

**SUPREME COURT - NASSAU COUNTY
PART 9 - RULES & PROCEDURES**

Justice: Hon. Jeffrey S. Brown
Law Secretary: Lisa Butler, Esq.
Secretary: Corinne Glanzman
Clerk: Diane M. Toscano

Phone: (516) 493-3164
Courtroom: (516) 493-3167
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I. ADJOURNMENTS

A. Preliminary Conference

1. Preliminary conference adjournments are to be addressed to the DCM Clerk's office and not to Chambers.
2. Adherence with the dates stipulated to and the directives outlined in the PC order will be strictly enforced, including dates for examinations before trial. Adjournment of any date in the PC order requires the consent of the court. As soon as a discovery or scheduling issue arises, counsel shall call chambers to request a telephone conference. Otherwise, it will be presumed that all discovery is proceeding as ordered. You must be able to furnish the court with a definite date for the production of documents or examination before trial. No adjournment is granted without compliance with this rule and until you receive confirmation from the court.

B. Motions, Depositions, Status Conferences:

1. Adjournments of motions may be granted if there is consent of all parties **and prior approval of the court**. If all parties do not consent to the adjournment, application shall be made in court on the return day of the motion.
2. Adjournments of **motions** shall be sought through the part clerk (516) 493-3167. Please see the rules pertaining to motions. **Stipulations sent in without prior approval of the court will not be considered.**
3. **Depositions may not be adjourned without permission of the court.** Call chambers.

4. Requests to adjourn conferences and/or depositions shall be made at least two (2) business days prior to the scheduled conference/deposition. A signed Stipulation confirming approved EBT dates and conference dates shall be faxed to Chambers. The Stip shall also contain full names of all parties, index number and the adjournment date of the motion and/or conference. **The adjournment is not granted until the court receives the Stip. (516-493-3411)**
5. Adjournments requested because of actual engagement of counsel **on trial** must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR Part 125.
6. Adjournment requests which are left on the chamber's voicemail shall be disregarded.

II. MOTIONS

A. Submission of Motions

1. **All motions relating to DISCOVERY require a conference** with the Court prior to the return date. If there are any pro se parties involved, including attorneys representing themselves, the conference will be held in open court on the return date of the motion or by Order to Show Cause, unless otherwise specifically waived by the court. There are no submitted discovery motions without an appearance. **All other motions are done on submission.**
2. 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 conference date.
3. **The court requires a working copy of all papers submitted through the e-file system.** Except for good cause shown, no affidavit or affirmation shall exceed twenty (20)pages (double spaced) in length. Papers in excess of the above may be returned to counsel.
4. All exhibits must be clearly tabbed, no exhibits shall be double sided; however, mini-transcripts are permitted. All submissions shall be **fully and securely bound** in accordance with the County Clerk's rules and shall have a litigation back attached thereto. **Motions not consistent with these rules will be rejected. Unbound papers will not be accepted.**
5. In addition to being part of the motion papers, a copy of the affidavit of service **must** be provided to the part clerk before the submission date of the motion.
6. If all or part of a submitted motion is settled, the court should be notified in writing

before the return date. Please set forth the date the motion was submitted, what aspects of the motion have been settled and what issues remain to be decided. If the motion is resolved in its entirety, the movant shall indicate same.

7. All papers must be submitted in a timely manner. The court will not consider late papers absent prior court approval. No sur-reply affidavit, affirmation, or letter will be accepted or considered without leave of the court.
8. Pursuant to CPLR §3212(a), a motion for summary judgment shall be made no later than ninety (90) days after the filing of the note of issue, except with leave of court **on good cause shown**.
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 the motion papers will be considered as exhibits, treated as such, and may be disregarded.
10. You are required to provide a fax number or email address with the motion papers to facilitate delivery of the court's decision for cases that are ***not on the NYSCEF system***. Decisions for NYSCEF matters will appear on that site two to three days after entry. Chambers **does not** mail or email copies of such decisions.
11. **Motions brought pursuant to CPLR §§ 3211, 3212, or 3213 shall not automatically stay disclosure.**

B. Oral Argument

The court will determine, after submission, whether oral argument is warranted. Upon such determination, counsel for all parties will be contacted and advised of the new adjourned date for purposes of oral argument.

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

1. An Order to Show Cause seeking any injunctive relief, including a stay or TRO, must comply with **Uniform Rule §202.7(f)**. The movant shall first consult with chambers as to a convenient 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.

III. COURT APPEARANCES

- A. On the first appearance in the part, any party who will require the assistance of an interpreter shall notify the clerk, and specify the language (including dialect, where appropriate).
- B. The court will begin conferencing ready matters at 9:30 a.m. in the order in which all attorneys are checked in. There is no calendar call in this part.
- C. Attorneys and pro se litigants must check in with the court clerk and/or court officer and complete the sign-in sheet. If counsel needs to appear before another judge, they must provide the court clerk with a cell phone number where they can be reached and note it on the sign-in sheet.
- D. All counsel and pro se litigants are directed to appear for each and every conference unless specifically excused by the court.
- E. Counsel who appear in the part must be fully familiar with the case for which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients.
- F. Counsel are advised to confirm all scheduled appearances with their adversary the day before the appearance date to facilitate 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. All correspondence with the court shall include an affirmation of service, cc, or other indication that a copy of correspondence was served on all other parties in the case. ***Ex parte* communications will be disregarded, except as permitted by Uniform Rules for Trial Courts.**
2. **Copies of correspondence between counsel shall not be sent to the court.** Such copies will be disregarded and not placed in the court's file.
3. The court will not accept telefax communications or submissions over 10 pages

without prior permission.

4. The court will 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 should avoid calling chambers during the daily lunch hour which is from 1:00 p.m. to 2:00 p.m.
7. Court staff cannot give legal or procedural advice. Ordinarily, it will not be necessary or appropriate to refer to oral discussions with court staff in open court or in court filings.

B. Settlements

1. No out of court settlement will be recognized or accepted unless counsel submits a letter, on notice to opposing counsel, along with the executed settlement agreement/stipulation or letter certifying that such agreement/stipulation has, in fact, been executed.
2. The court should be notified by letter/fax of settlements before the return date of any pending motion. A stipulation of discontinuance must follow as soon as practicable.
3. Any stipulation which seeks to dismiss or add one or more parties shall include a provision setting forth an amended caption.

V. SANCTIONS

- A.** 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 PART 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. **Counsel shall contact the court if the note of issue will not be timely filed.**
- B.** At the first appearance of all cases assigned to the part for trial, a conference will be

held. Any party who will require the assistance of an interpreter shall notify the clerk in the part and specify the language (including dialect, where appropriate). 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 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.
5. All trial exhibits, whether the parties stipulate to admit them into evidence 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. Expert witnesses - Each party shall, with respect to each expert witness that party intends to call, submit a list identifying with specificity any record, report, photograph, film, computer animation, x-ray, CT scan, MRI, EMG study or similar item or items to which an expert witness is expected to make reference as supporting in whole or in part the opinion he or she will offer. Where the exhibit is a many-paged document such as a hospital record, office record or voluminous (more than 10 pages) business record, counsel shall identify by way of tabs, Post-Its®, page numbering or similar device, the particular page or pages to which reference will be made.
8. Marked pleadings and CPLR 3101(d) responses from all parties are to be submitted before opening statements.
9. Parties shall alert the court to any anticipated request for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.
10. Parties are encouraged to stipulate to facts and/or exhibits.
11. Requests to Charge and Verdict Sheets - **Each party shall supply the court with preliminary requests to charge and proposed verdict sheets as early as practicable.** 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. Each party shall

supply an original and three (3) copies to the court and furnish every other party with a copy. The preliminary requests may be supplemented, modified or edited as the trial progresses.

12. If deposition transcripts are to be utilized, a copy of the deposition transcript should be available to the court. In this instance, mini-transcripts are not permitted.
13. Objections should be stated **without** argument except to succinctly 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 daily basis until conclusion. As such, no adjournments or delays during trial will be accepted unless exigent circumstances exist.
16. 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 thirty (30) days after the court renders a decision in a non-jury trial, shall be disposed of.
17. Malpractice Departures - In cases involving claims of professional negligence, on the next trial session after an expert testifies or such other time as the court may direct, plaintiff shall furnish the court and counsel for all parties with a list of the departures from the standards of good and accepted practice which that party asserts were testified to by its expert witness or witnesses. Page references to the trial transcript will be required.
18. Equipment - On the first appearance in the part for trial, any party who intends to rely upon the court to supply equipment for utilizing a video tape recording, an audio tape recording, demonstrative evidence, or the like, shall notify the clerk in the part.
19. Nassau County Police Officers - On the first appearance in the part for trial, any party who has issued a subpoena to secure the appearance of a Nassau County Police Officer shall notify the clerk in the part so that the clerk may facilitate the officer's appearance through a police liaison.

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 that day and the submission date must be provided by counsel. Copies of such motions should be 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 has been filed with the clerk of the part 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.

D. Settlements

With respect to actions which have been settled or otherwise discontinued, counsel must comply with 22 NYCRR 202.28 or sanctions may be imposed. Counsel are reminded of their obligations under §202.28 of the Uniform Rules for Trial Courts to file a stipulation or statement of discontinuance with the part of the Court to which the matter has been assigned within 20 days of the discontinuance. If a discontinued action is on a trial calendar, a copy of the stipulation or statement shall also be filed with the clerk of the trial part.