

PEEKSKILL CITY COURT

2 Nelson Ave
Peekskill, New York 10566
(914) 831-6480
Fax (914) 736-1889

JUDGE REGINALD J. JOHNSON

AMENDED PART RULES: CRIMINAL TERM

(rules are effective 9/6/18 and subject to change)

Law Clerk: Linda Gironda, Esq. (914) 831-6471

Part Clerk(s): Shirley Castro (914) 831-6474
Ferdinand Rivera (914) 831-6475

Counsel are expected to familiarize themselves with Part 200 of the Uniform Rules For Courts Exercising Criminal Jurisdiction and to comply therewith.

I. General

Counsel who appear must be fully familiar with the case and able to discuss the case in detail, unless the case is on for arraignment. Counsel who appear must have the authority to enter into any agreement, either substantive or procedural, on behalf of their clients.

Counsel must be on time for all scheduled appearances and must bring sufficient material to allow for meaningful discussion of unresolved issues to each Court appearance.

At every arraignment, Counsel will be required to complete and submit a Notice of Appearance on behalf of their clients.

When Court is in session, Counsel will refrain from speaking and/or moving around the Courtroom until their case is called.

II. Calendar Call

The Court's calendar will be called at 9:30 a.m. on Monday morning every month and at 9:30 a.m. on the 2nd, 3rd, and 5th Thursdays during months that have five (5) Thursdays, unless otherwise directed by the Court. Counsel and pro-se defendants are expected to appear for all Court appearances on time. If Counsel or a party is unable to appear on time due to unforeseen circumstances (medical or family emergency, inclement weather, for example), he or she should advise the Part Clerk by telephone as soon as possible.

The unexplained and/or unacceptable failure of Counsel and/or a defendant to appear for a Calendar Call may result in the issuance of an arrest warrant or bench warrant.

All cases will be called in this order:

1. Adjournments
2. Pleas
3. Arraignments
4. All other matters

III. Adjournments

All requests for adjournments must be made in writing and faxed to (914) 736-1889. Requests shall include a valid reason for the adjournment. Counsel who are actually engaged in trial should send an affirmation of actual engagement containing the name of the case, the trial judge, the Court and part, and an estimate of when the trial will conclude.

If an adjournment is granted, all parties will be notified by the Part Clerk. **Please note: Requests for an adjournment of a sentence must be made at least 5 business days before the scheduled date of sentence.**

IV. Arraignment

As stated above, Counsel will be required to complete and submit a Notice of Appearance to the Court. Counsel is expected to be on time for the call of the arraignment calendar. As a courtesy, the Court has and will continue to permit Counsel to request a second call in order to speak with a defendant for the first time, particularly where Counsel has just been assigned the case. However, the Court may not grant subsequent requests for a second call of the calendar particularly in cases where Counsel had the ability to meet with their clients prior to the court appearance.

V. Bail Applications

The Court will hear all bail applications at the time of the defendant's arraignment provided the Court has the defendant's criminal history. If Counsel reserves on bail, the Court will entertain a bail application at any subsequent time the case is called for an appearance. After bail is set, any

party seeking an upward or downward modification of the bail amount must set forth a clear change in circumstances since the last bail hearing.

VI. Plea Deal Offers

To the extent possible, the People and defense Counsel should have discussed any possible plea deal prior to the call of the calendar. The Court will grant a reasonable adjournment for the People and defense Counsel to discuss a plea deal offer.

If a plea deal is offered by the People and accepted by the Defendant (the Court will advise the parties of its approval or disapproval of the offer at that time), the case will be adjourned to the next scheduled date on a Thursday to take the plea. In the interim, the People and Defense Counsel will be expected to complete all applicable documentation for review and approval by the Court (e.g., the Misdemeanor Conviction Waiver of Rights Form, Conditional Discharge Order Form, Orders of Protection, Supplemental DWI Waiver Form, for example) prior to the next schedule appearance. Counsel should contact the Part Clerk if Orders of Protection are required. **The defendant will sign all pertinent documentation in the presence of the Court.**

In cases where an accepted plea deal does not involve probation, the Court will take the plea on the scheduled plea date and then, if all parties are ready, proceed to sentencing at that time.

In cases where an accepted plea deal includes probation, the Court will take the plea at the next scheduled plea date, order a PSR, and then schedule a date for sentencing.

NOTE: The Court will entertain all pleas to violations on the same day provided that the parties are ready to proceed to sentencing immediately.

VII. DWI Arraignments

As previously stated, Counsel will be required to submit a Notice of Appearance. If the defendant is charged with a violation of Vehicle and Traffic Law §§1192.2, 1192.2(a), 1192.3, or 1192.4(a), the People will be required to submit a certified BAC test indicating that the defendant's blood alcohol content was in excess of the legal limit.

Upon receipt of a certified BAC from the People, the Court will do the following:

1. immediately suspend the driving license or privilege to drive of the defendant on the record;
2. require defendant to execute a DMV Suspension Pending Prosecution form as a condition of release on recognizance;
3. order the defendant to surrender his or her driver's license to the Court as a condition of release on recognizance; and
4. order the defendant to attend TASC unless otherwise ordered by the Court.

Fines/Penalties

As most DWI pleas involve a fine and surcharge, all defendants will be required to pay all fines and surcharges on the day of sentencing, unless otherwise directed by the Court.

VIII. Motions

All motions are on submission only unless otherwise directed by the Court. Oral argument is not required but may be requested by noting “Oral Argument Requested” above or below the docket number on the Notice of Motion. If the Court, in its discretion, permits such argument, the movant or movant’s attorney will be so advised and will be required to notify all parties.

Reply affidavits are permitted. If new issues are raised in the opposition papers or if there has been a change in the law while the motion is pending, counsel are to advise the Court, in writing, of the request to submit additional affidavits or memoranda. Other papers, including letters, which are sent after the submission of the motion, will not be considered.

Omnibus Motions

Pursuant to CPL §255.20, the defendant is required to serve and file an Omnibus Motion no later than 45 days from the date of defendant’s arraignment, unless other statutory conditions apply. However, in light of the

open file policy of the Westchester County District Attorney's Office, the Court will suspend the timing requirements of CPL §255.20 pending open file discovery. Notwithstanding same, the People and defense Counsel are advised to conduct open file discovery with due diligence and the Court will make inquiries to ensure that open file discovery is being conducted expeditiously. If the Court determines that open file discovery is being delayed or otherwise not conducted with due diligence or not in good faith, the Court will immediately order a motion schedule.

Omnibus motions shall not contain a motion to compel discovery and inspection or to compel a bill of particulars unless a demand for same was properly and timely served upon the People.

In the event a motion has been withdrawn, counsel or the movant is to **immediately** advise the Court by faxing to the Court a letter of withdrawal.

Pro se motions will be rejected if the defendant is represented by counsel.

IX. Trials

A. Trial Dates

Cases are subjected to advancement for hearing and/or trial at any time after the case is scheduled for trial. Parties shall maintain their readiness for trial. Parties must be knowledgeable of their witnesses' availability at all times after the trial date has been set by the Court.

B. Subpoenas

All counsel are reminded that they may sign trial subpoenas duces tecum and subpoenas ad testificandum as officers of the Court pursuant to CPL §610.20, except when subpoenas are directed to a state or local government agency. In such cases, they must be “So Ordered” by the Court pursuant to CPLR §§2306 and 2307.

“So Ordered” subpoenas are not available for hearings and/or trials where a subpoena may be issued by the parties.

C. Pre-Trial Requirements

Scheduled Days/Times:

All pre-trial hearings (e.g., felony hearings and suppression hearings) and non-jury trials will be held on Wednesday afternoons at 11:00 a.m. unless otherwise directed by the Court.

Rosario:

At hearings and trial, the People shall provide the Court with Rosario material for each witness separately. In addition, the People shall provide a **written list** of all Rosario material provided which shall be marked into evidence as a Court exhibit.

Witnesses:

The People are to provide a list of witnesses prior to jury selection.

Exhibits:

To the extent practicable, exhibits are to be pre-marked.

Copies of the documentary exhibits intended to be offered or utilized are to be provided to the Court.

Copies of any transcripts to be utilized are to be provided to the Court and counsel.

Request to Charge:

The charges will be taken from the Criminal Jury Instructions (CJI). To the extent possible, a written list of requested charges is to be submitted prior to opening statements. Immediately upon the end of testimony in the case, a complete written list is to be submitted. A pre-charge conference will then be held upon disputed requests to charges.

Unless counsel seeks a deviation from the CJI charges or additions to the CJI charges, only CJI 2nd numbers need be submitted. Where deviations or additions are requested, the full text of such requests must be submitted (in writing on a CD in Word Perfect 8.0 format or in Word format), together with any supporting legal precedent(s). Additionally, to the extent that a requested CJI charge requires a factual statement or a statement of contentions, the text of the statement must be submitted (in writing and on computer disk in Word Perfect 8.0 format or Word format).

Motions in Limine:

Any motions for the Court's consideration *in limine* must be delivered to the Part Clerk and served upon adversary counsel no later than five (5) business days prior to the scheduled date of the trial, except as to issues that cannot be reasonably anticipated prior to trial. Unless otherwise directed by the Court, motions *in limine* and opposition papers to such motions shall not

exceed ten (10) pages in length. If more than one motion *in limine* is completed by a party, each such motion shall be separately bound and is subject to a separate page limit.

Sentences:

All pre-sentence memoranda, letters regarding sentence and any other material either party wants the Court to consider must be received by chambers no less than two business days prior to the date of sentence.

All sentencing proceedings will be scheduled for Thursday, unless otherwise directed by the Court.

Pre-sentence reports will be available to counsel prior to sentencing. Counsel should contact the Part Clerk to view the presentence report.

Requests for adjournments of a sentence must be made at least five (5) business days before the scheduled date of sentence.

If a sentence requires the payment of a fine and surcharge, all defendants will be required to pay all fines and surcharges on the day of sentencing, unless otherwise directed by the Court. The Court may convert a surcharge to a civil judgment upon proper application.