

HON. RANDY SUE MARBER, J.S.C.
Supreme Court – Nassau County
100 Supreme Court Drive
Mineola, New York 11501

IAS PART 8 – RULES & PROCEDURES
(effective as of August 2019)

Principal Law Clerk: **Mili Makhijani, Esq.**
Assistant Law Clerk: **Avani A. Shah, Esq.**
Courtroom Clerk: **Edward McClean**

Chambers Phone: **(516) 493-3219**
Courtroom: **(516) 493-3222**
Fax: **(516) 493-3205**

I. ADJOURNMENT REQUESTS

A. Requests to Adjourn Motions and Conferences:

1. Adjournment requests of **motions and/or conferences held before Justice Marber** may be granted by Chambers if the request is **on consent** of all parties and **sufficient cause exists for approving such request**. No adjournments will be granted without prior approval by Chambers. If all parties do not consent to the adjournment request, an application must be made by telephone conference with all parties/counsel **no later than 3:00 p.m.** the day **preceding the scheduled motion or conference**. No adjournment requests will be entertained without all parties/counsel participating in the telephone conference.
2. Adjournment requests of **motions and/or conferences (excluding PC/DCM/Central Jury appearances)** may only be sought through **Chambers**. Potential dates amenable to all parties must be provided at the time the adjournment is sought.
3. Except for applications made in court, and only upon approval of an adjournment request, letters confirming adjournments **MUST** immediately be faxed to Chambers and **MUST** contain full names of all parties; index number; refer to the original date and specify that a motion and/or conference is being adjourned to a date and time certain; and confirm whether an appearance is required on the new date. Letters confirming adjournments should **only be sent to Chambers by fax. Do not mail, email or e-file** the letter to Chambers (however, any method may be used to copy parties/counsel on such letter).
4. Adjournment requests which are left on the Chamber's Voice Mail shall be **disregarded**. An adjournment request is **not** granted until approved by Chambers **and** a faxed confirmation letter is received by Chambers.
5. Adjournments requested due to an attorney's actual engagement **on trial** must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR Part 125.

B. Requests to Adjourn Discovery Deadlines

1. No adjournments of discovery deadlines set forth in the Preliminary Conference Order shall be permitted without prior Court permission. Depositions are court-ordered pursuant to the PC Order. **Deposition dates** specified in the PC Order **may not be adjourned to any later date without prior court approval.**
 - a. Requests for adjournments of deposition dates shall be made by telephone prior to the scheduled EBT date. Counsel requesting the adjournment must be prepared **at the time of the call** with a reasonable basis for the request, a proposed new deposition schedule with firm dates, and whether the request is on consent of all parties. Where a request is granted, counsel will be directed to fax a confirming letter to Chambers, copied to all counsel, setting forth the new approved EBT schedule with firm dates, times and location, and that “EBTs may not be adjourned to any later date without prior Court approval.” Requests to adjourn EBTs **are not granted** until the Court’s receipt of the confirming letter referenced herein.
 - b. Any outstanding discovery issues that may potentially impact the holding of party depositions should be addressed sufficiently in advance of the Court-ordered EBT dates.
 - c. Counsel must endeavor to complete depositions prior to the scheduled Compliance Conference.

C. Requests to Adjourn Preliminary Conferences:

1. Preliminary Conferences shall be held in accordance with the rules set forth in 22 NYCRR § 202.19 in the Preliminary Conference Part of this courthouse, not before Justice Marber. The PC will be scheduled by the Clerk of that part. Accordingly, PC adjournment requests are to be addressed to the DCM Clerk’s office or Preliminary Conference Part (telephone no. 516-493-3120), **not** to Chambers.

D. Requests to Adjourn Pre-Trial (DCM/CCP) Conferences:

1. Requests to adjourn pretrial conferences are to be directed to the CCP/DCM Part (telephone no. 516-493-3113), **not** to Chambers.

II. DISCOVERY DISPUTES & DISCOVERY-RELATED MOTIONS

A. Pre-Motion Teleconferences:

1. Prior to the making or filing of any discovery-related motion (or other non-dispositive motion that may be resolved by a teleconference), counsel for the prospective movant(s) shall first discuss the issue(s) in question with his or her adversary. If the issue(s) in question cannot be resolved, counsel for the prospective moving party **MUST** arrange for a telephone conference to be held with all counsel and the Court to address the issue(s) and any possible resolution thereof. Counsel fully familiar with the matter and with authority to bind their client **MUST** be available to participate in the conference call.
2. If the matter can be resolved during the teleconference, the requesting party will be

directed to fax a confirming letter memorializing such resolution. Where the matter cannot be resolved during the teleconference, the prospective movant may request permission to file a discovery-related motion.

3. This rule does not apply to applications for counsel to be relieved or dispositive motions.
4. Any discovery motion must state that **Rule II A. 1.** above has been complied with. Failure to comply with **Rule II A. 1.** above may result in denial of the motion.

B. Telephone Conference Procedure:

1. A party that requests a teleconference shall first contact Chambers with the general nature of the discovery dispute and proposed dates and times amenable to all counsel. Telephone conferences are conducted by the Principal Law Clerk in the afternoon at 2:30, 3:00, 3:30 or 4:00 p.m. Where three or more parties are participating in the teleconference, the requesting party must arrange for a dial-in teleconference number.
2. Once all parties are on the line, Chambers must be contacted on the teleconference line at (516) 493-3220, which shall **only** be used for scheduled teleconferences.

III. MOTIONS

A. Submission of Motions & Motion Appearances

1. Motions brought pursuant to CPLR §§ 3211, 3212 or 3213 **shall not** automatically stay any discovery, unless otherwise ordered by the Court.
2. Generally, there are no appearances on motions for summary judgment made **after** the filing of a Note of Issue, pre-answer motions pursuant to CPLR § 3211, and for **unopposed** motions made pursuant to CPLR § 3215. Appearances of all counsel and pro se parties **are** required on all other motions and Orders to Show Cause, unless otherwise directed by the Court.
3. Pursuant to CPLR § 3212 (a), a motion for summary judgment 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.
4. On **e-filed cases**, upon the Court's receipt and processing of any e-filed motion, counsel and *pro se* litigants will receive an email from Chambers directing whether an appearance is required on the return date. The Court may, on occasion, administratively adjourn or advance motion return dates to coincide with previously scheduled conferences and/or with return dates of other motions filed in that matter.
5. On **e-filed cases**, the handling attorney(s) and *pro se* litigants, if any, are responsible for ensuring that a working email address is affiliated with the NYSECF system. Chambers is **not responsible** for adding or deleting any email addresses from the NYSECF system.
6. On **e-filed cases**, a "working hard copy" of any e-filed papers, **must** be submitted to Chambers with **all exhibits properly tabbed**. Working hard copies **must** be

received by the Court **prior to the return date or any adjourned date in order to be considered.** The E-filing confirmation notice must be annexed to the back of the litigation back of your working hard copy **facing out.**

7. On **non e-filed cases**, courtesy or working copies should **not** be submitted, unless requested by the Court. All motion papers **must** be received **no later than 9:30 a.m.** on the return date of the motion.
8. No sur-reply affidavits, affirmations, memoranda of law or letters will be accepted or considered by the Court after the return date of any motion or cross-motion without leave of the Court.
9. Reply papers are permitted on all motions, cross-motions, orders to show cause and petitions.
10. Failure to appear at a motion conference may result in denial of any motion made by the non-appearing party and/or the granting of any motion on default when the opposing party fails to appear.
11. In the event a case is already scheduled for a conference with this Part, counsel should endeavor to coincide the return date of a motion, where feasible, with the previously scheduled conference. Where a motion is previously filed, any subsequent movants shall endeavor to coincide the return date(s) of any such subsequently filed motions, where possible.
12. **All exhibits must be clearly tabbed**; no exhibits shall be double sided; and no mini-scripts are accepted. Motions not consistent with this rule will be rejected. Opposition papers need not duplicate deposition transcripts or voluminous medical records annexed to the moving papers and may refer to the relevant exhibit cited by the movant.
13. All submissions shall be fully and securely bound and shall have a litigation back attached thereto. All motion papers greater than two (2") inches thick must be split into multiple volumes and secured by heavy duty staples or ACCO fasteners and clearly marked with a copy of the Notice of Motion on each volume (e.g. 1 of 3, 2 of 3, 3 of 3). All Orders to Show Cause shall be ACCO fastened on the top and **not** the bottom of the papers
14. When submitting proposed orders or judgments in connection with a motion, the same shall be submitted as a separately bound document.
15. Counsel must advise the Court, in writing, and as soon as practicable, if any submitted or unsubmitted motion, or portion thereof, has been resolved, withdrawn, or rendered moot because the case is settled, or an issue is otherwise resolved.

IV. COURT APPEARANCES

A. **General Procedure**

1. All conferences and motion appearances are scheduled at 9:30 a.m. Please be prompt. Defaults in appearance will not be taken on the record until after 10:30 a.m.
2. Attorneys and *pro se* litigants must check in with the Court Officer or Part Clerk, if one is available. If the Courtroom is unavailable, counsel must call Chambers

from the Fourth Floor Security Desk **only when all parties are present**. All parties must fully and legibly complete a sign-in sheet and note thereon whether counsel is in another Part and provide a cell phone number to be reached.

3. All conferences will be held in the order in which **all** attorneys and/or *pro se* litigants have checked in with the Part Clerk and completed a sign-in sheet.
4. Counsel who appear in the Part must be fully familiar with the case and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients, including those appearing “of counsel” or “per diem”.
5. Failure to appear at the call of any calendar may result in an inquest or dismissal pursuant to 22 NYCRR § 202.27.

B. Compliance Conferences

1. The Compliance Conference date will be set down in the PC Order and must be held no later than 60 days before the date scheduled for the completion of discovery pursuant to 22 NYCRR § 202.19(b)(3).
2. In no event shall the Compliance Conference be held later than the deadline set forth in the Standards & Goals timetable accompanying the PC Order (provided by DCM). Adjournments will only be granted for compelling reasons. No Compliance Conference may be adjourned without prior approval of the Court.

C. Certification Conferences

1. A Certification Conference will be held no later than 90 days prior to the deadline by which a Note of Issue must be filed. In no event shall the Certification Conference be held later than the deadline set forth in the Standards & Goals timetable accompanying the PC Order (provided by DCM).
2. Requests to change a discovery track fixed in the timetable will only be granted for compelling reasons and where counsel have endeavored to complete discovery in a timely fashion.

V. STAYS OR TEMPORARY RESTRAINING ORDERS (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 as to a convenient date and 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.

VI. NOTICE OF CHANGE IN CIRCUMSTANCES: COUNSEL'S RESPONSIBILITY

- A. Pursuant to 22 NYCRR § 202.28 (b), if an action is discontinued, or wholly or partially settled by stipulation pursuant to CPLR § 2104, or a motion has become wholly or partially moot, or a party has died, become a debtor in bankruptcy or is in active military duty, the parties shall promptly notify the Court in writing of such an event, with appropriate documentation where necessary.
- B. It is the responsibility of counsel to apprise the Court of an Appellate Division decision or a change in circumstance referenced in **Rule VI. A.** above that affects the status of any case assigned to this Part.
- C. Any party or attorney who, without good cause shown, fails to promptly notify the Court consistent with the above requirements may be subject to the imposition of sanctions.

VII. COMMUNICATION WITH CHAMBERS

A. Inquiries:

- 1. In all communications with Chambers by letter or email, the title of the action, full names of the parties and index number shall be set forth, with copies simultaneously delivered to all counsel. ***Ex parte* communications will be disregarded.**
- 2. Copies of correspondence between counsel shall **not** be sent to the Court unless otherwise directed. Such correspondence shall be disregarded by the Court.
- 3. The Court will not accept telefax communications or submissions without prior permission.
- 4. The court shall 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. Chambers shall not be contacted during the daily lunch break which is from 12:45 p.m. to 2:00 p.m.

VIII. 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.

IX. TRIAL 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.
- B. At the first appearance of all cases assigned to this Part for trial, a pre-trial conference will be held. 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 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 two (2) copies and provide counsel for all parties with a copy. There shall be a separate affirmation for each motion in limine;
2. Pre-trial memoranda providing the Court with cited case law to be considered by the Court.
3. A courtesy copy of each exhibit intended to be introduced into evidence at trial for the Court and each counsel. All exhibits shall be tabbed or included in a binder for easy reference;
4. All trial exhibits, whether the parties stipulate to admit them into evidence to the Court 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;
5. A list of proposed witnesses for the Court's information;
6. A list of all expert witnesses with copies of their reports;
7. Marked pleadings, to be submitted before opening statements;
8. A statement of stipulated facts. [Parties are encouraged to stipulate to facts and/or exhibits];
9. Any written requests for jury instructions. 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;
10. Any proposed verdict sheets;
11. If deposition transcripts are to be utilized, a copy of the witness' deposition transcript should be available to the Court. No mini-scripts are accepted;
12. Objections should be stated without argument except to simply state the ground therefor, *e.g.*, hearsay, relevance, etc. If further argument is appropriate, it will be invited by the court;
13. Trial counsel are responsible for redactions of all evidence;
14. 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;
15. Counsel is required to have all proof in admissible form for inquests;
16. Trial counsel are responsible for taking back all exhibits, pleadings, transcripts, etc., 30 days after 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 sixty (60) days from the conclusion of a jury trial or within sixty (60) days after the Court renders a decision in a non-jury trial, shall be disposed of.

- C. **Malpractice “Departures”** – in jury trials involving claims of professional negligence, no later than the next trial session after a party “rests”, or such other time as the Court may direct, each party-plaintiff shall furnish the Court and all counsel with a list of proposed departures from the standards of applicable care which that party asserts were testified to by its expert(s) or other witnesses. Where such testimony has been transcribed, page references are required.

X. MISCELLANEOUS

- A. **Conferences/Trial** – If there are any outstanding motions (submitted or pending) at the time of the conference/trial, the Principal Law Clerk and/or Judge must be so informed at the start of such conference/trial; the submission date must be provided by counsel.
- B. **Proposed Stipulations** – Any stipulation to be “So-Ordered” by the Court must contain original signatures by all parties and/or counsel, which may be submitted in counterparts. Copies/faxes **shall not** be deemed originals.
- C. **Infant’s Compromise Orders**
1. 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).
 2. 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”**.
 3. 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. **Sealing Orders** – pursuant to 22 NYCRR § 216.1, no case or portion thereof shall be sealed unless good cause has been adequately shown.
- E. **Attorneys of Record** - Attorneys who have appeared in the matter are to make all appearances until they are relieved by Court Order or a fully executed Consent to Change Attorney form has been filed with Part 8 and with the Clerk of the Court.
- F. **Staff** - The Court functions through the aid and assistance of the courtroom and Chambers staff. They are to be treated in a dignified, civil and professional manner.
- G. **Professionalism** - All counsel are expected to treat each other and litigants in a civil and professional manner in accordance with 22 NYCRR § 700.4, the Rules of Professional Conduct, and the NYS Standards of Civility.