

HON. FRAN RICIGLIANO, J.S.C.

IAS Part 27 - Part Rules & Procedures

Effective July 10, 2023

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Prior to the preliminary conference, attorneys or parties appearing pro se must obtain the rules of this Part, thoroughly review them and comply with them throughout the course of any matter assigned to this Part. All of the rules applicable to attorneys are equally applicable to pro se parties. **These Part Rules are subject to change without notice, so they should be reviewed frequently by all who appear before this Part.**

I. Preliminary Conferences

- A. Adjournments: Requests for adjournments of Preliminary Conferences are to be addressed to the DCM Part and not to chambers.
- B. Deadlines: Discovery, Certification and Note of Issue deadlines set forth in the Preliminary Conference Order shall be enforced. Deadlines may not be extended without prior approval of the Court. Dates stipulated by the parties are subject to change by the Court.
- C. Adjournments of Depositions: Any adjournment of deposition dates must be to a date which precedes the Compliance Conference date.

II. All Other Conferences

- A. Virtual/In Person Appearance: Unless otherwise directed by the Court, attorneys shall appear via Microsoft Teams, not telephone, at the time indicated for all conferences held through February 28, 2023. Commencing March 1, 2023 attorneys shall appear in person for all conferences. The Court expects all counsel and *pro se* litigants to be appropriately dressed. All attorneys appearing for a conference shall be knowledgeable and familiar with the case and shall be vested

with the authority to enter into stipulations and/or dispositions which bind their respective clients. (See 22 NYCRR 202.1(f) and (g)). Counsel should be prepared to discuss any pending or submitted motions. Self-represented litigants shall be subject to the same rules of practice as attorneys appearing in the part.

- B. On those occasions where personal appearance is required by the Court, attorneys and unrepresented litigants must alert the courtroom clerk of their presence and complete a sign-in sheet. If counsel must also appear before another Judge, they must advise the Part Clerk of what Part they will be appearing in and how they can be reached. All counsel and prose parties must appear for each and every conference.
- C. Adjournments: Requests for adjournments of conferences must be made through chambers, in the manner directed below, no later than 3:00pm on the date preceding the scheduled conference. The Court will consider granting such requests upon good cause shown and the consent of all parties. Two proposed adjournments dates, no more than six weeks from the original date, consented to by all parties, must be provided at the time the adjournment is sought. Applications for adjournments must be made on the **Request for Adjournment Form** included at the end of this document and must be sent to chambers by email or fax. If any party or counsel objects to the adjournment of the conference, so state on the Request for Adjournment form and the Court will contact all parties.

III. Motions

- A. Discovery Motions:
 - 1. Pre-motion Discovery Conferences: Prior to making or filing any discovery motions, counsel for the moving party MUST make a good faith effort to resolve the issues at hand, pursuant to 22 NYCRR 202.7(c) and Section 202.20-f. It is the policy of this Part to not accept letters as good faith efforts, unless a series of letters indicates an interaction among counsel and not just a one-sided request or threat. If after a true good faith effort to resolve the discovery issues has been made without success, counsel for the moving party MUST arrange for a conference to be held among counsel for all parties and the Court to discuss the issues involved and the possible resolution of those issues. Requests for discovery related conferences must be submitted on the **Pre-Motion Discovery Conference Request Form** attached at the end of this document, and must be sent to chambers by email.

2. Sua Sponte Order: If the matter can be resolved during the conference call, an order consistent with such resolution may be issued on the Court's own motion on consent of the parties or over their objection.

B. All Motions:

1. Service: Motions are to be served and filed in conformity with CPLR 2214 and uploaded to NYSCEF where appropriate.
2. Appearances: Counsel are **not** required to appear on the return date of the motion unless directed by the Court or unless there is a contested application for adjournment.
3. Oral Argument: The Court generally will not entertain oral argument of motions, however, a prose party or counsel may request oral argument by letter accompanying the motion papers in accordance with 22 NYCRR 202.8-f. Should the Court determine that oral argument is warranted, attorneys for all parties and prose litigants will be contacted and advised of the date for oral argument.
4. Adjournments: Motion adjournment requests must be made through the Courtroom clerk of this part or by submitting to chambers the **Request for Adjournment Form** (included at the end of this document) prior to the return date. The Court will consider granting such request upon good cause shown and with consent of all parties. A date certain consented by all parties must be requested at the time the adjournment is sought. The Court is inclined to allow each side a brief one time adjournment over objection upon good cause if it is the party/counsel's first request for same. If there is no consent to adjourn the motion, all counsel or prose parties must appear in court in person regarding the adjournment on the scheduled motion date.
5. No sur-reply affidavit, affirmation or letter will be accepted or considered by the Court.
6. Orders to Show Cause: Motions may be brought by Order to Show Cause only when there is genuine urgency, a stay is required, or a statute mandates so proceeding. (22 NYCRR 202.8-d).

Any Order to Show Cause seeking **injunctive relief**, including a stay or TRO, must be made in accordance with 22 NYCRR 202.7(f). Accordingly, any application for temporary injunctive relief shall contain an affirmation demonstrating that there will be significant prejudice to the party seeking the restraining order by giving notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a

good faith effort has been made to notify the party against whom the restraining order is sought. Where there has been no significant prejudice shown, the Court requires that the party seeking temporary injunctive relief give the opposing side 24 hours notice in advance of presentment of the Order to Show Cause to the Court. Notice should be given by telephone, and/or email and an affirmation/affidavit stating that such notice has been provided to the opposing party/counsel must be filed and uploaded to NYSCEF. Upon such notice, any party/counsel seeking to be heard in opposition to the request for injunctive relief must email the Court, on notice to all parties, requesting a time to appear for same.

7. No Reply papers will be permitted on Orders to Show Cause.
8. 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. No reply affirmations will be permitted on cross-motions.
9. Parties are directed to review Section 202.8-b of the Uniform Rules for the Supreme Court and County Court, eff February 1, 2021, regarding the length of papers.
10. Interim Partial or Full Settlement: If all or part of a submitted motion is settled, a letter or stipulation shall be sent to the court, on notice to all parties/counsel, and same shall be uploaded to NYSCEF. Such notice shall set forth the date that the motion was submitted, what aspects of the motion have been settled, and what issues, if any, remain to be decided. If any motion is resolved, in whole or part, on the record, counsel shall obtain such transcript so that same can be "so ordered," unless the Court otherwise directs.
11. Withdrawn Motions: If a motion is being withdrawn, a letter from the movant requesting withdrawal may be sent to chambers by email or fax and must be uploaded to NYSCEF.
12. Summary Judgment: Motions for summary judgment shall be returnable no later than 90 days after the filing of a Note of Issue.
13. Motions brought pursuant to CPRL 3211, 3212 or 3213 shall not stay discovery unless specifically ordered by the Court.

IV. Communication with Chambers

- A. All communications with chambers shall be made via email (to JudgeRiciglianoRemote@nycourts.gov). In all communications with chambers, the title of the action, full names of the parties and index number shall be set

forth, with copies simultaneously delivered to all counsel. Do not assume that communications submitted through e-filing are seen by Chambers.

- B. Copies of correspondence between counsel shall not be sent to the Court, and will not be read or placed in the Court's files, except in the limited circumstances provided within these Part Rules and as 22 NYCRR 202.7 directs.
- C. Faxes: Faxes are not permitted for any purpose and will not be read.
- D. No out of court settlement will be recognized or accepted unless counsel submits a letter, on notice to opposing counsel/parties, submitting the executed settlement agreement/stipulation or certifying that such agreement/stipulation has, in fact, been executed.
- E. The Court will never accept *ex parte* communications on any substantive issue nor will the Judge or any staff member read such communications.
- F. DO NOT EMAIL JUDGE RICIGLIANO DIRECTLY.
- G. Except as provided herein, telephone calls to chambers are not permitted absent emergency situations requiring immediate attention.
- H. Adjournment requests that are left on Chamber's voicemail shall be disregarded. All requests for adjournments must be made in accordance with the directives of these Part Rules.

V. SANCTIONS

- A. The Court will not consider an application for sanctions unless the moving party first seeks withdrawal or discontinuance of the offending act or action or demands a required or necessary action which is refused. Proof of such request must be made a part of the sanctions application.

VI. TRIALS

- A. Jury Trials: A trial conference with the Court shall be held immediately prior to the commencement of all jury trials. Counsel should come prepared to discuss demands and offers of settlement. At the trial conference, counsel shall supply the Court with all pleadings, all bills of particulars, witness lists, exhibit lists and any deposition transcripts that will be used at trial. If any expert witnesses are to be called, counsel shall provide the information required by CPLR 3101(d)(1)(i). All trial exhibits shall be pre-marked for identification and, where possible, counsel shall stipulate to the admissibility of documents and records and shall notify the Court of their inability to stipulate to the admission of any exhibits to be offered

at trial. Counsel shall further provide the Court with proposed jury charges and proposed jury verdict sheets at the trial conference. The filing of a Note of Issue is a condition precedent to the commencement of any trial.

- B. Motions in limine: Counsel shall notify the Court as soon as the trial assignment is made, or at the trial conference if unable to do so sooner, of any motions in limine and any supporting statutory or case law. Counsel shall submit a brief written affirmation and/or memorandum of law setting forth the nature of the application and any supporting authority or case law. Motions in limine should be e-filed as “Pre-Trial Memorandum” document type on NYSCEF and emailed to sdalton@nycourts.gov and JudgeRiciglianoRemote@nycourts.gov.
- C. Scheduling: Generally, trial will begin at 9:30 am- 9:45 am each day and go until 12:30 pm - 1:00 pm and then resume between 2:00 pm - 2:15 pm and go until 4:30 pm - 4:45 pm. Each side should have their next witness available to testify when the prior witness finishes. Counsel should bring any scheduling issues to the Court’s attention as soon as possible.
- D. Counsel shall notify the Court if a witness requires a language interpreter as soon as the case is assigned so that timely arrangements can be made.
- E. Subpoenaed Records: Counsel are reminded of their authority to issue subpoenas under applicable law. Subpoenas seeking documents from a state agency must comply with CPLR 2307. 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.
- F. Please provide business cards for the Court and the Court reporter.
- G. 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.
- H. Openings: Openings will be limited to 30 minutes. If during either lawyer’s pending a visual aid or prospective evidentiary exhibit is to be used, opposing counsel and the court must be notified of that prior to the opening.
- I. Witnesses/Clients: In preparing the witnesses, each counsel should advise them as follows:

If a question calls for a “yes” or “no” answer, they should answer “yes” or “no”, without any further explanation. In the rare instance that a “yes” or “no” answer

would be incorrect the witness should simply state that they cannot answer the question “yes” or “no.” But, they cannot decline to answer yes or no simply because they want to further explain their answer.

Also, each counsel should advise them that they should not answer a question when they hear an objection voiced until I rule, and that if I then overrule the objection, they may answer, and if I sustain the objection, they must not. Also advise them that I may say “sustained” without a lawyer voicing an objection and in that instance they are not to answer the question.

Please tell your witnesses not to speak to the jury, not to say hello when they enter, or goodbye when they leave.

The lawyers may only ask questions of a witness. **NO INTRODUCTORY STATEMENT TO A QUESTION, AND NO COMMENT ON A WITNESS’S ANSWER.**

If any counsel believes a witness should be instructed by the Court in a particular way, make that application to the court outside the presence of jury. There is one exception to that rule: a request to have a witness answer yes or no, may be made during examination in the presence of the jury when the witness is plainly and unequivocally not answering yes or no to questions plainly and unequivocally calling for that answer. The Court’s initial instruction will be in essence that the witness answer such questions yes or no, if the witness can, and if the witness cannot, the witness should indicate that he or she cannot. If the witness says he or she cannot answer yes or no, counsel must decide whether to take the answer or ask another question.

J. Expert Witness:

After counsel who called the witness believes he/she has properly qualified the expert, do not ask the court in the presence of the jury to find that the witness is an expert. Simply ask the court if you can “ask questions of the witness” in the particular field of expertise which you believe the witness has been qualified. If opposing counsel is of the opinion that the witness has not been properly qualified, i.e, that the appropriate foundation has not been laid for the questions, counsel may request the appropriate voir dire or simply object to the question on that ground, and the court’s ruling on the objection will determine whether the witness has been sufficiently qualified to answer the question. The rationale for that procedure, as noted by the Appellate Division, is that the court’s declaration that the witness is an expert “in front of a jury improperly bolsters the witness and appears to grant the witness the imprimatur of the court.”

K. Stipulations: Do not ask opposing counsel in the presence of the jury to stipulate to anything. That request must be made outside the presence of the jury.

- L. Judicial Notice: Do not ask the court to take judicial notice of anything in the presence of the jury. That request must be made outside the presence of the jury.
- M. Procedures/Exhibits: Explanation of objections in the presence of the jury should be limited to the specific ground for the objection, e.g. “heresay”, “compound question”, “leading”. If there is an extended basis for arguing the objection, the court will hear counsel outside the presence of the jury. Each counsel will be granted an appropriate and adequate opportunity to make a record with respect to an objection or application, provided it is outside the presence of the jury, and at a point in time the Court finds does not unreasonably interfere with the progress of the trial.

There must be no courtroom colloquy between the lawyers. During any proceeding in or out of the presence of the jury, or at the bench, the lawyers speak to the Court one at a time, and not to each other.

The Court will permit, and encourages, pre-trial markings of exhibits for identification. The exhibits should be shown first to opposing counsel. If there is no objection to marking it for identification, then have the Court Reporter do so. If there is an objection, then advise me. All exhibits over 50 pages **MUST BE BATE STAMPED**.

Permission must be asked of the Court prior to publishing any exhibits to the jury. Copies of all exhibits published to the jury must be provided to the Court.

It is not the Court’s practice to permit the jurors to take notes of the testimony of a witness.

- N. Proposed Charges/Charge Conference: Plaintiff’s request to charge and proposed verdict sheet shall be provided no later than the next trial session after the party rests. The Court will conduct a formal charge conference on the record before summations. Prior to that, there may be informal conferences. The charge settled upon before summations will, however, be subject to change after summations if required by what is said or not said by each counsel in summation that was not anticipated by the court prior to summations.
- O. Summations: Summations will be limited to 45 minutes. This time limit may be extended by the Court only based upon the complexity of the case and number of witnesses.

If during summation, a visual aid, which is not in evidence, is to be used, opposing counsel and the Court must be notified of that prior to the summations.

- P. Non-Jury Trials: Non-jury trials are subject to scheduling upon forty-eight hours notice. An in person conference with the Court shall proceed the commencement of all non-jury trials, at which time counsel shall provide the Court with the

following: (1) a copy of marked pleadings, amendments thereto, and all bills of particulars; (2) A list of pre-marked exhibits and the identification of those exhibits which counsel cannot stipulate to admit into evidence at trial; (3) a list of witnesses and if any be experts, the information required by CPLR 3101(d)(1)(i); (4) a list of the causes of action to be tried; and (5) pre-trial memorandums of law, if any. The parties shall be required to provide the Court with a transcript of the trial. It is the obligation of the counsel or unrepresented parties to contact the Court within 48 hours prior to the start of the trial to confirm all parties will appear. Failure to contact the Court can result in the trial date being changed or vacated. The filing of a Note of Issue is a condition precedent to the commencement of trial.

- Q. Disposition of Cases: If a pending action has been settled, counsel shall notify chambers by email or fax that the matter has been settled and shall upload such notice to NYSCEF. Counsel shall further upload settlement documents within 20 days.

VII. Miscellaneous Rules

- A. Attorneys of Record: Attorneys who have appeared in the matter are to make all appearances until they are relieved by the Court or until a Consent to Change Attorney has been filed in NYSCEF and with this part by email or fax.
- B. 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 Sections 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 the 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.
- C. In the absence of an emergency, no Order to Show Cause will be heard after 2:00pm. Said Orders to Show Cause will be heard the following day.

- D. Stipulations to be “so ordered”: Absent good cause to do so, stipulations executed by all parties/counsel will not be “so ordered” by the Court. Should there be a significant reason that same is requested, the stipulation may be sent to chambers by email with a cover letter requesting said relief and the reason for requesting it, with copies to all counsel/prose parties.
- E. Paper Submission to NYSCEF: Counsel must seek permission of the Court for the submission of “evidentiary” materials to NYSCEF, unless such materials are exhibits to a formally submitted motion or an approved filing. The abuse of the NYSCEF filing system may be sanctionable by the Court.