

NYSCEF. If a party is discontinued, it is incumbent upon the attorney or party to remove their email address from the case on NYSCEF.

iii. **Moreover, in the event counsel is relieved, the self-represented party shall promptly provide an active email address through NYSCEF.**

D. **Interpreter:** The parties must inform the Court, no later than seven (7) days in advance of any scheduled appearance, if the assistance of an interpreter will be required.

II. ADJOURNMENT REQUESTS

A. **Requests to Adjourn Motions:** Adjournment requests of **motions pending before Justice Sher** may be granted by Chambers if the request is **on consent** of all parties. For a consent adjournment, counsel may *either* email or fax a letter to Chambers copied to all counsel indicating the case name, Index No., motion sequence number(s), the original return date and the mutually agreed upon adjourned date. A fully executed stipulation is **not** required for a consent adjournment.

i. If all parties do not consent to the adjournment request, an application must be made by telephone conference with all parties/counsel **no later than 3:00 p.m.** the day **preceding the scheduled motion return date.** No adjournment requests will be entertained without all parties/counsel participating in the telephone conference.

ii. Communications confirming adjournments should **only be sent to Chambers by EITHER fax or email. Do not use multiple methods of communication.**

iii. Adjournment requests which are left on the Chamber's Voice Mail shall be **disregarded.**

B. **Requests to Adjourn Conferences:** Adjournment requests of **conferences held before Justice Sher** may be granted by Chambers if the request is **on consent** of all parties and **sufficient cause exists for approving such request.** No adjournments will be granted without prior approval by Chambers. If all parties do not consent to the adjournment request, an application must be made by telephone conference with all parties/counsel **no later than 3:00 p.m.** at least two business days prior to the scheduled conference. No applications will be entertained without all parties/counsel participating in the telephone conference.

i. Adjournment requests of **conferences (excluding PC/DCM/Central Jury appearances)** may only be sought through **Chambers.** Potential dates amenable to all parties must be provided at the time the adjournment is sought.

ii. Adjournments requested due to an attorney's actual engagement **on trial** must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR Part 125.

C. Requests to Adjourn Party Depositions: No adjournments of party depositions set forth in the Preliminary Conference Order shall be permitted without prior Court permission. Depositions are court-ordered pursuant to the PC Order. **Deposition dates** specified in the PC Order or any subsequent order **may not be adjourned to any later date without prior court approval.**

- i. Requests for adjournments of deposition dates shall be made by telephone prior to the scheduled EBT date. Counsel requesting the adjournment must be prepared **at the time of the call** with a reasonable basis for the request, a proposed new deposition schedule with firm dates, time and location, and whether the request is on consent of all parties. Counsel must endeavor to complete all party depositions prior to the scheduled Compliance Conference. Requests to adjourn EBTs beyond the Compliance Conference date will require a sufficient basis for the request.
- ii. Where a request is granted, counsel will be directed to *either* fax a confirming letter to Chambers or send an email to Chambers' remote email address, copied to all counsel, setting forth the new approved EBT schedule with the firm new date(s), time(s) and location, and must indicate that "**EBTs may not be adjourned to any later date without prior Court approval.**" Requests to adjourn EBTs **are not granted** until the Court's receipt of the confirming letter or email referenced herein.
- iii. Any outstanding discovery issues that may potentially impact the holding of party depositions should be addressed sufficiently in advance of the Court-ordered EBT dates.

D. Requests to Adjourn Preliminary Conferences: Preliminary Conferences are held in person at the Preliminary Conference Desk in the lower level of 100 Supreme Court Drive, Mineola, New York, to schedule all outstanding discovery.

- i. Requests to adjourn PCs are **not** addressed to Justice Sher. Rather, PC adjournment requests are to be addressed to the Preliminary Conference Part (telephone no. 516-493-3101), **not** to Chambers.

E. Requests to Adjourn Pre-Trial (DCM/CCP) Conferences: Requests to adjourn pretrial conferences scheduled by DCM/CCP are to be directed to the CCP/DCM Part (telephone no. 516-493-3113), **not** to Chambers.

III. DISCOVERY DISPUTES & DISCOVERY-RELATED MOTIONS

A. Pre-Motion Teleconferences: Prior to the making or filing of any discovery-related motion, counsel for the prospective movant(s) shall first discuss the issue(s) in question with his or her adversary. If the issue(s) in question cannot be resolved, counsel for the prospective moving party **MUST** arrange for a telephone conference to be held with all counsel and the Court to address the issue(s) and any possible resolution thereof. Counsel fully familiar with the matter and with authority to bind their client **MUST** be available

to participate in the conference call.

- . If the matter can be resolved during the teleconference, the requesting party will be directed to fax or email a confirming letter memorializing such resolution. Where the matter cannot be resolved during the teleconference, the prospective movant may request permission to file a discovery-related motion.
- ii. This rule does not apply to applications for counsel to be relieved, motions to vacate the Note of Issue, or dispositive motions.
- iii. Any discovery motion must state that **Rule III A.** above has been complied with. Failure to comply with Rule **III** above may result in denial of the motion.

B. Telephone Conference Procedure for Discovery-Related Disputes: A party that requests a teleconference or Teams conference shall first contact Chambers with the general nature of the discovery dispute and proposed dates and times amenable to all counsel.

i. Scheduled Discovery Teleconference: Once all parties are on the line, Chambers must be contacted on the teleconference line at (516) 493-3239.

ii. Scheduled Discovery Teams Conference: Where Chambers schedules a virtual Teams conference, the parties are contacted via NYSCEF, by selecting a link entitled “email participating parties.” Once a link has been sent, Chambers is NOT to be contacted to re-send the link. Chambers allows forwarding on all Teams invites. As such, any office should first contact opposing counsel to obtain same.

iii. **In the event a discovery dispute is resolved prior to a scheduled conference, the Court shall be promptly notified.**

MOTIONS

IV.

A. **Submission of Motions & Motion Appearances**

- i. Motions brought pursuant to CPLR §§ 3211, 3212 or 3213 **shall not** automatically stay any discovery, unless otherwise ordered by the Court. _____
- ii. Generally, there are no appearances on motions for summary judgment made **after** the filing of a Note of Issue, pre-answer motions pursuant to CPLR § 3211, and **for unopposed** motions made pursuant to CPLR § 3215. Appearances of all counsel and pro se parties are only required when otherwise directed by the Court.
- iii. Pursuant to CPLR § 3212 (a), a motion for summary judgment shall be **filed** no later than sixty (60) days after the filing of the Note of Issue, except with leave of

court on good cause shown.

- iv. The Court may, on occasion, administratively adjourn or advance motion return dates to coincide with previously scheduled conferences and/or with return dates of other motions filed in that matter. Where possible, movants shall endeavor to select return dates that coincide with such previously scheduled conference and/or with return dates of other motion sequences filed in the matter. Where a motion is previously filed, any subsequent movants shall endeavor to coincide the return date(s) of any such subsequently filed motions.
- v. MULTIPLE MOTIONS ON THE SAME MATTER SHALL BE SUBMITTED ON THE SAME DATE. THE COURT DOES NOT STAGGER SUBMISSION DATES.
- vi. On **e-filed cases**, the handling attorney(s) and *pro se* litigants, if any, are responsible for ensuring that a working email address is affiliated with the NYSCEF system. Chambers is **not responsible** for adding or deleting any email addresses from the NYSCEF system. In the event Chambers sets a motion down for a conference, the parties will be contacted via NYSCEF and only the email addresses on NYSCEF shall receive such communication.
- vii. On **e-filed cases**, a “working hard copy” of any e-filed papers is no longer mandatory. _____
 - 1. However, where movant otherwise finds a working hard copy with clearly marked exhibit tabs would assist the Court, same may be submitted. Where any party elects to submit a working hard copy, it **must** be submitted to Room 186, located on the 1st floor, with all exhibits properly tabbed, and **must** be *received* by the Court **prior to the return date or any adjourned date**. The E-filing confirmation notice **must be annexed to the back of the litigation back of your working hard copy facing out, and bound/affixed at the top**. On E-Filed cases, working hard copies must confirm to what has been filed on NYSCEF.
- viii. On **non e-filed cases**, courtesy or working copies should **not** be submitted, unless requested by the Court. All motion papers **must** be received by the close of business the day prior to the return date of the motion.
- ix. No sur-reply affidavits, affirmations, memoranda of law or letters will be accepted or considered by the Court after the return date of any motion or cross-motion without leave of the Court.
- x. Reply papers are permitted on all motions, cross-motions, orders to show cause and petitions.

- xi.** Failure to appear at a motion conference may result in 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.
- xii.** **All exhibits must be clearly tabbed;** no exhibits shall be double sided; and no mini-scripts are accepted. Motions not consistent with this rule will be rejected. Opposition papers need not duplicate deposition transcripts or voluminous medical records annexed to the moving papers and may refer to the relevant exhibit cited by the movant.
- xiii.** All submissions shall be fully and securely bound and shall have a litigation back attached thereto. All motion papers greater than two (2”) inches thick must be split into multiple volumes and secured by heavy duty staples or ACCO fasteners and clearly marked with a copy of the Notice of Motion on each volume (e.g. 1 of 3, 2 of 3, 3 of 3). All motion papers and Orders to Show Cause shall be ACCO fastened on the top and **not** the bottom or side of the papers.
- xiv.** When submitting proposed orders or judgments in connection with a motion, the same shall be submitted as a separately bound document.
- xv.** 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.

V. COURT APPEARANCES

A. General Procedure

- i.** All conferences and motion appearances are scheduled at 9:30 a.m. IN PERSON except on Tuesdays, when they begin at 9:00 a.m., unless directed otherwise by Chambers. Please be prompt. Defaults in appearance will not be taken on the record until at least 15 minutes after the scheduled conference time.
- ii.** Attorneys and *pro se* litigants must check in with the Court Officer or Part Clerk, if one is available. If the Courtroom is unavailable, counsel must call Chambers from the Fourth Floor Security Desk **only when all parties are present**. All parties must fully and legibly complete a sign-in sheet and note thereon whether counsel is in another Part and provide a cell phone number to be reached.
- iii.** All conferences will be held in the order in which **all** attorneys and/or *pro se* litigants have checked in with the Part Clerk and completed a sign-in sheet.
- iv.** Counsel who appear in the Part must be fully familiar with all aspects of the case and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients, including those appearing “of counsel” or “per diem”.

- v. Failure to appear at the call of any calendar may result in an inquest or dismissal pursuant to 22 NYCRR § 202.27.

B. Compliance & ADR Conferences

- i. The Compliance Conference date will be set down in the PC Order and must be held no later than 60 days before the date scheduled for the completion of discovery pursuant to 22 NYCRR § 202.19(b)(3).
- ii. In no event shall the Compliance Conference be held later than the deadline set forth in the Standards & Goals timetable accompanying the PC Order (provided by DCM). Adjournments will only be granted for compelling reasons. No Compliance Conference may be adjourned without prior approval of the Court.
- iii. “Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery, including 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. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.” (Section 202.23 of the Uniform Rules for the Supreme Court and County Court, eff February 1, 2021).

C. Certification Conferences

- i. A Certification Conference will be held no later than 90 days prior to the deadline by which a Note of Issue must be filed. In no event shall the Certification Conference be held later than the deadline set forth in the Standards & Goals timetable accompanying the PC Order (provided by DCM). Upon request a signed Certification Order may be submitted via email prior to the Certification Conference.
- ii. Requests to change a discovery track fixed in the timetable will only be granted for compelling reasons and where counsel have endeavored to complete discovery in a timely fashion.

VI. STAYS OR TEMPORARY RESTRAINING ORDERS (TRO)

- A. If an Order to Show Cause seeking any injunctive relief, including a stay or TRO, is to be submitted, it must comply with Uniform Rule § 202.7 (f). Only where a TRO is being sought, the movant shall first consult with Chambers as to a convenient date and time for counsel to appear with regard to compliance with Uniform Rule § 202.7 (f).
- B. At any conference of the matter, if an Order to Show Cause seeking any injunctive relief, including a stay or TRO, is submitted or pending, counsel shall advise the Court of the

pendency of such application, the return date of such Order to Show Cause, the relief sought and whether an immediate hearing is sought.

- C. Requests to continue or to vacate a stay or TRO beyond the return date of the motion shall be made on the call of the motion calendar. Failure to apply for such extension shall result in the automatic *vacatur* of the stay or TRO, unless the Order to Show Cause provides otherwise.
- D. Proposed OSC's are sent to Chambers by the OSC Clerk via the remote email address. Chambers is not permitted to review OSCs from NYSCEF.

VII. NOTICE OF CHANGE IN CIRCUMSTANCES: COUNSEL'S RESPONSIBILITY

- A. Pursuant to 22 NYCRR § 202.28 (b), if an action is discontinued, or wholly or partially settled by stipulation pursuant to CPLR § 2104, or a motion has become wholly or partially moot, or a party has died, become a debtor in bankruptcy or is in active military duty, the parties shall promptly notify the Court in writing of such an event, with appropriate documentation where necessary.
- B. It is the responsibility of counsel to apprise the Court of an Appellate Division decision or a change in circumstance referenced in **Rule VII. A.** above that affects the status of any case assigned to this Part.
- C. Any party or attorney who, without good cause shown, fails to promptly notify the Court consistent with the above requirements may be subject to the imposition of sanctions.

VIII. SANCTIONS

- A. The Court will not consider a sanctions application unless the moving party first seeks withdrawal or discontinuation 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.

IX. TRIAL RULES

- A. A Note of Issue is to be filed within 90 days after certification, unless otherwise specified in the Certification Order or any subsequent order. Counsel for plaintiff shall pay the requisite fee with the County Clerk and ensure that the Note of Issue is submitted to the Calendar Clerk who will then assign a calendar number.
- B. At the first appearance of all cases assigned to this Part for trial, a pre-trial conference will be held. At the conference, the Court shall provide for the submission or scheduling of the following:
 - i. *In Limine* applications: 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. The party shall furnish the Court with an original and two (2) copies and provide counsel for all parties with a copy. There shall be a separate affirmation for each motion in limine;

- ii. Pre-trial memoranda providing the Court with cited case law to be considered by the Court;
- iii. A courtesy copy of each exhibit intended to be introduced into evidence at trial for the Court and each counsel. All exhibits shall be tabbed or included in a binder for easy reference;
- iv. All trial exhibits, whether the parties stipulate to admit them into evidence to the Court or not, shall *be pre-marked* by the Court Reporter. As to those exhibits marked for identification, the Court will address their admissibility *In limine* or during the trial, as may be appropriate;
- v. A list of proposed witnesses for the Court's information;
- vi. A list of all expert witnesses with copies of their reports;
- vii. Marked pleadings, to be submitted before opening statements;
- viii. A statement of stipulated facts. [Parties are encouraged to stipulate to facts and/or exhibits];
- ix. Any written requests for jury instructions. Charges from the Pattern Jury Instructions may be identified by number without necessity of reproduction, unless a modification of the standard charge is requested, in which case the modification is to be highlighted;
- x. Any proposed verdict sheets;
- xi. If deposition transcripts are to be utilized, a copy of the witness' deposition transcript should be available to the Court. No mini-scripts are accepted;
- xii. Objections should be stated without argument except to simply state the ground therefor, *e.g.*, hearsay, relevance, etc. If further argument is appropriate, it will be invited by the court;
- xiii. Trial counsel are responsible for redactions of all evidence when needed;
- xiv. Any audiovisual equipment required is to be provided by counsel;
- xv. Trials will be conducted on a continual daily basis until conclusion. As such, no adjournments or delays during trial will be accepted unless exigent circumstances exist;

- xvi. Counsel is required to have all proof in admissible form for inquests;
- xvii. Trial counsel are responsible for taking back all exhibits, pleadings, transcripts, etc., 30 days after the end of a trial, unless, in the case of non-jury trials the Court reserves its decision. In all cases, exhibits, pleadings, transcripts, etc. not retrieved within sixty (60) days from the conclusion of a jury trial or within sixty (60) days after the Court renders a decision in a non-jury trial, shall be disposed of.

C. **Malpractice “Departures”** – in jury trials involving claims of professional negligence, no later than 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 all counsel with a list of proposed departures from the standards of applicable care which that party asserts were testified to by its expert(s) or other witnesses. Where such testimony has been transcribed, page references are required.

D. **Inquests** – all exhibits shall be pre-marked for identification prior to any scheduled Inquest. Counsel should be prepared with admissible proof to present at the Inquest. In the event a matter was set down for an Inquest by written order due to insufficient proof having been submitted in support of the motion, then such proof will still be insufficient for the Inquest.

X. MISCELLANEOUS

A. **Conferences/Trial** – If there are any outstanding motions (submitted or pending) at the time of the conference/trial, the Principal Law Clerk and/or Judge must be so informed at the start of such conference/trial; the submission date must be provided by counsel.

B. **Proposed Stipulations** – On **non e-filed cases**, any stipulation to be “So-Ordered” by the Court **must** contain original signatures by all parties and/or counsel, which may be submitted in counterparts.

C. **Infant’s Compromise Orders**

- i. All applications for Court approval of a proposed compromise of an infant’s claim must be submitted through the Infant’s Compromise Clerk (“ICC”) (telephone no. 516-493-3049).
- ii. 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”**.

