



STATE OF NEW YORK SUPREME COURT

HON. PAUL E. DAVENPORT
SUPREME COURT JUSTICE

BRETT EBY
PRINCIPAL LAW CLERK

EMILY PREYER-BLAKNEY
SECRETARY

COURT RULES OF HON. PAUL E. DAVENPORT, J.S.C.

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.

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.

Requests to Adjourn Conferences/Appearances:

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.

Appearances:

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

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.

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 correspondence 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. 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

Foreclosure motions/submissions:

Where applicable, this Court requires the use of the foreclosure motion templates, initially approved by Administrative Order AO/356/17, which are updated from to time, which can be found online at the following url: <https://www.nycourts.gov/forms/foreclosure/>

Any substantive modifications or additions to the form order templates, which are not clearly contemplated by the templates, shall be 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 the approved form templates and this Court's rules. The Court also reserves the right to reject any proposed order that is not in conformity with the approved form templates and this Court's rules.

This Court generally 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:

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 counsel. 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 counsel, 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.

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 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.

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

Trial Rules and Special Directives:

- (1) Unless directed otherwise, expert disclosure shall be provided by Plaintiff(s) 60 days before trial. Expert Disclosure shall be provided by Defendant(s) 30 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 (ChambersPDavenport@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) expert witness reports;
 - (e) a list of PJI charge requests, and the substance of any custom PJI charge with appropriate sources and citations; and
 - (f) a proposed verdict sheet, which shall be in final, typewritten form, with each question contained on a separate page.
- (6) 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.
- (7) Trial briefs are suggested if intricate evidentiary or trial issues are anticipated.
- (8) The Court and counsel must be alerted as to any anticipated requests for a jury instruction relative to missing witnesses or evidence.
- (9) Post-trial motions may be presented orally or in writing.

(10) 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 chambersPDavenport@nycourts.gov. Memoranda of law may also be requested.