

HON. ROBERT A. McDONALD

Part 15
100 Supreme Court Drive
Mineola, NY 11501
Courtroom Clerk: Dino Termini
Law Clerk: Judy Gann, Esq. (jgann@nycourts.gov)
Secretary: Laura Gebbia
Chambers: 516-493-3164
Courtroom: 516-493-3167
Fax: 516-493-3411 (not for filing of papers)

Courtroom: Located on the 4th Floor South

Unless otherwise ordered by the Justice in a specific case, matters before the Justice shall be conducted in accordance with the CPLR, the Uniform Civil Rules of the Supreme Court, and the following:

Letters: Except as provided below, letters to the court that contain substantive issues regarding the case are not permitted absent **prior approval** from the court. Letters sent without prior approval will be disregarded. Repeated violations of this rule will result in sanctions.

Email: Parties may communicate with the law secretary by email. A party emailing the law secretary must include all the other parties to the case on the email.

Telephone Calls. Except as provided below, telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at the number listed above.

Faxes. Faxes to chambers are **not** permitted unless prior authorization is obtained or as set forth below.

Appearances. All appearances shall be made by attorneys with knowledge of the facts and vested 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 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. 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. Attorneys of record must continue to appear for their clients until such time as the court has relieved counsel of that obligation or until a stipulation substituting counsel has been filed with the clerk of the court. See, CPLR § 321. Self-represented litigants shall be subject to the same rules of practice as attorneys appearing in the part.

Preliminary Conferences. Preliminary conferences will be held according to the rules set forth in 22 NYCRR § 202.19 and will be conducted in the Preliminary Conference Part of the Supreme Court Building. The conference will be scheduled by the clerk of that part. (telephone no. 516-493-3167). **The court expects parties to strictly adhere to the schedule contained**

within the preliminary conference order. That schedule cannot be changed without prior permission of the court.

Compliance Conference. The compliance conference date will be set down in the preliminary conference order and must be held no later than 60 days before the date scheduled for the completion of discovery (22 NYCRR § 202.19[b][3]). The conference will be held either virtually or in the courtroom. Attorneys appearing at the compliance conference must have telephone access to their respective clients and shall be prepared to enter into good faith settlement discussions. Adjournments will be granted only for compelling reasons. In no event shall the compliance conference be held later than the compliance requirement date as set forth in the DCM timetable accompanying the preliminary conference order.

Certification Conference. Pursuant to the rules of the Administrative Judge, a certification conference will be held prior to the filing of a note of issue. The certification conference will be held no later than 90 days before the date fixed for the filing of the note of issue. The conference will be held virtually or in the courtroom. Attorneys appearing at the certification conference must have telephone access to their respective clients and shall be prepared to enter into good faith settlement discussions. There shall be no adjournments of certification conferences without the permission of the court.

Motion Practice.

A. Return date and adjournments. All motions are made returnable to the Hon. Robert A. McDonald, Part 15. Parties should contact chambers with any questions regarding return dates and adjournments. If an adjournment of a motion is being requested, but the adversary does not consent, a conference with the law secretary, either by phone, virtually or in person, can be requested. The court does not accept adjournments left by message on the chamber's or courtroom clerk's voice mail. **There shall be no appearance required on motion return dates.** If oral argument is requested, the court will consider the request, *after* reviewing the papers, and will then inform the parties of the date of the oral argument if the request is granted.

On non-e-filed cases, or cases where there is only "partial participation" in e-filing, each set of moving papers, opposition papers and reply papers must contain an active email address for the author of the papers and the adversary/adversaries.

THE COURT REQUIRES A HARD COPY OF MOTION PAPERS ON E-FILED CASES. HOWEVER, THE HARD COPY DOES NOT NEED TO CONTAIN EXHIBITS, AS LONG AS ALL EXHIBITS HAVE BEEN E-FILED

**DECISIONS AND ORDERS ON MOTIONS CAN BE FOUND, AFTER ENTRY, ON E-FILE CITE OR, IF NOT AN E-FILED CASE, ON THE COURT'S WEBSITE AT:
<http://decisions.courts.state.ny.us/10jd/nassau/decisions/search/supdecisions.htm>**

WHILE PARTIES MAY RECEIVE AN ELECTRONIC NOTIFICATION THAT A DECISION HAS BEEN RENDERED, IT IS EACH PARTY'S OBLIGATION TO REGULARLY CHECK THE WEBSITE FOR THE ENTERED DECISION AND ORDER

B. *Writs and Contempts*: All applications shall be calendared on the date returnable. Appearance by all parties is mandatory. No adjournments will be granted unless a stipulation consenting to the adjournment, signed by all parties and any alleged contemtor who is not a party, is received in Chambers no later than 1:00 p.m. of the day prior to the return date.

C. *Submission of papers*. All motion papers are to be addressed to and submitted through the Hon. Robert A. McDonald, Part 15. The court will not accept sur-reply papers unless **prior authorization** has been given by the court. Sur-reply papers submitted in violation of this rule will be disregarded.

D. *Temporary restraining orders*. No temporary restraining order contained in an order to show cause will be extended beyond the initial return date of the motion except upon written stipulation "so ordered" by the court or as otherwise directed by the court. If the parties or counsel cannot agree to the continuation or termination of a temporary restraining order, all counsel and any *pro se* litigant must appear on the return date of the motion. The failure to appear will be deemed a waiver of the defaulting party's position with respect to the continuation or termination of the TRO.

E. *Cross-Motions*. Submission of a cross-motion with a stated return date that is beyond the return date of the original motion will not serve to adjourn the original motion.

F. *Summary Judgment*. Motions for summary judgment shall be returnable no later than 60 days after the filing of a note of issue.

G. *Discovery Motions*. All discovery motions must contain an affirmation of good faith that strictly complies with 22 NYCRR § 202.7(c). Failure to comply will result in denial of the motion.

H. *Phone Conferences with Chambers*: If the parties believe, in good faith, a conference call with the law secretary may help resolve certain issues and obviate the need to make a motion, the parties may call chambers to ascertain the law secretary's availability.

Trials.

Jury Trials. A trial conference with the Court shall be held immediately prior to the commencement of all jury trials. At the trial conference, counsel shall supply the Court with marked pleadings, amendments thereto and all bills of particulars served. Counsel shall further provide the Court with a list of proposed jury charges and the contentions of each party and proposed jury verdict sheets. A list of all pre-marked exhibits shall also be provided to the Court and to the stenographer. Counsel shall notify the Court and opposing counsel in the conference of any motions in limine and any supporting statutory or case law. Counsel shall notify the Court of their inability to stipulate to the admission of any exhibits to be offered at trial. Counsel shall further advise the Court of the witnesses to be called, and if any are to be called as expert witnesses, shall further provide the information required by CPLR 3101 (d)(1)(l). The filing of a note of issue is a condition precedent to the commencement of any trial.

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

Non-Jury Trials. A conference with the Court shall proceed the commencement of all non-jury trials at which counsel shall provide the following: 1) A copy of marked pleadings, amendment thereto, bills of particulars; 2) A list of pre-marked exhibits; and identification of those on which counsel could not agree as to their introduction at trial; 3) A list of witnesses and if any be experts, the information required by CPLR 3101(d)(1)(l); and 4) pre-trial memoranda of law. **The parties shall be required to provide a transcript of the trial.** The filing of a note of issue is a condition precedent to the commencement of any trial.

Miscellaneous Rules.

A. *Ex parte and miscellaneous communications*. The court will not accept any ex parte communications by telephone or letter from counsel or a self-represented litigant. The court will not accept any correspondence between counsel except as may be necessary to confirm a consent adjournment.

B. *Settlements and other stipulations*. If an action is settled or discontinued or the parties otherwise stipulate to the resolution of an issue in dispute, counsel should advise the court forthwith by sending the court a copy of the stipulation. The original of any stipulation of settlement or discontinuance must be filed with the County Clerk, as the clerk of the court.

C. *Court personnel*. The court functions with the aid and support of the courtroom and chambers personnel. The court and the personnel assigned to the court will treat counsel, litigants and other persons present with dignity and courtesy which is indispensable to the proper administration of justice and the court expects the court personnel to be treated in like manner.

D. *Compromise Applications*: 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.

E. *Hearings/Inquests*: All hearings and/or inquests emanating from cases in the inventory of IAS Part 15 shall be scheduled by the Court. The filing of a note of issue is a condition precedent to the commencement of any hearing or inquest.

F. *Sanctions*: The Court will not consider a sanctions application unless the moving party first seeks withdrawal or discontinuance 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.

G. If the deadline for filing a note of issue (NOI) has passed and the note of issue has not been filed, the complaint will be subject to dismissal.

~~ASMA, INC. v. STB, et al., Case No. 15-10000 (ASB), filed 11/18/15, 2015 WL 6291119, 2015-10000 (ASB) (11/18/15)~~