

Hon. Catherine Rizzo, A.J.S.C.

Supreme Court, Nassau County
100 Supreme Court Drive
Mineola, New York 11501
IAS Part 46

JudgeRizzoRemote@nycourts.gov

Chambers Phone (516) 493-3211/Chambers Fax (516) 493-3142/Courtroom (516) 493-3214

Principal Law Clerk: Lauren Reber, Esq. email: lreber@nycourts.gov

Secretary: Beatriz Fuschetto

Part Clerk: Diane M. Toscano

Effective as of February 1, 2021

The Part Rules set forth herein are in accordance with Administrative Order AO/270/2020, Dated December 29, 2020 effective as of February 1, 2021. Certain portions thereto are delineated herein (*). Counsel and Self-Represented parties shall become familiar with all such rules. Click on the link for the full Administrative Order [[AO/270/2020](#)].

Communications with Court

The Court will not accept any *ex parte* communication by way of email, telephone, letter, or otherwise.

The Court will accept communications to JudgeRizzoRemote@nycourts.gov when corresponded to all counsel and self-represented parties.

Only counsel and self-represented parties shall communicate with the Court.

Adjournments only with permission of the Court.

A request to adjourn a motion or conference may be forwarded to chambers by way of email to JudgeRizzoRemote@nycourts.gov only if it is corresponded to all counsel and self-represented parties.

Adjournments of conferences will be granted upon a showing of good cause. An adjournment of a conference will not change any date in any court order, including but not limited to the preliminary conference order unless otherwise directed by the court. (*Rule 15: Section 202.10: Ex P).

All requests for an adjournment of a conference or motion shall be made no later than 48 hours before the hearing and shall set forth whether the other parties consent to the adjournment. (*Rule 34: Section 202.23: Ex CC(d)) and shall set forth the name of all counsel consulted with.

The written request shall include the title of the action, Index Number, and a brief one-line communication to the Court as to a request an “adjournment of a motion/conference,” or a “request for a conference.” *Any communication on substantive issues will be disregarded.* If the request for the adjournment is made with the consent of all counsel, counsel shall provide the name of all counsel, and the proposed agreed upon date and time, if applicable. The Court, in turn, will advise counsel if the adjournment may be made for good cause shown, and if the proposed adjourned date corresponds with the Court’s calendar.

Copies of correspondence between counsel shall **not** be corresponded to the Court.

Any and all faxes to chambers shall have prior written approval from chambers (*Rule 4: Section 202.5-a: Ex D) and shall not exceed five (5) pages. Any unauthorized faxes shall be disregarded.

All requests for adjournments of preliminary conferences should be made to the DCM part.

An adjournment of a conference shall not change the deadline dates set forth in a prior Court order, including a preliminary conference order. (*Rule 15: Section 202.10: Ex P).

Appearances Before The Court

Counsel who appear before the Court must be familiar with the case with regard to which they appear and be fully prepared and authorized to discuss and resolve the issues which are scheduled to be the subject of the appearance. Failure to comply with this rule may be treated as a default for the for the purposes of Rule 202.27 and or may be treated as a failure to appear for purposes of Rule 130.2.1. (*Rule 1: Section 202.1: Ex A).

Each attorney who receives notification of an appearance on a specific date and time is responsible for notifying all other parties by e-mail that the matter is scheduled to be heard on that assigned date and time. All parties are directed to exchange e-mail addresses with each other at the commencement of the case and to keep these e-mail addresses current, in order to facilitate notification by the person(s) receiving the court notification. (*Rule 34: Section 202.23(c): Ex CC).

Preliminary Conferences, Compliance Conferences and Certification Conferences

Counsel for all parties and self-represented parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery, including electronically discovery of electronically stored information, and any other issues to be discussed at the conference, (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation, and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. All preliminary conferences, compliance and certification conferences will be held virtually until further notice in accordance with the current Administrative Orders. (*Rule 8: Section 202.23: Ex F).

Chambers will provide counsel and self-represented parties with a Microsoft Teams Link for compliance conferences, certification conferences, and any other conference schedule by this court.

Court Ordered Depositions.

The number of depositions taken by plaintiffs, or by defendant, or by third-party defendants shall be limited to 10. The deposition of an entity through one or more representatives shall be treated as a single deposition, [unless also a fact witness, as opposed to an entity representative pursuant to CPLR 3106(d), shall constitute a separate deposition] even though more than one person may be designated to testify on the entity's behalf. Depositions shall be limited to seven hours per deponent. (*Rule 11-d: Section 202.20-b: Ex J). The seven hour clock begins upon the first question of the witness, and excludes time allotted to allow counsel, parties, and the court reporter to join virtually, and consented time in which to allow for agreed upon breaks which shall not exceed (90) minutes in total. Should the deposition not be completed the same day initiated, it shall be completed the next business day.

Court Ordered Depositions of Designated Parties.

Notices or subpoenas to an entity that does **not** identify a particular officer, director, member or employee of the entity requires that the named entity must designate one or more officers, directors, members or employees or other individual(s) who consent to testify on its behalf no later than 10 days prior to the scheduled deposition. (*Rule 11-d: Section 202.20-b: Ex J).

Notices or subpoenas to an entity that **does** identify a particular officer, director, member or employee of the entity requires that the named entity shall produce the individual so designated, and no later than 10 days prior to the scheduled deposition, notify the requesting party that another individual would be produced identifying such individual. (*Rule 11-f: Section 202.20-d: Ex L).

Submission of Papers

All incoming motions, cross-motions, writs, petitions or orders to show cause must be E-Filed.

Electronic Filing: All Writs, Motions, Petitions, and Orders to Show Cause must be E-Filed in accordance with the current Administrative Orders.

- The Electronic Document Delivery System (EDDS) was created in response to the COVID-19 pandemic and the Unified Court System's effort to transmit documents digitally. EDDS is used when the matter has not already been E-Filed or filed pursuant to matters that are mandatorily E-Filed pursuant to New York State Court's E-Filing System (NYSCEF).
- EDDS does not replace NYSCEF (e-filing) and, therefore, cannot be used for filing documents in matters where NYSCEF is available on consent or use of NYSCEF is mandatory.
- Supreme Court is accepting filings from EDDS only where NYSCEF cannot be used.
- Any questions concerning e-filing can be addressed at www.courthelp.com.

Motions

All Writs, Motions, Petitions, and Orders to Show Cause are to be made returnable at 9:30 AM on any day of the week and are **on submission only**. Therefore, there shall be no appearance required or oral argument of motions, *unless* specifically requested by the Court, whereby the Court will schedule a Virtual Conference by way of Microsoft Teams and advise counsel and self-represented parties accordingly.

Motions shall not be adjourned, on consent, more than three times or for a cumulative total of 60 days, unless the court orders otherwise. (*Rule 16: Section 202.8-a(c): Ex Q).

Oral Argument. "Any party may request oral argument of a motion by letter accompanying the motion papers. Notice of the date selected by the court shall be given, if practicable, at least 14 days before the scheduled oral argument. At that time, counsel shall be prepared to argue the motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing." (Rule 22: Section 202.8-f: Ex W). Either upon receipt of a letter requesting oral argument of a motion, or after a review of the submitted motion, this court will determine, on a case-by-case basis, whether oral argument will be heard and will advise counsel when they shall appear.

Motions brought pursuant to CPLR §§ 3211, 3212, or 3213 shall not automatically stay disclosure.

Proof of Service and Proposed Order. All motions shall have the appropriate proof of service on all parties where required annexed to the motion as well as a proposed order with respect to the requested relief, except on dispositive motions which will not need a proposed order. (*Rule 6: Section 202.5: Ex E & Rule 16: Section 202.8-a(b): Ex Q).

Motion Papers. Every paper, other than an exhibit or printed form, shall contain writing on one side only. All papers shall be double spaced in length with 12-point font and one-inch margins. Print for footnotes shall be no smaller than 10-point font. Counsel shall include a certification of the relevant word count with their submission. (*Rule 6: Section 202.5: Ex E).

Length of Papers. Unless otherwise permitted by the court, no affidavit, affirmation, brief, or memorandum of law in chief shall exceed 7,000 words. Each affidavit, affirmation, or memorandum of law more than 4,500 words shall include a bookmark providing a listing of the document's contents. Reply papers may not exceed 4,200 words and shall not contain any arguments not raised in the memoranda in chief. The caption shall not count as part of the word count. Papers in excess of the above without express written permission from the Court will not be considered. (*Rule 17: Section 202.8-b: Ex R).

Hard copies. The Court will notify counsel if a courtesy hard copy is required. In the court's discretion, counsel may be requested to submit memoranda of law by e-mail or by other electronic means, such as by a computer, flash drive, along with an original and courtesy copy. (*Rule 4: Section 202.5-a: Ex D). Counsel should use tabs on hard or working copies when submitting papers containing exhibits. Copies must be legible. Documents in a foreign language shall be translated as required by CPLR 2101(b). (*Rule 16: Section 202.8-a: Ex Q).

1. Discovery Motions. Counsel shall make every effort to resolve discovery disputes with their adversary before engaging in motion practice.

“Absent exigent circumstances, prior to contacting the court regarding a disclosure dispute, **counsel must first consult with one another in a good faith effort to resolve all disputes about disclosure.** Such consultation must take place by an in-person or telephonic conference. In the event that a discovery dispute cannot be resolved other than by motion practice, each such discovery motion shall be supported by an affidavit or affirmation from counsel attesting to counsel having conducted an in-person or telephonic conference, stating forth the date and time of such conference, persons participating, and the length of time of the conference. The unreasonable failure or refusal of counsel to participate in a conference requested by another party may relieve the requesting party of the obligation to comply with this paragraph and may be addressed by the imposition of sanctions pursuant to Part 130. If the moving party was unable to conduct a conference due to the unreasonable failure or refusal of an adverse party to participate, then such moving party, in an affidavit or affirmation, detail the efforts made by the moving party to obtain such a conference and set forth the responses received.” [emphasis added] (*Rule 14: Section 202.20-f: Ex N).

Rulings at Disclosure Conferences. Resolutions shall be dictated on the record. The transcript may be submitted to the court to be “so ordered,” or an order may be submitted to the court for approval and signature for the justice presiding, or the parties may agree to prepare an outline of the material terms of any resolution and shall thereafter agree and submit jointly to the court within one business day of the conference a stipulated proposed order memorializing the resolution of their discovery dispute. (*Rule 14-a: Section 202.20-g: Ex O).

No discovery motion shall be made absent prior written permission from chambers. The proposed moving party shall forward to chambers' remote email address, and all counsel and self-represented parties, the affidavit or affirmation in the fashion described above (*Rule 14: Section 202.20-f: Ex N). The court will thereafter notify the moving party, all counsel, and self-represented parties, whether permission is granted, or whether the court will allow a virtual conference with counsel, self-represented parties and chambers concerning the matter.

2. Summary Judgment Motions. All summary judgment motions shall include a separate, short and concise statement with numbered paragraphs setting forth the material facts that the moving party contends there is no genuine issue of fact to be tried. Opposition papers to a summary judgment motion must also annex a statement with correspondingly numbered paragraphs responding to the movant's statements. The opposing statement may also contain additional paragraphs setting forth a short and concise statement of the material facts that present a genuine issue of fact to be determined at trial. Each statement of material fact in support or opposition to the motion must be followed by a citation to evidence submitted to support the respective contention. (*Rule 19-a: Section 202.8-g: Ex U).

3. Sur-Reply. This court does not allow the submission of a sur-reply. "[S]ur-Reply papers, including correspondence addressing the merits of a motion are not permitted, except counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule shall not be respond in kind." (*Rule 18: Section 202.8-c: Ex S).

4. Settled Matters, Withdrawn Motions and notice of a deceased party or party filed a petition in bankruptcy. The Court is to be advised in writing immediately of the settlement or withdrawal of any motion or any portion of any motion *sub judice*, and/or the settlement of any underlying case with motions *sub judice* and/or notice of a deceased party or a party filed a petition in bankruptcy. (*Rule 2: Section 202.28: Ex B).

Orders to Show Cause

Orders to Show Cause shall only be filed where there is a **genuine urgency**, a stay is required or a statute mandates so proceeding. Absent advance written permission by the court, reply papers shall not be submitted on orders to show cause. (*Rule 19: Section 202.8-d: Ex T).

Temporary Restraining Orders

Notice of the TRO must be given unless the moving party can demonstrate significant prejudice by reason of giving notice. An affirmation of such notice must be submitted. The application for a TRO must include an affirmation attesting as to notice demonstrating that notice has been given, or notice could not be given despite a good faith effort to provide it, or there will be significant prejudice to the party seeking the restraining order by giving notice. (*Rule 20: Section 202.8-e: Ex V).

The adequacy of the affirmation pertaining to notice annexed to the application for a TRO can only be determined on a case-by-case basis, but every effort should be made to provide notice promptly and thoroughly. Thus, 24 hour prior notice (or more) by way of phone contact and e-mail (where the subject of the email indicates clearly an application for a TRO will be made to the court, the date of the application, time, and judge), should generally be pursued. The affirmation by the

moving party shall state the time and date the phone call was placed, to which number it was placed, and whether or not the call was returned. The affirmation should also state the time and date that the written email was forwarded, attaching a copy of it, and whether or not the email was responded to. If applicable, the moving party shall notify the court if the application for the TRO is on consent, providing a memorialized affirmation to that end providing the name of counsel and self-represented party.

Discovery

“Parties shall strictly comply with the discovery obligations and deadlines set forth in all case scheduling orders. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party or for the relief requested pursuant to CPLR 3126.” (*Rule 13: Section 202.20-e: Ex M).

Trial Part Rules

1. ***Virtual Trials.*** Virtual bench trials will be conducted in accordance with the Virtual Bench Trials Protocols and Procedure Manual. Counsel should familiarize themselves with Virtual Bench Trials Protocols and Procedure Manual prior to the commencement of the trial. Click on the following link to access manual. [[Virtual Bench Trials Protocols and Procedure Manual](#)].

2. ***Motions in Limine.*** On the first appearance in the Part for trial, 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. There shall be a separate affirmation for each motion in limine.

3. ***Pre-marking Exhibits.*** “Counsel shall consult prior to trial, and shall in good faith, attempt to agree upon the exhibits that will be offered into evidence without objection. Prior to the commencement of the trial, each side shall then mark its exhibits into evidence, subject to court approval, as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the clerk of the part for guidance. The court will rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked.” (*Rule 28: Section 202.34: Exhibit X).

All hospital records, and other items for identification, or in evidence, must be paginated before use in the trial.

“Absent good cause, a party may not use at trial or otherwise any document that was not produced in response to a request for such document or category of document, which request was not objected to or, if objected to, such objection was overruled by the court.” (*Rule 11-e: Section 202.20-c(f): Ex K).

4. ***Pre-Trial Memoranda, Exhibit Book.*** Counsel shall submit pre-trial memoranda at the pre-trial conference or at such other time as the Court may set. Pre-trial memoranda shall not exceed 25 pages. On the first appearance in the Part for trial, counsel shall submit an indexed binder or notebook, or the electronic equivalent, of trial exhibits for the court’s use. A copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses shall be prepared and submitted. Plaintiff’s exhibits shall be numerically tabbed, and defendant’s exhibits shall be tabbed alphabetically. (*Rule 31: Section 202.20h: Ex Z).

5. ***Proposed Verdict Sheet and Requests to Charge.*** On the first appearance in the Part for trial, each party shall supply the Court, counsel, and self-represented parties with a proposed verdict sheet and jury interrogatories whereby a reference to the PJI number will suffice. The proposed verdict sheet may be supplemented, modified or edited as the trial progresses. (*Rule 31: Section 202.20h: Ex Z).

6. ***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, counsel for the defendant(s) shall furnish the Court, and counsel for the plaintiff, with a list of the departures from the standards of good and accepted practice which that counsel for the defendant asserts were testified to by its expert witness or witnesses. Where the testimony has been transcribed, page references will be required.

7. ***Expert Witnesses.*** On the first appearance in the Part for trial, and if not otherwise pre-marked, each party shall, with respect to each expert witness that party intends to call, submit a list identifying with specificity any record, report, photograph, film, computer animation, x-ray, CT scan, MRI, EMG study or similar item or items to which an expert witness is expected to make reference as supporting in whole or in part the opinion he or she will offer.

8. ***Scheduling Witnesses.*** At the commencement of the trial, or at such time as the court dictates, each party shall identify in writing the witness it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel, and self-represented parties. Counsel shall separately identify for the court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility. (*Rule 32: Section 202.37: Ex AA).