide the Court with a short letter outlining their position relative to the discovery dispute.

Contempt Motions:

Contempt motions must be commenced by Order to Show Cause with personal service required.

Orders to Show Cause:

For any Order to Show Cause that seeks a preliminary injunction or Temporary Restraining Order pending the return date, Uniform Rules for Trial Courts (22 NYCRR) § 202.7 (f) must be followed by giving notice to the opposing party or, alternatively, submitting an affirmation to demonstrate that prejudice would result from the giving of notice.

Motions for Settlement of Infant Claims:

All motions for the settlement of infant claims shall be submitted in full compliance with CPLR 1208, following which the Court will schedule an appearance for the moving party/petitioner, as well as the infant and his or her counsel.

Counsel shall submit a proposed Order granting the application at least **five (5) days** prior to the scheduled appearance. The form for this proposed Order is available at [<https://www.courts.state.ny.us/courts/4jd/mt-rules/infant-settlement-order.pdf>].

Proposed Orders and Judgments:

If an Order or Judgment is submitted for signature with respect to an oral or written decision, the submitting party shall do so in a timely fashion. Unless otherwise directed by the Court, such order shall first be submitted for approval of its form and content to all other counsel. Once submitted for signature, it shall be accompanied with a letter from the submitting counsel stating that all counsel have approved the same as to form and content. In the absence of approval as to form

and content, the notice of settlement procedure provided in the Uniform Rules for Trial Courts (22 NYCRR) § 202.48 shall be used.

PLEASE PROVIDE A SELF-ADDRESSED STAMPED ENVELOPE FOR THE RETURN OF ALL SIGNED ORDERS, JUDGMENTS AND ORDERS TO SHOW CAUSE.

Special Instructions for Matrimonial Motions and Matters:

For matrimonial motions in cases not governed by a scheduling order, follow the general procedures applicable to the filing of a motion.

If the case is governed by a scheduling order, that order will specify any motions which were requested at the time of the preliminary conference and provide a return date.

The Checklist used by the Court in evaluating Domestic Relations Law § 211 papers is available at [\[http://www.nycourts.gov/courts/4jd/mt-rules/muller-Uncontested-Matrimonial-Checklist.pdf\]](http://www.nycourts.gov/courts/4jd/mt-rules/muller-Uncontested-Matrimonial-Checklist.pdf). Please ensure that all necessary documents have been submitted and, further, that the language in the proposed Judgment of Divorce complies fully with Uniform Rules for Trial Courts (22 NYCRR) § 202.50 (b) (4).

Alternative Dispute Resolution:

All civil cases filed in the New York courts are presumptively eligible for Alternate Dispute Resolution (ADR), an early intervention tool designed to provide quicker, less expensive and potentially better alternatives to litigation, without impairing the quality of justice or the right to trial. A copy of the Fourth Judicial District's ADR Program Rules is available at [\[http://ww2.nycourts.gov/sites/default/files/document/files/2019-12/ADR-Rules.pdf\]](http://ww2.nycourts.gov/sites/default/files/document/files/2019-12/ADR-Rules.pdf).

ADR presumptively applies to all cases *except*:

- criminal actions and proceedings;
- cases involving domestic violence;
- ex parte matters;
- uncontested matters (except certain uncontested matrimonials);
- pistol permit applications;
- extreme risk protective order applications;

- Mental Hygiene Law article 9, 10 and 81 proceedings;
- Habeas Corpus proceedings;
- Election Law proceedings;
- abuse and neglect proceedings;
- paternity proceedings;
- family offense proceedings;
- adoption proceedings;
- PINS and JD proceedings;
- termination of parental rights proceedings; and
- actions and proceedings where one of the parties is incarcerated.

If a case does not fall within one of these exceptions, it may nonetheless be deemed exempt from presumptive ADR for one of the following reasons:

- participation could jeopardize the health or safety of a party;
- a substantial power imbalance exists between the parties;
- one party is a victim of physical, emotional or other abuse by the other party; or
- the Court, for good cause shown, concludes that ADR would be imprudent.

In those cases where presumptive ADR applies, the following ADR options are available:

- compulsory arbitration;
- mediation with court-attorney referee;
- mediation with neutral from the Court's roster;¹
- mediation with a privately retained neutral (upon approval by the Court);
- neutral evaluation by a neutral from the Court's roster;
- settlement conferencing with the Assigned Judge;
- settlement conferencing with a Judicial Hearing Officer or a member of the Court's legal staff; and
- Summary Jury Trial.

An ADR Order will be issued at the preliminary conference.

¹ A copy of this roster is available upon request.

Discovery will *not* be stayed while the parties pursue ADR and the case will simultaneously proceed on its normal litigation track, alongside its ADR track.

Preliminary Conferences:

In contested non-matrimonial cases, a preliminary conference will be scheduled within 45 days of the date of filing of the Request for Judicial Intervention (RJI).

The purpose of the conference is twofold: (1) to establish an ADR plan and issue an ADR Order in conformance therewith; and (2) to establish a discovery schedule and issue a Preliminary Conference Stipulation and Order with the applicable dates.

The parties shall confer *prior to the date of the preliminary conference* with the goal of:

1. Agreeing on one or more of the ADR options listed above;
2. developing a proposed ADR timetable, with the first ADR session occurring 12-16 weeks after the preliminary conference; and
3. establishing a discovery schedule, including an expedited discovery schedule to aid in ADR.

If the parties are able to agree on an ADR plan and discovery schedule (including expedited discovery), and a proposed ADR Order and signed Preliminary Conference Stipulation and Order are submitted to the Court **at least 48 hours prior to the date of the conference (excluding weekends and holidays)**, then the preliminary conference will be removed from the Court's calendar.

The ADR Order and Preliminary Conference Stipulation and Order are available online at [<http://ww2.nycourts.gov/courts/4jd/motion-terms-rules.shtml>]. Please note that there are separate Preliminary Conference Stipulation and Orders for contractual disputes and personal injury cases.

If the parties are unable to agree – or if a party does not wish to participate in ADR – then appearances at the preliminary conference will be necessary.

Prior to the scheduled date of the preliminary conference the Court requires:

1. all counsel to submit a proposed ADR plan or, alternatively, a statement as to why the case should be exempt from ADR;
2. counsel for plaintiff to submit a copy of the summons and complaint and any verified bill of particulars, together with a brief (no longer than 2 pages) summary outlining the case and any issues to be discussed at the conference; and
3. counsel for defendant to submit a copy of the answer and any verified bill of particulars provided as the result of a counterclaim, together with a brief (no longer than 2 pages) summary outlining the case and any issues to be discussed at the conference.

In contested matrimonial cases, a preliminary conference will be scheduled within 30 days of the date of filing of the RJI. In addition to following the procedures set forth above, counsel must file a Statement of Net Worth and a Retainer Agreement with the Court prior to the conference and clients must be present at the conference.

In tax certiorari proceedings pursuant to RPTL article 7, a preliminary conference will only be scheduled in those cases wherein respondent has answered or otherwise appeared.

In the event that the parties are unable to comply with the dates set forth in the Preliminary Conference Stipulation and Order and wish to stipulate to an amended Order, that form is available online at [\[http://ww2.nycourts.gov/courts/4jd/motion-terms-rules.shtml\]](http://ww2.nycourts.gov/courts/4jd/motion-terms-rules.shtml).

Compliance Conferences:

At least three days prior to the conference, each party shall have delivered to the Court a summary (no longer than two pages) of your contentions of the facts, liability, damage and defenses.

Final Conferences:

Counsel attending the conference must be familiar with the case, have pertinent portions of the file with them and have authority to discuss settlement. Clients or a representative of the insurance carrier may be required to attend. All counsel shall confer prior to the date of the conference to discuss settlement and the resolution

of any trial issues. Counsel are encouraged to videotape any witness or expert who is unavailable for the scheduled trial. Postponement of any trial after the pre-trial conference is discouraged and will not be granted absent extraordinary circumstances.

In contested matrimonials, clients must attend the final conference.

Requests to Adjourn Conferences:

Adjournment requests shall be made to the Court in writing at least 48 hours (exclusive of weekends and holidays) before the scheduled date of the conference.

The requesting counsel should confer with opposing counsel prior to making the request and specifically indicate if the request is on consent. The requesting counsel should also provide proposed new dates and a reason for the adjournment.

Trial Rules and Special Directives:

1. Expert disclosure shall be provided by Plaintiff(s) 90 days before trial. Expert Disclosure shall be provided by Defendant(s) 60 days before trial.
2. Marked pleadings shall be presented to the Court before jury selection. Copies of the Bills of Particulars, discovery responses and expert reports should be available.
3. Jury selection shall follow one of the authorized methods contained within the Uniform Rules for Trial Courts (22 NYCRR) § 202.33, as the parties may agree. The Court may preside over a portion of or the entire jury selection process. Time limits on counsel may be imposed. Counsel are to confine their voir dire questions to the qualifications of the jurors.
4. Any motion *in limine* should be in writing and timely served on all counsel a reasonable time before trial.
5. Exhibits should be pre-marked by the Court Reporter. Counsel shall also confer prior to trial to determine if the admission of any exhibits into evidence will be stipulated and advise the Court of that prior to trial. Upon the admission of an exhibit at trial, the proponent of the exhibit shall provide a complete copy of it to the Court.

6. Experts who testify at trial shall bring their entire file and all documents considered in arriving at their opinion with them to Court. Failure to do so may result in an expert's testimony being limited or stricken. **Files must be in hard copy.** Digital files are unacceptable.
7. Trial briefs are suggested if intricate evidentiary or trial issues are anticipated.
8. A list (without the charge) of PJI jury requests should be available to the Court 10 days prior to trial. Other requests shall be typed on separate sheets with appropriate sources or citations. The Court's "boilerplate" charge is available to any counsel upon request. A charge conference will be held prior to summations.
9. The Court must be alerted as to any anticipated requests for a jury instruction relative to missing witnesses or evidence.
10. Counsel shall stand to object during the trial and *briefly* state the ground(s) for objection.
11. Verdict sheets: Counsel shall cooperate to prepare an agreed-upon verdict sheet. If that is not possible, then the parties shall submit separate proposed verdict sheets following the suggested forms in the PJI (*see* NY PJI 2:275, SV-1; NY PJI 2:301, SV-I). Each question shall be on a separate page. All verdict sheets shall be in a final, typewritten form that can be given to the jury. All verdict sheets shall also be submitted in Word Perfect format on a computer disc or via e-mail to ChambersRMuller@nycourts.gov.
12. Post-trial motions may be presented orally or in writing.
13. Motions pursuant to CPLR article 50-B should be submitted in motion form with notice to all parties.

Non-Jury Trials – Proposed Findings of Fact and Conclusions of Law:

In non-jury cases, each party shall submit post-trial proposed findings of fact and conclusions of law. Citations within the proposed findings will be to the record. The proposed findings of fact and conclusions of law shall be submitted in writing **and** in Word Perfect format on a computer disc or via e-mail to ChambersRMuller@nycourts.gov. Memoranda of law may also be requested.

Summary Jury Trials:

In conducting these types of trials, the Court utilizes the Summary Jury Trial Program in the Supreme Court, Eighth Judicial District. Information on this Program is available online at <http://www.nycourts.gov/COURTS/8jd/sjt.shtml#Manual>.

Settled or Discontinued Cases:

If a case has been settled or is otherwise being discontinued, counsel shall promptly advise the Court in writing and a notice of discontinuance or stipulation of discontinuance – whichever is applicable – shall be filed. Chambers must also be provided with a filed copy of the notice of discontinuance or stipulation of discontinuance.

January 23, 2020