

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

50 Delaware Avenue – 9th Floor – Part 34

Buffalo, NY 14202

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Court Clerk: Amy Jackson (*motions*) (716)845-9429 ajackson@nycourts.gov

Third Amended Part 34 Court Rules

CONFERENCES

Conferences are 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 RJI. A brief summary of the case shall be emailed to the Court's secretary at least one week 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 Thursday starting at 9:30 AM unless otherwise scheduled by the Court. Dispositive Motions are held in person unless otherwise directed by the Court.
- All motions and cross-motion papers must be filed and filing fees paid before scheduling of the hearing. Contact Court Clerk, Amy Jackson, to schedule the motion hearing.
- Motions are to be made in compliance with CPLR 2214.
- At the time of the NYSCEF or paper filings of all Notices of Motion, Orders to Show Cause, Affirmations, Affidavits, and Memorandums of Law (*but not exhibits*) email Microsoft Word formatted copies to pzalocha@nycourts.gov. *Do not send additional paper copies to the Court.*
- In all written or verbal submissions, use NYSCEF Document Numbers when referring to a filed document instead of or in addition to, for example, an exhibit letter or just the name of the document.
- Video exhibits must be cut to pertinent length or, alternatively, cite the pertinent beginning and ending time markers on the video clip.

- Motions to resolve discovery disputes shall be accompanied by an affidavit of good faith attempt at resolution.
- Unless otherwise directed by the Court, 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.
- A motion to bifurcate the issues of liability and damages shall be made returnable and heard on a date to be determined by the court. Papers in support of said motions must be served upon the court and opposing counsel no later than eight business days before the return date, while responding papers must be served upon the court and opposing counsel no later than two business days before the return date.

PRE-TRIAL RULES

1. Plaintiff shall provide Defendant with expert disclosure, in accordance with CPLR 3101(d)(1), at least sixty (60) days prior to jury selection, Defendants have 15 days to object to the sufficiency of the disclosure.
2. Defense counsel shall provide plaintiff with expert disclosure, in accordance with CPLR 3101(d)(1), at least forty-five (45) days prior to jury selection, Plaintiff has 15 days to object to the sufficiency of the disclosure.
3. Motions in limine shall be made returnable no later than two weeks before jury selection. Papers in support of said motions must be served upon the Court and opposing counsel no later than eight business days before the return date, while responding papers must be served upon the Court and opposing counsel no later than two business days before the return date.
4. After motion papers have been NYSCEF or paper filed, email Microsoft Word formatted copies, excluding exhibits, to pzalocha@nycourts.gov. No courtesy paper copies are to be submitted to the Court.
5. A final pre-trial conference will be held in-person **TBD** at the Buffalo City Court Building, 50 Delaware Avenue, Part 34, Buffalo, New York, 14202, with clients.

6. The Court requires each party to submit Requests for Prior to and After Trial Jury Charges and Proposed Verdict Sheets to the Court no later than the day before the Final Pre-Trial Conference, which will be set by the trial judge. The proposed Jury Charges and Verdict Sheets are to be emailed in a Word Document Format to the judge, the law clerk, and copied to the secretary as follows: epace@nycourts.gov, pbannist@nycourts.gov, pzalocha@nycourts.gov
7. Trial counsel must appear at the final pre-trial conference and should be prepared to discuss the following: all theories of liability as well as the proof supporting those theories; all damage claims as well as the proof supporting those claims; all likely defenses to liability and damages; the identity of witnesses likely to be called at trial as well as the sum and substance of their anticipated testimony; the anticipated order of proof; all exhibits likely to be offered in a party's case-in-chief.
8. Pursuant to Uniform Rule 202.34, Counsel for parties shall confer prior to trial and shall attempt in good faith to agree upon the exhibits that will be offered into evidence without objection, especially as to the receipt of trial exhibits. An in-person marking conference will be held **TBD** if the parties are unable to agree upon trial exhibits. All stipulated exhibits must be made into a PDF, Bates stamped, if voluminous, and marked for identification (e.g., "Exh. 1"), and the notation "EVD", and submitted to NYSCEF at least one week before the commencement of the trial, unless otherwise directed by the Court. It is suggested that counsel contact the court clerk and court reporter to facilitate the timely filing of all exhibits. Counsel shall then prepare an exhibit list and email it to Peter Zalocha at pzalocha@nycourts.gov.

Deadlines may not be extended without further order of the Court.

ADJOURNMENTS

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

ORDERS

Unless otherwise directed by the Court, 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 3 business 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 7 days (unless otherwise directed by

the Court), the Court will sign the order or judgment as submitted, unless the Court drafts its final order.

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.

MOTIONS seeking financial relief - must be accompanied by the movants DRL§236(B) affidavit.

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, and all litigants and attorneys are required to attend Settlement Conferences In Person.

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 if 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 NYSCEF or the ECCO 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 (Pattern Jury Instructions [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.

All of the above recited rules are subject to change upon an order of the Court.

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

Hon. Edward A. Pace, JSC