

HON. JEFFREY ARLEN SPINNER
Judge of the County Court
Acting Justice of the Supreme Court
Acting Judge of the Family Court
Supreme Court of The State Of New York, County of Suffolk
IAS Part 21
The Alan D. Oshrin Court Building
1 Court Street
Riverhead, New York 11901

Chambers: (631) 852-3290 • Telecopier: (631) 852-3291 • Courtroom: (631) 852-3294

Principal Law Clerk: **ROBERT DeGREGORIO, ESQ.**

Confidential Secretary: **ERIN MICHAEL WALSH**

Confidential Secretary: **CHERYL RUSSO**

The following shall comprise the rules of practice and procedure for all matters pending before Supreme Court, Part 21. The intent of these rules is to ensure fair and expeditious handling of all matters that are before the Court for the benefit of both the litigants and their respective attorneys.

COURT STAFF:

The Court staff shall include all court employees, including but not limited to the Justice, Principal Law Clerk, Confidential Secretary and all Court Clerks, Court Officers and Court Reporters. All of these persons constitute a necessary and indispensable part of the Court, and they enable the Court to function fairly and effectively, for the benefit of both litigants and counsel. All members of the staff must be treated with civility, courtesy and respect. Strict adherence to the rules set forth in 22 NYCRR Part 700 [“Decorum”] and 22 NYCRR Part 1200 [“New York State Standards Of Civility”] is mandatory. Unprofessional conduct will not be countenanced.

Parties - For the purposes of these rules, parties shall mean counsel of record and/or *pro se* litigants.

GENERAL CIVIL PART RULES

MOTION PRACTICE:

Return Dates

All motions made in cases assigned to Justice Spinner shall be calendared for submission on a ***Wednesday***. Please see dates listed on the last two pages under “Adjournment Rules”. Unless an adjournment is granted by the Court in accordance with these Rules, all motions appearing on the Court’s Wednesday motion calendar shall be marked as fully submitted.

Motion Conferences

Effective September 1, 2009, the Court will no longer convene a conference on all motions. Instead, after a motion has been submitted it shall be reviewed and, in the event the Court deems a conference necessary, same will be scheduled on a date convenient to the Court, due consideration being given to the availability of the parties and counsel.

Appearance of all parties is required at any Motion Conference, and all parties must be prepared to discuss the matter in depth, as well as the specifics of the pending motion, in an effort to narrow the issues, as well as to explore possible resolution of the case.

All discovery motions shall be scheduled by the Court, after submission thereof, for a conference with the Judge, where all parties shall be prepared to justify their support or opposition to the motion. At the end of said conference, the Judge shall direct the parties to either submit a stipulation, to be So Ordered prior to the parties leaving the Court, or to submit a Proposed Order by mail or fax for his signature, reflecting his determination as to the discovery issues. Where it is determined by the Court that a discovery motion cannot be resolved, the matter may be referred to the District Administrative Judge for the appointment of a Referee or Judicial Hearing Officer to supervise discovery.

Submission of Papers

All papers must be submitted in accordance with the express provisions of the CPLR. The Court will not consider any papers (opposition, cross-motion, reply, etc.) which appear to have been inappropriately interposed. All motion papers (including motions, opposing papers, affidavits, etc.) must be submitted through the Special Term Clerk's Office, Supreme Court, 1 Court Street, Riverhead, New York 11901. The Court will consider all papers properly submitted on notice and forwarded to Chambers by the Special Term Clerk's Office.

Submission of a cross-motion with a stated return date that is beyond the return date of the original motion will not serve to adjourn the original motion, although the Court may elect, in its discretion, to adjourn the original motion.

All motions and cross-motions submitted for Court consideration must be accompanied, at the time of submission, by a **Proposed Order** as permitted by 22NYCRR §202.48. All Orders To Show Cause matters must likewise be submitted with a **Proposed Order** at the time movant's Reply to opposition is filed. All opposition to any of the aforesaid must contain a **Proposed Order**. **Proposed Orders** submitted after filing of a motion, Order to Show Cause or opposition must be made on notice to all parties, but do not require formal service. Failure to submit an order may be deemed an abandonment as set forth in 22NYCRR § 202.48(b).

Chambers copies of papers are required for e-filed cases only.

Settled or Withdrawn Motions

The court Must be advised IMMEDIATELY of the settlement or withdrawal of any motion or any

portion of any motion *sub judice*, and/or the settlement of any underlying case with motion *sub judice*.

Oral Argument on Motions

All motions shall be decided upon the submission of papers, unless oral argument is specifically requested. Any party may make such a request, which must be done in writing, on notice to all other parties, and received by Chambers not later than seven (7) days before the stated return date. All such requests shall be made in accordance with the provisions of 22 NYCRR § 202.8(d). In the event the Court declines to entertain oral argument, all parties will be notified by Chambers in advance of the return date.

Temporary Restraining Orders & Stays

Where a Temporary Restraining Order (“TRO”) or a stay has been imposed pending the return date of an application, all parties must appear on the stated return date. The stay or TRO will not continue beyond the stated return date absent further order of the Court or written stipulation of the parties, unless the Order imposing said TRO or stay specifically states that it shall remain in effect pending determination of the motion or action.

Where a matter is returnable on a date other than an available the Court’s usual Wednesday, it will be administratively carried to the Court’s next available proper date. In such event, the return date will be deemed to be the rescheduled date (as per the Definitions herein above), which shall not be deemed to be an adjournment, and the TRO or stay shall continue in effect until that later date.

In the event continuation of a stay or TRO is sought, the requesting party must make application at the call of the calendar. The Court reserves the right to *sua sponte* continue a TRO or stay, if consent is unreasonably withheld under the circumstances or if the interests of justice so dictate.

Part 21 has adopted the statewide E-Filing rules (22 NYCRR §202.5-b et. seq.)

E-FILING RULES AND PROTOCOL:

All parties should familiarize themselves with the statewide E-Filing Rules (Uniform Rule §§202.5-b and 202.5-bb – available at www.nycourts.gov/efile) and the Suffolk County E/Filing Protocol (available at www.nycourts.gov/courts/10jd/suffolk/Efiling/protocol.pdf). General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@courts.state.ny.us

Specific questions relating to local procedures should be addressed to Special Term; (631) 852-2408.

Electronic Filing

All medical malpractice and commercial division actions are to be filed through the New York State Courts Efiling system (NYSCEF). All submissions to the Court, including proposed orders, proposed judgments, and letters, must be electronically filed.

All medical malpractice and commercial division actions are to be filed through the New York State Courts Efiling system (NYSCEF). All submissions to the Court, including proposed orders, proposed judgments, and letters, must be electronically filed.

Working Copies

This Part DOES require working copies. Working copies shall be delivered to the Part Clerk. All working copies submitted to this Part must include a copy of the NYSCEF Confirmation Notice firmly fastened as the back page of the submission and comply with other requirements set forth in the Suffolk County Protocol. Working copies without the Confirmation Notice will not be accepted. Working copies are to be delivered to the Part 21 courtroom A260.

Hard Copy Submissions

Part will reject any hard copy submissions in e-filed cases unless those submissions bear the Notice of Hard Copy Submission – E Filed Case required by Uniform Rule §202.5-b(d)(1). The form is available at www.nycourts.gov/efile.

CALENDAR MATTERS:

Scheduling

All conferences (Preliminary, Pre-Trial, Compliance, Certification, Settlement, Post Note of Issue, Motion, etc.) and all calendar matters (Hearings, Inquests, Infant Compromises, etc.) shall be scheduled on **Wednesdays** only. Hearings and Inquests will be scheduled for 2:30 p.m. in order to accommodate the schedules of the attorneys and to avoid unnecessary waiting time and inconvenience to counsel and parties. Please see “Adjournment Rules” on the last 2 pages of the part rules for a the list of 2014 dates.

Hearings and Inquests in civil matters assigned to Part 21 shall be scheduled by Chambers. No inquest may be scheduled unless a Note of Issue has been filed as required by 22 NYCRR § 202.22. Where the judgment sought on inquest is for a sum certain that is readily ascertainable, counsel may submit an affidavit from a competent party, together with supporting documentation and a **Proposed Judgment**, obviating the need for live testimony.

Appearances

Attorneys Of Record & Pro Se Parties are required to attend all scheduled court appearances unless they have been relieved or otherwise excused by order of the Court, or have otherwise been formally substituted.

Preliminary Conferences on matters that are assigned to Part 21 are returnable before, and are handled by, the Differentiated Case Management Part of the Supreme Court, located in Room A362 of the Supreme Court, located at 1 Court Street, Riverhead, New York. Preliminary Conference Orders are thereafter submitted to Part 21 for signature.

All other conferences and calendar matters are handled by, and are returnable before, this Court at IAS Part 21, Courtroom A-260, Supreme Court, 1 Court Street, Riverhead, New York.

Appearances are **required** for all scheduled conferences, and the Court requires the presence of

parties with knowledge of the facts of the matter before the Court, who are vested with authority to enter into binding dispositions on behalf of their respective clients. Failure to appear without proper cause may subject the non-appearing party to default or non-suit, as well as other sanctions, as provided for by 22 NYCRR § 202.27 and 22 NYCRR §§ 130-1.1 and 130-2.1

Calendar call commences at 9:30 a.m.. Parties are required to check in with the Senior Court Clerk in the Courtroom and indicate their readiness to proceed. If any party is also required to attend proceedings in another Part at the same time, the Senior Court Clerk and adversaries, if any, should be so advised, in order that the Court may extend appropriate latitude and courtesy to all parties.

PRETRIAL CONFERENCES

If a case is on the calendar for a Pretrial conference and it is ripe for remand to the Calendar Control Part, the parties may remand by stipulation. The stipulation, signed by all parties is to be faxed to the Calendar Department at (631) 852-3869.

TRIALS

Trials are assigned to Part 21 on a random basis by the Calendar Control Part of the Supreme Court. In Riverhead The Court will conduct trials on all days, and will continue trials in progress day to day, except that no trial proceedings shall be held on the Designated Motion Dates per month, which comprise the Court's designated calendar days.

The Court will hold a Trial Conference with counsel immediately prior to the commencement of the trial. Counsel shall provide the Court with the following items at or before the conference:

- (1) a set of marked pleadings and any amendments thereto;
- (2) all bills of particulars that have been served;
- (3) a list of witnesses for each side;
- (4) in the case of any expert witnesses, all of the information mandated by the provisions of CPLR 3101(d)(1)(i); and
- (5) a list of pre-marked exhibits.

At the Trial Conference, the Court will fully explore the matter and will also discuss possible settlement of the pending case. Counsel must be authorized to negotiate and enter into binding settlements on behalf of their respective clients

The Court requires that both proposed jury charges and verdict sheets be exchanged between and submitted by counsel at the close of testimony, to be marked as court exhibits, in order that a Charge Conference be held regarding the same..

The Court will neither postpone nor adjourn any matter scheduled and ready for trial, absent drastic, emergent and unforeseen circumstances (such as death or hospitalization which directly and immediately affects the parties or counsel). In the event that a party fails, without good cause, to proceed on a scheduled trial, appropriate sanctions may be imposed upon the defaulting party, including but not limited to costs and counsel fees in favor of the opposing party and assessment of

costs of assembling the petit jury.

The Court, in conduct of trial, employs the *New York Pattern Jury Instructions*, both for the pre-trial and post-trial instructions as well as the charges to be given to the jury. As to conduct of the trial, the Court affords considerable latitude to counsel and will not instruct counsel on how to proceed. The Court expects the usual professional decorum to be displayed during the trial (i.e.- standing when addressing the Court or the jury, stating succinctly the basis for objections, not approaching the witness on the stand, respect and courtesy toward opposing counsel and witnesses, etc.).

Summary Jury Trials

Summary Jury Trials are scheduled through the Calendar Control Part.

COMPROMISE APPLICATIONS

All applications for compromise of a claim on behalf of an infant or other incapacitated party must be served upon all parties and submitted through the Special Term Clerk's Office, Supreme Court, 1 Court Street, Riverhead, New York 11901. All such submissions must be in full compliance with 22 NYCRR § 202.67 and CPLR §§ 1206, 1207 and 1208.

Petitions must contain the name, address and attorney (if any) for any statutory or other lienors, together with the amount of their claims, if any. Medical reports must be in the form of an affirmation or affidavit, and must not be dated more than six (6) months prior to the date that the application is submitted to Special Term. Such reports must be fully detailed and indicate the nature and extent of the injuries, whether or not a full recovery has been had and the nature and extent of future limitations and/or treatment, if any.

In the Order Approving Compromise, counsel shall leave appropriate blanks for the Court to insert the computation and the depository for the infant's funds, as applicable (counsel should not take it upon themselves to designate the depository for the funds, as this is the exclusive province of the Court).

Once the submissions have been approved as complete by the Special Term Clerk's Office, the Court will schedule the appearance date. Both the applicant and the infant must be present at the compromise hearing, unless the Court grants an exception due to extreme and extenuating circumstances.

RESIDENTIAL MORTGAGE FORECLOSURE ACTIONS

In accordance with the provisions of CPLR § 3408 and 22 NYCRR § 202.12-a, a mandatory settlement conference shall be convened in all actions wherein the relief sought is the foreclosure of a mortgage encumbering residential real property consisting of a one to four family dwelling or condominium unit. In addition, the Court will convene a settlement conference at any stage of the proceeding, upon written application by any party in interest.

The scheduling of such a conference shall operate as a stay of all proceedings, to continue until the matter is resolved or released by the Court. The purpose of such conference shall be to engage in settlement discussions with due consideration given to the rights, responsibilities and obligations of all parties to the loan transaction. The Court will explore all issues including but not limited to avoiding the potential loss of the borrower's home, review and evaluation of potential amicable resolution of the matter (including loan modification, forbearance, short sale, deed in lieu of foreclosure or other workout of the indebtedness due the lender), and any other purpose deemed necessary and/or appropriate by the Court. Upon the request of any of the parties and as the interests of justice and equity dictate, or upon its own initiative, the Court may adjourn the conference, continue the matter or stay prosecution of the action.

The appearance and/or participation by the Defendant-Mortgagor shall not constitute an appearance in the action nor shall it be deemed to be a waiver, in whole or in part, of any defenses, jurisdictional or otherwise, that the Defendant-Mortgagor may have to the action. Any and all statements made, whether oral or written, and any and all information exchanged at the conference (aside from transactional documents such as the note, mortgage, HUD-1, payment history, etc.) shall be solely for the purposes of resolution and settlement, and shall not be deemed to be admissions of any party with respect to the underlying action.

At each scheduled conference parties shall appear together with counsel of record. If appearing by counsel, such attorney shall be vested with authority to negotiate and to enter into a binding settlement and to ultimately dispose of the matter. The Court may request the presence of a lender representative with actual knowledge of the particular matter in order to expedite the proceedings, whether by settlement, continued prosecution or otherwise. The failure of parties and/or counsel to appear at a scheduled conference without good cause shall be dealt with in accordance with 22 NYCRR § 130-2.1, and may subject the parties and/or counsel to appropriate remedial action, including but not limited to default, non-suit, dismissal with prejudice and monetary sanctions.

If it appears that one or more of the parties have failed to adhere to the statutory requirement to deal with each other in good faith, the Court may convene a formal hearing. If the Court determines, after such a hearing at which all parties in interest will be afforded the opportunity to be heard, that one or more of the parties have failed to proceed in good faith, the Court may elect to invoke one or more remedies that are legally and equitably appropriate to the unique circumstances of that particular matter. Such remedies may include but are not limited to default, dismissal, non-suit, judgment, vacatur of prior orders, costs, disbursements, attorney's fees, abatement of interest and other charges, actual damages and exemplary damages.

Ex Parte Communications with Chambers

Except to the limited extent permitted by these rules and by the rules set forth at 22 NYCRR 100.3, ex parte communications with the Court and any member of its staff, by telephone or otherwise, are strictly prohibited. All inquiries regarding the scheduling of conferences or return dates of motions should be directed with the Calendar Department at (631) 852-2353, as direct communications with Chambers is prohibited except for the most exigent of circumstances.

JUSTICE SPINNER'S ADJOURNMENT RULES

ADJOURNMENTS BY STIPULATION ONLY!

Calendar Department fax # (631) 852-3869

CONFERENCES ARE HELD @ 9:30 AM
INFANT COMP HEARINGS ARE HELD @ 11:00AM
INQUESTS & HEARINGS ARE HELD @ 2:30 PM
UNLESS SPECIFICALLY DIRECTED BY THE COURT.

**MOTIONS ARE SUBMIT ONLY UNLESS THERE IS A
T.R.O. OR A STAY.**

Adjournments

In accordance with the express provisions of 22 NYCRR § 208.8(e), adjournments may not extend the original return date of the motion beyond sixty days.

Stipulations must be received by not later than 3:00 p.m. of the Tuesday immediately preceding the return date. Stipulations may be forwarded either by mail or by facsimile.

In the event that an application for adjournment is denied, such denial will be communicated to counsel by Chambers sufficiently in advance of the return date.

In the unlikely event that consent of all parties is not available, the Court will entertain an oral application for adjournment on the date that the motion is returnable. The party seeking the adjournment must notify all parties of his or her intent to orally apply for the adjournment. Likewise, where consent for an adjournment is unreasonably withheld, the Court reserves unto itself the right to unilaterally impose an extensive adjournment.

PLEASE NOTE: ADJOURNMENTS TAKE A WEEK FROM THE CALENDAR DATE TO REFLECT INTO THE COURT COMPUTER SYSTEM & E-COURTS, THEREFORE ONE WEEK ADJOURNMENTS CANNOT BE GRANTED.

IF THESE RULES ARE FOLLOWED THERE IS NO NEED TO CONTACT THE COURT IN ADVANCE.

PLEASE READ THE NEXT PAGE FOR DATES:

JUSTICE SPINNER 2014 CALENDAR DATES
FOR ALL CASES, CONFERENCES, HEARINGS, INQUESTS, AND MOTIONS.

JANUARY - 8, 15, 29

FEBRUARY - 5, 26

MARCH - 5, 12, 19, 26

APRIL - 2, 9, 23, 30

MAY - 7, 14, 21

JUNE - 4, 11, 18, 25

JULY - 9, 16

AUGUST - 6, 13, 27

SEPTEMBER - 10, 17, 24

OCTOBER - 1, 8, 22, 29

NOVEMBER - 5, 12, 19

DECEMBER - 3, 10, 17

JUSTICE SPINNER 2015 CALENDAR DATES
FOR ALL CASES, CONFERENCES, HEARINGS, INQUESTS, AND MOTIONS.

JANUARY - 7, 14, 28

FEBRUARY - 4, 11, 25

MARCH - 11, 18, 25

APRIL - 8, 15, 22

MAY - 6, 13, 20

JUNE - 10, 17, 24

JULY - 8, 22, 29

AUGUST - 12, 19, 26

SEPTEMBER - 2, 16, 23

OCTOBER - 7, 21, 28

NOVEMBER - 4, 18

DECEMBER - 2, 9, 16