

Hon. Felice J. Muraca, A.J.S.C.
Supreme Court, Nassau County
4th Floor West
100 Supreme Court Drive
Mineola, New York 11501

IAS Part 44 – Rules & Procedures
(Effective November 15, 2022)

Principal Law Clerk: Lisa A. Corso, Esq.
Secretary: Elizabeth Hildebrandt
Part Clerk: AnnMarie Sullivan
Courtroom Telephone: 516-493-3167
Chambers Telephone: 516-493-3164
Chambers Email: JudgeMuracaRemote@nycourts.gov

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:

I. COMMUNICATIONS WITH THE COURT/CHAMBERS

Ex-parte communications are strictly prohibited. All inquiries and communication with chambers should be via email to chambers (see email above) and should include all other relevant parties to the case. **Telephone calls to chambers are permitted only in emergency situations requiring immediate attention.** Faxes are not permitted and will be disregarded.

All email communications with chambers shall set forth the title of the action and assigned index number, and counsel for all parties, as well as any *pro se* litigants, shall be copied. Emails to the Court should be concise, stating the relief or action requested to be taken by the Court.

Letters to the court that contain substantive issues regarding the case, or discuss the facts of the case in any manner, are not permitted absent prior approval from the court. Letters sent without prior approval will be disregarded. Copies of correspondence between counsel shall not be sent to the Court except as these Part Rules and 22 NYCRR § 202.7 permit.

II. E-FILING RULES AND PROCEDURES

All parties should familiarize themselves with the statewide E-Filing Rules: 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.

It is the responsibility of counsel/party to ensure that their email address is accurate and up to date. This address can be modified by request made to the NYSCEF E-Filing Resource Center. It is also the responsibility of counsel to remove consent on NYSCEF if they are no longer on a case.

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).

EF-10 Stipulation and Consent to E-filing:

<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/stipulation.and.consent.pdf>

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

All motion papers and submissions must be e-filed. Unrepresented litigants must also e-file their papers after creating an account in accordance with the instructions on the Court's website at:

<https://iapps.courts.state.ny.us/nyscef/UnRepresentedHome>

III. CONFERENCES

a. General Rules:

****ALL CONFERENCES IN PART 44 WILL BE CONDUCTED IN-PERSON, WITH A CALENDAR CALL BEGINNING AT 10:00 A.M., UNLESS OTHERWISE INDICATED.****

Virtual conferences will not be permitted absent extraordinary circumstances.

All appearances must be made by attorneys with knowledge of the facts, history, and status of the case, and authorized to resolve any and all issues on behalf of their respective clients, including entering into stipulations and settling the case, and shall make all appearances until they are relieved by Order of the Court or a Consent to Change Attorney has been filed. (22 NYCRR § 202.1(f) and (g)). 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. This Part expects and requires all counsel to treat one another, the other litigants and all court personnel with professionalism and respect. Self-represented litigants shall be subject to the same rules of practice as attorneys appearing in the part.

Counsel, including self-represented litigants, shall notify the court as **promptly as possible** in the event that an action is settled, discontinued or otherwise disposed of, or if a case or motion has become wholly or partially moot, or if a party has died or filed a petition in bankruptcy. Such notification shall be made **in writing** via e-filed letter, or if not an e-filed case, filed with the Clerk. (22 NYCRR § 202.28(b))

- b. Preliminary Conferences:** Preliminary conferences will be conducted according to the rules set forth in 22 NYCRR § 202.19 and are handled by the PC Part. **All inquiries regarding preliminary conferences, including scheduling and adjournments, should be directed to the Preliminary Conference Part, not to chambers.**

The Court expects parties to strictly adhere to the schedule contained within the preliminary conference order. All dates and deadlines contained in the Preliminary Conference Order, including deposition/EBT dates, may NOT be changed without prior approval of the court.

- c. Adjournments:** An adjournment of a conference may be granted upon consent of all parties and prior approval of the Court. All attorneys and pro se litigants shall be notified of all adjournment requests prior to said request. Any such application for adjournment must be made to chambers by

email via the part's adjournment request form, by 3:00 p.m. of the business day prior to the date of the scheduled conference. Any adjournment requested because of engagement of counsel must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR § 125.1.

Please note all requested adjournment dates are subject to the Court's availability. Adjournment requests should not be assumed to be granted unless expressly confirmed by chambers.

- d. **Default/Failure to Appear:** Pursuant to 22 NYCRR § 202.27, the Court has discretion in addressing a calendar default or failure to appear at a scheduled conference. When appropriate, among other possible sanctions, an action may be dismissed, or default judgment entered against the non-appearing party.

IV. DISCOVERY DEADLINES

There shall be no adjournments of discovery, certification and note of issue deadlines without the prior approval of the Court. Deposition dates are court-ordered pursuant to the preliminary conference order. **Applications for adjournments of deposition dates must be stipulated to and signed by all parties to the case. The stipulation must be e-filed. For non-NYSCEF cases, the fully executed stipulation must be emailed to JudgeMuracaRemote@nycourts.gov and include all parties to the case.** Counsel requesting the adjournment must provide a reasonable basis for the request and proposed new deposition dates. If the parties cannot agree to new dates, a request must be made to the email above and if granted, new dates will be So Ordered.

IV. MOTIONS

- a. **Pre-Motion – Discovery:** Prior to making or filing any discovery motions, the movant is encouraged to schedule a conference to permit the parties and the Court to attempt to resolve the issue(s). Should the conference resolve the matter, a *sua sponte* order consistent with such resolution may be issued.

Notwithstanding the above, all motions relating to discovery require a conference on the return date of the motion or order to show cause, unless otherwise specifically waived by the Court.

There shall be no submitted discovery motions in the absence of a conference. If the matter can be resolved during the conference, an order consistent with the resolution may be issued. If the matter cannot be resolved, the motion papers must state that this Rule has been fully complied with.

- b. **Submission of Motions:** All motions and cross motions submitted shall be in compliance with 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.

All motions should be made returnable on a Monday or Wednesday, and shall be submitted with a table of contents, outlining the relief requested and the page number on which it appears, either in the affirmation in support and/or memorandum of law.

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.

Counsel is required to provide the Court with their e-mail addresses on all submissions.

Chambers will not require hard copies of motions of e-filed cases, nor will they be accepted. All motions, other than discovery motions, shall be decided on submission, *except* where the court has advised the parties, on the record or in writing, that oral argument will be heard on a day certain. (Please note that this rule only applies to Notices of Motion and Notices of Petition, not Orders to Show Cause.) The Court will entertain oral argument requested by the parties in its discretion when it is deemed necessary.

If opposing counsel declines to submit opposition or if the movant declines to submit reply papers, counsel must e-file an affirmation stating such. Once all papers have been filed, please e-file a letter to the Court confirming that all papers have been submitted.

- c. **Withdrawal of Motions:** Motions on the calendar may be withdrawn by submission of a letter or stipulation signed by all parties and uploaded to NYSCEF. A courtesy copy may also be emailed to chambers. If a matter is settled, discontinued, or otherwise disposed of, the movant shall immediately inform the Court in writing prior to the return date of the motion. A stipulation of discontinuance must follow as soon as practicable.
- d. **Summary Judgment Motions:** All motions for summary judgment must be made in compliance with 22 NYCRR § 202.8-g. Pursuant to CPLR § 3212(a), motions for summary judgment shall be made no later than ninety (90) days after filing of the note of issue, except with leave of court upon a showing of good cause.

Motions brought pursuant to CPLR §§ 3211, 3212 or 3213 shall NOT automatically stay discovery pending the determination of that motion, unless otherwise ordered by the court.

- e. **Adjournments:** Applications for adjournments of motions must be made at least two (2) business days prior to the return date. All attorneys and pro se litigants shall be notified of all adjournment requests prior to said request. Requests for adjournments shall be made via the part's adjournment request form, or by stipulation, and emailed to chambers. The form can be found on the Supreme Court Directory http://ww2.nycourts.gov/COURTS/10JD/nassau/supreme_directory.shtml.

Counsel/pro se litigant requesting the adjournment must provide a reasonable basis for the request and propose new adjourn dates. The request must include all other relevant parties and must indicate whether such adjournment is on consent. **Adjournment requests should not be assumed to be granted unless expressly confirmed by chambers in writing.**

- f. **Decisions and Orders:** Decisions and Orders on motions can be found, after entry, on NYSCEF 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 their entered Decision and Order. Parties

should not contact chambers for a copy of a decision.

V. EX PARTE APPLICATIONS/ORDERS TO SHOW CAUSE

Orders to Show Cause return dates require an in-person appearance at the time indicated by the court, unless otherwise directed in the submitted papers. Failure to appear may result in the 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, or dismissal.

Orders to Show Cause must comply with 22 NYCRR §§ 202.7(d) and 202.8-3. Such motion shall only be brought when there is a genuine urgency, or for an application for a provisional remedy, or for relief such as contempt. Any request for a provisional remedy should be clearly noted on the face page of the Order to Show Cause. A party seeking an Order to Show Cause shall provide a minimum of twenty-four (24) hours' notice to the other parties and annex an Affidavit or Affirmation of Notice to the documents. Proof of service of the signed Order to Show Cause must be filed at least one (1) business day prior to the return date.

Any Order to Show Cause seeking any injunctive relief, including a stay or TRO, must be made in accordance with 22 NYCRR § 202.7(f). Requests to continue or vacate a stay or TRO beyond the return date of the motion shall be made in-Court on the return date. Failure to appear shall result in the automatic vacatur of the stay or TRO, unless the Order to Show Cause provides otherwise.

VI. PRE-TRIAL & TRIAL PROCEDURES

Prior to the commencement of trial, either with or without a jury, counsel shall submit to the Court by email to JudgeMuracaRemote@nycourts.gov., marked pleadings and amendments thereto, a copy of all bill of particulars served, an exhibit list, and any deposition transcripts that will be used at trial. Counsel shall further advise the Court of the witnesses to be called, and if any be experts, shall further provide the information required by CPLR § 3101 (d)(1)(i). The witness list shall include proposed testimony dates for each witness. If a full day of testimony is not possible, counsel must notify the Court prior to the commencement of trial. All trial exhibits shall be pre-marked for identification. Counsel shall notify the Court of their inability to stipulate to the admission of any exhibits. All exhibits over 50 pages must be Bates stamped.

Counsel must also submit proposed jury charges and verdict sheets to the Court in typed form prior to commencement of trial. The proposed jury charges and verdict sheet must be emailed to chambers in editable text format such as .doc or .wpd. Opposing counsel must be copied on the email.

Motions in limine shall be made as early as possible and **at least five (5)** days prior to the commencement of trial. Counsel shall submit a brief written affirmation and/or memorandum of law setting forth the nature of the application and any supporting statutory authority or case law. Motions in limine should be e-filed as "Pre-Trial Memorandum" document type on NYSCEF and a courtesy copy shall be emailed in PDF format.

Counsel must notify the Court if a witness requires a language interpreter as soon as the case is assigned so that timely arrangements can be made.

Except as otherwise permitted by the CPLR, subpoenaed records for trial must be sent to the

Subpoenaed Records Room. Trial authorizations should be filled out accordingly. It is the responsibility of counsel to ensure that the subpoenaed records have arrived in the records room before trial.

VII. MISCELLANEOUS RULES

- a. **Settlement and Discontinuances:** If the case has been settled or discontinued, pursuant to 22 NYCRR § 202.28, you must notify the court immediately by email, and file a stipulation of a settlement and/or discontinuance and withdrawing any pending motions or applications.
- b. **Subpoenas:** Counsel are reminded of their authority to issue subpoenas under applicable law. Subpoenas seeking documents from a state agency or municipality must comply with CPLR 2307.
- c. **Infant Compromise Orders:** Infant compromise petitions must comply with CPLR 1207, 1208 and 22 NYCRR 202.67. Counsel shall be notified by letter of any deficiencies in the papers and, when appropriate, be given an opportunity to cure the deficiency or submit supplemental papers. The proposed infant compromise order must include the full name of the infant-plaintiff and incorporate the following language: “Pursuant to 22 NYCRR 202.5(e)(2), the Court finds good cause to permit the inclusion of the infant’s full name and date of birth in the compromise order and papers submitted.” All submissions must include either a letter of tender stating the proposed settlement amount or a stipulation of the parties reflecting same. If the infant is fourteen years or older, an affidavit of consent from the infant must be included in the submitted papers.
- d. **Hearings/Inquests:** All hearings and/or inquests emanating from cases in the inventory of IAS Part 44 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.
- e. **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.
- f. **Mandatory Alternative Dispute Resolution (ADR):** Attorneys/parties will be required to attend a pre-trial settlement conference within 60 days after certification. The attorneys/parties are directed to advise the court of any developments in terms of ADR prior to the pre-trial settlement conference. The parties are also free, as always, to take part in private mediation. Parties should also expect that EVERY conference before the IAS Part prior to the pre-trial settlement conference will also be a settlement conference, and parties should appear with the authority to settle the matter.
- 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.
- h. The Court has the discretion to modify its rules in accordance with the interests of equity, justice, fairness, and judicial economy.