HON. DAVID J. GUGERTY
SUPREME COURT - NASSAU COUNTY
100 SUPREME COURT DRIVE - 4TH FLOOR
MINEOLA, NY 11501

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IAS PART 16

GUARDIANSHIP/CIVIL MATTERS

I. Communication with Chambers

Correspondence and emails sent to chambers must reflect the name of the action and the index number. Copies are to be sent to all adversaries. All emails shall be sent to judgegugertyremote@nycourts.gov unless otherwise directed. Correspondence between attorneys and/or parties shall not be copied to the Court unless directed by chambers.

There shall be no *ex parte* telephone communication regarding substantive issues.

II. Orders to Show Cause - Motions - Adjournments

Every Article 81 order to show cause requires an appearance. Petitioner's counsel is charged with advising the Court of the need for an interpreter and the dialect, if any. Teams links may be forwarded to interested persons/witnesses necessary to the hearing upon prior approval of the Court and with a showing of necessity. Whether in person or virtually, interested persons will be given access to the record at hearings and conferences only at the discretion of the Court. Per statute, hearings to appoint a guardian are to be held within 28 days of the date of the signed order to show cause. Counsel should make every effort to adhere to the 28-day limit. Any request for an adjournment with a valid reason, shall be on consent. Submit a request for an adjournment by email along with three to four proposed dates agreeable to all parties to judgegugertyremote@nycourts.gov.

After receipt of an order to show cause or motion, all counsel shall email the name of the attorney appearing at the hearing, and any witness or party testifying along with their address, office and cell phone number to the Court's email address, judgegugertyremote@nycourts.gov, and to the email address of our Court Clerk, Jamie Corsitto.

All motions, except for annual and final accounts, shall be filed via order to show cause.

Counsel shall not send motions, orders or judgments directly to chambers unless directed to do so by the Court. These papers are to be filed with the Clerk's Office through NYSCEF.

III. Court Evaluator Reports

For all initial hearings, the Court Evaluator shall submit a copy of their report to chambers **by email no later than 48 hours before the hearing** to judgegugertyremote@nycourts.gov. The Court Evaluator's report DOES NOT GET EFILED and may not be shared with the interested persons, the petitioner, or petitioner's counsel prior to submitting same to chambers. Only after submitting a copy to chambers and getting approval from Judge Gugerty may the Court Evaluator provide counsel for petitioner and/or interested persons, if they are represented by an attorney, with a copy of the report.

IV. Remote Appearance

A request for a remote appearance will be considered by the court should the health of a party require it or if distance to the court makes it impractical to appear in person. The request should be made via email to judgegugertyremote@nycourts.gov and copied to all interested persons. With that said, appearances in person by all involved are strongly preferred.

VI. Settlements

If a pending action has been settled, petitioner's counsel shall notify chambers as soon as possible by email to judgegugertyremote@nycourts.gov.

VII. Guardianship Hearing/Civil Trial Rules

The following rules apply to hearings and non-jury trials:

1. Electronic and recording devices of any kind are not permitted to be used while Court is in session or during conferences off the record. Phones should be set to silent. There is no gum chewing or eating permitted; however, an exception will be made for medical reasons. All counsel and parties are expected to conduct themselves appropriately.

2. *In Limine* applications: Any party intending to make a motion *in limine* shall submit a brief written affirmation setting forth the nature of the application and any supporting statutory or case law. The party shall furnish the Court with an original and a copy and provide counsel for all parties with a copy. There shall be a separate affirmation for each motion *in limine.*

3. Pre-trial memoranda providing the Court with cited case law to be considered by the Court shall be submitted via email at least 48 hours in advance.

4. A courtesy copy of each exhibit intended to be introduced into evidence at trial/hearing for the Court and each counsel. All exhibits shall be tabbed or included in a binder for easy reference.

5. All trial/hearing exhibits, whether the parties stipulate to admit them into evidence or not, shall be pre-marked by the court reporter. Exhibits should be Bates stamped where possible.

6. A list of proposed witnesses with addresses and phone numbers for the Clerk's information should be provided two days before the hearing along with cell phone numbers of counsel. This information should also be emailed to the judgegugertyremote@nycourts.gov mailbox and Jamie Corsitto, Sr. Court Clerk, jcorsitt@nycourts.gov.

7. A list of expert witnesses with copies of their reports.

8. A statement of stipulated facts. Parties are encouraged to stipulate to facts and/or exhibits.

9. Objections should be stated without argument except to state the grounds, e.g., hearsay, relevance, etc. If further argument is appropriate, it will be invited by the Court.

10. Counsel are responsible for redaction of all evidence.

11. Trials will be conducted on a continual daily basis until conclusion. As such, no adjournments or delays during trial will be accepted unless exigent circumstances exist.

12. Trial counsel are responsible for taking back all exhibits.

CIVIL CONFERENCES AND DISCOVERY DISPUTES

All conferences will be conducted remotely on Microsoft Teams. Upon scheduling the conference, an invitation will be sent to each email listed on the NYSCEF system. Attorneys and self-represented litigants must appear at the scheduled time. **It is imperative that the NYSCEF system be updated with the email addresses of the attorney(s) of record for each matter before the Court.**

Every party must appear timely as each conference is only scheduled for 15 minutes.

An attorney appearing on a case for any purpose must be familiar with the case and authorized to resolve any and all issues, including settling the case, and shall make all appearances until they are relieved by the Court or a Consent to Change Attorneys has been filed with the Clerk of the Court.

Contravention of these Part Rules, or the new Uniform Rules for the Supreme and the County Court effective February 1, 2021 https://ww2.nycourts.gov/rules/trialcourts/202.shtml may result in sanctions, including the granting of a default judgment, dismissal of the action, or the issuance of any other order that the Court deems just (Uniform Rules for the Supreme and the County Court [22 NYCRR] § 202.27).

For urgent matters requiring immediate attention, parties should email chambers a completed conference request form that can be found on the Supreme Court's website.https://ww2.nycourts.gov/sites/default/files/document/files/2020-04/Email%20Request%20For%20Conference%20Form.pdfhttps://ww2.nycourts.gov/sites/default/

*****APPEARANCES ARE MANDATORY*****

PRELIMINARY CONFERENCE

A. Preliminary Conferences will now be conducted electronically through the NYSCEF system (there will not be any in person appearance). They will be scheduled and calendared by an E-file notice to the parties that contains detailed instructions on how to complete a proposed Preliminary Conference Stipulation and Order, available on the Court's website at http://ww2.nycourts.gov/COURTS/10JD/nassau/cicgeneralforms.shtml

B. At the preliminary conference, the attorneys and self-represented parties must obtain, review, and familiarize themselves with the rules of this part, to ensure future compliance. Preliminary conferences will not be adjourned.

C. **The following conferences will be heard virtually before Part 16 of the Nassau County Supreme Court.** All conferences are also **A**lternative **D**ispute **R**esolution (ADR) conferences, and more information regarding ADR is at: https://ww2.nycourts.gov/courts/10jd/nassau/ADR.shtml

COMPLIANCE - **Tuesdays**

CERTIFICATION - **Wednesdays**

MOTION - **Thursdays**

D. **Discovery, Certification, and Note of Issue deadlines, will be enforced, and may not be extended without Court approval.**

E. **Motions must be made returnable on a Thursday. Noncompliance may result in sanctions, including the motion not being calendared.**

F. Prior to filing a discovery related motion, including motions to strike, restore, preclude, and compel, the parties must send an email to judgegugertyremote@nycourts.gov, attaching ***a completed conference request form*** that includes a summary of the discovery related issues, **and** an affirmation of good faith in compliance with the New Uniform Rules for the Supreme and the County Court (22 NYCRR) § 202.20-f, setting forth, **in detail**, the efforts made by the attorney/party requesting the conference to obtain discovery prior to requesting judicial intervention. Conclusory statements, or *pro forma* letters or emails will not satisfy this requirement. Failure to request a conference prior to the filing of a discovery related motion will result in the motion not being scheduled.

G. Pursuant to CPLR 3212(a), summary judgment motions shall be filed no later than sixty (60) days after the filing of the Note of Issue, except with leave of court on good cause shown (*see Brill v City of New York*, 2 NY3d 648 [2004]). Motions pursuant to CPLR 3211 and 3212 **shall not** automatically stay any discovery, unless by order of the Court.

H. All orders to show cause must comply with Uniform Rules for the Supreme and the County Court (22 NYCRR) § 202.7(d). Failure of the moving party to appear will result in the motion being deemed abandoned, and any opposition papers will not be considered.

I. Movant must notify all self-represented parties, with proof of said notice on the Microsoft Teams scheduled day and time, by printing and mailing the invitation to the self-represented parties, prior to the Microsoft Teams meeting.

J. All motions, cross motions, and *ex parte* applications submitted shall be in compliance with Uniform Rules for the Supreme and the County Court (22 NYCRR) §§ 202.5 and 202.7. Any failure to comply with the requirements of this section may result in the rejection of the non-complying papers.

K. Service requirements under CPLR 2214 and 2215 will be strictly enforced. No sur-reply papers will be considered without express leave of the Court. No papers shall be accepted after a motion is marked submitted, without express leave of the Court.

L. Counsel are required to provide the Court with their e-mail addresses on all submissions. In all communications with chambers by email, the title of the action, full names of the parties and the index number shall be set forth in the email and copying all other parties and attorneys in the matter. Copies of correspondence between counsel shall **not** be sent to the Court except as these Part Rules and 22 NYCRR § 202.7 permit.

ELECTRONIC FILING RULES AND PROTOCOLS

A. All parties should familiarize themselves with the statewide E-Filing Rules: Uniform Rules for the Supreme and the County Court (22 NYCRR) § 202.5-b and 202.5-bb, which are available at http://ww2.nycourts.gov/rules/trialcourts/202.shtml. General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033. Local E-Filing questions can be addressed to Nassau E-Filing at (516) 493-3136.

B. All paper cases must be converted to e-file. Parties on non e-filed cases must complete the EF-10 Stipulation and Consent to E-filing found on the e-filing website (link below) and file it with the EDDS (Electronic Document Delivery System) website (link below).

C. EF-10 Stipulation and Consent to E-filing: https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/stipulation.and.consent.pdf

D. EDDS: https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm

E. All submissions must be e-filed and hard copies are not necessary nor will they be accepted.

ADJOURNMENTS

Applications for adjournments on consent or otherwise will **ONLY** be entertained at the time of the conference and will **NOT** be entertained by any other method. ***Engagement of counsel*** shall be a ground for adjournment by affirmation and in accordance with 22 NYCRR §125.1. ***Discovery related motions will not be adjourned*.**

WITHDRAWAL

Withdrawal of motions will be considered at the time of the scheduled TEAMS conference. You will not be required to appear if you email to judgegugertyremote@nycourts.gov a stipulation settling the case and withdrawing the motion, as soon as you have it, but no later than the day before the conference.

INFANT'S COMPROMISE

A. All applications for Court approval of a proposed compromise of an infant's claim must be submitted through the Infant's Compromise Clerk ("ICC") (telephone no. 516-493-3049).

B. A proposed Infant's Compromise Order must include the full name of the infant plaintiff and reference therein the following: "Confidential personal information is included in this Order upon the Court's finding that good cause exists pursuant to 22 NYCRR § 202.5 [e][2], in that the inclusion of the full name and date of birth of the minor, as well as related information, is material and necessary to effectuate the terms of this Order".

C. The infant's compromise paperwork submitted to the ICC must include, *inter alia*, (i) a medical report/affidavit indicating whether the injured infant plaintiff has fully recovered, and if not, the nature and extent of the injuries and anticipated future treatment, if any, and related medical records where applicable; (ii) proof of settlement of the infant's claim from defense counsel, in writing; and (iii) defense counsel's waiver of appearance at the Infant's Compromise Hearing, in writing. Such paperwork must also otherwise comply with all applicable rules concerning the compromise of an infant's claim.

D. 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 of the injuries and the costs 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 prospective 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.

SETTLEMENT AND DISCONTINUANCES

If the case has been settled or discontinued, pursuant to Uniform Rules for the Supreme and the County Court (22 NYCRR) § 202.28, you must notify the court immediately by email, sending a stipulation of settlement and/or discontinuance and withdrawing any pending motions or applications to judgegugertyremote@nycourts.gov

TRIAL RULES

Counsel should ascertain the availability of all witnesses and subpoenaed documents. Any special needs, e.g., interpreter, easels, blackboards, shadow boxes, television, subpoenaed, material, etc., must be reported to the Court Clerk, in advance, so as not to delay the progress of the trial.

All exhibits must be e-filed and mailed to the Court in advance with copies made for all adverse parties

MARKED PLEADINGS

Plaintiff's counsel shall furnish the Court with copies of marked pleadings, the bill(s) of particulars and copies of any case law and/or statutory provisions, which any party will rely upon.

Counsel for the parties shall provide to the Court:

A. A chronological summary of all expert reports to be offered into evidence together with a glossary of terms that are used or are expected to be used by the expert witness, but are typically unfamiliar to a lay person;
B. A chronological list of all dates relevant to the matter on trial;
C. All reports, depositions and written statements which may be used to either refresh a witness' recollection and/or cross-examine the witness;
D. To the extent any part of a deposition is to be read into evidence (as distinguished from mere use on cross-examination) you must, in advance, provide the Court and your adversary with the page and line number of all such testimony so that all objections can be addressed prior to use before the jury;
E. A list of the names of all witnesses to be called by you and for each such witness, the elements of proof to be supplied or addressed by such witness; and
F. Suggested jury charges and a suggested verdict questionnaire. Amendments thereto shall be permitted at the final charging conference. Jury charges should be referred to by the PJI number and topic. If any changes to the PJI are suggested, then the entire proposed charge should be set forth and the changes should be highlighted. Citations to appropriate statutory or common law authority must be given in support of suggested non-PJI jury charges or suggested PJI modifications.

PRE-TRIAL CONFERENCES WILL BE HELD PRIOR TO EVERY TRIAL

At this conference counsel should be prepared to:

A. Discuss settlement;
B. Advise the Court as to all anticipated disputed issues of law and fact, and provide the Court with copies of all statutory and common law authority upon which counsel will rely;
C. Stipulate to undisputed facts and the admissibility of clearly admissible documents and records;
D. Advise the Court of any anticipated *in limine* motions or evidentiary objections which counsel intends to make. Motions *in limine* may be made orally, but must be supported by a memorandum of law with citations to the relevant statutes and case law relied upon, as well as treatises of evidence law. All prior decisions and orders relevant to any *in limine* application must be provided to the Court;
E. Advise the Court of any anticipated requests for a jury instruction relating to missing witnesses and/or documents;

F. Advise the Court of any anticipated requests for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16;
G. Discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial; and
H. Counsel is advised that, pursuant to Uniform Rules for Trial Cts (22 NYCRR § 202.26(e), the Court may require parties, representatives of parties, representatives of insurance carriers or persons having an interest in any settlement, including those holding liens on any settlement or verdict, to also attend the conference.

To access Court Rules go to:

https://www.nycourts.gov/LegacyPDFs/COURTS/10JD/nassau/partrules/Gugertypartrules.pdf