



SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788
(631) 234-5588

The Workings of the Supreme Court System in Suffolk County

PRESENTERS

Hon. Andrew G. Tarantino Jr.
Michael Scardino, Chief Clerk
Thomas Clavin, Court Clerk Specialist
Fred Crockett, Court Clerk Specialist
Alan Costell, Esq., Court Attorney Referee
Diane K. Farrell, Esq., Principal Law Clerk

Program Coordinators: Hon. Andrew G. Tarantino, Jr., AJSC

April 25, 2016
SCBA Center - Hauppauge, NY

SUPREME COURT-SUFFOLK COUNTY
TRIAL TERM-MATRIMONIAL DIVISION
400 CARLETON AVENUE
P.O. BOX 9070
CENTRAL ISLIP, NEW YORK 11722-9070
(631) 853-5468

**CONTESTED (SETTLED) AND
UNCONTESTED REQUIREMENTS
FOR SUBMISSION OR INQUEST**

NAME _____

INDEX NO: _____

IMPORTANT: PAPERS WILL NOT BE ACCEPTED BY THE MATRIMONIAL CLERK UNLESS ALL FEES ARE PAID IN PERSON: SUPREME COURT CLERK'S OFFICE, 400 CARLETON AVENUE, CENTRAL ISLIP, N.Y. IN PERSON OR BY MAIL: SUFFOLK COUNTY CLERK'S OFFICE, 310 CENTER DR., RIVERHEAD, N.Y. 11901 IF FEES ARE PAID BY MAIL, SEND CHECK OR MONEY ORDER WITH SELF-ADDRESSED STAMPED ENVELOPE TO THE ATTENTION OF: CIVIL COURT ACTIONS. CHECKS ARE TO BE MADE PAYABLE TO THE SUFFOLK COUNTY CLERK.

1. Index Number must be affixed on all papers submitted. (Fee: \$210.00)
2. Request for Judicial Intervention (R.J.I.) (filing fee \$95.00) together with affidavit of service {22NYCRR 202.6}. (Fee: \$95.00). Submit form in duplicate
3. Note of Issue (filing fee \$30.00) together with affidavit of service {22NYCRR 202.21, CPLR 3402}.
4. SUMMONS with statutory notation and proof of filing of the original summons with the Suffolk County Clerk.
5. AFFIDAVIT OF SERVICE OF SUMMONS, containing, amongst other things, a description as to defendants' identity {DRL 232} and military status of defaulting party {22NYCRR 202.21} with proof of filing with the County Clerk. If the defendant admits to service, defendant's affidavit must state the date that the Summons was served upon the defendant. If service was made pursuant to an Order of Publication, submit copy of order with affidavit of service, affidavit of publication and proof of filing both with the Suffolk County Clerk.
6. ORIGINAL, VERIFIED COMPLAINT, or a photocopy, with proof of filing original verified complaint with the Suffolk County Clerk. Submit proof of service of Verified Complaint and Notice of Appearance and/or Verified Answer if defendant has appeared
7. Original Affirmation of Regularity, Affidavit of Regularity for self represented litigants
8. PLAINTIFF'S AFFIDAVIT, {22NYCRR 202.21(i)}. Establish residency {DRL 230} and the evidentiary facts to warrant the relief sought.
9. If custody is to be determined in the absence of a Family Court Order, stipulation or agreement, comply with Section 76-h of the DRL.
10. Where there is a request to continue a Family Court Order, you must submit a copy of same.
11. Sworn statement pursuant to Section 253 of the DRL, with proof of service. This is in addition to the statement appearing in the complaint. (If the grounds are based on a separation agreement, and the defendant has answered, then we need a sworn statement pursuant to Section 253 from each party).
12. Original Certificate of Dissolution of Marriage (Form D.O.H. 2168).

3 NOTICES:
DRL 232
AUTOMATIC
ORDERS
MAINTENANCE
GUIDELINES

13. (a) If cause of action is based on a Separation Agreement, submit one of the following:
 ---Copy of the executed Agreement with proof of filing of the original with the County Clerk
 OR
 ---Copy of Memorandum of the Agreement with proof of filing of the original memorandum with the County Clerk, and submit the original Separation Agreement.
 NOTE: Receipt for filing fee is not considered proof of filing.
- (b) If cause is based on other grounds, submit original stipulation of settlement, if any. Filing fee: \$35.00
- {c} Stipulation of Settlement/Separation Agreement must comply with DRL 255 (Health insurance for parties after Dissolution of Marriage)
14. In order to comply with the CHILD SUPPORT STANDARDS ACT, effective 9/15/89, we need:
- (a) Itemization Sheet for Computation of Income must be completed and verified {DRL Sec. 240}.
 Note: Income of each party may be stated in the Stipulation of Settlement/Separation Agreement.
- (b) Any agreement or stipulation executed on or after 9/15/89 must contain a provision that the parties have been advised of the CHILD SUPPORT STANDARDS ACT.
- {c} Effective April 2, 1992, agreements or stipulations must contain a statement that the BASIC SUPPORT OBLIGATION provided by CSSA would presumptively result in the correct amount of child support to be awarded, the amount agreed to, and if there is a difference, the reason(s) for the difference.
- (d) Affidavit/Affirmation that the unrepresented party has been served with a copy of the Child Support Standards Chart promulgated by the Commissioner of Social Services.
15. When there are unemancipated children who are not in receipt of public assistance, an affirmation or affidavit from the custodial parent must be submitted containing one of the following {DRL Sec. 236 B(7)(b), effective 6/15/94}:
- (a) A request for child support services through the Support Collection Unit which would authorize collection of the support obligation by the immediate issuance of an income execution for support enforcement; OR
- (b) A statement that he or she has applied for such services through the Support Collection Unit; OR
- {c} A statement that he or she is in receipt of such services through the Support Collection Unit; OR
- (d) A statement that he or she is aware of, but declines, such services through the Support Collection Unit at this time. Where the custodial parent declines Support Collection Unit services, a statement in addition to same must be made that he or she understands that an income deduction order may be issued pursuant to CPLR Sec. 5242^c without other child support enforcement services and that payment of an administrative fee may be required.
- NOTE: If (a) is selected, the following information must be included or attached thereto: Name, Address, DOB, SS# of both parties; Date & Place of marriage; name & DOB of child(ren); Name & Address of employer of income payor.
- If (a) or (b) is selected, language as set forth in DRL Sec. (240(c)(5)(b) must be included on the face of the judgment.
16. Proposed FINDINGS OF FACT and CONCLUSIONS OF LAW, and a separate Proposed JUDGMENT {22NYCRR 202.50, Appendix B}. Both must be on separate "BLUE BACK."
17. Proof of service of Proposed Judgment upon opposing party by regular mail or personal service {22NYCRR 202.48}. If the party is represented by an attorney, serve the attorney.
18. Qualified Medical Child Support Order (DRL 240{1}) Effective 1-1-98) Submit proof of service and an affidavit describing the available health insurance. If there is no health insurance available through an employer submit an affidavit to that effect.

19. Notice of Settlement: Settle Judgment, Qualified Medical Child Support Order, and any other Orders by picking a date at least ten (10) days from the date that the opposing party will be served by mail with the proposed Judgment or any other proposed Orders; or at least five (5) days from the date that the opposing party will be served by personal service. Submit proof of service of Notice of Settlement.
20. Form UCS 111, completed and signed.
21. Certification pursuant to Section 130-1.1-a of the Rules of the Chief Administrator of the Courts.
- 21(a). Registry check information sheet for custody/visitation requests

IN THE ABSENCE OF A STIPULATION, FAMILY COURT ORDER OR SEPARATION AGREEMENT, AND THERE ARE UNEMANCIPATED CHILDREN OF THE MARRIAGE, AND/OR A REQUEST FOR MAINTENANCE, COUNSEL FEES AND/OR EQUITABLE DISTRIBUTION, THEN COMPLY WITH THE FOLLOWING (22, 23, AND 24). THE CASE WILL THEN BE PLACED ON THE INQUEST CALENDAR. (ITEMS 12 THROUGH 20 NEED NOT BE SUBMITTED AT THIS TIME). NUMBERS 21, 21a, 22, 23, and 24 ARE TO BE SUBMITTED WITH ALL OTHER NECESSARY PAPERS.

22. Statement of Net Worth with retainer agreement {DRL 236, 22NYCRR 202.16}
23. Signed Statement of Proposed Disposition where Net Worth Statement is required.
24. Affirmation of professional services rendered when applying for counsel fees.

NOTE: YOU WILL BE NOTIFIED BY MAIL, OF THE DATE TO APPEAR FOR INQUEST AND THE ASSIGNED JUSTICE. SERVE NOTICE OF THE APPEARANCE DATE AND ASSIGNED JUSTICE UPON THE DEFAULTING PARTY'S ATTORNEY OR UPON THE DEFAULTING PARTY IF NOT REPRESENTED BY AN ATTORNEY. SUBMIT PROOF OF SERVICE TO THE ASSIGNED JUSTICE PRIOR TO OR ON THE DATE OF INQUEST

CLERK _____ DATE _____
 TELEPHONE NUMBER _____

RETURN THIS CHECKLIST WITH CORRECTIONS TO THE CLERK WHOSE NAME APPEARS ABOVE

SUPREME COURT
TRIAL TERM-MATRIMONIAL DIVISION
400 CARLETON AVENUE
P.O. BOX 9070
CENTRAL ISLIP, N.Y. 11722

**CONTESTED MATRIMONIAL FILING REQUIREMENTS FOR:
PRELIMINARY CONFERENCE AND NOTE OF ISSUE**

IMPORTANT: PAPERS WILL NOT BE ACCEPTED FOR FILING BY THE MATRIMONIAL CLERK'S OFFICE UNLESS ALL FEES ARE PAID OR A WAIVER OF FEES WAS ORDERED BY THE COURT. (PAYMENT MAY BE IN THE FORM OF CASH, CHECK OR MONEY ORDER. **FEES ARE PAYABLE TO THE SUFFOLK COUNTY CLERK**). FEES MAY BE PAID BY MAIL OR IN PERSON AT THE SUFFOLK COUNTY CLERK'S OFFICE, 310 CENTER DRIVE RIVERHEAD, NEW YORK, 11901 OR THE SUPREME COURT CLERK'S OFFICE, 400 CARLETON AVENUE, CENTRAL ISLIP, NEW YORK, 11722.

RE: _____ INDEX NO.: _____

PRELIMINARY CONFERENCE :

- _____ 1• Index Number must be affixed on all papers. (Fee is \$210.00, payable to the SUFFOLK COUNTY CLERK).
- _____ 2• Request for Judicial Intervention (R.J.I. form rev. Jan/2000), marked PAID, with affidavit of service {22NYCRR 202.6}. Fee is \$95.00, payable to the SUFFOLK COUNTY CLERK. Submit in duplicate with self-addressed stamped envelope.
- _____ 3• Request for Preliminary Conference with proof of service {22NYCRR 202.12(a)}.

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NOTE OF ISSUE:

- _____ 4- Marked Pleadings. {CPLR 4012}.
- _____ 5- Statement of Proposed Disposition, with affidavit of service (from each party). {202.16 (h)(3)}.
- _____ 6- Statement of Net Worth, with affidavit of service (from each party).
- _____ 7- Signed copy of attorney's retainer agreement {22NYCRR 202.16(c)}(from each party).
- _____ 8- Affidavit regarding Child Support Enforcement Services {DRL 236B(7) (b)}.
A request for such services must include an information sheet containing the following:
Name, address, DOB, SS# of both parties, date/place of marriage, name/DOB of child(ren),
name and address of employer of income payor.
- _____ 9- Note of issue with Certificate of Readiness, together with affidavit of service {22NYCRR 202.21.
CPLR 3402}. Submit in duplicate. Fee is \$30.00, payable to the SUFFOLK COUNTY CLERK.
- _____ 10- Original Attorney's certification {22NYCRR 202.16(e)}.

*Items (1, 2, 3) initialize the case into the Court System for assignment to a Justice of the Supreme Court.
-Items (4, 5, 6, 7, 8, 9, 10) are required to place the case on the **Contested Trial Calendar**. If the Court directs the filing of a Note of Issue for **Inquest purposes only**, then comply **only** with **items (9, 10)** and state such direction in an **Affirmation** or submit a copy of the **Court's Order**.

PLEASE RETURN THIS CHECK SHEET WITH ANY MISSING/INCOMPLETE DOCUMENT(S).

CLERK _____ PHONE NO. _____ DATE _____

Revised 5/08

How to Maximize the Impact of Your Papers

April 25, 2016
Diane K. Farrell, Principal Law Clerk to Acting Supreme Court Justice Andrew G. Tarantino, Jr.

Outline

- I Brevity**—short words in short sentences in short paragraphs.
Economy of words
- Give the necessary facts, not gratuitous facts
 - Examples
 - The plaintiff’s testimony vs. the testimony of the plaintiff
 - The Defendant Third Party Plaintiff Appellant Ford Motor Co. [“Ford”]
 - The child ran out very quickly in between 2 parked cars vs. The child darted out between two parked cars
 - The abrupt manner in which Houseman made his departure from the firm vs. The way Houseman bolted from the firm
 - He repeatedly refused to answer the interrogator’s questions vs. he stymied the interrogator
- II Simplify and Lose the Legalese**
Write in the **active voice and simplify**. The active voice engages the reader by emphasizing action
- The deposition of the plaintiff was taken on March 1st vs. Defendant deposed Plaintiff on March 1st.
 - The case was placed on the trial calendar and the defendant had 120 days in which to make a motion for summary judgment vs. Plaintiff noticed the case for trial and defendant timely moved for summary judgment
 - Defendant made a motion for summary judgment vs. Defendant moved for summary judgment
 - When you frame the issues, make all the answers uniform—yes yes yes See Steve Covey’s book The Seven Habits of Highly Effective People

Example

Did the district court correctly conclude that Plaintiff received the benefit of all procedural safeguards before her housing subsidy was terminated?

Yes.

Did termination of Plaintiff's housing subsidy comply in all respects with HUD's regulatory scheme?

Yes.

Has Plaintiff waived any appellate argument that the Town's Administrative Plan implementing the HUD regulations constitutes an unconstitutional custom practice or policy under *Monell*?

Yes.

- Avoid legal jargon at all costs. Thirty-year movement to get rid of it.

III Be scrupulous about **your reputation** for integrity, accuracy and veracity

- Don't make foolish arguments
- Lead with your strongest argument
- Discard weak arguments because it undermines your credibility
- Deal with the problems in your case—don't avoid the problems. This may mean being selective about what you plan to argue. Get rid of arguments that make you look insincere, cavalier or stupid.

Example

In the summary judgment context, explain to the Court why an issue of fact is not a *material* issue of fact.

- The Reply and opposing affirmation: correct factual errors
- Always Cite to the record

- Each cite to the record builds your credibility
- Never gild the lily
- Don't take liberties with the record
- Never attack your adversary or the court

Examples

- “Defendant’s description of the accident is not correct vs. Defense counsel has intentionally and shamelessly tried to mislead the court.
- The statement in Plaintiff’s brief that there were 2 prior similar accidents caused by defective tires is not correct. In fact there was one prior similar accident, on June 1, 1999. An intoxicated driver, not a tire failure, caused the second accident Plaintiff mentioned.

If you are attacked personally

- Get your revenge by defeating your opponent, not berating him/her i.e., the record does not support Plaintiff attorney’s statement that the defendant intentionally and willfully defied this court’s order.
- Deal with issues—not personalities
- Subtly take the moral high ground by addressing the accusation and unemotionally explain why your adversary’s characterization of you is unwarranted
- Never let attacks on your credibility and integrity go unanswered
- Either explain why you are right or, if you have made a mistake, acknowledge it and move on
- Don’t ask the Court to impose sanctions or award attorneys’ fees except in the extraordinary case.

IV Going outside “the record”

State (don’t do it) vs. federal (what is considered as “the Record”).

V Know your Court, know your Judge

A. Procedure

Check the various court websites and each Court's rules of practice and the court's individual or local rules

Don't assume uniformity

Always include a stamped, self-addressed envelope

Always include a proposed order/judgment

Page limits

Word limits

Formatting

Certificates of Compliance

Motion practice differences

- Supreme Court i.e., many, if not most, judges require a conference before a discovery motion
- Motion days vary- check the Part rules
- Almost every appellate court requires 14-point type with 12-point footnotes and 1-inch margins. Don't work the system with shorter margins, too many footnotes, and 13-point type.
- Different time periods in different counties for CPLR 3212 motions
- Affirmations vs. declarations
- Memos of law state and federal

B. Substantively

Is this court a policy court? If it is, the result has to be fair for all, not just your client.

Cite to that court's precedent first.

Be sensitive to the issue. There are some "darling issues" in a particular court

Example

NY Court of Appeals

- municipal liability
- Defamation
- Res judicata

Second Circuit

- First Amendment, due process, equal protection—make sure you know the court's history

Has this judge written about strip searches, qualified immunity, First Amendment, ripeness? Cite to the presiding Judge's cases if possible.

The court—know the law of the jurisdiction you're in

VI Structure tips

1. Table of Contents is giving the Judges the “big picture”. Giving them the big picture gives them context when they are reading.
2. Give them the conclusion first. Tell the court the relief you are requesting up front —what do you want the court to do?
3. Give the statutory and/or common law basis for why you are entitled to it
4. Give a brief synopsis of what you're going to show in order to demonstrate why you are entitled to the relief requested.
5. **DO NOT BURY THE LEAD.** A motion or a brief is not a Tale of Two Cities.
6. Never devote page after page of boilerplate case law or distinguishing your adversary's cases.
7. Tell the court everything you're going to rely on at the beginning. List those items and if there is an affidavit that's crucial, don't bury it—your moving affirmation or declaration, the affidavit of someone with knowledge. **Don't make an affidavit an exhibit.**
8. Include a picture if applicable

Regarding a Statement of Facts

9. The Statement of Facts compels a desired result. Some people write it last.
10. The most important part of your brief because the recitation of facts should make 1 + 1 equal 2 by the end. Your facts should be able to stand alone.
11. Don't quote witness after witness or give a synopsis of each deposition/EBT—tell a story
12. Never omit facts but mention only those facts necessary for your sought-after relief.
13. Humanize clients by naming them throughout.
14. Never misrepresent the lower court decision or put something in quotes where no witness has used the quoted words
15. If you're in federal court, your declaration is to list exhibits only-no arguments. The affidavit of someone with knowledge spells it out; your memorandum of law supports it.
16. State vs. federal—complete transcripts in state court/ not federal court

17. Only use signed transcripts
18. Exhibit designation
 - State Court (Exhibit A, p. 2, para.4)
 - Federal Court (Complaint, p. 3; plaintiff Smith deposition, p. 6, ll. 12-18)
 - Do NOT say (Examination before trial testimony of Jane Smith, p.7, ll.1-4)
 - Be consistent
19. Citing case law in your affirmation: state vs. federal
Significance for your record later- in state court no memos of law in the Record or appendix
Make citations unobtrusive: Do not begin a sentence with a citation. Do not put a citation mid-sentence; arrange for it to be at the end of a sentence.
Don't use string citations BUT
Put the citations in a bulleted list if you're trying to show that there is overwhelming authority for the proposition you are advancing.
20. Be consistent in the way you cite. Tables of Authorities are very helpful although not always required (Second Department). If you're going to include one, do a cite check
21. Shepardize when you submit your papers, when you prepare a reply, and immediately before oral argument, PARTICULARLY IN FEDERAL COURT.
22. Set out the facts first and then the law applied to the facts
23. Read Judge Lebovits' column in the NYS Bar Journal
24. State the facts that support your argument.
You don't need to include every fact; if it isn't necessary to understanding the legal issues, leave it out. One way of implementing this is to write the legal argument first and then the factual statement. Anticipate unfavorable facts and plan when you will deal with them.
25. Populate your argument.
Avoid Appellant and Appellee and use Smith, Jones, Nationwide, "the Town"
Use real names for the parties

VII READ YOUR ADVERSARY'S PAPERS AND ADDRESS THE ADVERSARY'S ARGUMENTS

Use records on appeal to distinguish what your adversary says is a
“case directly on point”

Don't try to discuss and distinguish every single case your adversary
cites

Don't play your adversary's game- play your game.

VIII Proofreading and editing

“Reading a brief with spelling, grammar, and punctuation errors is
like talking to someone who is picking his nose.”

In the morning/sleep on it.

Read it aloud and you'll find more errors

Use spell-check.

Spelling, grammar and punctuation

Generate a Table of Authorities and proof your citations from that
instead of in the text.

Have someone else read your papers

MOTION PRACTICE IN SUFFOLK COUNTY: AVOIDING THE PITFALLS
By Diane K. Farrell and Gerald Lebovits

Diane K. Farrell is the Principal Law Clerk to the Honorable John J.J. Jones, Jr. Gerald Lebovits is a New York City Civil Court judge and an adjunct professor of law at Columbia, Fordham, and NYU. The authors thank Elizabeth Sandercock, a student at City University of New York Law School, for her research help. On May 15, 2013, at 6 PM, the Suffolk Academy of Law will welcome Judge Gerald Lebovits back for a CLE entitled *Persuasive Writing for Litigators*.

This article is a brief overview of some of the most common motions encountered in civil practice in State Supreme Court, Suffolk County, with tips on how to avoid some oft-repeated pitfalls.

To draft effective motion papers, practitioners must be familiar with Uniform Rules for the New York State Trial Courts and CPLR 2211 through 2222. Practitioners must also consult the individual rules that many IAS judges have enacted.

Movants who bring an order to show cause need shorter notice than the minimum eight days provided under CPLR 2214(b) for bringing a motion on notice. In Supreme Court, Suffolk County, an order to show cause movant should call the assigned IAS judge's part before attempting to have the order signed. Under 22 NYCRR 202.7(f), the nonmoving party must be given notice of the movant's intention to present the order to show cause if the prayer for relief includes a request for temporary injunctive relief, such as a stay. Notice is not necessary if the movant can demonstrate that there will be significant prejudice to the party seeking the restraining order by giving notice.

Some types of motions do not require notice to be given when they are made. Among these are ex parte motions, which are made to a judge without notice to the adversary. The CPLR authorizes ex parte motions only in limited situations, such as attachment (CPLR 6211), temporary restraining orders (CPLR 6313), and orders specifying the manner of effecting service of process (CPLR 308(5)).

Other motions must be made on notice. These include a CPLR 3211 motion to dismiss a complaint, a defense, or a counterclaim; a motion to compel discovery or to strike a pleading for failure to provide discovery or appear for an examination before trial under CPLR 3126; a motion for summary judgment under CPLR 3212; and a motion to renew or reargue under CPLR 2221. These common motions are discussed below.

Defendants may move to dismiss a complaint before they interpose an answer or, in limited circumstances, after they interpose an answer. For defendants to be able to move after they have answered, they must preserve the right to move to dismiss by raising the ground as a defense in the answer.¹ Because of this requirement, the issue of the plaintiff's standing to commence the action is forfeited altogether in many foreclosure actions by the defendant-borrower's failure to interpose the defense of lack of standing in an answer or in a timely motion to dismiss the complaint.² It is too late to raise the defense of lack of standing for the first time in a motion to vacate the borrower's default under CPLR 5015(a).³

Under CPLR 3211(e), you may make only one motion to dismiss for the grounds specified in CPLR 3211(a) against any one pleading. Movants waive any potential ground for dismissal under CPLR 3211(a) if that ground is not asserted in the dismissal motion. Some grounds to dismiss under CPLR 3211 can be raised at any time, such as a failure to state a cause

of action (CPLR 3211(a)(7)), absence of a necessary party (CPLR 3211(a)(10)), and lack of subject matter jurisdiction (CPLR 3211(a)(2)).

A plaintiff who faces a motion to dismiss should consider cross-moving to replead or to amend the deficient complaint. A proposed amended complaint should always accompany such a cross-motion. CPLR 3025(b) was amended effective January 1, 2012, to require that any motion to amend or supplement pleadings be accompanied by the amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

A cross-motion to amend under CPLR 3025 requires a showing that the other side will not be unduly prejudiced if the court grants leave to amend. On January 1, 2006, the legislature amended CPLR 3211(e) to allow a party to replead without having to seek leave to replead in writing. Before the amendment, the nonmoving party had to submit evidence in admissible form to support the cause of action or defense. The new legislation does not include any time limit on a motion for leave to replead.⁴

A motion to strike a pleading for a party's failure to comply with disclosure demands or appear for an examination before trial, or both, is one of the most common motions. When making such a motion, the moving party is required to demonstrate a good-faith attempt to resolve the disclosure issues before seeking the court's help.⁵ Failure to make that showing, or evidence that the movant's attempt was perfunctory, will invite a denial of the motion without consideration on the merits.⁶ Some Suffolk County Judges will order a compliance conference when faced with a discovery motion as an alternative means to resolve discovery disputes.

Striking a pleading is a last resort. Practitioners in the Second Department should read *Arpino v. F.J.F. & Sons Elec. Co., Inc.*,⁷ to get a sense of the high threshold of willful and contumacious conduct required before a court may strike a pleading.

All too often motions to strike a pleading are filled with ad hominem attacks on the adversary. Gratuitous attacks that permeate motion papers distract courts trying to assist the parties in resolving their disclosure differences. Rather than persuading the court that the other party has been unreasonable, frivolous, or contemptuous, these attacks call into question the credibility of the attorney making them and obscure the merits of the attorney's argument. The New York State Standards of Civility for the legal profession require counsel for the parties to be courteous and civil in all professional dealings.⁸ In accordance with those standards, counsel should refrain from personal attacks on opposing counsel in all submissions and proceedings. Counsel should also be aware that they are vulnerable to sanctions for frivolous conduct, which can including making a frivolous motion for costs or sanctions.⁹

Motions for summary judgment are one of the most dangerous weapons in a civil litigator's arsenal. Any party may move for summary judgment in any type of action after issue has been joined.¹⁰ The one exception is found in CPLR 3212(e), which prohibits summary judgment in matrimonial actions. Practitioners should be careful when moving for summary judgment to provide all supporting proof. Many judges will deny a summary-judgment motion outright if the movant fails to attach a copy of the pleadings.¹¹

A significant amount of case law has developed in the Second Department and in Suffolk County about the effect of relying on unexecuted deposition transcripts in support of summary judgment. Although the issue may be waived if not raised by the court or a party,¹² the movant should strive to attach executed copies of all deposition transcripts or, alternatively, demonstrate that the party seeking to rely on the transcript has complied with CPLR 3116.¹³

In addition, the moving affirmation should always contain a list of exhibits to which the court can refer. The exhibits should be divided into volumes no larger than a single ream of

paper if unwieldy exhibits make the motion awkward or difficult to handle. Each volume should have a cover page listing the exhibits within that volume. If the papers are difficult to navigate for the lawyer who prepared them, they are going to be unwieldy, and annoying, for the court. Supporting affidavits should be placed in the motion package, not hidden in the documentary exhibits.

Legal arguments should be contained in a memorandum of law rather than in an attorney affirmation. The Uniform Rules of the New York State Trial Courts do not contain page limitations. But page limitations would be a beneficial addition to the rules. Limits force the writer to organize and prioritize the facts and arguments succinctly and prevent repetition and digression from important issues. When crafting reply papers, the movant should avoid rehashing arguments and points made in the original moving papers. If the reply simply restates the initial moving papers rather than offering a focused response to the opposition papers, the movant is inviting the court to give the reply short shrift or, worse, skip reading the reply altogether.

Affidavits in support of and in opposition to summary judgment must be made by a person with knowledge. Attorney affirmations not based on personal knowledge lack probative value and are insufficient to support or preclude summary judgment.¹⁴ This is true even if the motion is for a default judgment.¹⁵ An affidavit setting forth the facts on which the relief is sought must be made by a person with knowledge. A verified complaint may do the job unless the complaint is verified by the attorney who lacks personal knowledge.¹⁶

Motions to renew and motions to reargue are separate and distinct requests for relief with significant differences.¹⁷ Most important, the denial of a motion to reargue is not appealable.¹⁸ Litigants dissatisfied with an order should file both a motion to reargue and a notice of appeal. The time to take both actions is the same: within thirty days of service of the order with written notice of its entry, plus five days for mailing under CPLR 2103(b)(2).¹⁹

Whether or not the court adheres to its original decision, if the motion to reargue is granted an appeal lies from the order that grants reargument, not from the original order. If the court denies the reargument, the appeal lies from the original order.²⁰

There is no time limitation on a motion to renew. Both the granting and the denial of a motion to renew are appealable orders.²¹ The motion to renew must be based on new information rather than simply a reargument of fact and law submitted on the original motion.²²

Litigants almost always describe their motion as one to renew and reargue. The court is required to differentiate between the two.²³ Whether the motion is one to reargue or renew, or both, the original moving papers, the opposition, and any reply, in addition to the order being reargued or renewed, should be included as exhibits. The reader is invited to join Judge Lebovits at the Suffolk Academy of Law on May 15th for an in-depth discussion on persuasive and effective legal writing and oral argument techniques and tips.

¹ Michael Barr, Myriam J. Altman, Burton N. Lipshie & Sharon Gerstman, *New York Civil Practice Before Trial* § 36:61, at 36-15 (2006; Dec. 2009 Supp.).

² *Wells Fargo Bank Minn. N.A. v. Mastropaolo*, 42 A.D.3d 239, 241, 837 N.Y.S.2d 247, 249 (2d Dep't 2007).

³ *Deutsche Bank Nat. Ass'n v. Hussain*, 78 A.D.3d 989, 990, 912 N.Y.S.2d 595, 596 (2d Dep't 2010).

⁴ *Janssen v. Inc. Vill. of Rockville Ctr.*, 59 A.D.3d 15, 28, 869 N.Y.S.2d 572, 582 (2d Dep't

2008).

⁵ N.Y. Comp. Codes R. & Regs. Tit. 22, § 202.7(a) (2013).

⁶ *Hernandez v. City of New York*, 100 A.D. 3d 433, 434, 953 N.Y.S.2d 199, 201 (2d Dep't 2012), (citing *Molyneaux v. City of New York*, 64 A.D. 3d 406, 882 N.Y.S.2d 109 (1st Dep't 2009)).

⁷ 102 A.D.3d 201, 959 N.Y.S.2d 74, 79 (2d Dep't 2012).

⁸ 22 NYCRR Part 1200, App. A.

⁹ Rules of the Chief Admin. 130-1.1(c)(3).

¹⁰ CPLR 3212(a).

¹¹ CPLR 3212(b); *Mieles v. Tarar*, 100 A.D.3d 719, 720, 955 N.Y.S.2d 86, 87 (2d Dep't 2012).

¹² *Ross v. Gidwani*, 47 A.D.3d 912, 913, 850 N.Y.S.2d 567, 568 (2d Dep't 2008).

¹³ See generally, *Rodriguez v. Ryder Truck Rental, Inc.*, 91 A.D.3d 935, 936, 937 N.Y.S.2d 602, 603 (2d Dep't 2012).

¹⁴ *Currie v. Wilhouski*, 93 A.D.3d 816, 817, 941 N.Y.S.2d 218, 219 (2d Dep't 2012).

¹⁵ *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 71, 760 N.Y.S.2d 727, 733 (2003).

¹⁶ See *Beaton v. Transit Facility Corp.*, 14 A.D.3d 637, 789 N.Y.S.2d 314, 315 (2d Dep't 2005).

¹⁷ See CPLR 2221.

¹⁸ *Poulard v. Judkins*, 102 A.D.3d 665, 666, 965 N.Y.S.2d 916, 917 (2d Dep't 2013).

¹⁹ CPLR 2221(d)(3); *Dinallo v. DAL Elec.*, 60 A.D.3d 620, 874 N.Y.S.2d 246 (2d Dep't 2009).

²⁰ David D. Siegel, *New York Practice* § 254, at 434 (4th ed. 2005).

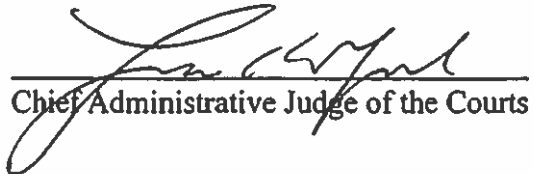
²¹ *Id.*

²² CPLR 2221(e).

²³ CPLR 2221(d)(1), (e)(1); *In re Will of Nigro*, 14 Misc. 3d 1239(A), 836 N.Y.S.2d 501 (N.Y. Sur. 2007).

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and in consultation with the Presiding Justices of the Appellate Divisions, upon notice by the Presiding Judge of the Court of Claims, and, as appropriate, in consultation with or with the approval of County Clerks, I hereby establish, continue, or give notice of, programs for the voluntary and mandatory use of electronic means for the filing and service of documents ("e-filing") in the manner authorized pursuant to L. 1999, c. 367, as amended by L. 2009, c. 416, L. 2010, c. 528, L. 2011, c. 543, L. 2012, c. 184, L. 2013, c. 113, and L. 2015, c. 237 in the counties, courts, and cases in effect as of the date of this Order or upon the effective dates set forth in Appendix A (e-filing matters) attached hereto. Such programs shall be subject to sections 202.5-b, 202.5-bb, 206.5,206.5-aa, 207.4-a, 207.4-aa, and 208.4-a of the Uniform Rules for the New York State Trial Courts. This Order is effective March 21, 2016, and supersedes AO/10/16.


Chief Administrative Judge of the Courts

Dated: March 18, 2016

AO/79/16

APPENDIX A
E-FILING MATTERS
(commenced on or after March 21, 2016,* unless otherwise indicated)
SUPREME COURT

Albany	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • commercial, contract, tort • tax certiorari (including RPTL §730 proceedings) • foreclosure actions addressing real property and mechanics liens <p><u>Mandatory:</u> None</p>
Bronx	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • commercial, contract, tort (except for medical, dental, and podiatric malpractice actions, which are mandatory) • tax certiorari (including RPTL §730 proceedings) • foreclosure actions addressing real property and mechanics liens • workers' compensation applications for judgment <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • medical, dental, and podiatric malpractice actions

Broome	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • commercial, contract, tort • tax certiorari (excluding RPTL §730 proceedings) • foreclosure actions addressing real property and mechanics liens • workers' compensation applications for judgment • CPLR Art. 75 proceedings • CPLR Art. 78 proceedings • matrimonial (See Appendix B relating to matrimonial filings.) • Mental Hygiene Law matters <p><u>Mandatory:</u> None</p>
Cortland	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • all actions <u>except</u> – Mental Hygiene Law matters (See Appendix B relating to matrimonial filings.) <p><u>Mandatory:</u> None</p>

* For cases commenced prior to March 21, 2016, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12, AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, AO/64/14, AO/210/14, AO/049/15, AO/058/15, AO/194/15, and AO/10/16; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/efile).

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E-FILING MATTERS
(commenced on or after March 21, 2016,* unless otherwise indicated)
SUPREME COURT

Dutchess	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • CPLR Art. 70 proceedings • CPLR Art. 78 proceedings • matrimonial matters (See Appendix B relating to matrimonial filings.) • consumer credit transactions as defined in CPLR 105(f) • residential foreclosures as defined in RPAPL § 1304 <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • all actions <u>except</u> – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters – consumer credit transactions as defined in CPLR 105(f) – residential foreclosures as defined in RPAPL § 1304 	Essex	<p><u>Consensual/Voluntary:</u> None</p> <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • tax certiorari (excluding RPTL §730 proceedings) • eminent domain matters • foreclosure actions involving real property (but <u>excluding</u> mechanics liens and in rem tax foreclosure)
Erie	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • CPLR Art. 70 proceedings • CPLR Art. 78 proceedings • RPTL § 730 proceedings <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • all actions <u>except</u> – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – in rem tax foreclosures – matrimonial matters – Mental Hygiene Law matters – RPTL §730 proceedings 	Kings	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • all actions <u>except</u> – CPLR Art. 70 proceedings – Election Law proceedings – emergency medical treatment applications – matrimonial matters – Mental Hygiene Law matters – name change applications – sale or finance of religious/not for profit property – actions authorized for mandatory program listed below <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • Commercial Division matters (commercial cases as defined in 22 NYCRR §§202.70(a), (b), and (c)) • tort
		Livingston	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • all actions <u>except</u> – Mental Hygiene Law matters (See Appendix B relating to matrimonial filings.) <p><u>Mandatory:</u> None</p>

* For cases commenced prior to March 21, 2016, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12, AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, AO/64/14, AO/210/14, AO/049/15, AO/058/15, AO/194/15, and AO/10/16; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/efile).

**APPENDIX A
E-FILING MATTERS
(commenced on or after March 21, 2016,* unless otherwise indicated)
SUPREME COURT**

Nassau	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • all actions except – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters – residential mortgage foreclosures as defined in RPAPL § 1304 – actions authorized for mandatory program listed below <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • commercial matters (without regard to the amount in controversy) • civil forfeitures • in rem tax foreclosures • tax certiorari (including RPTL § 730 proceedings) 	Niagara	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • CPLR Art. 70 proceedings • CPLR Art. 78 proceedings • in rem tax foreclosures • RPTL §730 proceedings • consumer credit transactions as defined in CPLR 105(f) • residential foreclosures as defined in RPAPL § 1304 <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • all actions except – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters – in rem tax foreclosures – RPTL § 730 proceedings – consumer credit transactions as defined in CPLR 105(f) – residential foreclosures as defined in RPAPL § 1304
New York	<p><u>Consensual/Voluntary:</u> None</p> <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • all actions except – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters 		

* For cases commenced prior to March 21, 2016, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12, AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, AO/64/14, AO/210/14, AO/049/15, AO/058/15, AO/194/15, and AO/10/16; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/efile).

**APPENDIX A
E-FILING MATTERS
(commenced on or after March 21, 2016,* unless otherwise indicated)
SUPREME COURT**

<p>Oneida</p>	<p><u>Consensual/Voluntary:</u> – consumer credit transactions as defined in CPLR 105(f) – residential foreclosures as defined in RPAPL § 1304</p> <p><u>Mandatory:</u> • all actions <u>except</u> – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – emergency medical treatment applications – matrimonial matters – Mental Hygiene matters – name change applications – RPTL § 730 proceedings – consumer credit transactions as defined in CPLR 105(f) – residential foreclosures as defined in RPAPL § 1304</p>	<p>Onondaga</p>	<p><u>Consensual/Voluntary:</u> • CPLR Art. 78 proceedings • name change applications • non-residential foreclosures, including in rem tax foreclosures, commercial foreclosures, and mechanics lien matters</p> <p><u>Mandatory:</u> • all actions <u>except</u> – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – emergency medical treatment applications – foreclosure actions addressing real property and mechanics liens – matrimonial matters – Mental Hygiene Law matters – name change applications – RPTL § 730 proceedings</p>
		<p>Ontario</p>	<p><u>Consensual/Voluntary:</u> • all actions <u>except</u> – Mental Hygiene Law matters (See Appendix B relating to matrimonial filings.)</p> <p><u>Mandatory:</u> None</p>

* For cases commenced prior to March 21, 2016, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12, AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, AO/64/14, AO/210/14, AO/049/15, AO/058/15, AO/194/15, and AO/10/16; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/efile).

APPENDIX A
E-FILING MATTERS
(commenced on or after March 21, 2016,* unless otherwise indicated)
SUPREME COURT

Orange	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • all actions except – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law matters – matrimonial matters – Mental Hygiene Law matters – RPTL § 730 proceedings <p><u>Mandatory:</u> None</p>	Richmond	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • commercial, contract, tort • tax certiorari (including RPTL §730 proceedings) • foreclosure actions addressing real property and mechanics liens • workers' compensation applications for judgment <p><u>Mandatory:</u> None</p>
Queens	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • commercial, contract, tort (except for medical, dental, and podiatric malpractice actions, which are mandatory) • tax certiorari (including RPTL §730 proceedings) • workers' compensation applications for judgment <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • medical, dental, and podiatric malpractice actions • foreclosure actions (including commercial foreclosures) addressing real property and mechanics liens 	Rockland	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • CPLR Art. 70 proceedings • CPLR Art. 78 proceedings • matrimonial matters (See AO/366/13 relating to matrimonial filings.) <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • all actions except – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters

* For cases commenced prior to March 21, 2016, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12, AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, AO/64/14, AO/210/14, AO/049/15, AO/058/15, AO/194/15, and AO/10/16; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/efile).

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SUPREME COURT**

Suffolk	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • tort (except for medical, dental, and podiatric malpractice actions, which are mandatory) <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • all actions <u>except</u> – CPLR Art. 70 proceedings – CPLR Art. 75 proceedings – CPLR Art. 78 proceedings – civil forfeiture actions – consumer credit transactions as defined in CPLR 105(f) (except initial filing of commencement papers by a represented party, which is mandatory) – Election Law proceedings – emergency medical treatment applications – matrimonial matters – Mental Hygiene Law matters – name change applications – other special proceedings – tort actions (except medical, dental, and podiatric malpractice actions, which are mandatory) 	Westchester	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • matrimonial matters (See AO/139/13 relating to matrimonial filings.) • CPLR Art. 70 proceedings • CPLR Art. 78 proceedings • name change applications <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • all actions <u>except</u> – CPLR Art. 70 proceedings – CPLR Art. 78 proceedings – Election Law proceedings – matrimonial matters – Mental Hygiene Law matters – name change applications
Tompkins	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • all actions <u>except</u> – Mental Hygiene Law matters (See Appendix B relating to matrimonial filings.) <p><u>Mandatory:</u> None</p>		

* For cases commenced prior to March 21, 2016, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12, AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, AO/64/14, AO/210/14, AO/049/15, AO/058/15, AO/194/15, and AO/10/16; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/efile).

**APPENDIX A
E-FILING MATTERS**

(commenced on or after March 21, 2016,* unless otherwise indicated)

SURROGATE'S COURT

Allegany Cattaraugus Cortland Genesee Niagara Orleans Queens Tompkins Westchester Wyoming	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • probate and administration proceedings • miscellaneous proceedings relating thereto • such other types of proceedings as the court may permit <p><u>Mandatory:</u> None</p>
Cayuga Chautauqua Erie Livingston Monroe Ontario Seneca Steuben Wayne Yates	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • such types of proceedings as the court may permit <p><u>Mandatory:</u></p> <ul style="list-style-type: none"> • probate and administration proceedings • miscellaneous proceedings relating thereto

CIVIL COURT

New York City	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • actions brought by a provider of health services specified in Insurance Law §5102(a)(1) against an insurer for failure to comply with rules and regulations promulgated by the Superintendent pursuant to Insurance Law §5108(b) <p><u>Mandatory:</u> None</p>
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COURT OF CLAIMS

Albany District (Albany, Clinton, Columbia, Essex, Franklin, Greene, Rensselaer, Saratoga, Schenectady, Ulster, Warren, Washington)	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • claims for personal injury or property damage <p><u>Mandatory:</u> None</p>
New York District (Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk)	<p><u>Consensual/Voluntary:</u></p> <ul style="list-style-type: none"> • claims for personal injury or property damage <p><u>Mandatory:</u> None</p>

* For cases commenced prior to March 21, 2016, see AO/243/08, AO/244/08, AO/371/09, AO/395/10, AO/396/10, AO/507/10, AO/376/11, AO/468/11, AO/527/11, AO/529/11, AO/530/11, AO/531/11, AO/235/12, AO/236/12, AO/237/12, AO/238/12, AO/245/12, AO/112/13, AO/173/13, AO/222/13, AO/029/14, AO/64/14, AO/210/14, AO/049/15, AO/058/15, AO/194/15, and AO/10/16; see also, administrative orders of the Court of Claims dated 12/31/02 and 6/3/13 (www.nycourts.gov/efile).

APPENDIX B

Rules Governing the Consensual Electronic Filing of Matrimonial Actions in Supreme Court

(a) Application

(1) On consent, documents may be filed and served by electronic means in matrimonial actions in the Supreme Court of authorized counties subject to the conditions set forth below. Except as otherwise required by this order/appendix, the provisions of 22 NYCRR § 202.5-b shall apply.

(2) For purposes of this order/appendix:

(i) "Matrimonial actions" shall mean those actions set forth in CPLR § 105(p) and DRL § 236 wherein:

(A) the action is contested, and addresses issues including, but not limited to, alimony, counsel fees, pendente lite, maintenance, custody and visitation, child support or the equitable distribution of property; or

(B) the action is uncontested; or

(C) the action is a post-judgment application that either (1) addresses an underlying matrimonial action that was commenced electronically, or (2) is electronically initiated with the purchase of a new index number.

(ii) A "party" or "parties" shall mean the party or parties to the action or counsel thereto (as set forth in 22 NYCRR § 202.5-b(a)(2)(viii)) and the attorney(s) for the minor child(ren).

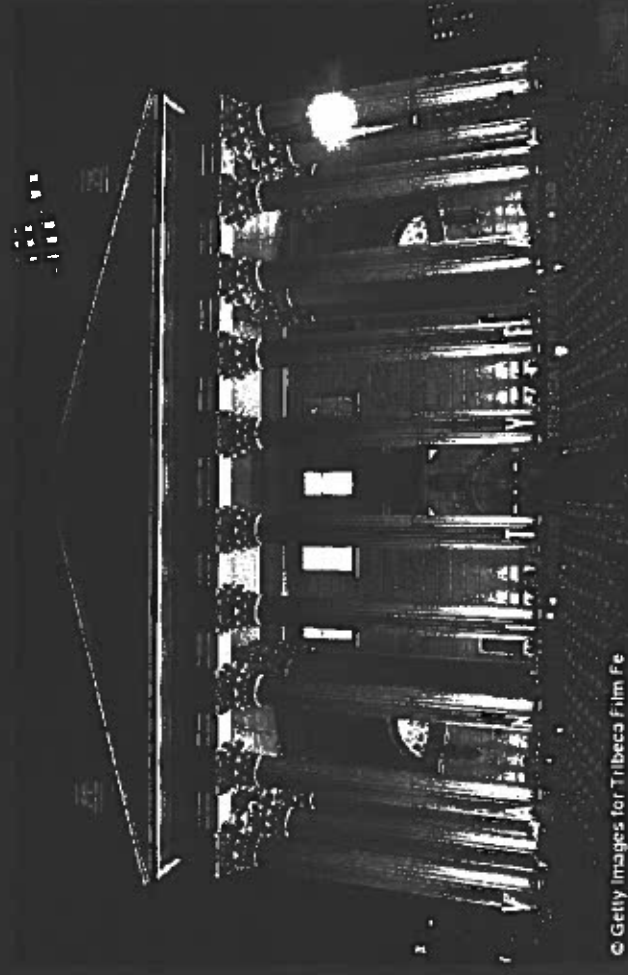
(3) No paper or document filed by electronic means in a matrimonial action shall be available for public inspection on-line or at any computer terminal in the courthouse or the office of the County Clerk.

(4) Nothing in this section shall be construed to abrogate existing personal service requirements as set forth in the domestic relations law, family court act or civil practice law and rules.

(5) Unless otherwise directed by the court, forensic evaluation reports in custody, visitation and other matters concerning children shall not be filed electronically.

(6) Service of the initiating documents in post-judgment applications subject to consensual e-filing must be effectuated in hard copy and accompanied by a notice regarding availability of electronic filing in post-judgment matrimonial proceedings on a form to be approved by the Chief Administrator. Proof of hard copy service shall be filed by electronic means.

NEW YORK STATE COURTS ELECTRONIC FILING



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NYSCEF PROGRAM HIGHLIGHTS

- WEB BASED SYSTEM
 - ACCESS 24/7
 - NO ADDITIONAL FEES
- PAYMENT OF COURT FEES ONLINE
 - PDF/A FORMAT
- ALL DOCUMENTS MUST BE E-FILED
- PAPER CASES CANNOT BE ACCESSED
- DISCOVERY NOT CONDUCTED ON NYSCEF WITHOUT A
STIPULATION

LEGISLATION

- 1999 ORIGINAL LEGISLATION CONSENSUAL PROGRAM
- 2009 MANDATORY E-FILING AUTHORIZED
- 2013 ENTIRE 7TH JD MANDATORY SURROGATES
- 2016 MANDATORY E-FILING AUTHORIZED IN AT LEAST 14 COUNTIES
 - 2016 NEW ADMINISTRATIVE ORDER
- --MATRIMONIAL IN SEVERAL COUNTIES ON CONSENSUAL BASIS

RULES AND LEGISLATION

- CPLR 304-2101(g) 2103 (b) (7)-8023
- .Uniform Rule 202.5b-Consensual Program
- .Uniform Rule 202.5 bb-Mandatory Program
- .Uniform Rule 206.5aa-Court of Claims
- .Uniform Rule 207.4a-Surrogates Court
- .Uniform Rule 207.4aa-Surrogates Mandatory
 - .Uniform Rule 208.4a-Civil Court

NYSCEF ACCOUNTS

LIVE SYSTEM

- ATTORNEY - ATTORNEY ONLINE SERVICE ACCOUNT
- AUTHORIZED FILING AGENT – FORMS EF1 AND EF12-EF17
- PRO HAC / UNREPRESENTED LITIGANTS- FORMS EF1
 - SEARCH AS GUEST

TRAINING SYSTEM EF2

SIGNATURES

- ATTORNEY CAN USE S/ WITH OWN ACCOUNT
- ALL OTHER DOCUMENTS MUST HAVE IMAGE OF SIGNATURE
- DEEMED SIGNED RULE 130 PURPOSES
 - NO NEED FOR BLUEBACK

OPTING OUT MANDATORY E-FILING

ATTORNEY MUST CERTIFY:

NO COMPUTER

NO INTERNET CONNECTION

NO SCANNER

ATTORNEY AND EMPLOYEE LACK THE KNOWLEDGE TO OPERATE ABOVE

ATTORNEY FILING AT COURT MUST ATTACH NOTICE OF HARD COPY
SUBMISSION FORM

CONSENSUAL E-FILING

- ANY ATTORNEY CAN OPT OUT AS OF RIGHT
- CASE REMAINS OPEN TO E-FILING
- SERVICE BY TRADITIONAL MEANS
- ATTORNEY FILING AT COURT MUST ATTACH NOTICE OF HARD COPY SUBMISSION FORM

COMMENCING ELECTRONICALLY

ALWAYS SERVE:

NOTICE REGARDING AVAILABILITY OF ELECTRONIC FILING EF-3

OR

NOTICE OF COMMENCEMENT OF ACTION SUBJECT TO MANDATORY
E-FILING EFM-1

JURISDICTION OBTAINED BY PERSONAL SERVICE

CASE DEEMED COMMENCED UPON PAYMENT

WORKING COPIES

PAPERS SUBMITTED TO THE COURT
MUST HAVE

CONFIRMATION NOTICE

JUDICIAL REVIEW ONLY/PAPERS WILL BE
DISCARDED

NOTICE OF HARD COPY SUBMISSION

COMMENCEMENT

- STATUTE OF LIMITATIONS COMBINED WITH TECHNICAL FAILURE
- SEALING APPLICATION

EXISTING CASE

- OSC/TRO
 - TECHNICAL FAILURE
 - EXPARTE APPLICATION
 - IN CAMERA REVIEW
 - HARD COPY EXHIBIT
- DOCUMENTS TO BE FILED ELECTRONICALLY WITHIN THREE DAYS OF
SERVICE/FILING

INTERLOCUTORY SERVICE

FILING = SERVICE EF11

- Parties that have not registered their consent/representation must be served by traditional means
- Time to respond to NYSCEF service is calculated as it would be by personal service
- Document deemed filed same day if transmitted by 11:59pm

PUBLIC ACCESS TO DOCUMENTS

- SEARCH AS A GUEST
 - SECURE
- SEALED DOCUMENTS
- SSN GENERAL BUSINESS LAW 399ddd 6

NEW REDACTION RULE 202.5 (E)

- MANDATORY REDACTION AS OF MARCH 1ST 2015 for documents containing
 - TAXPAYER ID NUMBER
- including ssn, employee id #, individual taxpayer id except the last four digits thereof
 - DOB except the year thereof
- FULL NAME OF INDIVIDUAL KNOWN TO BE A MINOR except the minors initials
- FINANCIAL ACCOUNT NUMBER including credit/or debit card number, bank account number, investment account number, and/or insurance account number EXCEPT THE LAST FOUR LETTERS OR DIGITS THEREOF

TECH TIPS

- INTERNET EXPLORER 7+
- FIREFOX 4+
- GOOGLE CHROME
- SAFARI 4+
- TURN OFF POP UP BLOCKERS
- DOCUMENTS ARE SAVED AS PDF/A
- UP TO 100 MB LIMIT

**NYSCEF CONTACT
INFORMATION**

PHONE # 646-386-3033

EFILE@nycourts.gov

Michael Scardino

Supreme Court

1 Court St.

Riverhead NY 11901

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(631) 852-2334

Experience

Supreme Court, Suffolk County

December 2002 to present,

Chief Clerk. Responsible for all day to day operations of the second busiest Supreme Court Civil Term in New York State. Budgeting, Hiring establishing and implementing policy and procedure.

Supreme Court Suffolk County

January 1999 to December 2002,

Court Clerk Specialist, Principal Court Clerk, Associate Court Clerk.

“Legal Expert” supervisor and review clerk for Special Term Office.

NYS Court System (Various Courts)

March 1984 to January 1999

Various and sundry positions.

Education

St John’s University

BS Criminal Justice, AS Police Science

ALAN TODD COSTELL graduated from New York University with a Bachelor of Arts in 1975, and received his Juris Doctorate from Georgetown University Law Center. He was an associate with a New York City law firm from 1982 to 1986, and a solo practitioner in Suffolk County from 1986 to 2010, handling a wide range of civil litigation matters. He currently is a Court Attorney Referee in the Suffolk County Supreme Court Law Department.

Mr. Costell has served two three-year terms as a member of the Board of Directors of the Suffolk County Bar Association, and previously served as chair of a number of its committees. He also has served as the Secretary of the Suffolk County Bar Association Pro Bono Foundation and as a member of the Judicial Screening Committee. He was elected to a two-year term as the Dean of the Suffolk Academy of Law from 1999 to 2001. Mr. Costell has held the position of Suffolk County Coordinator of the New York State Bar Association High School Mock Trial since 1987. He also held the position of Senior Law Examiner with the New York State Board of Law Examiners from 1987 to 2010, and continues to assist the Board on a contract basis.

DIANE K. FARRELL
Supreme Court Principal Law Clerk
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EXPERIENCE

Principal Law Clerk to the Hon. Andrew G. Tarantino, Jr., January, 2014 to Present
Research and analyze complex and sensitive legal issues. Provide personal and confidential assistance to the Justice. Draft decisions for the Court's review. Conference matters to resolve disputes and clarify legal issues in broad spectrum of civil cases.

Principal Law Clerk to the Hon. John J. J. Jones, Jr. August, 2012 to January, 2014

Partner, Devitt Spellman Barrett, LLP, Smithtown, New York 2000-2012
Argued civil appeals in the First and Second Judicial Departments, the New York Court of Appeals, and the United States Court of Appeals for the Second Circuit. Authored complex discovery, accelerated judgment, and post-trial motions in state and federal courts.

Prior Career Experience

<i>Principal Attorney, Law Office of Diane K. Farrell, East Setauket, New York</i>	1997-2000
<i>Partner, Farrell & Nolan, Esqs., Riverhead, New York</i>	1994-1997
<i>Associate, Michael T. Clifford & Associates, Riverhead, New York</i>	1986-1994
<i>Principal Attorney, Law Office of Diane K. Farrell, East Northport, New York</i>	1983-1986
<i>Associate, Law Offices of Gerard A. Gilbride, Woodbury, New York</i>	1980-1983
<i>Assistant Special Attorney General, Office of the Special Prosecutor NYC</i>	1979-1980

EDUCATION

Juris Doctor, St. John's University School of Law, Queens, NY
Bachelor of Arts in Political Science, summa cum laude, St. John's University, Queens, NY

PROFESSIONAL AFFILIATIONS

Member, Suffolk County Bar Association Nominating Committee (2014-2017)
Member, Suffolk County Bar Association Commercial Division Committee (2014 to Present)
Director, Suffolk County Bar Association (2011-2014)
Member, Judicial Screening Task Force (2013-2014)
Officer and Associate Dean, Suffolk Academy of Law (2010 -2011)
Member, Suffolk County Bar Task Force to Address the Legal Rights of Same Sex Couples
Member, Women in the Courts Committee (May, 2013 to Present)
Lecturer, Academy of Law, Legal Writing, Civil Motion and Appellate Practice

BAR ADMISSIONS

New York State Bar, Second Judicial Department
United States District Court, Southern and Eastern Districts of New York
United States Court of Appeals for the Second Circuit
United States Supreme Court

SELECTED APPEALS

Shulman v. Hunderfund, 12 N.Y.3d 143, 905 N.E.2d 1159 (2009) (in context of local school board election, statement in anonymous flyer that plaintiff “flagrantly broke the law” in connection with award of food service contract to business associate was not made with actual malice, as required to support member’s recovery for libel under First Amendment free speech restrictions on defamation claims by public figures).

Scarangella v. Thomas Built Buses, Inc., 93 N.Y.2d 655, 717 N.E.2d 679 (1999) (in products liability action, fact that optional safety feature of back-up alarm for school bus was not made a standard feature did not render design of bus defective).

Shapiro v. McNeill, 92 N.Y.2d 91, 699 N.E.2d 407 (1998) (alleged violation by attorney of ethical duties owed to non-client third party investor when attorney is in receipt of funds known to belong to third party investor, could not support cause of action by investor against attorney).

Bucalo v. Shelter Island Union Free School Dist., 691 F.3d 119 (2d Cir. 2012) (school district’s proffered circumstantial evidence of resumes of candidates for librarian position was sufficient to satisfy district’s burden of production as to legitimate, nondiscriminatory reason for school superintendent’s refusal to hire 46-year-old applicant, as required to rebut applicant’s prima facie case of age discrimination and retaliation under both ADEA and Title VII, where superintendent was sole decision maker with direct knowledge regarding refusal to hire applicant and was unavailable to testify).

DeFabio v. East Hampton Union Free School Dist., 623 F.3d 71 (2d Cir. 2010) (school officials had reasonable belief that readmittance of expelled high school student to whom racially inflammatory comment was allegedly falsely attributed would cause substantial disruption or material interference with school activities, entitling officials to qualified immunity from student’s § 1983 action alleging violation of First Amendment speech rights).

Byrne v. Nicosia, 104 A.D.3d 717, 961 N.Y.S.2d 261 (2d Dept. 2013) (holding that failure to maintain steps leading to front door pursuant to Property Maintenance Code section resulting in hazardous conditions warranted summary judgment in favor of police officer on General Municipal Law § 205-e claim).

Ng Yiu v. Crevatas, 103 A.D.3d 691, 962 N.Y.S.2d 158 (2d Dept. 2013) (in case of first impression, Trustee, who held remainder interest in subject property and was named as defendant in pedestrian’s trip-and-fall action, was exempt from liability under city’s sidewalk law, New York City Administrative Code § 7-210).

Hendrickson v. Philbor Motors, Inc. 102 A.D.3d 251, 955 N.Y.S.2d 384 (2d Dept. 2012) (where trial court’s dismissal of products liability claims against automobile manufacturer was for failure to state claim, rather than via summary judgment, tire manufacturer named as codefendant was

not collaterally estopped from attributing portion of liability to automobile manufacturer).

Broich v. McGann, 92 A.D.3d 710, 938 N.Y.S.2d 451 (2d Dept. 2012) (defamation defendants demonstrated prima facie entitlement to judgment as a matter of law by establishing that challenged statements were entitled to qualified “common interest” privilege).

LiFrieri v. Town of Smithtown, 72 A.D.3d 750, 898 N.Y.S.2d 629 (2d Dept. 2010) (holding that street was considered a “highway” within meaning of local ordinance requiring prior written notice as condition precedent to suit).

Gerry v. Commack Union Free School Dist., 52 A.D.3d 467, 860 N.Y.S.2d 133 (2d Dept. 2008) (student athlete, an experienced shot putter, assumed risk associated with voluntary participation in shot put event including serious injury caused by fellow student athlete who threw shot that injured plaintiff at track meet).

Payne v. 100 Motor Parkway Associates, LLC, 45 A.D.3d 550, 846 N.Y.S.2d 211 (2d Dept. 2007) (property owner not liable in common law negligence or under Labor Law § 200 governing general duty to protect health and safety of workers for injuries sustained by subcontractor's employee in fall while working at construction site, where owner did not have notice of condition that allegedly caused worker's injuries).

Ungaro v. Patchogue-Medford, New York School Dist., 19 A.D.3d 480, 797 N.Y.S.2d 114 (2d Dept. 2005) (school district established it provided adequate supervision and that the level of supervision was not a proximate cause of infant plaintiff's accident and serious injury).

Capozzi v. Hulme, 14 A.D.3d 474, 788 N.Y.S.2d 152 (2d Dept. 2005) (gravel walkway where plaintiff tripped and fell did not constitute inherently dangerous condition).

Jahier v. Jahier, 50 A.D.3d 966, 857 N.Y.S.2d 196 (2d Dept. 2008) (plaintiff's opposition to owner's summary judgment motion consisting of architect's affidavit and report relying largely upon certain recommendations promulgated by the National Swimming Pool Institute insufficient to raise a triable issue of fact where there was no competent proof that recommendations regarding configurations of swimming pools “establish[ed] or [we]re reflective of a generally-accepted standard or practice in [residential swimming pool] settings”).

Utica Fire Ins. Co. of Oneida County v. Shelton, 226 A.D.2d 705, 641 N.Y.S.2d 864 (2d Dept. 1996) (after insured punched victim in the eye causing serious injury, intentional injury exclusion of homeowners' insurance policy barred coverage, even though insured was only convicted of third-degree assault for recklessly causing physical injury).

THOMAS CLAVIN is a Court Specialist in the Suffolk County Supreme, assigned to the Chief Clerk's office he oversees the day to day operations of the civil term of the court. Mr. Clavin has been involved with Filing By Electronic Means (FBEM) since it's inception in 1999 and is the Suffolk County Coordinator for the New York State Courts Electronic Filing System (NYSCEF), in this role he provides technical and practical assistance and instruction to attorneys and filers in the use of the system. He has been with the Unified Court System since 1983 and holds a Bachelor of Science from the City University of New York.

