

HON. CHRISTOPHER T. McGRATH
Supreme Court of the State of New York
10th Judicial District – Nassau County
100 Supreme Court Drive
Mineola, New York 11501
Chambers Telephone: (516) 493-3188
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Secretary:	Bridget Ryan
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Courtroom:	Third Floor, Part 28

IAS PART 28 – RULES & PROCEDURES
(Effective as February 8, 2024)

I. Communications with the Court

A. *Correspondence.* All correspondence must include the title of the action and index number. Correspondence to the Court shall, without exception, be copied to all adversary counsel and *pro se* (self-represented) litigant(s). Correspondence between counsel and/or *pro se* (self-represented) litigant(s) shall not be copied to the Court except in the limited circumstances provided within these Part Rules. All correspondence to this part should be filed via NYSCEF and copied via email to JudgeMcGrathRemote@nycourts.gov.

B. *Telephone Calls.* Telephone calls to Court staff are permitted only in urgent situations requiring immediate attention.

C. Adjournment requests that are left on Chamber’s voicemail shall be disregarded. All requests for adjournments shall be made in accordance with these rules.

II. E-Filing Rules

A. *E-Filing Rules.* Counsel and *pro se* (self-represented) litigant(s) shall familiarize themselves with the statewide E-Filing Rules (Sections 202.5-b and 202.5-bb of the Uniform Rules for the New York State Trial Courts, available at www.nycourts.gov/efile).

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or nyscef@nycourts.gov. Information about local procedures are available at: [EFilingProtocol.pdf \(nycourts.gov\)](#).

All documents in mandatory e-filed cases, except documents subject to the opt-out provision of Section 202.5-bb of the Uniform Rules for the New York State Trial Courts, or

documents subject to e-filing in which consent is being withheld, are to be filed through the New York State Courts E-Filing System (NYSCEF). All submissions to the Court must be electronically filed.

B. *Working Copies.* Counsel and *pro se* (self-represented) litigant(s) must provide working copies of all legal papers which require judicial action (e.g., motions, notices of settlement, *ex parte* applications and proposed orders). The working copy of a motion must include all documents filed in support of the motion, excluding voluminous exhibits exceeding 20 pages in length, which shall be so indicated by use of a placeholder page stating “Exhibit ____ electronically filed.” Working copies shall be mailed or hand-delivered to the Court Intake Department, Room 186, to be received no later than the return date.

All working copies must include a copy of the NYSCEF Confirmation Notice, firmly fastened, and must comply with all requirements of the Nassau County and Supreme Courts E-Filing Rules. The Confirmation Notice is generated when the case is e-filed and is available in the specific case file at www.nycourts.gov/efile. Working copies that do not include a NYSCEF Confirmation Notice will be rejected.

C. *Court Orders.* Copies of orders are posted on NYSCEF and will not be sent to attorneys unless there is an *urgent* need for an order to be provided.

D. *Sealing Orders.* No case or portion thereof shall be sealed unless good cause has been adequately shown (22 NYCRR 216.1).

III. Court Conferences

A. *General Rules.* All conferences with the Court are conducted promptly at 9:30 a.m., in person, Monday through Friday, in the Nassau County Courthouse, unless otherwise directed. Counsel, including per diem covering counsel and *pro se* (self-represented) litigant(s), must appear on time, be fully familiar with the action(s) on which they appear, be authorized and prepared to discuss all factual and legal issues presented by the litigation and settlement demands or offers, and be authorized to enter into any agreement on behalf of their client.

If counsel or *pro se* (self-represented) litigant(s) are unable to appear on time due to unforeseen circumstances (i.e., delays due to inclement weather or road closures), he/she should contact opposing counsel, and advise the Part Clerk or Court staff, by telephone, as soon as possible.

B. *Adjournment of Conferences.* A request to adjourn a conference must be made in writing, by uploading to NYSCEF and copy to JudgeMcGrathRemote@nycourts.gov at least twenty-four (24) hours in advance of the scheduled conference. All applications for adjournments must set forth: (1) the reason why an adjournment is necessary; (2) whether

the opposing party(ies) consent(s) or object(s) to the application; and (3) the length of the adjournment sought or, if on consent, a date all parties are available. All such communications must be copied to all counsel and *pro se* (self-represented) litigants. A party objecting to an adjournment request may succinctly provide the reason for objecting via email to JudgeMcGrathRemote@nycourts.gov.

Adjournments requested because of engagement of counsel must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR 125.1.

The Court will advise counsel/*pro se* (self-represented) litigant(s) via email if the requested adjournment has been granted. Parties should not assume that any stipulated request for adjournment of a conference has been granted unless specifically advised by the Court.

C. Preliminary Conferences

1. *Requests to Adjourn Preliminary Conferences:* Preliminary Conferences (hereinafter “PC”) shall be held in accordance with the rules set forth in 22 NYCRR 202.19 in the Preliminary Conference Part of this courthouse. 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 at (516) 493-3120.

D. Compliance with Preliminary Conference Orders.

At the Preliminary Conference, the parties will set specific dates for completion of various items of discovery, the date by which all disclosure must be completed, and dates for a Compliance Conference/Alternative Dispute Resolution (“ADR”) Conference. All counsel and *pro se* (self-represented) litigant(s) are expected to abide by, and comply with, the Court’s discovery schedule and deadlines. However, counsel and parties may stipulate to alternative dates, provided that all deadlines will be met by the next court conference date. No other modifications of the dates set by the Court are permitted, except by Court approval or pursuant to Court order.

Parties who have a discovery dispute are not to wait until the Compliance Conference to bring such dispute or complaint about non-disclosure to the Court’s attention. Rather, counsel or *pro se* (self-represented) litigant(s) who believes that discovery is not being conducted in accordance with the Preliminary Conference (or other Court) Order is to discuss, in good faith, as required by Court Rule Section 202.7, the claimed non-compliance with the opposing party who is allegedly not compliant with the Court Order. There must be actual, substantive communication between counsel and/or *pro se* (self-represented) litigant(s), either telephonically or in writing, regarding the claimed failure to engage in discovery, on the one hand, and the claimed compliance or reason for noncompliance, on the other. The Court is not to be copied on the correspondence between counsel and/or *pro se* (self-represented) litigant(s) unless requested by the Court. Similarly, any scheduling issues for depositions, Defendant’s Medical Examinations, appraisals,

etc. must be addressed by counsel and/or *pro se* (self-represented) litigant(s) and must not wait until the Compliance Conference.

The parties are not to make any motion concerning discovery without having first attempted to resolve the issue. If counsel cannot resolve the discovery issue between themselves after a good faith effort, then the counsel who believes that discovery is not being conducted in accordance with the Court's Order is to contact the Court by letter (see Rule I[A], supra), to advise of the nature of the dispute and the efforts that have been made to attempt to resolve it. The Court will either resolve the issue by letter or by scheduling a conference. After the Court conferences the matter and if the Court grants leave of court to file a discovery motion, any discovery motion must state that this procedure has been complied with. Failure to comply with this Part's rules as set forth above may result in denial of the motion.

E. *Compliance Conferences.* The purpose of the Compliance Conference is for counsel and *pro se* (self-represented) litigant(s) to report to the Court that pre-trial discovery is progressing, or has been completed, so the Court can direct a date on which a Note of Issue shall be filed and can schedule a future Settlement Conference. At the Compliance Conference ADR/settlement discussions will/may also take place. Counsel and *pro se* (self-represented) litigant(s) are not permitted to file a Note of Issue in any action unless permission to do so is granted by the Court.

F. *Certification Conferences.* A certification conference will be held no later than 90 days prior to the deadline by which a Note of Issue must be filed.

G. *Settlement Conferences.* Counsel are advised that on the date of the first compliance conference, the Court will conduct a conference where, in addition to the status of discovery, the Court will also address Alternative Dispute Resolution ("ADR"). In addition, after the certification conference, but before the Note of Issue is due, the Court will conduct an ADR/Settlement Conference.

Counsel attending the ADR/Settlement Conference must be fully familiar with the action and be authorized to discuss all factual and legal issues presented by the litigation, settlement demands or offers, witness scheduling, and trial procedure (e.g., whether any party or witness will require a translator or trial accommodation).

Counsel also must be authorized to enter into binding settlements on terms agreeable to the parties and to the Court. The Court will explore limitation of issues for trial (e.g., in an appropriate case, whether liability may be conceded, or certain claims or defenses withdrawn).

H. *Pre-Trial Conferences.* Once a case is assigned to this Part for trial, a Pre-Trial Conference with all counsel and *pro se* (self-represented) parties will be conducted at a date and time provided by the Court.

On or before the Pre-Trial Conference, Plaintiff's counsel, Defendant's counsel (or *pro se* (self-represented) parties) must file via NYSCEF and provide the Court with a working copy of the following:

1. Marked pleadings in accordance with CPLR Section 4012, including copies of any exhibits incorporated by reference in the pleadings;
2. A copy of all bill(s) of particulars;
3. A copy of all expert disclosures served pursuant to CPLR Section 3101(d) (if applicable);
4. A list of probable trial witnesses;
5. A copy of all prior Decisions or Orders on motions issued in the case (if applicable);
6. Any statutory provision(s) in effect at the time that the cause of action arose upon which either party intends to rely;
7. Memoranda of law concerning any procedural, evidentiary, or other legal issue which the parties anticipate the Court will need to determine;
8. Any anticipated request for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.
9. Requests to charge; and
10. Proposed verdict sheet.

IV. Motions/Orders to Show Cause/Temporary Restraining Orders

A. *General Rules.*

There will be no oral argument required on any motion or Order to Show Cause unless directed by the Court. Parties seeking oral argument of a motion or Order to Show Cause may request that oral argument be heard by stating "Oral Argument Requested" above the Index Number on the first page of the papers submitted. If the Court grants the request for oral argument, the Court staff will inform the requesting party's attorney of the date and time for argument. It is the responsibility of that person to inform all other attorneys of the date and time set, and failure to do so may result in sanctions.

1. All motion papers and Orders to Show Cause must be typewritten (minimum 12-point type), double-spaced, securely bound and entirely legible. Except for good cause shown, no affirmation or affidavit shall exceed 20 pages. All exhibits must be legible and labeled with external tab markings. Plaintiffs shall designate exhibits by number; Defendants shall designate exhibits by letter. Exhibit lettering or numbering should not begin anew for subsequent papers submitted by the same party. Any submission over 1/2-inch thick must be acco-fastened, not stapled.
2. Voluminous exhibits exceeding twenty (20) pages in length may be provided electronically and shall be indicated in the Court's working copy by use of a placeholder page stating "Exhibit ___ electronically filed."
3. Reference to exhibits longer than ten (10) pages shall indicate the page number on which the information cited is contained. Should the exhibit not contain page numbers, the exhibit shall be bates-stamped.
4. In addition to being part of the motion papers, the affidavit of service of the motion must be separately uploaded to NYSCEF prior to submission of the motion.
5. 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.
6. Unless there are extremely unusual circumstances in which significant prejudice (set forth in detail in a supporting affidavit/affirmation) will result, opposing counsel or parties are to be advised at least 24 hours in advance of the date and time that any Order to Show Cause which includes a request for a Temporary Restraining Order or other emergency relief is being presented to the Court in accordance with 22 NYCRR 202.7(f) and is to be advised that he/she has the right to be heard on the application. In a true emergency, the Court, in its discretion may dispense with the 24-hour notice requirement.

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.

If the opposing party requests oral argument concerning the request for a Temporary Restraining Order or other emergency relief, said request shall be made immediately upon receipt of notice required by 22 NYCRR 202.7(f) via letter uploaded to NYSCEF and email copy to JudgeMcGrathRemote@nycourts.gov on notice to all counsel/*pro se* (self-represented) litigant(s).

B. *Adjournments of Motions.* A request to adjourn a motion must be made in writing and transmitted to Chambers by letter uploaded to NYSCEF, and email a copy to JudgeMcGrathRemote@nycourts.gov, prior to the return date of the motion, and copied to all counsel and *pro se* (self-represented) litigant(s). Adjournment requests may only be granted by the Court, not by stipulation of counsel.

All applications for adjournments must set forth: (1) the current return date; (2) the reason why an adjournment is necessary; (3) whether the opposing party(ies) consent(s) or object(s) to the application; (4) the length of the adjournment sought; and (5) the number of prior requests for adjournment and the dates previously set. The letter request and the response, if any, are not to be used to advocate a position on the substantive dispute and shall address only the reason that consent for the requested adjournment is being declined. The Court will advise the parties whether the adjournment is granted, and if so, the return date for the motion.

C. *Submission of Motions.* Counsel are not required to appear on the submission date unless directed by the Court. Motions are to be served and filed in conformity with CPLR 2214. In addition, the various branches of the motions as delineated in the Notice of Motion or Order to Show Cause are to be preceded by a number or letter which corresponds to a number or letter in the supporting affirmations and affidavits containing the numbered paragraphs dealing with the particular relief sought.

D. *Discovery Motions.* There shall be no submitted discovery motions in the absence of a Conference (*see* Rule III(C) above).

E. *Motion for Default Judgment.* The movant on a motion for entry of a default judgment shall submit the Part's annexed checklist for default judgment on the submission date, with a copy of a proposed order.

F. *Infant Compromises.*

1. Infant Compromise petitions must comply with CPLR 1207, 1208, and 22 NYCRR 202.67. Counsel shall be notified of any deficiencies in the papers, and when appropriate, be given an opportunity to cure the deficiency or submit supplemental papers.
2. All applications for Court approval of a proposed compromise of an infant's claim must be submitted through the Infant's Compromise Clerk ("ICC").
3. 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.”

4. 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.
5. If the infant is fourteen years or older, an affidavit of consent from the infant must be included in the submitted papers.

V. Judgments, Decisions and Orders

Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will be returned unsigned unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with 22 NYCRR 202.48 has been included.

All papers which are submitted for signature by the Court shall be identified on the signature page so that the document being signed by the Court can be identified. Example: Jones v. Jones, Index #/year, Type of Document.

VI. Trials and Hearings

A. *Trial and Hearing Dates.* Scheduled trial and hearing dates will be adhered to except for the most extraordinary good cause shown. Clients, fact witnesses, experts of all kinds (including physicians) are to be timely advised of the date set for trial by the Court within a reasonable period of time of the setting of such date, to avoid last minute claims of unavailability. Check in at the start of trial each date so that the Part Clerk is aware of your presence.

B. *Subpoenas.* Counsel are referred to CPLR 2306 and 2307 for guidance as to subpoenas directed to municipal entities. The Court’s issuance of a subpoena to such entities does not constitute a ruling as to the admissibility of the subpoenaed records. Counsel are also reminded that they are designated agents for service of subpoenas on their clients under CPLR 2303-a.

All subpoenas seeking the production of medical (or other) records subject to the HIPAA Rules shall attach a duly executed authorization permitting the release of such records.

C. *Trial Exhibits.* All trial exhibits, whether the parties stipulate to admit them into evidence or not, shall be pre-marked with the Court reporter.

D. *Requests to Charge.* Once a matter is assigned to this Part for trial, a complete list of requested jury charges, drawn from the Pattern Jury Instructions (PJI) of the then-current year, including departures if the trial involves claims of professional negligence, must be submitted by email in Microsoft Word format to the remote email (JudgeMcGrathRemote@nycourts.gov), as directed by the Court and no later than the *first* Pre-Trial Conference before this Part. Where the requested charge comes directly from the PJI, only the PJI title, section number and page number need to be provided. Where deviations from, or additions to, the PJI are requested, the full text of such requests must be submitted, together with any supporting legal authority.

E. *Proposed Verdict Sheet.* A Proposed Verdict Sheet, jointly prepared by all counsel/*pro se* (self-represented) litigant(s) must be submitted by email in Microsoft Word format to the Court's remote email (JudgeMcGrathRemote@nycourts.gov), as directed by the Court and no later than the *first* Pre-Trial Conference before this Part. If counsel/*pro se* (self-represented) litigant(s) cannot agree to the questions to be posed to the jury prior to the Pre-Trial Conference, each side shall submit a Proposed Verdict Sheet by email in Microsoft Word format to the Court's remote email (JudgeMcGrathRemote@nycourts.gov).

F. *Motions in limine.* Motions in limine must be made returnable at least twenty days prior to jury selection, if possible. To the extent possible, the Court will decide such motions prior to commencement of jury selection and/or the commencement of a bench trial, as applicable.

G. *Interpreters.* In the event a translator or interpreter is required for a proceeding, counsel shall notify the Part Clerk no later than the seven (7) days prior to the scheduled appearance so that timely and appropriate arrangements can be made.

H. *Personal Injury/Bifurcation.* Trials of personal injury actions, except if special conditions exist and those involving claims of wrongful death or medical/dental malpractice, will be bifurcated in accordance with 22 NYCRR 202.42.

I. *Use of Videotapes.* If a party intends to use a videotape at trial, that party shall submit a copy of the videotape (or other video recording) and transcript of same, if applicable, to the Court at least two (2) weeks prior to the scheduled trial date in order to allow the Court to rule on the admissibility of the videotape (or other video recording), conduct a hearing if applicable, and any Objections made during the video recording.

J. *Displays and Monitors.* The Court provides no electronic support. Specifically, counsel must bring all equipment it plans to utilize during trial (i.e., screens, monitors, etc.).

K. *Responsibility of Trial Counsel.* Trial counsel are responsible for taking back all exhibits, pleadings, transcripts, etc., 30 (thirty) days after the end of trial, unless, in the case of non-jury trials the Court reserves its decisions. In all cases, exhibits, pleadings, transcripts, etc.,

not retrieved within 60 (sixty) days from the conclusion of the jury trial or within 60 (sixty) days after the Court renders a decision in a non-jury trial, shall be disposed of.

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

VII. Substitution/Discharge of Attorneys

Except in cases where an attorney is replaced by another attorney on consent, any change or withdrawal of counsel must be approved by the Court on a motion, brought by Order to Show Cause pursuant to CPLR Section 321.

VIII. Civility

This Court values civility and courteousness. Parties are encouraged to refrain from showmanship, gamesmanship and discourteousness. The Court expects that the Judge, her staff, the Part Clerk, the Court Reporter, the Court Officers and all attorneys and parties will be treated respectfully. The Court will not tolerate discourteous behavior (i.e., constant interruptions or outbursts). 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.

It is incumbent upon all counsel and *pro se* (self-represented) litigant(s) appearing before this Court to ensure they have read this Court’s current Part Rules and are in compliance with same.

These rules are in addition to the New York State and Local Rules of Court. Failure to comply with any rules or orders of this Court may result in preclusion and/or sanctions without further notice. These Rules are subject to revision or modification by the Court.