

**NEW NOTICES TO THE PROFESSION
AND
PRACTICE FORMS**

New Notices to the Profession and Practice Forms have been developed to reflect changes to our procedures in scheduling civil jury and nonjury trials, matrimonial trials, simplified procedure matters, applications and motions. Copies of this material are also available from the law librarian Catherine Malvern by emailing cmalvern@waterloolaw.org.

C. S. Glithero
Local Administrative Judge
November 20, 2003

NOTICE TO THE BAR

FROM: Mr. Justice C.S. Glithero
Local Administrative Judge

DATE: November 21, 2003

RE: Civil and Matrimonial Cases

As a result of inefficiencies and underutilization of our available trial time in civil and matrimonial matters, a number of procedural changes are being implemented. These changes follow collaboration with the Bench and Bar Committee, consisting of Ross Earnshaw (575-7525), Tony Keller (725-2518), Don McIntyre (576-7360), David Bond (623-2311), Jim Marentette (743-7530), Jamie Bennett (744-4491).

Civil and Matrimonial Trials

Previously we have maintained separate matrimonial, civil jury and civil non-jury trial lists. All too frequently many cases have not been ready to proceed when called for trial. We perceive this to be largely a function of the fact that we have had so many civil and matrimonial sittings that the importance of being on a ready list has lost its significance.

For 2004, we will have four combined civil jury, civil non-jury and matrimonial sittings. They will commence on February 2, April 13, September 7 and November 29, 2004. Each sitting will be for three weeks and there will be multiple judges available for each sitting. With multiple judges available, it is anticipated that most, if not all, cases on a list will be reached and accordingly, counsel must be ready to proceed.

As we expect counsel to appreciate the significance of being on a list for trial, it is appropriate that counsel have input as to the sittings for which their case is listed. Accordingly, when a case is set down for trial, counsel will be given a notice in Form 1 advising them of the assignment court date at which their case will be spoken to. The necessity of appearing at assignment court may be circumvented if all counsel and/or unrepresented litigants consent to the case being added to the list for trial at one of the above-noted sittings. This consent is to be forwarded in Form 2. If counsel and/or unrepresented litigants do not or cannot agree, then it will be necessary to attend at the assignment court. After hearing submissions, the presiding justice will then assign the case to one of the four scheduled sittings. If the consent in Form 2 is not completed and if no counsel attend the assignment court, then the presiding justice shall assign the case to a trial list, adjourn it to another assignment court, strike it, or take such other action as he/she deems appropriate. Counsel should understand that they should not consent to a matter being placed on one of the four prescribed

sittings unless indeed they intend to proceed with the action at that time. Adjournments will not be granted without good cause.

A "speak to" court will be held on the second Friday preceding the commencement of each of the four trial sittings. These dates are January 23, April 2, August 27 and November 19, 2004, at 10:00 a.m. At that court counsel of record or fully informed agents are to appear to advise the court of the latest projected time estimates for the trial, and to advise the court of any last minute problems in having the case proceed to trial. Matters will not simply be adjourned because counsel consent to adjournments, because counsel have scheduled holidays during the four civil sittings, or for other similar excuses that have sufficed in the past. With only four scheduled sittings a year, civil and matrimonial counsel in the jurisdiction are expected to be available for trial during the sittings at which they have agreed to have their cases listed for trial.

As counsel in all cases will either have appeared at assignment court, or consented in Form 2 to be placed on a particular sitting, there is no longer a need to have the trial co-ordinator forward a trial list for that sitting. Such a list will be posted in the Local Registrar's office, and available at the trial co-ordinator's office but will not be sent out to counsel with cases on the list, as has been the practice. Counsel and/or self-represented litigants are expected to keep themselves advised as to the status of the trial list as posted and to be ready to be called for trial at any time during the sitting.

Pretrials

Previously counsel have been able to avoid going to assignment court if they arranged on consent a pretrial conference date. This has led to an ineffective system in that the majority of cases that come before us for a pretrial conference are not ready. Discoveries have not been completed, expert reports are not yet available or other necessary aspects of preparation have not been completed. Often, counsel did not seek the pretrial because the case was ready to be pretried but rather as a means of avoiding having to attend at assignment court. In order to promote a more efficient utilization of court resources, henceforth pretrials will no longer be automatically scheduled. They will only be held if requested by counsel in appropriate cases and with counsel's certification that the case is ready to be pretried. Consenting to a pretrial conference will no longer remove the requirement to appear at assignment court. Similarly, a request for a pretrial conference will no longer automatically justify an adjournment of a case that has been placed for trial on one of the four sittings.

Counsel seeking to arrange a pretrial conference may do so by contacting the trial co-ordinator.

Pretrial conference memos must be served and filed 48 hours in advance of the pretrial conference, failing which the conference will be cancelled and the case will be placed on the next assignment court list so as to continue to monitor it,

and so that the party who failed to file the pretrial conference memo cannot succeed in delaying the file.

In simplified procedure matters, pretrial conferences continue to be mandatory and may be arranged through the trial co-ordinator.

Motions

The current system of short motions on Wednesday and Thursday mornings and long motions every Wednesday and second Thursday afternoon is proving inefficient and unworkable because of the large volume of motions to be heard.

Commencing January 1, 2004, short motions will be heard on Wednesday and Thursday commencing at 10:00 a.m. Short motions are those expected to last no more than 45 minutes in total. Each counsel shall have 15 minutes for submissions, with a 5 minute maximum period for reply. Motions with a very short estimate of time, for example, five or ten minutes, will generally proceed first, but counsel will be held to those estimates so as to avoid abuse of the procedure by deliberately underestimating the time required. Factums are not mandatory for short motions but are encouraged, on the understanding that the length and degree of formality of the factum should be commensurate with the number and complexity of the issues to be determined.

Long motions will be all those expected to last more than 45 minutes. They are to be made initially returnable any Thursday at 2:00 p.m. At that time the motions or applications will be spoken to for the purpose of adjourning them to a ready list which is agreeable to counsel, or as fixed by the presiding judge. Alternatively, if all counsel obtain a ready list date from the trial co-ordinator, and all agree to that date and all agree as to the estimated time required to hear the motion, then the present consent adjournment form may be used and the need to appear on the return of the motion at 2:00 p.m. is obviated. All long motions must be accompanied by factums. We anticipate being able to hear long motions/applications fairly quickly after they are ready to be heard. This procedure will be an improvement on the current situation where an undetermined number of long motions/applications are all made returnable on one afternoon, often with the result that there are many times the number of motions that could possibly be heard that afternoon, and counsel have prepared and attend only to find their case has to be adjourned either at the outset of the afternoon session, or worse still, towards the end of the afternoon session.

Counsel are reminded that Rule 37.10(6) requires that factums on motions be filed at least two days before the hearing. Rule 38.09 requires that factums on applications be filed at least 2 days before the hearing. These same rules set out when they must be served.

All Motions

As has been the practice, our policy will continue to be that a motion or application may be adjourned twice on consent to a specific date. Thereafter, it will be adjourned sine die, returnable on four days notice, unless counsel attend

and persuade the presiding justice that there is sufficient reason to adjourn the case further to a specific date.

Counsel are reminded that Rule 37.10 requires the moving party to file motion material at least three days before the return of the motion, and requires the responding party to file its material at least two days before the hearing of the motion. The staff of the local registrar's office will be instructed that they should not accept materials for filing if the above time limits are not met. Requests to have the court consider material that has been short served will be considered but generally speaking urgency will have to be shown in order to justify an abridgement of the rules regarding the time requirements for service.

Counsel are also reminded that the Central South Region Administrative Procedures Manual requires that all counsel file a motion certificate certifying that they have discussed the matter, and if it is to proceed, containing the time estimated for submissions. Many counsel have been lax about the certificate and often only one counsel files a certificate indicating only his/her estimated time for submissions. Without knowing the time estimate of the opposite counsel, the court is left with an incomplete understanding of the estimated length of the motion/application. All counsel are required to file a certificate, or a certificate may be filed by one counsel with the consent of and on behalf of all the others indicating the total time required for argument. All such certificates must be filed by 2:00 p.m. the day before the motion. Any counsel who does not file a certificate containing a time estimate will be afforded a maximum of ten minutes for submissions.

Where motions or applications have been set to proceed for hearing and subsequently settle, counsel should immediately so advise the trial coordinator at 519-741-3240 so that the booked time can be reassigned.

SUPERIOR COURT OF JUSTICE

COURT HOUSE
20 WEBER STREET EAST
KITCHENER, ONTARIO

FILE # _____

DATE FILED _____

PLAINTIFF

VS

DEFENDANT

(ALL CASES LISTED DURING THE MONTH OF SEPTEMBER 2003)

NOTICE

THE ABOVE CASE IS NOW READY FOR TRIAL AND WILL BE SPOKEN TO ON FRIDAY, JANUARY 30, 2004 ASSIGNMENT COURT AT THE HOUR OF 10:00 O'CLOCK (JURY, NON-JURY AND MATRIMONIAL) AT THE COURT HOUSE, 20 WEBER STREET EAST, KITCHENER.

IT IS THE RESPONSIBILITY OF THE FILING PARTY TO NOTIFY ALL OTHER PARTIES OR THEIR COUNSEL OF THE ASSIGNMENT COURT DATE AND TIME WITHIN 5 DAYS.

THE CASE NEED NOT BE SPOKEN TO AT THE ASSIGNMENT COURT IF ALL COUNSEL AND/OR UNREPRESENTED LITIGANTS CONSENT IN FORM 2 TO THE CASE BEING ADDED TO THE TRIAL LIST FOR THE SITTINGS COMMENCING FEBRUARY 2, APRIL 13, SEPTEMBER 7 OR NOVEMBER 29, 2004.

IF THE MATTER SETTLES, PLEASE NOTIFY THE TRIAL CO-ORDINATOR.

GOWNS ARE NOT REQUIRED FOR THE ASSIGNMENT COURT.

C.S. GLITHERO
LOCAL ADMINISTRATIVE JUSTICE

SUPERIOR COURT OF JUSTICE - KITCHENER

FILE # _____

DATE FILED _____

PLAINTIFF

VS

DEFENDANT

CONSENT TO PLACEMENT ON TRIAL LIST

We, counsel for the parties and/or self-represented litigants, hereby confirm that each party has consented to this matter being placed on the trial list commencing _____, 2004, and that they are required to attend the "speak to" court to be held 6 working days prior to the commencement of the sittings, namely, Friday _____, 2004 at 10:00 a.m.

Counsel and/or self-represented litigants hereby acknowledge that this case is ready to proceed and will be expected to proceed at the aforementioned trial sitting.

Dated:

_____, 2003.

Counsel For

Counsel For

Counsel For

SIMPLIFIED PROCEDURE
SUPERIOR COURT OF JUSTICE

COURT HOUSE
20 WEBER STREET EAST
KITCHENER, ONTARIO

FILE # _____

DATE FILED _____

PLAINTIFF

VS

DEFENDANT

(ALL CASES LISTED DURING THE MONTH OF OCTOBER 2003)

NOTICE

THE ABOVE CASE IS NOW READY FOR PRE-TRIAL AND WILL BE SPOKEN TO ON FRIDAY, JANUARY 30, 2004 ASSIGNMENT COURT AT THE HOUR OF 10:00 O'CLOCK AT THE COURT HOUSE, 20 WEBER STREET EAST, KITCHENER.

IT IS THE RESPONSIBILITY OF THE FILING PARTY TO NOTIFY ALL OTHER PARTIES OR THEIR COUNSEL OF THE ASSIGNMENT COURT DATE AND TIME WITHIN 5 DAYS.

PRE-TRIALS CAN BE ARRANGED THROUGH THE TRIAL CO-ORDINATOR AT (519) 741-3240. IF A PRE-TRIAL IS SET ON CONSENT OF ALL PARTIES AND CONFIRMED, *in writing, on Form 2A*, WITH THE TRIAL CO-ORDINATOR, IT WILL NOT BE NECESSARY TO ATTEND ASSIGNMENT COURT. PRE-TRIAL MATERIAL IS TO BE FILED FIVE CLEAR DAYS BEFORE THE PRE-TRIAL DATE.

IF THE MATTER SETTLES, PLEASE NOTIFY THE TRIAL CO-ORDINATOR.

GOWNS ARE NOT REQUIRED FOR THE ASSIGNMENT COURT.

C.S. GLITHERO
LOCAL ADMINISTRATIVE JUSTICE

SIMPLIFIED PROCEDURE
SUPERIOR COURT OF JUSTICE - KITCHENER

FILE # _____

DATE FILED _____

PLAINTIFF

VS

DEFENDANT

CONSENT TO PRE-TRIAL IN SIMPLIFIED PROCEDURE CASE

We , counsel for the parties and/or self represented litigants, hereby confirm that each party has consented to the pre-trial conference of this matter being held on _____ the _____ day of _____, 200__ at _____ a.m./p.m. At that pre-trial conference the case will be adjourned to a particular trial list, or a particular assignment court, as directed by the presiding judge, upon hearing the representations of the parties.

Dated:

_____, 2003.

Counsel For

Counsel For

Counsel For

COURT HOUSE
20 WEBER STREET EAST
KITCHENER, ONTARIO

NOTICE OF ASSIGNMENT COURT

Attached is a list of cases that have been listed for trial but on which no action has been taken for a period of time, or cases where the trial record was filed during the month OCTOBER, 2003.

Counsel/and or self-represented litigants are ordered to attend on Friday, JANUARY 30, 2004, at 10:00 a.m. at the Court House, 20 Weber Street East, Kitchener to advise the Court of the status of the case and to have the case placed on an appropriate trial list.

For 2004, the trial sittings for civil jury, civil non-jury and matrimonial trials will commence on February 2, April 13, September 7 and November 29, 2004 and each sittings will be of a three-week duration with multiple justices available. If counsel and/or self-represented litigants wish to consent in writing, on the attached Form 2, to have their case placed on one of these trial lists, then it will not be necessary to attend this assignment court. It will be necessary for them to attend a "speak to" court to be held at 10:00 a.m. on the Friday which is six working days prior to the commencement date of the sittings.

In the event that counsel and/or self-represented litigants do not appear at assignment court, and do not consent in writing to be added to one of the aforementioned trial lists, the case will then be scheduled for trial at the discretion of the presiding justice.

Counsel and/or self-represented litigants should be advised that cases will be expected to proceed to trial at the sittings for which the case has been listed. Adjournments will not be granted except where adequate cause is shown.

It will be the responsibility of counsel and/or self-represented litigants to monitor the progress of the trial list and to be ready to proceed when the case is called.

THE HONOURABLE MR. JUSTICE C.S. GLITHERO
LOCAL ADMINISTRATIVE JUDGE

DATED AT KITCHENER
08 January 2004

SUPERIOR COURT OF JUSTICE
REGIONAL MUNICIPALITY OF WATERLOO

FORM 3A

COURT HOUSE
20 WEBER STREET EAST
KITCHENER, ONTARIO

NOTICE OF ASSIGNMENT COURT - SIMPLIFIED PROCEDURE CASES

Attached is a list of cases that have been adjourned to assignment court at pre-trial or no action has been taken for a period of time or cases where the Notice of Readiness for Pre-Trial was filed during the month of JULY, 2003.

Counsel/and or self-represented litigants are ordered to attend on Friday, October 31, 2003 at 10:00 a.m. at the Court House, 20 Weber Street East, Kitchener to advise the Court of the status of the case.

If counsel and/or self-represented litigants wish to set a pre-trial they may do so by contacting the trial coordinator at 519-741-3240. If a pre-trial is set on consent of all parties and confirmed, *in writing*, in Form 2A, it will not be necessary to attend this assignment court.

For 2004, the trial sittings for civil jury, civil non-jury and matrimonial trials will commence on February 2, April 13, September 7 and November 29, 2004 and each sittings will be of a three-week duration with multiple justices available. If the matter has been pre-tried and counsel and/or self-represented litigants wish to consent in writing, on the attached Form 2, to have their case placed on one of these trial lists, then it will not be necessary to attend this assignment court. It will be necessary for them to attend a "speak to" court to be held at 10:00 a.m. on the Friday which is six working days prior to the commencement date of the sittings.

In the event that counsel and/or self-represented litigants do not appear at assignment court, and do not consent in writing to a pre-trial or to be added to one of the aforementioned trial lists, the case will then be scheduled for pre-trial or trial at the discretion of the presiding justice.

Counsel and/or self-represented litigants should be advised that cases will be expected to proceed to trial at the sittings for which the case has been listed. Adjournments will not be granted except where adequate cause is shown.

It will be the responsibility of counsel and/or self-represented litigants to monitor the progress of the trial list and to be ready to proceed when the case is called.

Counsel are reminded that the Rules require that the trial record be filed 10 days before the commencement of the trial. In cases where trial records have not been filed in compliance, they will be struck off the list at the "speak to" court.

THE HONOURABLE MR. JUSTICE C.S. GLITHERO
LOCAL ADMINISTRATIVE JUDGE

DATED AT KITCHENER
08 January 2004

NOTICE TO PROFESSION
DIRECTION RE MOTIONS AND MOTION PROCEDURES
SUPERIOR COURT OF JUSTICE, KITCHENER

Due to the large volume of motions, the following direction is in effect as of Jan. 1, 2004

SCHEDULING:

Short Motions (maximum of 45 minutes, total all parties)

- Wednesday of each week, 10:00 a.m.
- Thursday of each week, 10:00 a.m.

Long Motions / Applications (Longer than 45 minutes)

-long motions/applications shall be made returnable on any Thursday at 2:00 p.m. for the purpose of adjournment to an appropriate ready list, but all material must be filed on the original motion day. Responding material (including factum) for motions should be filed in accordance with the requirements of Rule 37.10(3), and for applications, Rule 38.09

-these long motions/applications will be placed on a ready list as agreed to by counsel or otherwise set by the presiding justice. This ready list will be maintained by the trial co-ordinator, who will advise counsel of the first available date to hear these matters. If counsel can agree on the amount of time required to hear a motion/application, and can obtain a date from the trial co-coordinator, then a consent adjournment form may be filed thereby obviating the need to appear at the 2:00 p.m. Thursday return of the long motion.

-pursuant to the Central South Regional Administrative Manual, factums are required on long motions/applications. The length of the factum should be commensurate to the number and complexity of issues requiring adjudication. Rules 37.10 and 38.09 require the factums to be filed at least 2 days before the hearing of the motion or application, and set out when the factums must be served.

PROCEDURES:

(In accordance with the Administrative Manual for Central South)

Short Motions - maximum time for presentation and argument, 15 minutes for each party and five minutes for reply.

THE PRESIDING JUSTICE MAY ADVISE EACH COUNSEL TO SUM UP WHEN COUNSEL HAS TWO MINUTES REMAINING IN THE ALLOTTED TIME AND SHALL TERMINATE THE PRESENTATION PROMPTLY.

All Motions

Counsel or self-represented parties on all motions/applications will be required to file (or fax to the trial co-ordinator at 519-741-3213) a motion certificate in the form annexed hereto no later than 2:00 p.m. on the afternoon of the day before a motion is to be heard. Counsel for each of the applicant and respondent(s) will be required to file the aforementioned certificate or the certificate may be filed jointly by counsel. These certificates must contain counsel's estimate of the time required for his/her submissions. If a counsel does not file a certificate containing a time estimate, that counsel will be limited to a maximum of ten minutes for submissions. The motions data form will also be completed at the time of filing motion material.

FACTUMS, (HOWEVER BRIEF) ARE HIGHLY RECOMMENDED ON ALL MOTIONS AND ARE MANDATORY ON APPLICATIONS AND LONG MOTIONS. COUNSEL ARE REMINDED THAT THE TIME FOR SERVICE AND FILING OF FACTUMS ON MOTIONS IS GOVERNED BY RULE 37.10, AND FOR APPLICATIONS IS GOVERNED BY RULE 38.09.

Counsel are requested to provide out-of-town responding counsel with a copy of these Directions and Certificates to assist in compliance with this procedure.

(Also see directions re Motions and Applications in Central South Region, Administrative Procedures Manual.)

DATED AT KITCHENER, ONTARIO this 21st day of November, 2003.

JUSTICE C.S. GLITHERO
LOCAL ADMINISTRATIVE JUDGE

SHORT MOTION CERTIFICATE
(For Motions Lasting No Longer Than 45 Minutes)

_____ v. _____

Motion Returnable _____

File No. _____

I/WE _____ am/are counsel for the

_____ moving party _____ respondent

I certify that I have discussed with opposing counsel whether the motion will proceed. I certify that as a result of that discussion the motion:

_____ will proceed _____ will be resolved/adjourned on consent

_____ adjournment will be argued

I certify that I will make submissions lasting no longer than _____ minutes

The presiding judge should read the following materials filed in respect of this motion:

1. _____
2. _____
3. _____

The following are the issues to be argued:

1. _____
2. _____
3. _____

NOTE: Although factums are not required on short motions, counsel are urged to use them. The length and complexity of the factum should be commensurate with the number and complexity of the issues to be argued. Pursuant to Rule 37.10(6), factums are to be filed two days before the return of the motion. In the event that a motion is noted to proceed but subsequently settles at any time before the hearing of the motion, counsel are to immediately so notify the trial coordinator at 519-741-3240 so that the booked time can be reallocated.

Motions expected to last more than 45 minutes are to be treated as long motions, and made returnable at 2:00 p.m. on a Thursday to be spoken to for purposes of scheduling a hearing date.

DATE

SIGNATURE OF COUNSEL

LONG MOTION CERTIFICATE
(For Motions Expected to Last More Than 45 Minutes)

_____ v. _____

Motion Returnable _____

File No. _____

I/WE _____ am/are counsel for the

_____ moving party

_____ respondent

I certify that I have discussed with opposing counsel whether the motion will proceed. I certify that as a result of that discussion the motion:

_____ will proceed

_____ will be resolved/adjourned on consent

_____ adjournment will be argued

I certify that I will make submissions lasting no longer than _____ minutes

The presiding judge should read the following materials filed in respect of this motion:

1. _____

2. _____

3. _____

The following are the issues to be argued:

1. _____

2. _____

3. _____

NOTE: Factums are required for long motions. The length and complexity of the factum should be commensurate with the number and complexity of the issues to be argued. Pursuant to Rule 37.10(6) and Rule 38.09 factums are to be filed 2 days before the return of the motion or application.

Long motions/applications are to be initially returnable any Thursday at 2:00 p.m. At that time the matter will be spoken to and placed on a ready list as agreed to by counsel or as fixed by the presiding justice. The usual consent form may be left with the registrar if counsel have obtained an available return date from the trial co-ordinator, and all counsel agree on the date and on time estimates.

DATE

SIGNATURE OF COUNSEL