

# SUPREME COURT, CIVIL BRANCH NEW YORK COUNTY



## UNIFORM RULES OF THE JUDICIAL HEARING OFFICERS AND THE SPECIAL REFEREES REGARDING REFERENCES TO HEAR AND REPORT AND TO HEAR AND DETERMINE

The following rules are applicable in the all of the Parts of the Judicial Hearing Officers and the Special Referees.

**(1) Scheduling Information:** For scheduling information on a reference assigned to a Judicial Hearing Officer (“JHO”) or Special Referee, including with regard to adjourned dates, see Rule 9 of the Rules of the Special Referees’ Part (Part SRP).

**(2) E-Filing:** Cases before a JHO/Referee may be e-filed matters since many cases in this court are subject to mandatory e-filing. In e-filed cases, counsel filing memoranda or other documents for the assigned JHO/Referee in accordance with these Rules shall do so by filing same with the New York State Courts Electronic Filing System (“NYSCEF”). When counsel is e-filing a memorandum or other document intended for action by the JHO/Special Referee in an e-filed case, the filer shall select in NYSCEF the designation “Document Related to Existing Motion” and input the Sequence Number that is used to identify the reference or that of the motion if the document is being submitted on a formal motion. Working copies of e-filed documents need not be delivered to the JHO/Referee unless otherwise directed in a particular case. In all e-filed cases in which the proceedings before the JHO/Referee are transcribed, it shall be the responsibility of counsel to upload the transcript to the NYSCEF system. Counsel shall also upload exhibits to the system and shall, prior to doing so and as necessary, redact therefrom confidential information, such as social security, bank or security account numbers. See GBL 399-ddd (6); Uniform Rule 202.5 (e).

**(3) Hearings:** The subject of the hearing shall be limited precisely to the issue or issues referred as set forth in the Order of Reference. The hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318, 4320 (a))(the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) Unless otherwise directed by the JHO/Special Referee for good cause shown, hearings shall proceed from day to day until completion and counsel shall arrange their schedules and those of their witnesses accordingly.

### **(4) Prehearing Conferences:**

(a) Where the Order of Reference directs that a prehearing conference be held, the

conference shall be conducted as follows. The conference shall be limited to the issues referred. To the extent applicable, the subdivisions of Section 202.26 of the Uniform Rules for the Trial Courts shall govern the conference. The conference shall be conducted on the first appearance before the assigned JHO/Referee. Where parties are represented by counsel, at the discretion of the JHO/Referee, the parties need not appear for the conference, but must be available by telephone. At the conference, the JHO/Referee shall consider, but not be limited to, the subdivisions of Rule 202.26 (c), specifically: (1) simplification and limitation of the issues; (2) obtaining admissions of fact and of documents to avoid unnecessary proof; (3) disposition of the action, including scheduling the action for trial; (4) limitation of number of expert witnesses; (5) compliance with the Order of Reference directing specific exchange and/or filing of documents, e.g., Witness Lists, Exhibit Lists, Motions in Limine, Pre-trial Stipulations and, in Matrimonial Cases, Statements of Proposed Disposition, Updated Net Worth Statements, and, where applicable, Child Support Worksheet; (6) any other matters deemed relevant, including settlement discussions. Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations, or accompanied by a person empowered to act on behalf of the party represented, will be permitted to appear at the conference.

(b) After consultation with counsel, the JHO/Referee shall set hearing dates at the prehearing conference. The JHO/Referee shall prepare a stipulation setting forth the hearing dates; the stipulation shall be signed by counsel and so-ordered by the JHO/Referee. No adjournment of the commencement of the hearing shall be granted except for compelling reasons and upon approval of the JHO/Referee and the referring Justice.

**(5) Adjournments:** All dates set by the JHO/Special Referee for hearings, trials, the submission of memoranda, and the like are final and may not be adjourned except with the approval of the JHO/Referee for good cause shown. Applications for adjournment of such dates shall be made by submission of a written application or orally on a conference call with all counsel and the JHO/Referee. If counsel seeks an adjournment on the ground of actual engagement elsewhere, the application shall be supported by an affidavit of actual engagement in proper form in compliance with Part 125 of the Rules of the Chief Administrator. Written applications for adjournment and Part 125 affidavits shall be submitted to the JHO/Referee by filing with NYSCEF at least 24 hours prior to the appearance scheduled.

**(6) Communications Between Counsel:** Attorneys shall not transmit to the JHO/Referee copies of correspondence or e-mail messages between counsel.

**(7) Motions:**

(a) Appropriate Motion Practice: Motion practice before the JHO/Special Referee must fall within the scope of the Order of Reference. If the proposed motion does not fall within the scope

of the Order, the party shall move for judicial relief before the referring Justice. Motion practice shall not stay the hearing unless otherwise ordered by the Justice or the JHO/Special Referee.

(b) Dispositive Motions: Dispositive motions on a reference to hear and report shall generally be determined by the referring Justice and any such motion on a reference to hear and determine shall be decided by the assigned JHO/Special Referee. Dispositive motions are those that seek to dispose of all or part of the issues referred to the JHO/Special Referee that are not precluded by prior orders of the court or applicable provisions of the CPLR or court rules.

(c) Non-Dispositive Motions: Any non-dispositive motion that falls within the scope of the Order of Reference shall be determined by the assigned JHO/Special Referee. Non-dispositive motions are all motions other than those embraced by the immediately preceding paragraph, including *in limine* motions.

(d) Informal Non-Dispositive Motion Process: Unless otherwise directed, the moving party shall make an attempt to resolve contemplated non-dispositive motion practice informally through a telephone conference with the JHO/Special Referee. The moving party shall invoke this informal resolution process by written notice to the JHO/Special Referee and all parties. The moving party must also contact the JHO/Special Referee to schedule a phone conference on the application. The parties may submit short letters (no briefs, affirmations, or sworn affidavits are to be filed) prior to the conference to set forth their respective positions. In an attempt to resolve the issue, the JHO/Special Referee will read the written submissions before the phone conference and hear arguments of counsel and unrepresented parties on the conference. Depending on the nature of the dispute, the JHO/Special Referee may or may not issue a written order. The JHO/Special Referee may also determine that the dispute must be presented via formal motion and hearing. Telephone conferences will not be recorded or transcribed.

(e) Procedure for Making Motions: Except as provided in subparagraph (d) above, or as otherwise directed by the referring Justice or a JHO/Special Referee, all motions seeking relief with regard to a reference shall be made by formal motion on notice. The motion shall be filed with the NYSCEF system in an e-filed case or in the usual manner in a hard-copy case. Each such motion will be assigned a distinct Motion Sequence Number in CCIS and, in e-filed cases, in NYSCEF (i.e., a Sequence Number other than that assigned to the reference itself as explained in Par. 9 of the Rules of the Special Referees Part). All formal motions shall comply with the time limits for application, opposition, and reply as ordered by the assigned Justice or the JHO/Special Referee or as provided in the CPLR. In order to ensure orderly recording and processing, all formal motions on notice, whether regarding a reference to hear and report or one to hear and determine, and whether the motion is a dispositive one or not, shall be marked as returnable before the assigned Justice in the Motion Submission Part Courtroom (Room 130) on any business day. Where the motion is one to be determined by the JHO/Referee, the assigned Justice will forward the motion

papers to the JHO/Referee and counsel should request such referral in their papers.

**(8) Resolutions and Settlements:** If a referred issue has been resolved or if the entire case is settled, or if there are other developments in the case that affect the reference, counsel shall immediately notify the JHO/Special Referee by telephoning the phone number of the JHO or Referee's Part and leaving a message to that effect or filing a letter so stating with the Part via NYSCEF in an e-filed case. A signed stipulation of resolution or settlement shall forthwith be transmitted to the JHO or Referee's Part by filing with NYSCEF in an e-filed case or in paper format in a hard-copy case.

**(9) Post-Hearing and Post-Trial Memoranda:** The schedule for the submission of post-hearing and post-trial memoranda and the length thereof shall be set by the JHO/Referee by no later than the date of the final appearance. Unless otherwise directed, no opposition or reply memoranda shall be submitted. If such memoranda are submitted in violation of this rule, they will be ignored.

**(10) Ex Parte Communications:** The JHO/Referee will not entertain ex parte communications except when such communications would be permitted if made to a Justice of the court.

**(11) Reports and Determinations:** When a report or determination is issued by a JHO/Referee in an e-filed case, it will be filed with the Clerk of the court by posting to the NYSCEF system. In cases that are not in the e-filing system, the Special Referee Clerk will transmit reports and determinations to the County Clerk for filing. The Special Referee Clerk will make a notation of the issuance of the report or determination in CCIS, which will generate an e-mail notification to attorneys on the case who have subscribed to *e-Track* for that case. Reports and determinations will be posted in the *Supreme Court Records On-Line Library*, except in matrimonial and guardianship cases, cases under seal, or cases in which the JHO or Referee directs that such posting not be made. In these last groups of cases, the JHO/Referee will transmit a copy of the report or recommendation to counsel by e-mail or regular mail. Regarding transcripts of the testimony, see Rule 2.

September 20, 2016