

**HON. EDWARD A. PACE, J.S.C.**

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Amended Part 3 Court Rules

**CONFERENCES**

Conferences, by MS Teams, unless otherwise directed by the Court. The Preliminary Conference will be scheduled within 45 days of the Court's receipt of a filed RJL. A brief summary of the case shall be emailed to the Court's secretary at least 48 hours in advance of the first scheduled conference. Prior to court conference, the parties shall consult about (1) resolution of the case, in whole or part; (2) discovery; (3) alternative dispute resolution and (4) any voluntary and informal exchange of information that the parties agree would help to aid an early settlement. Counsel are to make a good faith effort to reach agreement on these matters in advance of the conference.

**MOTIONS**

- Motions are heard every Thursdays starting at 9:30 AM unless otherwise scheduled by the Court.
- All motions and cross-motion papers must be filed and filing fees paid before scheduling of the hearing. Contact Court Clerk, Nicole Schug, to schedule the motion hearing.
- Motions are to be made in compliance with CPLR 2214.
- All counsel are encouraged to provide chambers with paper copies of the Attorney Affirmation or Affidavit and Memorandum of Law without paper copies of exhibits.
- Motions to resolve discovery disputes shall be accompanied by an affidavit of good faith attempt at resolution.
- Oral argument is required unless all non-defaulting parties agree to submit on papers only.

- For non-e-filed cases, all moving papers must be filed with a working paper copy for the Judge no later than 10 days in advance of the return date.
- Temporary injunctive relief requests must comply with 22NYCRR 202.8(e) and will not be granted in the absence of prior notice to the opposing counsel and pro se parties, as required by 22 NYCRR § 202.7(f), unless the moving party can demonstrate significant prejudice. Live MS Teams or in-person testimony of the moving party may be required where an order to show cause requests temporary injunctive relief.
- Orders to Show Cause/TROs on a case assigned to another judge will be signed only upon prior written approval of IAS judge or his/her law clerk.
- Motions for Summary Judgment are to be made in accordance with 22 NYCRR part 202. CPLR 3212(a) requires that Motions for Summary Judgment must be made within 120 days of the filing of the note of issue, unless the Court sets a different deadline.
- Motions seeking financial relief must be accompanied by the movants DRL§236(B) affidavit.

### **ADJOURNMENTS**

Parties requesting an adjournment must first seek consent of each counsel or pro se party. Requests for adjournment of conferences must be directed to the court secretary. Requests for adjournment of motions must be directed to the court clerk. All requests for adjournment must be copied to all parties before approval by the Court. The Court will notify each counsel or pro se party of the adjourned date.

### **ORDERS**

Orders are to be submitted within 30 days by the prevailing party. All orders and papers for signature (except orders to show cause) must first be circulated to opposing counsel and any pro se parties for comment and consent. Orders and judgments will not be signed without proof that opposing counsel and any pro se parties had the opportunity to review them for at least 7 days, unless otherwise directed by the Court. Proof of consent by letter or email is required. However, if no objection or consent is received after 10 days (unless otherwise directed by the Court), the Court will sign the order or judgment.

Orders of Protection should be personally presented to the Court Clerk. Applications for an order **SHOULD** include police and/or medical reports, if available, as well as the Protective Registry Information Sheet. If an individual is in imminent danger, **call the police.**

## **MATRIMONIAL ACTIONS**

**PRELIMINARY CONFERENCES** must be held within 45 days of the filing of an RJI as required by NYCRR 202.12(b). Attendance is mandatory for parties and counsel. The Preliminary Matrimonial Information Sheet, a retainer agreement, summons, affidavit of service, a Social Security earnings statement, must be provided to the Court and opposing counsel 10 days prior to the conference. The Court will address temporary support and the automatic stays at the conference. If possible, counsel should refrain from bringing a motion/order to show cause for such relief prior to completion of the conference. Be prepared to discuss issues of *pendente lite* relief.

**PRELIMINARY CONFERENCES ADJOURNMENTS** – because of the limited time to hold a Preliminary Conference, adjournment requests will only be considered within 3 business days of notice. Therefore, you must confirm your client’s availability immediately upon receipt of notice. The Adjournment Request Form must be used if the clients are not available.

**SETTLEMENT CONFERENCES** – Counsel must bring the most recent proposed agreement in paper and electronic form. It is expected that both parties will have reviewed the proposed agreement prior to the settlement conference.

**FINAL JUDGMENT ROLL** – once a fully executed agreement or written ratification has been received by the Court, counsel will have 30 days to submit the final judgment roll. The submission date is an in-person appearance **WITH CLIENTS**. In order to avoid the appearance, you must provide all necessary documents listed on the Judgment Roll Checklist, from both sides, to chambers 48 hours prior to the return date. Partial submissions will not excuse the appearance. If all of the necessary documents are submitted, you will receive an email dispensing with your appearance. The judgment roll will then be substantively reviewed.

**NOTE:** If counsel does not receive an email, **both attorneys and clients must appear.**

**QUANTUM MERUIT APPLICATIONS** – the following documents **MUST** be submitted, or the application will be denied. A copy of the agreement or the transcript – the Court does not retain copies in the file. A fully executed retainer agreement and Statement of Client’s Rights and Responsibilities, a current DRL§236(B) affidavit and itemized billing statements, including 60-day invoices. Counsel should review 22 NYCRR 1400.2, 1400.3, 1400.9, and 22 NYCRR 202.16.

## **QDROS**

**ANY CASE THAT IS LESS THAN ONE YEAR AWAY FROM ENTRY OF JUDGMENT:**

(Q)DRO should be submitted to the judge who signed the judgment of divorce (if no longer on the bench or it originates as an uncontested matter go directly to the Chief Clerk’s Office) with the following:

1. proposed (Q)DRO
2. property settlement agreement
3. judgment of divorce
4. proof that (Q)DRO has been approved by spouse's attorney or spouse

**IF NO APPROVAL:**

Proof that the attorney is not representing the party on the issue of the (Q)DRO and then proof that the spouse has agreed,

**IF SPOUSE CAN'T BE LOCATED**

Proof by affidavit of diligent effort to locate the spouse & statement that terms requested in (Q)DRO do not expand on the rights set forth in the written agreement,

**IF SPOUSE OR ATTORNEY DO NOT AGREE**

Request settlement conference with the Court,

**IF EXPAND ON RIGHTS**

Modification to agreement must be signed & notarized by parties.

**ANY CASE THAT IS OLDER THAN ONE YEAR FROM ENTRY OF JUDGMENT:**

(Q)DRO must be submitted on motion filed in the NCCO and then taken to the judge who signed the judgment of divorce with the following documents:

1. Proposed (Q)DRO
2. Property Settlement Agreement
3. Judgment of Divorce
4. Proof that (Q)DRO has been approved by spouse's attorney or spouse

**IF NO APPROVAL**

Proof that the attorney is not representing the party on the issue of the (Q)DRO and then proof that the spouse has agreed,

**IF SPOUSE CAN'T BE LOCATED**

Affidavit of diligent effort to locate the spouse & statement that terms requested in (Q)DRO do not expand on the rights set forth in the written agreement must be attached to the motion,

**IF SPOUSE OR ATTORNEY DO NOT AGREE**

Motion will be scheduled by the Court,

**IF EXPAND ON RIGHTS**

Modification to agreement must be signed & notarized by parties.

**NOTE: THERE IS NO FILING FEE FOR THIS MOTION.**

A court errs in granting a (Q)DRO more expansive than an underlying written separation agreement regardless of whether the parties or their attorneys approved the (Q)DRO without objecting to the inconsistency, under such circumstances, the Court has the authority to vacate or amend the (Q)DRO as appropriate to reflect the provisions of the separation agreement. Santillo v. Santillo 155 A.D.3d 1688 (Fourth Department 11/17/17)

### **DEADLINES BEFORE TRIAL**

Expert disclosure must be exchanged no less than 30 days prior to Jury Selection. Before jury selection, all counsel and pro se parties are to confer and attempt to agree on the marking of all proposed documentary evidence. If necessary, the Court will hold an in-person "marking conference" 7 days prior to Jury Selection. Requests to charge (PJI numbers only, unless modification of a charge is requested), witness lists, and proposed verdict sheets shall be submitted to chambers before jury selection. Motions *in limine* shall be filed, served, and heard by the Court before commencement of jury selection.

If you have questions, or require further information, please contact the Court.

Hon. Edward A. Pace, JSC

03-03-2023