



2023 Annual Conference

Syracuse, New York

Unblurring the Lines for Judges Without Court Clerks

Date: Tuesday, October 3, 2023

Instructors:

Diane S. Turo, Esq.

Kim Howard

MCLE: 1.0

(0.5 Professional Practice, 0.5 Law Practice Mgmt.)

This program has been approved for credit in
New York State for all attorneys
including those who are Newly Admitted
(less than 24 months) and administered by
the Onondaga County Bar Association



DIANE S. TURO, ESQ. is Supervising Court Attorney in the Office of Justice Court Support (OJCS). A native of Clifton Park, New York, Diane joined OJCS in September 2015. She also served as Town Justice for the Town of Milton, Saratoga County until December of 2019. She graduated from St. Bonaventure University, Albany Law School, and is admitted to practice in New York. Prior to working at OJCS, Diane served as an Assistant Public Defender of Saratoga County for more than eight years. In that capacity she worked within the town and village courts, and county court, defending clients in criminal matters from assignment to trial. In 2014 she was appointed as the Conflict Defender of Saratoga County and engaged in a diverse private practice.

Kim M. Howard

Kim Howard is the Clerk for the Town of Sullivan Court where she began in 1992 and is in her 31st year of holding this position. In 2019 she started as the 1st Clerk for Town of Lincoln Court. 2020 she was elected Secretary to the Madison County Magistrates and Court Clerks Association. Prior to this she worked for an Attorney's office for 3 years. She began serving on the NYSAMCC board as a County Representative in 2002. She has served as an elected member since 2014 holding positions of Director, Executive Secretary, 3rd VP, 2nd VP and currently holds the position of 1st VP. She has served as Chair to many committees on the board. Kim has been an advocate for mandatory training and does many training of Clerks and Judges on her own time. She has been a huge part with assisting in the 5th and 6th Judicial training. Kim resides in Chittenango (Madison County) where she has raised 3 children and became a proud grandma in February. She has been a member of the North Chittenango Fire Company for over 30 years.

Currently Kim is the Membership Chair, and serves on Education, Parliamentarian and Resolutions, NYSMA Partnership and Conference Committees.

**UNBLURRING THE LINES
JUDGES WITHOUT A COURT CLERK**

TOPICS TO BE COVERED

- Focusing on judges without court clerks:
 - E-Tickets
 - Digital Recorder
 - Preparing for and Adjudicating
 - 1192 Cases
 - VTL Cases
 - Summary Proceedings
 - Americans with Disabilities Act
 - Preparing for Monthly Financial Reports

E-TICKETS

Missing tickets? What to do?

MISSING E-TICKETS

- Take away – if not the Court's fault = NOT YOUR PROBLEM
- Law enforcement's role is to ensure that their tickets are properly filed with the court on or before the return date of the ticket
- Technology can fail, again Law Enforcement's duty is to file a paper version if technology has failed
- Do NOT contact Law Enforcement
- CAN check with Office of Justice Court Support and/or Criminal Disposition Reporting/E-Tickets to see if it was an OCA glitch

DIGITAL RECORDER

Can be your best friend!

DIGITAL RECORDER

- Bookmarking!
 - In the digital recorder, the court can bookmark the recording for ease of later access – can import the court calendar to the digital recorder
 - This is incredibly useful for reviewing the proceedings for writing decisions, preparing recordings for transcription, etc.
 - Resources, including a demonstration, available on our website: https://www.nycourts.gov/courts/townandvillage/judges_only/topics/digitalrecorders.shtml

PREPARING AND ADJUDICATING 1192 CASES

DWI CHARGES POP QUIZ

- VTL 1192(1) DRIVING WHILE ABILITY IMPAIRED
 - (TRAFFIC INFRACTION)
- MISDEMEANORS
 - VTL 1192(2)-DRIVING WHILE INTOXICATED; PER SE- BAC.08% OR MORE
 - VTL 1192(2-a)(a)- AGGRAVATED DRIVING WHILE INTOXICATED- BAC. 18%
 - VTL 1192(2-a)(b)- LEANDRA'S LAW- VIOLATION OF VTL 1192(2),(3),(4), OR (4-A) WHILE A CHILD 15 YEARS OR LESS IS A PASSENGER
 - VTL 1192(3)- MISDEMEANOR – NO BAC!

DWI CHARGES POP QUIZ

- VTL 1192(4)-DRIVING WHILE ABILITY IMPAIRED BY DRUGS
- VTL 1192(4-A)-DRIVING WHILE ABILITY IMPAIRED BY THE COMBINED INFLUENCE OF DRUGS OR ALCOHOL AND ANY DRUG OR DRUGS
- VTL 1192(5)- COMMERCIAL MOTOR VEHICLE, BAC BETWEEN .04% AND .06% TRAFFIC INFRACTION
- VTL 1192(6)- COMMERCIAL MOTOR VEHICLE, BAC BETWEEN .06% AND LESS THAN .08% TRAFFIC INFRACTION –MISDEMEANOR.

1192 FILING PAPERWORK- WHAT MAY BE FILED?

1. Accusatory Instrument - Uniform Traffic Ticket
2. Supporting Deposition/Bill of Particulars
3. Chemical Test Results/ BAC Paperwork
4. Chemical Test Refusal Paperwork (Report or Refusal).
5. Arrest Report
6. Additional Paperwork: Accident Report, Oral Admissions, Additional Supporting Depositions

LET'S CHAT

WHAT DO YOU NEED FOR THE ARRAIGNMENT?

WHAT DO YOU DO IF SOMETHING IS MISSING?

LET'S UNBLUR THOSE LINES!

1192 RELATED ARRAIGNMENT FORMS

Non-Refusal:

- Order of Suspension Pending Prosecution (MV-1193)

Chemical Test Refusal Paperwork:

- Notice of Temporary Suspension and Notice of Hearing (AA-137)

PREPARING THE FILE FOR DWI ARRAIGNMENT

- DID YOU?
 - Enter the case into the Case Management System?
 - Download the tickets?
 - Copies of documents for all parties?
 - Do you have the defendant's driver's abstract?
 - Do you have the Defendant's RAP Sheet?



AFTER THE DWI ARRAIGNMENT

- Was the license suspended?
 - What if I, the judge, forgot? Options?
 - Was the physical NYS license taken?
- Out of State license?
- How quickly does the paperwork go up to DMV?



1192 RELATED SENTENCING FORMS

Pre-Sentence IID Paperwork:

- Pre-Sentence Order Directing Installation of IID Form (UCS-956) and DMV Pre-Sentence IID Form (AA-497)

Sentencing Paperwork Related to IIDs:

- Orders and Conditions of Probation and Conditional Discharge Related IID (UCS-965B)
- Monitor Notification of IID Condition (OPCA-510-IIN),
- Motor Vehicle Ownership Affidavit, and
- IID Financial Disclosure Report Form (DCPA500-IID-FDR)

PREPARING AND ADJUDICATING VTL CASES

REQUESTS FOR SUPPORTING DEPOSITIONS

- **Scenario:** Defendant sends a Uniform Traffic Ticket into the court with a “Not Guilty” plea and requests a supporting deposition be served
- **Judge without a Clerk or Clerk:** Notifies Judge as soon as request comes in
- **Judge:** Orders complainant police officer to serve supporting deposition on defendant and file proof of service with the court
- **Judge without a Clerk or Clerk:** Sends order to the complainant police officer
- **Judge:** If defendant makes motion to dismiss for officer’s failure to serve supporting deposition and file proof of service, review and make determination on motion to dismiss
- **Bottom Line:** Court cannot serve defendant with supporting deposition on behalf of police officer
 - This is different from a records request by defendant for a copy of the court’s file (which should be provided by the court to defendant!)

CPL §100.25(2)

**PREPARING AND
ADJUDICATING
SUMMARY PROCEEDING
CASES**



WHAT IS A SUMMARY PROCEEDING

A summary proceeding is the means by which a landlord may evict a tenant. This means it provides the landlord with the legal means to recover possession of real property

WHO ARE THE PARTIES TO A SUMMARY PROCEEDING

A landlord or other person entitled to possession of real property may commence a summary proceeding to quickly remove a tenant or occupant

The person who commences the summary proceeding is called the petitioner

The person who responds to the summary proceeding is called the respondent

The respondent is the tenant or occupant of the real property sought to be recovered

WHAT GOVERNS THE COMMENCEMENT OF A SUMMARY PROCEEDING

The procedures for bringing a summary proceeding are found in Article 7 of the Real Property Actions & Proceedings Law (RPAPL)

Other relevant provisions for commencing a summary proceeding are found in the Real Property Law (RPL)

Summary proceedings are governed by strict statutory guidelines that concern, among other things, notice, service, and the right to a jury trial

WHAT IS THE COURT CLERK'S ROLE IN A SUMMARY PROCEEDING?

- 1. Explain court rules and procedures;**
- 2. Explain public court operations and jobs;**
- 3. Describe court records and their availability;**
- 4. Provide public case information;**
- 5. Can't assist with paperwork, direct to speak with an attorney or the www.nycourts.gov/courthelp website**

What if you have no Court Clerk?!

WHAT SHOULD A COURT CLERK (OR A JUDGE WITHOUT A COURT CLERK) NOT DO IN A SUMMARY PROCEEDING?

- 1. Suggest procedures to follow;**
- 2. Provide opinions about which option to choose;**
- 3. Predict what the court will do;**
- 4. Analyze the law based on the specifics of a case;**
- 5. Provide information derived from the decision-making process;**
- 6. Provide access to sealed or confidential case records;**
- 7. Provide confidential case information;**
- 8. Give opinions about complaints;**
- 9. Make referrals based on personal preference;**
- 10. Provide or suggest information to enter on forms.**

HOW IS JURISDICTION ACQUIRED IN A SUMMARY PROCEEDING

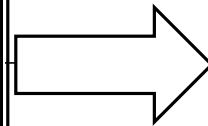
In order to hear a summary proceeding the court must have the following two types of jurisdiction:

 • **Geographic Jurisdiction; and**

 • **Subject Matter Jurisdiction**

GEOGRAPHIC JURISDICTION

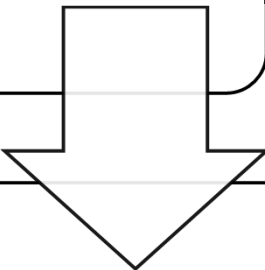
Pursuant to RPAPL §701(2)-
the summary proceeding
must be commenced in the
court of the municipality
where the property is
located



Check and make sure that the
proceeding is being properly filed. If
the papers are not filed within the
jurisdiction where the property is
located, you, the judge, decide if the
filing is proper

WHERE TO FILE

Village – file in the Village Court where the property is located or the TOWN, if concurrent jurisdiction (UJCA §§201 & 204) exists



Town – file in the Town Court where the property is located or in the Village, if concurrent jurisdiction (UJCA §§201 & 204) exists

FILING BY A CORPORATION OR VOLUNTARY ASSOCIATION

If a proceeding is commenced in a Town Court or Village Court the corporation or voluntary association may appear by an attorney or by any authorized officer, director or employee

RECUSAL

If the Notice of Petition and Petition are filed within the jurisdiction that contains the property however, you have to recuse yourself from hearing the proceeding, what should be done?

DO NOT transfer the proceeding:

- Contact the District Office and notify of the recusal
- District Office should assign, by Administrative Order, a new judge to handle the proceeding in your courthouse

SUBJECT MATTER JURISDICTION

The respondent **MUST** be in possession of the premises sought to be recovered at the time the proceeding is commenced

The petitioner must have taken the proper steps to invoke the court's jurisdiction

WHAT ARE THE TYPES OF SUMMARY PROCEEDINGS?

Two types of summary proceedings:

- **Non-payment proceeding** where the respondent may be evicted for the non-payment of rent. In a non-payment proceeding the petitioner's objective is to obtain outstanding arrears and obtain possession of the premises; and
- **Holdover proceeding** where the respondent may be evicted based upon things such as the expiration of a lease, the respondent is a licensee or squatter, or the respondent is a nuisance or displays objectionable conduct. In a holdover proceeding the petitioner's objective is to obtain possession of the premises. Even though a petitioner may commence a holdover proceeding, they may also request rent and/or use and occupancy. It is up to the judge to decide whether the petitioner can obtain money as part of the holdover proceeding.



NON-PAYMENT PROCEEDINGS

Non-payment proceedings are commenced by the petitioner to collect unpaid rent.

Prior to coming to court, the petitioner or someone working for the petitioner, must demand the overdue rent from the respondent and warn the respondent that if the rent is not paid, they may be evicted

The demand must be in writing and must be delivered to the respondent at least 14 days before the court case is started ("RPAPL §711")

If the respondent does not pay the rent after the demand is made, the petitioner may file a nonpayment petition (sometimes called a "dispossess") against the respondent in court

It is up to, you, the judge, to decide whether the petitioner complied with the prerequisites prior to commencing the non-payment proceeding

HOW TO START A SUMMARY PROCEEDING AFTER SERVICE OF THE PREDICATE NOTICE

To start a summary proceeding the petitioner must file the Notice of Petition and Petition with the court

The Petition should include the following information

1. The interest of the petitioner in the premises;
2. The interest of the respondent in the premises and their relationship with the petitioner;
3. A description of the premises;
4. The facts upon which the proceeding is based;
5. The relief sought



HOW TO START A SUMMARY PROCEEDING AFTER SERVICE OF THE PREDICATE NOTICE

- The Notice of Petition should reflect the date, time, and place the parties need to appear in court
- Holdover and non-payment proceedings must be scheduled so the petitioner can serve between 10 and 17 days of that return date (“RPAPL §733”)



IS THERE A FEE TO COMMENCE A SUMMARY PROCEEDING?

- **Yes.**
- The filing fee is \$20 and \$20 issuing fee (if the court signs the notice of petition and regularly charges for issuing the Notice of Petition)
- The court responsible to advise petitioner of the acceptable forms of payment for such fee





The court should write the docket number on the original forms and keep a copy of the Petition



The Court should return the Notice of Petition with the docket number on the front so that the petitioner can serve the Notice of Petition and Petition



After serving the papers, the petitioner should return the original Notice of Petition with a notarized affidavit of service

WHEN SHOULD THE NOTICE OF PETITION AND PETITION BE FILED WITH THE COURT

- The Notice of Petition and Petition must be filed with the court within 3 days of service
 - If the Notice of Petition and Petition are personally served-the three days starts when personal service was effectuated.
 - If the Notice of Petition and Petition are served by substituted service or nail and mail, the three days starts after the required mailing is made.
- Check for if the filing is not timely
- Only you, the judge, can determine whether the filing was untimely and whether or not to dismiss the proceeding

RPAPL §735(2)



HOW THE RESPONDENT ANSWERS A PETITION

Once the papers have been served the respondent will come to court to give the court an oral or written answer

If the answer is oral, court should ask for identification

If the court is told that the person is infirmed, in the hospital and/or incarcerated you, the judge, may have to decide the appropriate steps to be taken

RESPONDENT'S ANSWER

- RPAPL Section 743 ANSWERS

- Respondent may submit their own written answer. If it is not writing it can be submitted orally
- The court, would recommend doing on the record if no clerk, may ask the tenant questions and write down the tenant's answers however, the court may not offer legal advice or opinions as to the alleged defenses
- The court must be thorough in writing down the answer. A respondent may be prejudiced if the court is not thorough since the respondent may not be able to raise defenses not indicated in their initial Answer
- No fees associated with the filing of an Answer

WHAT IF A PARTY NEEDS AN INTERPRETER

If a party indicates they need an interpreter, the court must arrange for the interpreter to be present on the return date

If the court believes a party may need an interpreter, the court should inquire of the party as to whether they believe an interpreter will be helpful

If the party states that they do not need an interpreter and the court believes that despite the party's objection an interpreter is necessary, you, the judge, will have to decide

Legal Advice

- A judge who does not have a court clerk **MAY NOT** give legal advice or opinions even if the party asks for such help.
- Parties requesting advice may be:
 - Directed to speak with an attorney, or
 - Directed to www.nycourts.gov/courthelp

SUBPOENAS

- If a party asks for a subpoena the court
 - can provide the form

- The court can not fill out the subpoena
 - or provide any legal advice
- For more info on Subpoenas see Core A 2023 Training on mycje.learnupon.com

AMERICANS WITH DISABILITIES ACT (ADA)

AMERICANS WITH DISABILITIES ACT (ADA) ACCOMMODATION

If a party indicates, they need an ADA accommodation the court will be notified:

- If the court sees and/or believes a party may need an ADA accommodation, you, the judge will have to research the accommodation
- The judge is the person who will be responsible for determining any ADA requests
- If you, the judge, determine that an ADA accommodation is necessary, the court must arrange for the appropriate accommodations and notify the parties of such accommodation

PREPARING FOR THE MONTHLY FINANCIAL REPORT

MONTHLY REPORTS

- What is the Monthly Report exactly? It is the report that is submitted to the NYS Comptroller certifying the funds the Judge took in that Month.
- What is in the report?
 - Justice ID Number
 - Statute, Section, and description of the offense
 - Notation
- **Judge:** Prepare and submit the Monthly Report
- **MUST FILE A REPORT EVEN IF AT ZERO!**



MONTHLY REPORTS

- If you have a question or issue with your report, call the Justice Court Fund!
 - FYI, Judges Core A 2020 Training: “The Judge’s Duty to Report and Remit Monthly” and Clerk Core 2022 Fiscal Program: Justice Court Fund and CourtRoom Program staff discuss common reporting issues and how to prevent them are available on mycje.learnupon.com
- If there is an issue after your report is filed or if you don’t file the report, the State Comptroller will send a letter to your court, to the Office of Justice Court Support, and to the District office. PLEASE PRIORITIZE THIS LETTER.
- If three notices go out without a response, then a letter is sent to your municipality advising the municipality your pay can be suspended until compliance is met.



QUESTIONS?

Office of Justice Court Support

800-232-0630

resourcecenter@nycourts.gov

www.nycourts.gov/justicecourts