



STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
**HON. PETER H. MAYER**

*Supreme Court Justice*

**CHAMBERS**

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## **IAS/TRIAL PART 17 - RULES & PROCEDURES**

Unless otherwise directed by the Court, the following Rules shall govern practice in Part 17:

### **MOTION PRACTICE:** (Except Contempt - See Miscellaneous Matters)

**PRE-MOTION CONFERENCES:** Any party wishing to make a motion (other than those types of motions set forth below) must first schedule a pre-motion conference with the Court and all parties. Such conferences shall be conducted in Chambers on *Tuesday* afternoons, and shall be scheduled by telephone conference from the prospective movant to Chambers. After obtaining a pre-motion conference date from the Court, the prospective movant shall confirm the conference in writing by fax or mail to Chambers and all parties, and shall provide proof of such written confirmation to the Court at the time of the conference.

All motion papers must include, in the **first paragraph** of the attorney's affirmation in support, a statement confirming that these pre-motion conference rules have been fully complied with, as well as the date on which the pre-motion conference was held and the parties in attendance at said conference. Non compliance with the provisions of these Part Rules shall, in the discretion of the Court, result in denial of the motion without prejudice and with leave to resubmit after compliance with these Rules.

A pre-motion conference is **not** required for the following motions: those filed after the filing of the note of issue (unless it is to vacate the note of issue); those filed before assignment of the case to this Part; default judgment motions; motions to withdraw as counsel; timely and proper cross-motions; and ex parte motions for orders of reference in foreclosure proceedings.

**RETURN DATES/SUBMISSIONS:** All motions made in cases assigned to Justice Mayer shall be calendared for submission on *Tuesdays*. Unless adjourned by the Court, all motions appearing on the Court's Tuesday motion calendar shall be marked submitted. All proposed orders and proposed judgments submitted to Chambers pursuant to a Court directive shall include a copy of such directive, including the Court transcript or written decision, as applicable.

**PAPERS:** Timely interposition of all papers in accordance with the CPLR is required, as the Court will not consider the merits of any papers, including opposition, cross-moving or reply, which appear to have been interposed in an untimely or otherwise inappropriate manner. All requests for oral argument must be made in accordance with the 22 NYCRR 202.8(d). The Court may, in its discretion require a hearing or oral argument on any motion. Counsel shall appear at all hearings and oral arguments with complete settlement authority. The timely submission of memoranda of law is expected in all special proceedings and on motions which include demands for dispositive relief. All motion papers must be submitted through Special Term. All exhibits, including transcripts, shall be submitted on one-sided paper and in full-sized, non-condensed format. In the event the parties resolve issues which are the subject of a submitted motion, the movant must notify Chambers forthwith by telephone that the motion is withdrawn. Failure to so notify the Court may, in the Court's discretion, result in sanctions pursuant to 22 NYCRR 130-1.1.

**ADJOURNMENTS:** Adjournments of motions are limited to three in number and may not extend the original return date for more than sixty days [22 NYCRR 202.8 (e)]. *All proposed adjourn dates must fall on a Tuesday.* An application for an adjournment of a motion may be made by submission of a written request with an attached stipulation executed by counsel for all appearing parties. All stipulations of adjournment must be received by Chambers no later than 1:00 p.m. on the day prior to the return date, and may be forwarded by fax or mail directly to Chambers. The stipulations must indicate the date on which the motion and all cross-motions riding therewith are returnable before the Court, the adjourn date requested [Tuesdays only], and the number of prior adjournments granted. A denial of any stipulated adjournment request will be forthwith communicated by telephone or fax by Chambers personnel. If the stipulated consent of all appearing parties is not obtainable, an oral application for an adjournment on the date the motion is returnable before the Court must be made by the party seeking the adjournment, upon due notice to all parties. Interposition of a cross-motion with a return date subsequent to the submission date of the motion-in-chief will not cause an adjournment of the motion-in-chief.

## CONFERENCES:

**SCHEDULING:** Conferences shall be calendered for each Tuesday of the month.

**APPEARANCES:** Appearance shall be made by counsel of record or attorney's acting in an "Of Counsel" capacity. In either case, attorneys must be **fully familiar** with the facts of the case and have full authority to settle and/or enter appropriate stipulations. Non-appearances will not be countenanced by the Court and may subject the non-appearing party to one or more of the sanctions attendant with defaults (see, 22 NYCRR 202.27; 22 NYCRR Part 130-2). Attorneys are directed to bring all prior orders of the Court, including but not limited to preliminary conference orders and additional directives sheets issued by the Court, to all Court conferences.

**ADJOURNMENTS:** Due to the time limitations imposed on various stages of civil cases within the purview of the Comprehensive Civil Justice Program and its cornerstone, the Differentiated Case Management system, adjournments of conferences will not be granted lightly. *Applications for adjournments of conferences are governed by the same procedures applicable to adjournments of motions [see above].* Appearances are thus required unless the Court has granted an adjournment upon a written request with an attached stipulation executed by counsel for all parties received by Chambers not less than one day prior to the scheduled conference.

**PRELIMINARY CONFERENCES:** Preliminary conferences will be scheduled by the Court in accordance with 22 NYCRR 202.12 and 202.19. All matters, including those raised by pending motions and those contemplated by 22 NYCRR 202.19, shall be undertaken at the preliminary conference. Pursuant to 22 NYCRR 202.12(b), where a case is reasonably likely to include electronic discovery, counsel for all parties who appear at the preliminary conference must be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery; counsel may bring a client representative or outside expert to assist in such e-discovery discussions.

**COMPLIANCE CONFERENCES & PRE-TRIAL CONFERENCES:** These conferences will be scheduled and conducted in accordance with the provisions of 22 NYCRR 202.19.

**MEDICAL, DENTAL & PODIATRIC MALPRACTICE ACTIONS:** Part 17 has been designated as the Model Part for electronic discovery in actions for medical, dental and podiatric malpractice. Accordingly, for all such actions assigned to this Part, pursuant to 22 NYCRR 202.12(c)(3), after completion of the preliminary conference order in the DCM Part, counsel for the parties shall immediately report to Chambers to obtain an electronic discovery order form. At that time, the Court will schedule a mandatory electronic discovery conference, which shall be conducted within 45 days after the preliminary conference.

Prior to the electronic discovery conference, counsel for the parties shall confer with their respective clients and with one another regarding all issues of electronic discovery to facilitate the completion of a so-ordered electronic discovery order, which shall be the subject of the electronic discovery conference. All counsel who appear at the electronic discovery conference must be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery; counsel may bring a client representative or outside expert to assist in such e-discovery discussions. The electronic discovery order will include a compliance conference date.

Pursuant to CPLR 3409 and 22 NYCRR §202.56(c), a mandatory settlement conference will be held within 45 days after the filing of the note of issue. Such mandatory conference shall be held in lieu of a pretrial conference. At the compliance conference, counsel for the parties shall be responsible to identify the action as one for medical, dental or podiatric malpractice, so the Court may timely schedule the required settlement conference. Counsel attending the settlement conference shall be fully familiar with the action and authorized to dispose of the case, or shall be accompanied by a person empowered to act on behalf of the party represented.

## **TRIALS:**

**JURY TRIALS:** A trial conference with the Court shall be held immediately prior to the commencement of all jury trials. Thereat, counsel shall supply the Court with marked pleadings, amendments thereto and all bills of particulars served. Counsel shall further provide the Court with a list of proposed jury charges and the contentions of each party, all dispositive motions and proposed jury verdict sheets. A list of all pre-marked exhibits shall also be provided to the Court and to the stenographer. Counsel shall notify the Court of their inability to stipulate to the admission of any exhibits to be offered at trial. Counsel shall further advise the Court of the number of witnesses to be called, and if any be experts, shall further provide the information required by CPLR 3101(d)(1)(I).

**NON-JURY TRIALS:** Non-Jury trials are subject to scheduling upon forty-eight hours notice. A trial conference with the Court shall proceed the commencement of all non-jury trials at which counsel shall submit the following: 1) a copy of marked pleadings, amendments thereto, bills of particulars, 2) a list of pre-marked exhibits; and identification of those on which counsel could not agree as to their introduction at trial; 3) a list of witnesses and if any be experts, the information required by CPLR 3101(d)(1)(I); 4) pre-trial memoranda of law; and 5) a proposed order framing the issues to be tried. The parties shall be required to provide to the Court at Chambers a transcript of the trial. The filing of a Note of Issue is a condition precedent to the commencement of any trial.

## **FORECLOSURE PROCEEDINGS:**

Prior to any scheduled conference, the plaintiff's counsel shall review any submitted application(s) and shall appear by a principal of the firm, or by an attorney who has full knowledge of all applicable statutes, case law and Court Rules, as well as any application(s) submitted to the Court, including full authority to dispose of the case and any submitted application(s).

The plaintiff shall bring to each conference all documents necessary for evaluating the potential settlement, modification, or other workout options which may be agreed to, including but not limited to the payment history, an itemization of the amounts needed to cure and pay off the loan, and the mortgage and note; if the plaintiff is not the owner of the mortgage and note, the plaintiff shall provide the name, address and telephone number of the legal owner of the mortgage and note.

In the event any scheduled court conference is adjourned for any reason, the plaintiff shall promptly send, via first class mail, written notice of the adjourn date to the homeowner-defendant(s) at all known addresses (or upon their attorney if represented by counsel), as well as upon all other appearing parties, and shall provide the affidavit(s) of such service to the Court at the time of the subsequent conference, and annex a copy of the relevant order and the affidavit(s) of service as exhibits to any future applications submitted to the Court.

For all applications submitted to the Court, the moving party(ies) must clearly state, in an initial paragraph of the attorney's affirmation, whether or not the statutorily required foreclosure conference pursuant to CPLR 3408 has been held and, if so, when such conference was conducted and, if not, why no such conference was held.

All proposed orders of reference shall include an ordered paragraph stating, in sum and substance, that in the discretion of the Court and pursuant to CPLR 8003(a), the Referee shall be paid, upon the filing of his or her report, a fee of \$250.00 for the computation stage of the proceedings.

**NOTE:** For any scheduled court conferences or applications by the parties, if the Court determines that such conferences have been attended, or such applications have been submitted, without proper regard for the applicable statutory and case law, or without regard for the required proofs delineated herein, the Court may, in its discretion, strike the non-compliant party's pleadings or deny such applications with prejudice and/or impose sanctions pursuant to 22 NYCRR § 130-1, and may deny those costs and attorneys fees attendant with the filing of such future applications.

## **MISCELLANEOUS MATTERS:**

**CONTEMPT:** All applications shall be calendared on the date returnable. *Appearance by all parties is mandatory.* No adjournments will be granted unless a stipulation consenting to the adjournment, signed by all parties and any alleged contemtor who is not a party, is received in Chambers no later than 1:00 p.m. of the day prior to the return date.

**COMPROMISE APPLICATIONS:** All applications for Court approval of a proposed compromise of an infant or other disabled party's claim must be submitted through the Special Term, with proof of service on all remaining parties. *Compliance with the provisions of CPLR 1207, 1208 and 22 NYCRR 202.67 and a proposed distribution of net amounts to be recovered by the disabled plaintiff that is consistent with the provisions of CPLR 1206 is required.* The Court will not accept medical reports/affidavits executed more than six months prior to the submission date. The report must indicate whether the injured plaintiff has fully recovered, and if not, the nature and extent the injuries and course of future treatment. Since the Court may direct that notice of the application be given to all persons who possess claims against the proceeds recoverable under the compromise, including those with statutory liens, the names and addresses of all such persons and the amount of their respective claims must be set forth in the petition. If no person has asserted such a claim, the petition must so state. Once the submissions are complete, an appearance date shall be scheduled by the Court.

**HEARINGS/INQUESTS:** All hearings and or inquests emanating from cases in the inventory of IAS Part 17 shall be scheduled by the Court. The filing of a Note of Issue is a condition precedent to the commencement of any hearing or inquest.

**EX PARTE COMMUNICATIONS WITH CHAMBERS:** Except to the limited extent permitted by the rules set forth at 22 NYCRR 100.3, ex parte communications with the Court or any member of its staff, by telephone or otherwise, is strictly prohibited. You are advised to avoid unnecessary contact with Court personnel, as they must attend to the paper work and other tasks to which they are assigned during business

hours. All inquires regarding the scheduling of conferences or return dates of motions should be directed to the Calendar Department at (631) 852-2350 or Special Term at 852-2407, *as direct telephone communication with Chambers is prohibited except for the most exigent circumstances.* Authorized communication directly with Chambers is thus limited to those communications permitted by these rules, all of which must contain a stipulation of consent executed by all appearing parties or proof that the communication was duly served upon all such other parties.

Thank you for your courtesies and cooperation.