

**HON. ARTHUR M. DIAMOND, J.S.C.**

Supreme Court, Nassau County  
100 Supreme Court Drive  
Mineola, New York 11501  
IAS Part 7

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Part Clerk: George Ebanks

**PART RULES, effective as of August 10, 2018**

I. Communications with the Court:

All correspondence to the Court shall be copied to all adversaries and must reflect the name and index number of the action which it involves. Correspondence between attorneys and/or parties shall not be copied to the Court unless requested so by Chambers.

No ex parte communications shall be permitted with the Court via telephone. If a party has an issue that requires immediate attention by the Court, that party shall organize a telephone conference with all parties prior to speaking with the Court.

Neither Chambers nor the Clerk will accept faxed copies of papers that must otherwise be filed in original form with the County Clerk. All faxes must be faxed simultaneously to all other parties and the original document sent to the Court via regular mail. Counsel are not permitted, without prior approval, to send a fax that will exceed three (3) pages in length.

II. Electronic Filing (NYSCEF) Cases:

All actions subject to e-filing are to be filed through the NYSCEF system. All submissions to the Court, including proposed orders, proposed judgments, and letters, must be electronically filed first and then a working copy provided to Chambers.

This Part requires working copies of all electronic submissions. Working copies shall be delivered to Chambers and must include a copy of the NYSCEF confirmation attached to the document. Working copies without the confirmation notice will not be accepted.

III. Conferences:

All scheduled conferences begin at 9:30am. All counsel shall appear promptly. Any attorney appearing shall be knowledgeable and familiar with the case, including those appearing “of counsel” or “per diem”.

Pursuant to 22 NYCRR §202.27 of the Uniform Civil Rules for the Supreme Court, upon the default of any party in appearing at a scheduled call of the calendar or at any scheduled conference, the Court may grant judgment by default against the non-appearing party.

#### IV. Motions:

Generally, no appearance is required on motions and order to show cause return dates unless an adjournment is requested by one party and not consented to by all the parties. No oral arguments on motions are permitted except as directed by the Court.

Any paper relating to motions required to be submitted shall be brought to the Clerk's Office in Room 186 of the Supreme Court building. For e-filed (NYSCEF) cases, attorneys shall provide working copies of all motions, opposition papers, and reply papers submitted electronically by submitting a complete copy to Room 186. Counsel for all parties shall provide the Court with a business card attached to their respective papers containing a valid email address, so that the Court may email the parties a copy of the order after the motion is decided.

Motions brought pursuant to CPLR §3211, §3212, or §3213 shall not automatically stay disclosure.

Counsel must request a conference with the Court prior to submitting motions to compel discovery, or preclusion of evidence at trial, or dismissal of the action based upon failure to comply with discovery demands.

**Temporary Restraining Orders.** Counsel submitting an order to show cause requesting a temporary restraining order must notify the Court to schedule a date and time for submission and oral argument. Notice to an opposing party must be given in writing at least twenty-four (24) hours prior to the scheduled date and time.

#### V. Adjournments:

Motions cannot be adjourned to a specific date without consent of all the parties. The parties may stipulate to adjourn said motion and fax a copy of a fully executed stipulation to chambers before the return date. Stipulations received after the return date or letters requesting an adjournment will not be accepted by the Court.

Conferences cannot be adjourned without consent of all the parties and express consent from the Court. Parties wishing to adjourn a compliance conference may do so for up to two (2) weeks if it is the first time on. All certification conferences thereafter require a stipulation signed by all parties and consent of the Court.

#### VI. Trials:

Upon assignment to the part, counsel shall provide the Court with a copy of all pleadings, bill of particulars, and CPLR §3101(d) notices via email to the Law Clerk within twenty-four (24) hours. Counsel shall also promptly inform the Court of any motions *in limine* upon assignment, which shall be decided prior to opening statements.

Any medical records being offered into evidence longer than twenty-five (25) pages must be Bate stamped. Counsel must also provide two Bate-stamped copies to the Court, one for the witness who is testifying, and one for the Court.

Counsel for all parties shall provide proposed jury charges and verdict sheets prior to the conclusion of Plaintiff's case.

**Malpractice Actions.** In cases involving claims of professional negligence, on the next trial session after a party rests, or such other time as the Court may direct, each party shall furnish the Court and opposing counsel for all parties with a list of departures from the standards of good and accepted practice which that party asserts were testified to by its expert witness or witnesses. Where the testimony has been transcribed, page references will be required.

VII. Settlements:

If a pending action has been settled, Plaintiff's counsel shall notify chambers by telephone and in writing that the matter has been settled prior to the next scheduled conference date. In order to remove the action from the Court's calendar and mark it disposed, Plaintiff's counsel shall submit a fully executed stipulation of settlement or a fully executed stipulation of discontinuance to via fax or to the Law Clerk. Failure to do so will require an appearance by both sides on the next scheduled conference date. For e-filed (NYSCEF) cases, Plaintiff shall submit a working copy of the filed stipulation to chambers.

VIII. Submission of Motions, Orders, Judgments and Stipulations:

Counsel shall not mail motions, orders, or judgments directly to chambers unless directed to do so by the Court. All of these papers are to be properly filed with the Clerk's Office.

Any stipulation submitted by the parties to be "so-ordered" by the Court must contain original signatures for all parties on one document to be considered by this Court. The Court will reject anything presented for signature that is signed in counterparts or that contain a photocopy signature on it. This requirement applies equally to stipulations in NYSCEF cases.

IX. Guardianship Cases:

All guardianship matters are heard on Fridays only. All guardianship motions, except for annual and final accounts, shall be filed via order to show cause. Appearances are required from petitioner and all opposing parties on the return date of the order to show cause.

For all initial hearings, the Court Evaluator shall submit a copy of his/her report to chambers no later than forty-eight (48) hours before the hearing by emailing same to the Law Clerk. The Court Evaluator may not share his/her report with the interested parties or petitioner prior to submitting same to Chambers. Only after submitting a copy to chambers may the Court Evaluator provide counsel for petitioner and/or represented interested parties a copy of the report upon request.

X. Election Law Cases:

Personal service of the order to show cause and verified petition upon respondents must be completed by serving a person of suitable age and discretion with overnight mailing pursuant to CPLR §308(2), and personal service by nail and mail with overnight mailing pursuant to CPLR §308(4) to effectuate service within the fourteen (14) day statutory period required by Election

Law § 16-102. Service on the last day is not acceptable, as such service is not reasonably calculated to give timely notice to the respondent. *See Kaplan v. Bucha*, 207 AD2d 509, 615 NYS2d 933 (2<sup>nd</sup> Dept., 1994); *Matter of Buhlmann v. LeFever*, 83 AD2d 895, 442 NYS2d 529 (2<sup>nd</sup> Dept., 1981).

Furthermore, even though the Court has the discretion to authorize alternative personal service under CPLR §308(5) on the last day of the statutory period, a party seeking said relief still has to allege facts in the application showing that personal service under CPLR §308(1), (2), and (4) is impracticable. *See Astrologo v. Serra*, 240 AD2d 606, 659 NYS2d 481 (2<sup>nd</sup> Dept., 1997). A statement of facts setting forth actual prior efforts to effectuate service is also acceptable. *See Markoff v. South Nassau Community Hospital*, 91 AD2d 1064, 458 NYS2d 672 (2<sup>nd</sup> Dept., 1983). Conclusory assumptions that conventional service cannot be made is insufficient. Without factual allegations to support the request for alternative service stated clearly by the movant, the Court will not direct alternative service in the order to show cause on the last day of the statutory period.

#### XI. Courtroom Attire:

For all attorneys, the following is considered appropriate professional attire: suits, sports jackets, ties, skirts, and pant suits. Clothing outside of these parameters should not be worn in the courtroom under any circumstances.