

Supreme Court of the State of New York
County of Nassau – IAS Trial Part 22

Part Rules

Updated: January 25, 2018

Justice: **Hon. Sharon M.J. Gianelli, J.S.C.**

Law Secretary: **Karen L. Moroney, Esq.**

Secretary: Kevin Brady

Part Clerk: Ann Marie Sullivan

Chambers Phone: 516-493-3286

Chambers Fax: 516-493-3386 (*Please note: Not for the filing of papers*)

Courtroom Phone: 516-493-3282

Address: 100 Supreme Court Drive, Mineola, New York 11501

Courtroom: 4th Floor West

Chambers: 2nd Floor

Unless otherwise ordered, matters before the Court shall be conducted in accordance with the following rules, as well as the Uniform Civil Rules for the New York State Trial Courts:

I. COURT PERSONNEL

A. The Court endeavors daily to do the People’s work competently, efficiently, and with the dignity befitting this duty. To that end, the Court relies on the assistance and support of Supreme Court and Chambers personnel.

The Court and personnel assigned to the Court will treat counsel, litigants and other persons present in a courteous, civil, and professional manner.

The Court expects court personnel to be treated in like manner. These principles are indispensable to the proper administration of justice.

II. COUNSEL

- A. Welcome to Part 22. Knowledgeable, timely, and prepared counsel are an integral part of an overall well-functioning court Part. We appreciate your efforts in that regard. To that end, attorneys shall comport themselves in accordance with the rules established in 22 NYCRR §700.4, the Rules of Professional Conduct, and the NYS Standards of Civility. Self-represented litigants are subject to the same rules of practice as attorneys appearing in this Part.
- B. All appearances shall be made by counsel with knowledge of the facts and with authority to enter into stipulations and/or dispositions which bind their respective clients. The failure to comply with this rule or the failure to appear in a timely fashion may subject counsel to one or more of the sanctions authorized by 22 NYCRR §202.27 and/or 22 NYCRR Part 130-2.

III. COMMUNICATION WITH CHAMBERS

- A. No *ex parte* communication with the Court on any substantive issue is permitted.
- B. Communication with chambers shall be by letter, which must set forth the title of the action, the full names of the parties, as well as index number, with copies simultaneously delivered to all counsel, and any respective *pro se* litigants.
- C. Copies of correspondence between counsel shall not be sent to the Court, except as 22 NYCRR 202.7 and these Part Rules permit.
- D. Telephone calls, except as set forth below, are permitted only in emergency situations requiring immediate attention.
- E. Fax communication to Chambers is not permitted without prior authorization, or as expressly permitted herein.

IV. CONFERENCES

A. Preliminary Conference (“PC”)

1. Prior to the PC, attorneys and parties appearing *pro se* must obtain the Rules of the Part, review them and comply with them throughout the pendency of the matter. Self-represented individuals should note that the Rules applicable to attorneys are equally applicable to *pro se* litigants.
2. PC adjournment requests shall be addressed to the DCM Clerk’s office and *not* to Chambers.
3. Definitive dates for the production of documents and examinations before trial (EBTs) are required to be set forth in the PC Order. No adjournment of these dates will be granted in the absence of consent of the Court and compliance with this rule.

B. All Other Non-PC Conferences

1. Part 22 conferences will be held on Tuesdays, unless otherwise directed.
2. Attorneys and *pro se* litigants shall appear for all conferences, unless otherwise directed by the Court.
3. Appearances shall be at 9:30 a.m., unless otherwise directed by the Court.
4. All counsel and *pro se* litigants appearing on the matter shall be knowledgeable about the case and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients.
5. Counsel are advised to confirm all scheduled appearances with their adversary the day prior to the scheduled appearance in order to facilitate a prompt appearance.
6. Attorneys and *pro se* litigants shall immediately contact opposing counsel as well as the Court in the event of a delay in arrival for a conference.

7. Five (5) business days prior to the first conference in the Part, any party who requires the assistance of an interpreter shall notify the Part Clerk and specify the language (including specific dialect, where appropriate).
The Court will exercise due diligence in its efforts to secure a necessary interpreter. When an interpreter is made available by the Court, counsel for the requesting party, or the *pro se* litigant(s), shall remain in the courtroom until the matter is heard.
8. Adherence to the stipulated dates and directives set forth in the PC Order will be strictly enforced. Adjournment of any date set forth in the PC Order requires the consent of the Court, following agreement by all parties (*see annexed Part 22 Adjournment Request Form*).
9. Adjournment of conferences may be granted upon consent of all parties and prior express approval of the Court, together with the completion of the annexed Adjournment Request Form. All requests for adjournment must be received by the Secretary via facsimile at (516) 493-3386, before 3:00PM of the prior business day. Additionally, a letter confirming a conference adjournment shall be submitted to the Court and shall contain the full names of all parties, along with the index number, and shall specify that a conference is being adjourned. The adjournment will not be deemed granted until receipt of a confirming fax by Chambers.
10. In the absence of consent of all parties, an application for adjournment of a conference must be made before the Court on the scheduled date of appearance.
11. Adjournments requested due to actual engagement of counsel on trial *must* be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR, Part 125.

12. Adjournment requests simply left on Chamber's voicemail for the Secretary or on the courtroom voicemail for the Court, without a corresponding Adjournment Request Form, will not be considered.
13. If there are any newly submitted or pending motion(s) at the time of a conference or trial, the Law Secretary and/or Judge must be so informed.
14. Attorneys and *pro se* litigants must check in with the Part Clerk in the courtroom and complete the sign-in sheet. In the event counsel has cases in another Part, a cell phone number must be provided at sign-in.
15. The Court will begin conferencing ready matters at 9:30 a.m. in the order in which they are signed in.
16. Counsel appearing at the certification conference must have authority to enter into stipulations and/or dispositions which bind their respective clients or have telephone access to their respective clients and be prepared to enter into good faith settlement discussions with the Court.

V. MOTIONS

A. Pre-Motion Conference (Discovery):

1. Prior to making or filing any discovery motions, where no *pro se* litigants are involved, the movant is encouraged to schedule a conference call for the purpose of the parties and the Court to discuss and attempt to resolve the issue(s). Should the conference call resolve the matter, a *sua sponte* order consistent with such resolution may be issued.
2. Notwithstanding (1), *all motions relating to discovery require a telephone conference prior to the return date*. The movant shall call the Court to schedule same. However, in the event there are *pro se* litigants involved, including attorneys representing themselves, instead of a telephone conference, a conference will be held instead in open court on the return date of the motion or order to show cause, unless otherwise specifically waived by the Court.
3. There shall be no submitted discovery motions in the absence of a conference.
4. If the matter can be resolved during the conference, an order consistent with the resolution may be issued.
5. If the matter cannot be resolved, the motion papers must state that this Rule has been fully complied with.

B. Generally

1. Motions shall be made returnable on a Tuesday.
2. Motions, other than Discovery motions, are done on submission, unless otherwise directed by the Court.

3. Adjournment of motions may be granted upon consent of all parties and prior express approval of the Court, together with completion of the Adjournment Request Form. Additionally, a letter confirming the adjournment shall be submitted to the Court and shall contain the full names of all parties, along with the index number, and shall specify that a motion is being adjourned. The adjournment will not be deemed granted until receipt of a confirming fax by Chambers before 4:00PM on the date the adjournment is granted. Failure to do so may result in the adjournment request being considered withdrawn, and the currently scheduled adjourn date will remain on the Court's calendar.
4. In the absence of consent of all parties, an application for adjournment of a motion must be made in court on the scheduled date.
5. Adjournments requested due to actual engagement of counsel on trial must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR, Part 125.
6. Adjournment requests simply left on Chamber's voicemail for the Secretary or on the courtroom voicemail for the Part Clerk, without a corresponding Adjournment Request Form, will not be considered.
7. If there are any newly submitted or pending motions at the time of a required appearance on a motion, the Law Secretary and/or Judge must be so informed by counsel.
8. Attorneys and *pro se* litigants must check in with the Part Clerk in the courtroom and complete the sign-in sheet. In the event counsel has cases in another Part, a cell phone number must be provided at sign-in.

9. The Court will begin conferencing ready matters at 9:30 a.m. in the order in which they are signed in with the Part Clerk.
10. Except for good cause shown, no affidavit or affirmation shall exceed twenty (20) pages (double-spaced). Papers submitted in excess of this limit may be returned to counsel.
11. All papers shall be submitted in a timely manner. The Court will not consider late papers absent Court approval. No sur-reply affidavit affirmation, or letter will be accepted or considered without leave of Court.
12. The Court requires a hard copy of all papers submitted through the E-file system, including affidavits of service.
13. In the event a matter has already been scheduled for conference, the Court may, where practicable, advance the conference date to align with the return date of the motion.
14. All motion exhibits must be clearly tabbed and single-sided. All submissions shall be fully and securely bound in accordance with the County Clerk's rules and shall have a litigation back attached thereto.
15. In addition to inclusion in the motion papers, a copy of the affidavit of service must also be provided to the Part Clerk before the submission date of the motion.
16. 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.

17. Proposed orders submitted for approval must include notice of settlement (on at least 10 days' notice) or a signed waiver of settlement with a copy of the proposed order and a self-addressed, stamped envelope to the following: "Motion Support, Room 186, Nassau County Supreme Court, Nassau County, 100 Supreme Court Drive, Mineola, NY 11501."

The proposed order shall be accompanied by a letter setting forth the date the motion was submitted, what aspects have been settled, and what issues remain to be decided.
18. Pursuant to CPLR §3212(a), a motion for summary judgment shall be made no later than sixty (60) days after filing of the note of issue (NOI), except with leave of Court for good cause shown. Any physician affirmations, reports or other medical proof submitted in threshold motions shall contain the original signatures of the physician or provider.
19. Motions not consistent with these rules will be rejected.
20. Counsel shall provide a fax number, along with the motion papers, to facilitate delivery of the Court's decision, copies of which will be distributed to counsel by the Secretary once rendered.
21. Motions brought pursuant to CPLR §§ 3211, 3212, or 3213 shall not automatically stay disclosure.
22. Should all or part of a submitted motion settle or otherwise resolve, the Court shall be notified by letter before the return date. Such letter shall set forth the date the motion was submitted, the specific part of the motion that has been resolved, and the remaining issues to be decided. In the event the motion is resolved in its entirety, the movant shall so indicate, and take all necessary steps to withdraw the motion as soon as is practicable.

23. If a motion is resolved in whole or in part on the record, counsel shall obtain the transcript so that same could be “so-ordered.”

C. Oral Argument

1. The Court will determine, following submission, whether oral argument is warranted. Upon such determination, counsel for all litigants will be advised of the scheduled date for oral argument.

D. 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 in order to schedule counsel’s appearance concerning Uniform Rule §202.7(f) compliance.
2. At any conference of the matter, if an order to show cause seeking any injunctive relief, including a stay or TRO, has been 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 to the Court on said date. Unless the order to show cause provides otherwise, failure to apply for such extension shall result in the automatic *vacatur* of the stay or TRO.
4. An “Emergency” Order to Show Cause requires a special affidavit based upon personal knowledge and an affirmation explaining in detail the nature of the emergency. In addition, the movant shall be prepared to appear in court as soon as is practicable to make a record, if the Court requires same.

VI. SETTLEMENTS

- A. 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 certifying that such agreement/stipulation has, in fact, been executed.
- B. The Court shall be notified by letter/fax of a settlement prior to the return date. A stipulation of discontinuance must follow as soon as is practicable.

VII. TRIALS

- A. A note of issue shall be filed within sixty (60) days after the date of certification, unless otherwise specified in the certification order. Counsel for plaintiff shall pay the requisite fee with the Office of 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. Trials will be conducted on a daily basis until conclusion. Once trial has commenced, there will be no adjournments or delays absent exigent circumstances.
- C. All counsel and litigants are expected to be ready to proceed at 9:30 a.m.
- D. Objections during trials should be stated without argument, simply stating the ground upon which the objection is based – e.g. objection, hearsay; objection, relevance, etc. No speaking objections are permitted. If further argument is warranted, it will be invited by the Court.
- E. Trial counsel are responsible for redactions of all evidence.
- F. A formal charge conference will be conducted prior to summations. Prior thereto, informal conferences may be held.

- G. At the conclusion of the trial, trial counsel are responsible for retrieving all exhibits, pleadings, transcripts, etc., except in the case of a bench trial, where the Court reserves decision. In all cases involving non-jury trials where decision is reserved, exhibits, pleadings, transcripts, etc. shall be disposed of if they are not retrieved within thirty (30) days following the date the Court renders a decision.
- H. At the first appearance of all cases assigned to the Part for trial, a conference will be held. At the conference, counsel shall submit to the Court as follows:
1. Request for Interpreter. On the first appearance in the Part, any party requiring the aid of an interpreter shall notify the Part Clerk and specify the language (including specific dialect, where appropriate).
 2. Proof of filing of the note of issue.
 3. Marked pleadings are to be submitted before opening statements.
 4. Parties are encouraged to stipulate to facts and exhibits whenever possible.
 5. A list of proposed witnesses, including name and title/identifier (e.g. John Doe, Husband or Jane Doe, doctor, etc.).
 6. 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 multi-page document such as a hospital record, office record or voluminous (in excess of 10 pages) business record, counsel shall identify by use of tabs, Post-Its, page numbering or similar device, the particular page or pages to which reference will be made.

7. Malpractice departures. In cases involving claims of professional negligence, at the trial session immediately following an expert's testimony, or such other time as the Court may direct, plaintiff shall furnish the Court and counsel for all parties a list of the departures from the standards of good and accepted practice which that party asserts were testified to by its expert witness(es). Where the testimony has been transcribed, page references will be required.
8. Pre-trial memoranda including cited case law if any, that counsel seeks to be considered by the Court.
9. All *in limine* applications, including any supporting statutory or case law, shall be submitted to the Court in writing. Absent extraordinary circumstances, all motions *in limine* addressing the preclusion of evidence, testimony or other trial-related matters must be brought to the attention of the Court immediately upon counsel becoming aware of such matter to be addressed, in order to avoid applications on the eve of or during trial. The moving 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*.
10. The Court is to be provided a copy of any deposition transcript prior to the commencement of opening statements, should it be intended for use at trial.
11. All trial exhibits, whether or not the parties stipulate to their admission into evidence, 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. A courtesy copy of each exhibit intended to be introduced into evidence shall be provided to the Court.

12. Requests to Charge and Verdict Sheets. Each party shall provide the Court with preliminary requests to charge and proposed verdict sheets. Charges from the Pattern Jury Instructions (PJI) 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 during the course of the trial.
13. Equipment. On the first appearance in the Part for trial, any party who intends to rely upon the Court to supply electronic, audio-visual, Skype, or other technological assistance, or utilize demonstrative evidence, etc., shall make the request to the Part Clerk.
14. 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 police officer shall notify the Part Clerk in order that the Clerk may facilitate the officer's appearance through police liaison.

VIII. EXPEDITED JURY TRIALS (also known as Summary Jury Trials)

- A. Trials having prior approval to proceed as Expedited Jury Trials shall abide by the following:
1. All counsel and litigants are expected to be ready to proceed at 9:30 a.m.
 2. Upon arrival, attorneys and *pro se* litigants must check in with the Part Clerk in the courtroom and complete the sign-in sheet.
 3. Any party requiring the aid of an interpreter shall notify the Part Clerk at least five (5) days prior to the trial date in order for the Court to make a timely accommodation of the request.
 4. All verdicts are final. There are no appeals, no motions, and no further trial proceedings following the verdict.
 5. Neither party shall enter judgment on the verdict.
 6. There shall be no bifurcation. If the issue of the negligence of the defendant(s) is not conceded, all issues shall be determined in a full trial.
 7. The parties may, if necessary, request one pre-trial conference to discuss admissibility of trial documents / exhibits. Upon such request, the Court may assign the conference to a court referee.
 8. In any event, any *in limine* applications are to be made once the issue arises, and to the extent practicable, no later than the Friday preceding the scheduled trial date.

9. Prior to trial, the parties shall each prepare a trial exhibit book. The books shall include any documents each party wishes the jury to review during deliberations. Each party shall present their book to the adversary prior to jury selection. Any objections to proposed exhibits contained therein shall be made to the Court prior to commencement of trial and prior to jury selection. The books shall be provided to the jury prior to the commencement of summations. Any documents found inadmissible by the Court shall be removed prior to the distribution of the books to the jury.
10. Trial exhibit books shall be delivered to the Part Clerk in the courtroom or the Chambers no later than the Friday preceding the date of the trial.
11. Proposed verdict sheets and requests to charge shall be provided to the Court by the Friday preceding the date of trial, via fax at (516) 493-3386.
12. Any party who intends to rely upon the Court to supply electronic, audio-visual, Skype, or other technological assistance, or utilize demonstrative evidence, etc., shall make the request to the Court at least five (5) business days prior to the date of the trial.
13. Jury selection shall commence on the morning of trial and be completed within ninety (90) minutes of commencement, subject to application to the Court for additional time prior to commencement of selection.
14. Each side shall have three (3) peremptory challenges.
15. The parties will be allocuted prior to the commencement of trial to ensure their understanding of their right to a full trial and that they are knowingly and voluntarily waiving that right to proceed with an expedited trial.
16. If a verdict is not reached by 4:30 p.m., jury deliberations shall be adjourned to the following business day.

IX. SANCTIONS

- A. The Court will not consider an application for sanctions 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.

X. CONCLUSION

- A. We look forward to working with you.

Supreme Court of the State of New York
County of Nassau – IAS Trial Part 22
Hon. Sharon M.J. Gianelli, J.S.C.

ADJOURNMENT REQUEST FORM
THIS FORM IS REQUIRED FOR ALL ADJOURNMENT REQUESTS
Requests must be on consent of all parties

Case Name: _____

Index No.: _____ / _____

Current Calendar Date: ____ / ____ / ____

Requested Adjourn Dates (*Please provide 3*).

Please Note: Our preference is for BRIEF adjournments, in the name of efficiency:

1) ____ / ____ / ____ 2) ____ / ____ / ____ 3) ____ / ____ / ____

Purpose of Appearance:

COMPLIANCE ____ DISCOVERY ____ CERTIFICATION ____
NON-DISCOVERY MOTION ____ HEARING ____ TRIAL ____

Reason for Request (Affirmation of Actual Engagement attached, *if required*):

CONTACT INFORMATION

Party Requesting Adjournment (circle one): PLAINTIFF / DEFENDANT

Attorney Contacting Court: _____

Phone: (____) _____ - _____

Fax: (____) _____ - _____

Do you have the consent of all opposing counsel? (circle one) YES / NO

NOTE: ALL REQUESTS MUST BE RECEIVED BY THE SECRETARY VIA FAX
AT (516) 493-3386, **BEFORE 3:00 PM** OF THE PRIOR BUSINESS DAY.

Once an adjournment is agreed to by the Court, as per our Part Rules, a confirming letter to
all sides must be received by the Secretary via Fax before 4:00 PM
on the date the adjournment is granted.
(see also Part Rules)

*Failure to do so may result in the adjournment request being considered withdrawn, and the
currently scheduled adjourn date will remain on the Court calendar.*