

COURT RULES OF THE HONORABLE RICHARD MOTT, J.S.C.
11/2/18 Revised Rules (Supersedes 3/3/15 Revision)

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1.0 Applicability Of These Rules

These Local Rules apply to **all** civil actions. There are additional rules for matrimonial (see, Rule 15.0, post) and foreclosure cases (see, Rule 16.0 post). These rules seek to promote the efficient/impartial administration of justice and to be in harmony with controlling statutes and rules.

For the purposes of these rules only, filing requires two steps: filing written documents with the Court Clerk AND contemporaneously emailing to Chambers a copy of the document in pdf format.

2.0 Communications

All communications with chambers must be by email. Every document filed with the Court Clerk including letters shall be contemporaneously sent by email to Chambers in pdf format. The email must have in its subject line the name of the case and its index number and show that it was also sent to all adversaries by email. **Documents that do not show contemporaneous service upon all adversaries will not be considered.** Any conferences must be requested by email. The request must provide available dates convenient to all counsel and state the subject matter of the conference.

2.1 Accommodations

Counsel must immediately inform Chambers whenever a party/witness requires the services of an interpreter and of the party's/witness's native language/dialect.

Counsel must immediately inform Chambers if a party/witness has any disability (hearing, sight, etc.) and of the appropriate accommodation requested.

3.0 Motions at a Glance

Pre-Motion Conference: Required for all discovery and for all non-dispositive motions.

Motions By Email: Whenever any request for relief is made, in addition to the parties' obligations under law and the parties' filing the original document with the Clerk, a copy of the request/motion must be emailed to Chambers in pdf format, never by FAX.

Oral Argument: May be requested. Not generally held unless requested by the Court.

Article 78 motion terms do not require personal appearance on the return date.

Summary Judgment Motions require submission of an additional, separate Statement of Material Facts.

4.0 Notice of Appearance

Within one week of written notification of assignment of Justice Mott, or written notification of a Preliminary Conference, whichever first occurs, each attorney must file, and contemporaneously email to Chambers, a Notice of Appearance, which includes the attorney's name¹, firm affiliation, mailing address, telephone number, FAX number, email address, and acknowledgment that counsel is familiar with these Rules.

4.1 Consent to Change Attorneys

If, at any time, counsel for any party changes the incoming attorney must provide a copy of the fully executed consent to change attorney form to all parties and to Chambers by email, within three (3) business days of said change.

5.0 Preliminary Conferences

Preliminary Conferences are scheduled pursuant to 22 N.Y.C.R.R. §202.12(a) and for matrimonial cases pursuant to 22 N.Y.C.R.R. §202.16(f).

The Court uses pre-trial scheduling orders in all cases. Once the case is assigned, an email will be sent scheduling the preliminary conference and providing a form for a Preliminary Conference Stipulation and Order. In cases in which the stipulation is filed at least one week before the conference date, the conference will not be held. If the form is not filed one week before the scheduled conference date, the conference will be held. **Whether or not the conference is held, each party must file at least one week before the conference date a short (no longer than 2 pages) case summary including any relevant legal authorities and any issues to be discussed at the conference, including anticipated discovery problems.** See, 22 N.Y.C.R.R. § 202.16(f).

IF THE CASE SUMMARY IS NOT TIMELY RECEIVED, THE COURT MAY UNILATERALLY RESCHEDULE THE CONFERENCE AND/OR TAKE SUCH OTHER ACTIONS AS MAY BE APPROPRIATE.

Every preliminary conference order will provide a date and time for the parties to appear at a compliance conference. The compliance conference will ensure that discovery is proceeding as scheduled. If a discovery dispute occurs prior to a scheduled compliance conference, any request to extend discovery dates must be made prior to the expiration date sought to be extended.

When counsel submit, for the Court's approval, a proposed Preliminary Conference Stipulation and Order in lieu of conducting a scheduling conference, all deadlines set forth therein are **firm** dates and must be within six (6) months of the date of the Stipulation. No request for an extension of said date(s) will be granted, absent exigent circumstances, unless made prior to the expiration of the date(s) sought to be extended.

6.0 Submission of Motion Papers, Orders and Judgments

Motions are returnable any weekday. No appearances are required on the return date unless directed by the Court. All original papers including opposition and reply papers must be timely served on all counsel and filed with the Court Clerk. **All papers filed with the Court Clerk must contemporaneously be sent by email to Chambers and counsel in pdf format by 4:00 P.M. on the due date.** A courtesy copy of any motion papers should **never** be sent to Chambers. Any papers filed or served late may, in the Court's discretion, not be considered.

¹The name of the attorney provided must be the attorney who is familiar with and principally responsible for the case. If that attorney changes, counsel must immediately notify Chambers.

ALL MOTION PAPERS, INCLUDING AFFIDAVITS, ETC., MUST BE BOUND, OTHERWISE THEY WILL BE REJECTED.

All affirmations, affidavits, memoranda of law and any other submissions must contain numbered pages. All affirmations and affidavits must have numbered paragraphs. All submissions must be double spaced, use at least twelve (12) font and contain one-inch margins.

All exhibits must be **attached** to motions and **tabbed**.

Sur-Reply papers may not be filed absent advance Court authorization. No papers filed subsequent to a motion return date will be considered without prior Court approval.

Memoranda of Law, Affirmations/Affidavits may not exceed ten (10) pages, without prior Court authorization.

7.0 Adjournment Requests

Counsel who wish to **adjourn the return date of a motion** must confer to determine whether the adjournment is on consent. If so, the party requesting the adjournment must file a letter at least two business days before the return date stating the new return date for the motion. In no case may a motion's return date be adjourned for more than two (2) weeks without leave of Court. If agreement is not reached, requesting counsel must file a request for adjournment of the motion return date at least two (2) business days before the return date.

If the parties agree to **adjourn a conference**, the party requesting the adjournment must file one week before the conference a letter informing Chambers of the adjournment and requesting a new date. This request should state the dates when any counsel is unavailable within the next sixty (60) days. If agreement is not reached, counsel must file a request for adjournment at least one week before the conference. The request must state the reason for the adjournment. Chambers will notify the parties of the new date.

8.0 Discovery and Non-Dispositive Motions

No discovery motion or non-dispositive motion may be filed unless the parties immediately advise the court as to the issues in dispute, (1) counsel personally confer to resolve the issue [see, 22 N.Y.C.R.R. § 202.7(c)], (2) each party has emailed a short letter to the Court not exceeding two (2) pages, with legal authority for its position, (3) a conference with the court has been held in an attempt to resolve the dispute **and** (4) the Court authorizes the filing of the motion.

8.1 Expert Disclosure

Expert disclosure pursuant to CPLR § 3101(d)(1) must be served in accordance with the Third District Expert Disclosure Rule, to wit: on or before the filing of the Note of Issue for the party bearing the burden of proof on that issue. The opposing party shall serve its expert response pursuant to CPLR 3101(d) within 60 days after the filing of the Note of Issue. Amended or supplemental expert disclosure is not permitted absent leave of Court. The statutory stay [CPLR § 3214(b)] upon service of a dispositive motion under CPLR § 3211 does **not** apply to the service of these expert responses. A party who fails to comply with this rule is precluded from offering the testimony and opinions of the expert for whom a timely response has not been given, unless the Court directs otherwise.

8.2 Expert Files

Expert witnesses at trial must bring their entire file and all documents they used to formulate an opinion. If they fail to do so, they may be limited or precluded from testifying at trial as to that issue, or at all.

9.0 Summary Judgment Motions

A dispositive motion including a motion for Summary Judgment or a motion to dismiss may be made at any time, provided that prior thereto a preliminary conference has been conducted, except if a party is in default in appearance/pleading.

Every motion for Summary Judgment must contain a separate Statement of Material Facts. Such statement must set forth, in separate numbered paragraphs, each material fact which the moving party contends is undisputed. Each material fact stated must cite the specific language in the record which clearly establishes the asserted material fact. Material facts may not be established by vague or wholesale references to the record. The record, for Summary Judgment motion purposes, includes pleadings, depositions, answers to interrogatories, admissions and affidavits. It does **not** include attorney affidavits or affirmations. **Failure of the movant to submit an accurate and complete record or Statement of Material Facts will result in denial of the motion.**

The opposing party must file a response to the Statement of Material Facts. This response must mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial must state a specific citation to the record where the factual issue arises. The non-movant's response may also set forth in separately numbered paragraphs any additional material facts that the non-movant contends are in dispute. The Court will deem admitted any properly supported facts in the Statement of Material Facts that the opposing party does not specifically controvert.

All post-note of issue summary judgment motions must be filed no later than forty-five (45) days after the filing date of the note of issue. The motion must be made returnable between twenty-one (21) and twenty-eight (28) days after the motion has been served and filed. Motion response papers must be served and filed at least fourteen (14) days prior to the motion return date. Reply papers, not exceeding three (3) pages, must be served and filed at least five (5) days prior to the motion return date.

10.0 Orders to Show Cause

An Order to Show Cause must be presented personally only by an attorney fully familiar with the case. If the case is unassigned under IAS, presentment must be to the Part I Judge. If the Order to Show Cause contains a request for a preliminary injunction, a temporary restraining order, or any other form of interim relief, 22 N.Y.C.R.R. §202.7(f) must be followed to give adequate notice to the opposing party.

11.0 Motions *In Limine*

Such applications must be made as early as possible, but in no event less than seven (7) days before trial absent leave of Court.

12.0 Note of Issue

If a note of issue is not timely served and filed pursuant to a scheduling order and no party has requested an extension of that order, the Court will mark the case ready for trial, direct that a note of issue be filed and schedule a final conference. No case will be scheduled for trial unless a note of issue has been filed.

13.0 Conference to Set Trial Date

The scheduling order will provide that a conference be held subsequent to the filing of the note of issue at which a trial date will be set. Counsel must contact their client(s), witnesses and experts before this conference to determine their availability for trial.

13.1 Settlement Conference (Part 1)

Approximately one month prior to the trial date at the scheduled settlement conference, this Court, when acting as Part 1, will explore settlement, including referrals to a referee or ADR and limitation of issues for trial. The trial attorneys must be present and have submitted, at least five days prior thereto, a settlement conference sheet, including a brief case summary, the issues and amount in controversy, possible *in limine* issues, the most recent demand/offer and the expected length of the trial including the number of witnesses.

The trial attorneys must be fully conversant with the case, have pertinent portions of the file with them and have authority to settle. Client(s) and a representative of the insurance carrier may be requested to attend. All counsel must confer prior to the date of the conference to discuss settlement, the resolution of any trial issues, and whether the parties will agree to alternate dispute resolution. Counsel are encouraged to videotape any witness or expert who may be unavailable for the scheduled trial. **Trial adjournment requests will not be granted absent unforeseen, extraordinary circumstances and considering the case Standards and Goals date.**

14.0 Proposed Orders and Judgments

Orders or judgments must be presented for signature within ten (10) days. Unless otherwise directed by the Court, the order must first be submitted for approval of its form and content to all counsel. The submitted order/judgment must be accompanied by a letter stating that all counsel have approved it as to form and content. The notice of settlement procedure provided in 22 N.Y.C.R.R. §202.48(c) may not be used unless directed by the Court.

15.0 Special Instructions In Matrimonial Cases

Notwithstanding this section, all of the other Court Rules apply in all respects to matrimonial actions.

No later than ten (10) days before a preliminary conference in a matrimonial action, each party must file copies **in addition to the documents otherwise required in a preliminary conference** (see Rule 5.0, ante) the following documents:

- (A) retainer agreement,
- (B) net worth statement,
- (C) most recent pay stub and income tax return, and
- (D) all other items required to be filed by 22 NYCRR 202.16(f).

IF THE CASE SUMMARY IS NOT TIMELY RECEIVED, THE COURT MAY UNILATERALLY RESCHEDULE THE CONFERENCE AND/OR TAKE SUCH OTHER ACTIONS AS MAY BE APPROPRIATE.

The parties **must** attend the preliminary conference and their attorneys must be prepared to discuss the topics listed in 22 NYCRR §202.16(f)(2).

The parties must attend the settlement conference (Part 1).

16.0 Special Instructions For Owner Occupied Foreclosure Matters

Plaintiff is directed forthwith to advise the Court of all addresses Plaintiff has ever used to correspond with Defendants.

Upon scheduling of a preliminary conference, Plaintiff must provide Chambers with the payment history, an itemization of the amounts required to reinstate and pay off the loan and copies of the mortgage and

note. If Plaintiff is an assignee of the note and/or mortgage, Plaintiff must provide a copy of all assignments.

NO LATER THAN ONE WEEK PRIOR TO THE FORECLOSURE PRELIMINARY CONFERENCE, PLAINTIFF MUST PROVIDE CHAMBERS WITH THE NAME OF THE ATTORNEY WHO WILL APPEAR ON ITS BEHALF AT THE CONFERENCE AND CERTIFY THAT SUCH ATTORNEY HAS REVIEWED ALL RELEVANT DOCUMENTS, IS ENTIRELY FAMILIAR WITH THE CASE AND HAS UNFETTERED AUTHORITY TO ENTER INTO APPROPRIATE STIPULATIONS, ETC.

At the preliminary conference Defendant must provide the Court with information concerning his/her current income, including recent tax returns or pay stubs, expenses, property taxes and previously submitted applications for loss mitigation; benefits information; rental agreements or proof of rental income and any other relevant documentation indicating the amount and sources of Defendant's income.

At the conference the parties must be prepared to discuss a resolution of the matter.

Whenever Defendant submits documents to Plaintiff in connection with any proposed resolution of the case, whether by loan modification, deed in lieu of foreclosure, or any other matter requiring Plaintiff's approval, Defendant must submit such documents by certified mail, return receipt requested or as tracked mail evidencing delivery, and must retain copies of all documents submitted, proof of mailing, including the return receipt or tracking receipt.

16.1 Surplus Monies

Plaintiffs in all foreclosure actions are required to (1) recite in the Proposed Order of Reference that "the Referee is directed to complete and secure all signatures on the 'Foreclosure Action Surplus Form' after the sale, file same with the County Clerk's Office, and provide a copy to Chambers within 30 days of the sale" and (2) recite the contents of such Form and its filing and service in the Proposed Final Order/Judgment confirming the sale.

16.2 Special Instructions in Consumer Credit Cases

Plaintiff is directed to provide Chambers at least five days prior to the Preliminary Conference with (1) the payment history, (2) a copy of the applicable cardholder or other agreement, and (3) copies of any assignments relied upon by Plaintiff.

17.0 Settlement

Whenever a matter is settled, the parties must immediately notify Chambers of the settlement. Filing of a Stipulation of Discontinuance will NOT be deemed compliance with this Rule.

If counsel seeks to withdraw a motion in whole or in part, she/he must immediately advise Chambers of the withdrawal.

18.0 Withdrawal as Counsel for a Party

An attorney seeking to withdraw as counsel for any party must do so by order to show cause whenever the approval of such application may result in a party being self-represented. See, Rule 4.1, ante and CPLR § 321.

19.0 Bankruptcy

If the filing of bankruptcy is claimed to impose a stay on any aspect of a pending matter, the party so asserting must immediately notify Chambers and counsel of the claim. The adversary must immediately notify Chambers whether she/he disputes the stay.

20.0 Trial Rules and Special Directives

At Least Four Days Before the Commencement of Trial Counsel must:

A. Provide Chambers with marked pleadings, as required by CPLR §4012 (including bills of particulars), an exhibit list, a copy of any statutory provisions in effect at the time the cause of action arose upon which any party relies AND all expert reports relevant to the issues. Copies of discovery responses must be available;

B. Notify Chambers of all anticipated issues of law and fact, and email a **trial brief** containing citations to all statutory and common law authorities upon which counsel relies. **Trial briefs, which are required in all cases**, must not exceed ten (10) pages, including a statement of facts, absent leave of Court;

C. All exhibits must be pre-marked. Counsel must confer and determine whether there are any stipulations concerning factual issues and the admission of evidence. Counsel must file a stipulation of undisputed facts and the admissibility of documents;

D. Provide Chambers with a copy of all prior decisions and orders which may be relevant to the trial;

E. Advise Chambers as to the number of witnesses to be called, the estimated length of the trial and any anticipated scheduling issues;

F. Provide Chambers with a list of all PJI requests, excluding the text. Non-PJI requests must be typed on separate sheets with appropriate sources and/or citations.

21.0 Jury Selection

The Court, in its discretion, may preside over a portion of or the entire jury selection process. Prior to commencement of *voir dire*, counsel will have access to juror questionnaires. Counsel must confine *voir dire* to the qualifications of the jurors and time limits will be imposed. Alternate jurors will be undesignated until immediately prior to the commencement of jury deliberations. Once the jury has been selected no one is to communicate with any juror verbally or non-verbally.

22.0 Miscellaneous Trial Rules

Counsel should stand when making an objection. After objecting, add only the words necessary to state a generic ground, e.g. "Hearsay" or "Bolstering." For further argument, request to approach the bench.

Counsel's remarks must be directed exclusively to the Court. Any colloquy between/among counsel must be conducted outside the presence of the jury.

Counsel must collaborate in the preparation of a verdict sheet. If not possible, each must submit separate proposed verdict sheets pursuant to the suggested forms in the PJI. Each question must be on a separate page and contain signature lines for concurring jurors and any dissenting juror.

23.0 Non-Jury Trials

In non-jury trials each party must file post-trial proposed findings of fact and conclusions of law, unless waived pursuant to CPLR § 4213.