

SUPREME COURT - NASSAU COUNTY
100 Supreme Court Drive
Mineola, New York 11501

IAS PART 10 – PART RULES & PROCEDURES (revised as of March 7, 2016)

Justice: **HON. RANDY SUE MARBER**
Principal Law Clerk: **JOSEPH H. LORINTZ, ESQ.**
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I ADJOURNMENTS

A. Motions and Conferences:

1. Adjournments of **motions and conferences** may be granted if there is consent of all parties and **prior approval of the Court**. No adjournments will be granted without the approval of the Court. If all parties do not consent to the adjournment, an application shall be made by conference call, with all counsel, **no later than 3:00 p.m.** of the day preceding the scheduled motion or conference. No requests for an adjournment will be entertained without all parties participating in the conference call. Except for applications made in court, upon approval of the adjournment, a letter must immediately be submitted by fax, **only**, to Chambers confirming same with a copy to all counsel appearing in the matter.
2. Adjournments of **motions and conferences** may only be sought through **Chambers**. Potential dates, convenient to all parties must be available at the time the adjournment is sought.
3. Letters confirming adjournments **MUST** immediately be faxed to Chambers and **MUST** contain full names of all parties, the index number and shall specify if a motion and/or a conference is being adjourned. Do not mail a copy to Chambers.
4. Adjournment requests which are left on the Chamber's Voice Mail shall be **disregarded**.
5. Adjournments requested because of the actual engagement **on trial**

of counsel must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR Part 125.

6. No adjournment of discovery as per the Preliminary Conference Order shall take place without prior Court permission. Counsel is advised to seek Court permission before adjourning any deposition date specified in the Preliminary Conference Order to a later date.

B. Preliminary Conference:

1. Preliminary conference adjournments are to be addressed to the DCM Clerk's office and not to Chambers.

II MOTIONS

A. Pre-Motion Conferences:

1. Prior to the making or filing of any discovery or other non-dispositive motions, counsel for the prospective moving party shall first discuss the issue(s) in question with his or her adversary. If the issue(s) in question cannot be resolved, counsel for the prospective moving party **MUST** arrange for a conference call to be held with his/her adversary and the Court to discuss the issue(s) involved and the possible resolution thereof. Counsel fully familiar with the matter and with authority to bind their client **MUST** be available to participate in the conference call.
2. If the matter can be resolved during the conference, an order consistent with such resolution may be issued.
3. This rule does not apply to applications for counsel to be relieved or motions for summary judgment.
4. Any discovery or other non-dispositive motion must state that Rule II A. 1. above has been complied with. Failure to comply with Rule II A. 1. above will result in the motion being denied.

B. Submission of Motions

1. Unless otherwise specifically required by the Court, there are no appearances on CPLR § 3212 motions made **after** the filing of a Note of Issue and for **unopposed** motions made pursuant to CPLR § 3215. Appearances of all Counsel and Pro se parties **are** required on all other motions and Orders to Show Cause.

2. Courtesy or working copies should **not** be submitted, unless requested by the Court or the motion has been electronically filed. A working copy (hard copy) of the E-Filed motion papers, any Memorandum of Law, opposition and reply papers must be submitted with all exhibits properly tabbed.
3. Failure to appear at a calendar call may result in denial of any motion made by the non-appearing party and/or the granting of any motion on default when the opposing party fails to appear.
4. In the event a case is already scheduled for a conference with the Court, counsel should endeavor to make the return date of a motion, if possible, on said date.
5. Counsel must advise the Court, in writing, and as soon as practicable, if any submitted motions have been resolved, withdrawn, or if the motion is moot because the case has been settled.
6. Pursuant to CPLR § 3212 (a), a motion for summary judgment shall be filed no later than sixty (60) days after the filing of the Note of Issue, except with leave of court on good cause shown. Any physician affirmations, reports or other medical proof submitted in threshold motions shall contain the original signatures of the physician or medical provider whenever possible.
7. **All exhibits must be clearly tabbed**; no exhibits shall be double sided; no mini-scripts are accepted; motions not consistent with this rule will be rejected and returned to counsel.
8. All submissions shall be fully and securely bound and shall have a litigation back attached thereto. Orders to Show Cause and Motions greater than two (2") inches thick must be split into multiple volumes and secured by heavy duty staples or ACCO fasteners and clearly marked with a copy of the Order to Show Cause or Notice of Motion on each label (e.g. 1 of 3, 2 of 3, 3 of 3).
9. When submitting proposed orders or judgments in connection with a motion, the same shall be submitted as a separately bound document. Proposed orders or judgments incorporated within motion papers will be considered exhibits, treated as such, and may be disregarded.
10. All papers must be timely submitted at the time the motion is heard. The Court will not consider late papers absent prior Court approval. No sur-reply affidavits, affirmations, memoranda of law or letters will

be accepted or considered by the Court without leave of the Court.

11. Counsel are required to provide the court with **SELF-ADDRESSED, STAMPED** envelopes with the submitted papers in order to facilitate delivery of the court's decision. Without same, copies of decisions will not be mailed to counsel.
12. Motions brought pursuant to CPLR §§ 3211, 3212 or 3213 shall not automatically stay disclosure.

C. **Application for a Stay or Temporary Restraining Order (TRO)**

1. If an Order to Show Cause seeking any injunctive relief, including a stay or TRO, is to be submitted, it must comply with Uniform Rule §202.7 (f). The movant shall first consult with Chambers as to a convenient date and time for counsel to appear with regard to the compliance with Uniform Rule §202.7 (f).
2. At any conference of the matter, if an Order to Show Cause seeking any injunctive relief, including a stay or TRO, is submitted or pending, counsel shall advise the Court of the pendency of such application, the return date of such Order to Show Cause, the relief sought and whether an immediate hearing is sought.
3. Requests to continue or vacate a stay or TRO beyond the return date of the motion shall be made on the call of the motion calendar. Failure to apply for such extension shall result in the automatic *vacatur* of the stay or TRO, unless the Order to Show Cause provides otherwise.

D. **Interim Partial or Full Settlement**

If all or part of a submitted motion is settled, a proposed order with Notice of Settlement (on at least ten [10] days notice) or a signed waiver of settlement shall be submitted with a copy to be conformed and a self-addressed, stamped envelope. Such order shall be accompanied by a letter setting forth the date the motion was submitted, what aspects of the motion have been settled and what issues, if any, remain to be decided. A copy of the stipulation settling such issues shall be forwarded to the Court. If the motion is resolved, in whole or part, on the record, counsel shall obtain such transcript so that same can be "so ordered", unless the Court otherwise directs.

III COURT APPEARANCES

- A. All conferences and motions are scheduled at 9:30 a.m. Please be prompt. Defaults in appearance will not be taken on the record until after 10:30 a.m.
- B. Attorneys and “Pro se” litigants must check in with the Court Officer or Part Clerk, if one is available. If the Courtroom is unavailable, only when all parties are present, is a call to Chambers, from the Fourth (4th) Floor Security Desk, to be made. Do not call Chambers to check-in if the Courtroom is unavailable. All parties must fully complete a sign-in sheet. If counsel must also appear before another Judge, and the Courtroom is available, they must advise the Part Clerk or Court Officer where they can be reached and provide a cell number to be reached. All Counsel and “Pro se” litigants are directed to appear for each and every conference (including preliminary, compliance and certification conferences).
- C. All conferences will be held in the order in which **all** attorneys and/or Pro se litigants have checked in with the Court Officer or Part Clerk. If the Courtroom is unavailable, the conference will be held when all attorneys and/or Pro se litigants are present and call Chambers from the Fourth (4th) Floor Security Desk.
- D. Counsel who appear in the Part must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural on behalf of their clients.
- E. Failure to appear at the call of any calendar may result in an inquest or dismissal pursuant to 22 NYCRR § 202.27.
- F. Counsel are advised to confirm all scheduled appearances with their adversary the day before the appearance date to confirm a prompt appearance.

IV COMMUNICATION WITH CHAMBERS

A. INQUIRIES

- 1. In all communications with Chambers by letter, the title of the action, full names of the parties and index number shall be set forth, with copies simultaneously delivered to all counsel. ***Ex parte communications will be disregarded.***
- 2. Copies of correspondence between counsel shall **not** be sent to the Court. Such copies shall be disregarded and not placed in the Court’s

file.

3. The Court will not accept telefax communications or submissions without prior permission.
4. The court shall not accept *ex parte* telephone communications on substantive issues.
5. E-mail correspondence with Chambers staff is not permitted unless prior authorization is obtained.
6. Attorneys shall not call Chambers during the daily lunch hour which is from 12:45 p.m. to 2:00 p.m.

B. SETTLEMENTS

1. Pursuant to 22 NYCRR § 202.28 (b), if an action is discontinued or wholly or partially settled by stipulation pursuant to CPLR § 2104, or a motion has become wholly or partially moot, or a party has died or become a debtor in bankruptcy, the parties promptly shall notify the Court, in writing, of such an event. No out of court settlement will be recognized or accepted unless counsel submits a letter, on notice to opposing counsel submitting the executed settlement agreement/stipulation or certifying that such agreement/stipulation has, in fact, been executed.

V SANCTIONS

The Court will not consider a sanctions application unless the moving party first seeks withdrawal or discontinuation of the offending act or action or demands required or necessary action which is refused. Proof of such request must be made a part of the sanctions application.

VI TRIAL RULES

- A. A Note of Issue is to be filed within 90 days after certification, unless otherwise specified in the Certification Order. Counsel for plaintiff shall pay the requisite fee with the County Clerk and ensure that the Note of Issue is submitted to the Clerk who will then assign a calendar number.
- B. At the first appearance of all cases assigned to this Part for trial, a pre-trial conference will be held. At the conference, the Court shall provide for the submission or scheduling of the following:

1. *In Limine* applications: Any party intending to make a motion in limine shall submit a brief written affirmation setting forth the nature of the application and any supporting statutory or case law. The party shall furnish the Court with an original and two (2) copies and provide counsel for all parties with a copy. There shall be a separate affirmation for each motion in limine;
2. Proof of filing of the Note of Issue;
3. Pre-trial memoranda providing the Court with cited case law to be considered by the Court.
4. A courtesy copy of each exhibit intended to be introduced into evidence at trial for the Court and each counsel. All exhibits shall be tabbed or included in a binder for easy reference;
5. All trial exhibits, whether the parties stipulate to admit them into evidence to the Court or not, shall be pre-marked by the Court Reporter. As to those exhibits marked for identification, the Court will address their admissibility *In limine* or during the trial, as may be appropriate;
6. A list of proposed witnesses for the Court's information;
7. A list of all expert witnesses with copies of their reports;
8. Marked pleadings, to be submitted before opening statements;
9. A statement of stipulated facts. [Parties are encouraged to stipulate to facts and/or exhibits];
10. Any written requests for jury instructions. Charges from the Pattern Jury Instructions may be identified by number without necessity of reproduction, unless a modification of the standard charge is requested, in which case the modification is to be highlighted;
11. Any proposed verdict sheets;
12. If deposition transcripts are to be utilized, a copy of the witness' deposition transcript should be available to the Court. No mini-scripts are accepted;
13. Objections should be stated without argument except to simply state the ground therefor, *e.g.*, hearsay, relevance, etc. If further argument is appropriate, it will be invited by the court;

14. Trial counsel are responsible for redactions of all evidence;
15. Trials will be conducted on a continual daily basis until conclusion. As such, no adjournments or delays during trial will be accepted unless exigent circumstances exist;
16. Counsel is required to have all proof in admissible form for inquests;
17. Trial counsel are responsible for taking back all exhibits, pleadings, transcripts, etc., at the end of a trial, unless, in the case of non-jury trials the Court reserves its decision. In all cases, exhibits, pleadings, transcripts, etc. not retrieved within sixty (60) days from the conclusion of a jury trial or within sixty (60) days after the Court renders a decision in a non-jury trial, shall be disposed of.

VII MISCELLANEOUS

- A. **CONFERENCES/TRIAL** - If there are any outstanding motions (submitted or pending) at the time of the conference/trial, the Law Secretary and/or Judge must be so informed of same that day; the submission date must be provided by counsel. Counsel shall ensure that copies of such motions are made available to the Court at the time of such conference.
- B. **ATTORNEYS OF RECORD** - Attorneys who have appeared in the matter are to make all appearances until they are relieved by the Court or a fully executed Consent to Change Attorney form has been filed with Part 12 and with the Clerk of the Court.
- C. **STAFF** - The Court functions through the aid and assistance of the courtroom and Chambers staff. They are expected to treat attorneys, litigants and others in a dignified and civil manner; as well they are to be treated in a civil and professional manner.