

IAS/TRIAL TERM PART 32 – RULES AND PROCEDURES
HON. W. GERARD ASHER

MOTION PRACTICE

RETURN DATES/SUBMISSIONS: All motions in cases assigned to Justice Asher shall be calendared for **TUESDAYS**. Unless adjourned by the court, all motions appearing on the Court's motion calendar shall be marked submitted. All papers must be submitted, together with proofs of service, in accordance with the express provisions of the CPLR.

Appearances are **NOT** required on any motion unless the motion is for discovery and a conference has been scheduled prior, in which case all motions shall be discussed at said conference.

Oral argument will only be ordered by the Court.

All orders to show cause made returnable on any day other than Tuesday shall be administratively adjourned to the Court's next Tuesday submission date. All motions shall be decided upon the submission of papers.

PAPERS: Timely filing of all papers in accordance with the CPLR is required, as the court will not consider the merits of ANY PAPERS (including opposition, cross-motions or reply), which have been filed in an untimely manner. All motion papers must be submitted through Special Term.

ADJOURNMENTS: Adjournments of motions on consent must be to a Tuesday and submitted in writing and faxed to chambers at 631-852-3418. The writing must indicate the motion and/or cross-motions being adjourned along with the date requested. If consent of all parties cannot be obtained, an oral application for an adjournment on or before the return date of the motion must be made by the party seeking the adjournment, upon due notice to all parties.

SETTLED OR WITHDRAWN MOTIONS: The Court is to be advised immediately, in writing, of the settlement or withdrawal of any motion or any portion of any motion sub judice, and/or the settlement of any underlying case with motions sub judice. Failure to do so may result in the imposition of sanctions as permitted by law.

DISCOVERY MOTIONS: . All discovery motions shall be set down for a conference by Court order. Any discovery motions on matters that have conference dates scheduled (as indicated above) shall be administratively adjourned until the conference date. The Court urges that, prior to making the motion, counsel discuss the issues and make a bona fide attempt to resolve them without judicial intervention. **NOTE:** Discovery shall proceed on pending motions pursuant to CPLR §3211, 3212 & 3213. Such motions **DO NOT** automatically stay discovery.

ELECTRONICALLY FILED (E-FILED) MOTIONS: E-Filed motions shall be made returnable on the Court's regular motion day of Tuesday.

The initial moving party shall provide "working copies" of all submissions in connection with the motion, including affirmations/affidavits in opposition, cross-motions, reply affirmations/affidavits, exhibits, and proposed orders/judgments, as well as any stipulations or correspondence pertaining to the motion and any cross-motion, to the Court's part clerk no later than one day prior to the return date or any adjourned date. Each working copy submitted to this Part must include a copy of the NYSCEF confirmation notice firmly bound or stapled to the front thereof. If working copies are not received as directed herein, any papers received will be rejected and the motion will be administratively adjourned until compliant copies are received by chambers. The motions where working copies have not been received will be administratively adjourned up to three (3) times for a aggregate of sixty (60) days from the original return date. If the working copies are not received by the 60 day time limit, the motion will be deemed withdrawn and marked as such in the Court's computerized system with the indication of non-compliance.

CONFERENCES

SCHEDULING: Conferences shall be scheduled for any Tuesday, when the Part is in session.

APPEARANCES: Appearances shall be made by the attorney of record or any attorney 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, 22NYCRR 202.27; 22 NYCRR Part 130-2). Attorneys are directed to bring all prior orders to the Court, including but not limited to preliminary conference orders and additional directives sheets issued by the Court, to all Court conferences.

ADJOURNMENTS: Applications for adjournments of conferences are governed by the same procedures applicable to the adjournments of motions (see above).

It is the party's obligation to communicate their request to all other parties and to provide the Court, in writing, the date of the adjournment.

PRELIMINARY CONFERENCES: Preliminary conferences shall be scheduled by the Court in accordance with 22 NYCRR 202.12 and 202.19. All matters, including those raised by pending discovery motions and those contemplated by 22 NYCRR 202.19 shall be undertaken at the preliminary conference.

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

TRIALS

JURY TRIALS: a conference with the Court shall be held immediately prior to the commencement of all jury trials. At said conference, 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 motions *in limine* and proposed jury verdict sheets. A list of all pre-marked exhibits shall also be provided to the Court. 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 identity and 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 will be governed by the same procedures and requirements set forth above for jury trials. In addition, for non-jury trials, counsel shall submit a proposed order framing the issues to be tried. The parties shall be required to provide a transcript of the trial. The filing of a Note of Issue is a condition precedent to the commencement of any trial.

INTERPRETERS: Counsel **must** inform the Part, immediately upon assignment, if an interpreter will be required for any part of the trial. Trial days may need to be rescheduled based upon availability of interpreters. It is the party's responsibility to inquire about the availability of interpreters for certain languages.

MISCELLANEOUS MATTERS

CONTEMPT: All applications shall be calendared for Tuesday submission. Any appearance shall be ordered by the Court. Adjournments are governed by the same procedures applicable to the adjournment of motions (see above).

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 office, with proof of service on all remaining parties. Compliance with the provision of CPLR §1207, 1208 AND 22 NYCRR 202.67 and a proposed distribution of 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 of 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 submissions are complete, an appearance date will be scheduled by the Court.

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

EX PARTE COMMUNICATION WITH CHAMBERS

Except to the limited extent permitted by these rules and 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.