



# STATE OF NEW YORK SUPREME COURT

ROBERT SEYMOUR  
PRINCIPAL LAW CLERK

HON. ALLISON M. MCGAHAY  
SUPREME COURT JUSTICE

SHONA DOYLE  
SECRETARY

## COURT RULES OF HON. ALLISON M. MCGAHAY, J.S.C.

### **Contact Information:**

Counsel<sup>1</sup> shall ensure that the Court and all other counsel in a matter are continuously provided with up-to-date contact information to include current mailing addresses, email addresses and phone numbers. The Court will not view a missed deadline/appearance/directive that stems from the failure to continuously provide up-to-date contact information as good cause for the missed deadline/appearance/directive.

### **Communications from the Court:**

The Court routinely utilizes email to communicate with counsel. All counsel are directed to regularly check their email to ensure that they are receiving communications from the Court.

### **Communications to the Court:**

All communications to the Court shall be made in writing and on notice to all parties that have appeared in a matter. 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.

### **Conference requests:**

Requests for conferences shall be made in writing and provide the reason for the conference and available dates convenient to all counsel. Requesting counsel shall initially contact all other counsel to determine their position with respect to the scheduling of a conference and for convenient dates available to all parties.

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<sup>1</sup> Wherever the terms “counsel” and/or “attorney” are used herein, they are intended, and shall be deemed to include, self-represented litigants.

### **Requests to Adjourn Conferences/Appealances:**

Initially, counsel shall contact all other counsel to determine their position with respect to an adjournment of a conference/appearance. An adjournment of any conference/appearance shall be requested in writing, on notice to other counsel.

The requesting counsel shall provide proposed new dates, a reason for the adjournment, and opposing counsel's position regarding such adjournment.

Absent unforeseeable/exigent circumstances, any request for an adjournment must be made at least 1 business days before the scheduled date of the conference/appearance.

Where an adjournment request of a conference/appearance has been made, and counsel have not heard back from the Court with respect to such request, counsel are to appear at the conference/appearance at the scheduled date, time and place.

### **Appearances:**

Counsel must make all scheduled appearances and conferences in person and on time. Failure to appear as directed may result in the entry of an order pursuant to 22 NYCRR § 202.27, which reads as follows:

At any scheduled call of a calendar or at any conference, if all parties do not appear and proceed or announce their readiness to proceed immediately or subject to the engagement of counsel, the judge may note the default on the record and enter an order as follows:

- (a) If the plaintiff appears but the defendant does not, the judge may grant judgment by default or order an inquest;
- (b) If the defendant appears but the plaintiff does not, the judge may dismiss the action and may order a severance of counterclaims or cross-claims;
- (c) If no party appears, the judge may make such order as appears just.

Where the parties have agreed to settle, all scheduled appearances must be made unless a stipulation of discontinuance, signed by all parties, is filed with the County Clerk.

### **Motions (generally):**

Motions are heard by the Court ON SUBMISSION ONLY unless a written request for oral argument is granted by the Court. This means no in-court appearance will occur on the motion return date; instead, the Court will decide the motion upon consideration of the submissions that have been filed with the County Clerk (with proper proof of service). The Court reserves

the right to schedule oral argument for any motion that it determines would benefit from such appearance.

For motions heard on submission only, the movant is responsible for setting the return date. The movant can select any date as long as it complies with applicable statutory timing provisions as contained in the Law of the State of New York to include, where applicable, CPLR §§ 2214 and 2103. **The notice of motion shall clearly state that the motion is being heard and decided “ON SUBMISSION ONLY”, and that no in-person court appearance will occur on the return date.**

When oral argument is granted, the Court will set the date and time of the oral argument, which will also serve as the return date and time for the motion.

Unless otherwise requested by the Court, courtesy copies of motion papers are not required.

Motion submissions shall comply with 22 NYCRR § 202.8-b “Length of Papers”.

In accordance with 22 NYCRR § 202.8-c, absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decisions that are relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this rule shall not respond in kind.

If papers are not timely served on all counsel, the Court reserves the right to adjourn the return date of the motion.

The Court reserves the right to direct a party to submit a memorandum of law in support of their respective motion argument/position.

### **Requests to Adjourn Motions:**

Adjournment requests shall be made to the Court, in writing, before the scheduled return date of the motion.

Requesting counsel shall initially confer with all other counsel to determine if the adjournment is on consent. If so, a letter (one copy only) shall be delivered to Chambers before the return date.

If the adjournment is not on consent, requesting counsel shall write the Court to request the adjournment. The letter shall notify the Court of the opposition to the adjournment and shall specify the good cause for the requested adjournment.

### **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 such Court rule. Attempts to personally confer shall not be limited to writing emails and letters, but shall also include attempts to speak to each other to resolve the issue. Prior to motion practice, a conference with the Judge or Law Clerk shall be requested in writing to attempt to resolve the dispute.

### **Contempt Motions:**

Contempt motions must be brought before the Court by Order to Show Cause, with personal service required.

### **Motions for Summary Judgment:**

This Court will not require a statement of material facts to be annexed to a motion for summary judgment in accordance with 22 NYCRR 202.8-g. If a statement of material facts is served with a motion for summary judgment, and the non-moving party fails to address or controvert a numbered paragraph therein, the Court will not deem such numbered paragraph to be admitted for purposes of the motion

### **Orders to Show Cause:**

Please call Chambers immediately, (518)873-3424, after the filing of an Order to Show Cause, which addresses an urgent matter of genuine and legitimate emergency, so that the Court can ensure it receives immediate attention.

All applications for temporary injunctive relief, including TRO requests, must comply with Uniform Rules for Trial Courts (22 NYCRR) § 202.7 (f).

### **Foreclosure motions/submissions:**

Where applicable, this Court requires the use of the foreclosure motion templates approved by Administrative Order AO/356/17, which can be found at the following url:

<https://ww2.nycourts.gov/sites/default/files/document/files/2018-06/AdministrativeOrder35617.pdf>

*Any substantive modifications or additions to the form templates, which are not clearly contemplated by the templates, **shall be bolded, underlined and italicized so that the Court can see the changes that have been made.*** The Court reserves the right to deny, without prejudice, any applicable motion that is not in conformity with AO/356/17 and this Court's rules. The Court also reserves the right to reject any proposed order that is not in conformity with AO/356/17 and this Court's rules.

This Court requires the use of the form TERMS OF SALE contained at the following url: <https://www.nycourts.gov/FORMS/foreclosure/pdfs/Terms-of-Sale.pdf>

Although RPAPL § 1321 allows the Court to ascertain the amount due and owing upon the defendant's default or admission, without the appointment of a referee to compute, the Court declines to do this; instead, the Court will appoint a referee to compute in all applicable matters. Accordingly, a plaintiff shall not file a combined "NOTICE OF MOTION FOR A DEFAULT JUDGMENT, ORDER OF REFERENCE, AND JUDGMENT OF FORECLOSURE AND SALE" (see AO/356/17 EXHIBIT C). If such a motion is made, the Court reserves the right to: 1) deny the motion without prejudice to the filing of a motion for a default judgment and order of reference (see AO/356/17 EXHIBIT A); or 2) require the submission of a proposed "ORDER OF REFERENCE AND DEFAULT JUDGMENT" (see AO/356/17 EXHIBIT A) granting so much of the motion seeking an order of reference and default judgment, and appointing a referee to compute, but denying the issuance of a judgment of foreclosure and sale as premature.

#### **Orders and Judgments (generally):**

If an order or judgment is to be submitted for signature, 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 appearing parties. Once submitted for signature, it shall be accompanied with a letter from the submitting counsel stating that all counsel that have appeared in the action approved the same as to form and content. Notwithstanding the foregoing, if a proposed order is submitted to Chambers on notice to the appearing parties, and no objection to the form/content of the order is received within one week of the date service, the Court reserves the right to treat the form and content thereof as unopposed and issue the order.

Generally speaking, in paper-filed (not e-filed) cases that are venued in Essex County, the Court will file any judicially signed orders with the Clerk. Copies thereof will be emailed to the prevailing party to be served, with notice of entry, unless a self-addressed stamped envelope is provided by the prevailing party, in which case the document will be mailed.

In paper-filed (not e-filed) cases that are venued in any county other than Essex County, a self-addressed stamp envelope shall be provided for the return of all signed documents to the prevailing party, who shall then file the document with the appropriate Clerk, and serve the document with notice of entry.

#### **Proposed Orders and Judgments (Settled Matrimonial Actions):**

In settled matrimonial actions, do not submit the proposed Findings of Fact, Judgment of Divorce, Qualified Domestic Relations Order and/or Qualified Medical Child Support Order to the Court for judicial consideration until such documents have been approved as to form

and content by all the settling parties. If no consent can be reached, please notify the Court in writing.

### **Preliminary Conferences:**

Preliminary conferences in contested matrimonial cases are scheduled pursuant to the Uniform Rules of Trial Courts (22 NYCRR) § 202.16 (f). Clients must be present and counsel must file a Statement of Net Worth and a Retainer Agreement with the Court prior to the conference. A Scheduling Order will be issued containing a return date for any pendente lite motions. All pertinent matters will be discussed at the conference in an effort to resolve and limit contested issues.

Preliminary conferences in all other civil cases are scheduled pursuant to the Uniform Rules of Trial Courts (22 NYCRR) § 202.12 (a).

If a Note of Issue is not timely served and filed pursuant to a scheduling Order and no party has requested an extension of that Order, the Court will mark the case ready for trial, direct that a Note of Issue be filed and schedule a final conference.

### **Pre-trial / Final Settlement Conferences:**

In all cases, the pre-trial/final settlement conference will be scheduled by letter after the filing of a Note of Issue. Counsel shall contact their client(s), witness(es) and experts before this conference to determine their availability for trial. 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. In contested matrimonial actions, the parties must attend the final settlement conference.

Counsel shall confer prior to the date of the conference to discuss settlement and the resolution of any trial issues. Postponement of trial after the pre-trial conference is discouraged and will not be granted absent extraordinary circumstances.

### **Settlement Conferences in Residential Foreclosures:**

The homeowner must appear in person or by counsel. The lender's counsel must appear in person and the appearing individual shall be fully authorized to engage in meaningful settlement discussions.

The failure of the homeowner to appear at the conference may be considered a forfeiture of the right to a settlement conference.

The homeowner must bring the following documents to the conference:

- (1) Current proof of income (if employed, bring your most recent pay stubs. If self-employed, bring your profit and loss statement);
- (2) recent bank statements (bring statements from the last 2 months at least);
- (3) list of monthly expenses;
- (4) recent mortgage statements;
- (5) property tax statements;
- (6) most recent income tax return; and
- (7) any written loan resolution proposals or information from previous workout packages.

The lender must provide the following to both the Court and the homeowner at least ten (10) days prior to the scheduled conference:

- (1) Copy of the pleadings;
- (2) the homeowner's payment history;
- (3) a copy of the payoff and reinstatement figures;
- (4) workout forms or packet, including loss mitigation contact information;
- (5) any written loan resolution proposals or information from previous workout packages; and
- (6) if plaintiff is not the owner of the Note and Mortgage, then the name and contact information for the owner of the Note and Mortgage must be provided

### **Scheduling Order Compliance:**

It is the responsibility of all counsel practicing before the Court to maintain and comply with the scheduling order. If counsel for one party fails to comply with a discovery request/demand/deadline/order, it is the responsibility of the party seeking the discovery to timely pursue compliance, as outlined above (see “**Discovery Motions**”). If a deadline contained in a scheduling order is missed, all other deadlines remain effective.

### **Trial Rules and Special Directives:**

- (1) Unless otherwise directed otherwise, 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) Motions *in limine* should be in writing and made returnable at least two weeks before the date of the trial.
- (3) Exhibits should be presented to the Court Reporter to be pre-marked. 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.
- (4) 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.
- (5) At least two business days before the start of the trial via email ([chambersamcgahay@nycourts.gov](mailto:chambersamcgahay@nycourts.gov)), and on the morning of the trial via hardcopy, counsel shall provide the following to the Court:
  - (a) marked pleadings;
  - (b) a list of witnesses;
  - (c) statement of contentions;
  - (d) a list of PJI charge requests, and the substance of any custom PJI charge with appropriate sources and citations; and
  - (e) a proposed verdict sheet, which shall be in final, typewritten form, with each question contained on a separate page.
- (6) A charge conference will be held prior to summations. Counsel shall confer and cooperate to resolve any discrepancies between their respective proposed charge and verdict sheet. This dialogue should be occurring prior to, and throughout, the trial. At the charge conference, the Court will address not only the discrepancies with the parties' respective charges, if any, but also any discrepancies concerning the form and content of the verdict sheet.
- (7) Experts who testify at trial shall bring their entire file and all documents considered in arriving at their opinion(s) with them to Court. Failure to do so may result in an expert's testimony being limited or stricken.



- (8) Trial briefs are suggested if intricate evidentiary or trial issues are anticipated.
- (9) The Court and counsel must be alerted as to any anticipated requests for a jury instruction relative to missing witnesses or evidence.
- (10) Post-trial motions may be presented orally or in writing.
- (11) Motions pursuant to CPLR article 50-B should be submitted in motion form with notice to all parties.

**Non-Jury Trials/Hearings - Proposed Findings of Fact and Conclusions of Law:**

In non-jury cases, each party shall submit in duplicate 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 Word format via e-mail to [chambersamcgahay@nycourts.gov](mailto:chambersamcgahay@nycourts.gov). Memoranda of law may also be requested.

**Requests to Adjourn Jury Trials:**

Absent unexpected and extraordinary circumstances, requests to adjourn jury trials, made within one month of the trial date, will be denied.