

HON. MARY ANN BRIGANTTI

Part Rules: Part 15 - Motor Vehicle Part (Revised 9/2019).

851 Grand Concourse, Bronx, NY 10451, Courtroom 702

Court Clerk: (718) 618-1395

ADR Conferences - Mondays (morning and afternoon), Courtroom 702.
DEFAULT TIME: 10:30AM*

DCM Conferences – Tuesdays (morning status conferences on a staggered calendar, afternoon first-time compliance conferences at 2:00PM), Courtroom 702

Pre-Trial Conferences – Wednesdays at 9:30AM, Courtroom 702. **DEFAULT TIME: 10:30AM***

Oral Argument on Motions – Thursdays at 9:30 AM, Courtroom 702.
Note: The Court requires working copies of all e-filed motion papers, and exhibits **with confirmation of eFiling attached.**

Orders to Show Cause/ Hearings - Fridays at 9:30AM, Courtroom 702. **DEFAULT TIME - 10:30AM***

Note of Issue/ Discovery Non-Compliance Conferences - Fridays at 2:00PM.
DEFAULT TIME: 3:00PM*

*** FAILURE TO APPEAR ON THE SCHEDULED APPEARANCE DATE AND TIME MAY RESULT IN EITHER DISMISSAL OF THE COMPLAINT OR STRIKING OF THE ANSWER PURSUANT TO 22 NYCRR 202.27.**

GENERAL RULES

1. Appearances by Counsel with Knowledge and Authority

Counsel who appear in this Part must be fully familiar with the case in regard to which they appear and be fully authorized to enter into agreements, both

substantive and procedural, on behalf of their clients. In addition, all Counsel must be prepared for settlement discussions and have their client or adjuster "on call" by telephone. Failure to comply with this rule may be regarded as a default and dealt with appropriately. It is important that Counsel be on time for all scheduled appearances. Please read these rules carefully. Your papers may be rejected for failure to follow these rules. The failure of the movant(s) to follow these rules may result in the denial of the motion(s) with leave to renew upon proper papers.

2. Settlements and Discontinuance

If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the Court by submission of a copy of the stipulation or a letter directed to the Clerk of the Part. Filing a stipulation with the County Clerk does not suffice.

3. Facsimile and E-mail

Papers of any sort sent via fax or e-mail are not accepted unless otherwise directed by the Court.

4. Information on Cases

All inquiries as to case or calendar status should, in the first instance, be made to the appropriate clerk's office: IAS Motion Support Office, Room 217 (ext. 1310). The Part Clerk can also provide information about scheduling of cases (conferences and argument of motions) in the Part (ext. 1395). **The only inquiries that should be made directly to Chambers should be those involving immediate and substantive exercise of judicial discretion.**

5. Ex Parte Communications

Under no circumstances will ex-parte communications be accepted.

6. Availability of Decisions and Orders

All decisions and orders (including DCM orders) are scanned and available on the Internet (NYSCEF or Bronx County Clerk). Do not call to ask whether a decision has been issued.

7. Adjournment Requests

The parties shall use their best efforts to obtain consent from their adversaries prior to requesting an adjournment of any sort from the Court. All

parties requesting an adjournment must insure that such request has been granted prior to the scheduled date in order to avoid a default determination being entered. All requests for adjournments prior to the scheduled date must be made in writing, eFiled, and faxed to Chambers for approval. Oral applications will not be entertained – no exceptions. **It is the burden of the parties to inquire as to whether the stipulation was approved by the Court.**

Stipulations requesting a more than sixty (60) day adjournment after the original return date on a motion must include an explanation for the request.

One-sided requests for adjournments must always include an explanation for the request. If the requesting party does not provide an explanation under these circumstances, the adjournment request will be denied.

NOTE: DISCOVERY STATUS, COMPLIANCE, AND NON-COMPLIANCE CONFERENCES WILL NOT BE ADJOURNED ABSENT EXIGENT CIRCUMSTANCES.

8. Failure to Appear at the Call of any Calendar

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

DISCOVERY GUIDELINES

Discovery motions are strongly discouraged

1. Appearances

There is a conference system to handle discovery. Please maximize use of this valuable resource.

2. Case Scheduling Orders (“CSO”)

All initial discovery motions will be converted into a CSO. You should avoid a motion by simply filing an RJI with a request for a Preliminary Conference and you will receive a CSO without having to appear. If the dispute cannot be resolved at the conference, then the issue(s) will be narrowed and the DCM Order will specifically allow a motion to be brought and must set forth a briefing schedule. A copy of that Conference Order, as well as all other Conference Orders, must be annexed to all discovery motions.

3. Bill of Particulars

A Bill of Particulars (“BP”) and authorizations are the foundation upon which much discovery is based. Accordingly, the failure of the plaintiff to provide a BP and HIPAA compliant authorizations by the first Compliance Conference, without good cause shown, may result in the plaintiff being precluded from offering any evidence of damages.

4. Conferences Generally

Conferences are important; be prepared. The Court invests significant resources into the DCM system in order to efficiently and fairly resolve discovery disputes. The rules of this Part require compliance with court-ordered deadlines. Remember, these are court orders, not suggestions. The failure to adhere to deadlines and comply with orders may result in serious penalties. Counsel attending the conference are expected to be familiar with the case and have the authority to discuss and stipulate to resolve all discovery issues.

At each Compliance Conference, Counsel must bring a list of all discovery previously ordered but not yet completed, as well as new discovery requested which could not have been previously addressed (and be ready to explain why it could not have been addressed). Failure to address all outstanding discovery existing at the time of the Compliance Conference may be deemed a waiver of the right to obtain said discovery.

Please bring copies of all prior conference orders and stipulations to the conferences. If you have any motions pending, or which are *sub judice*, please bring this to the attention of the Part Clerk and consult with the DCM Coordinator.

Counsel are assumed to have consulted clients, examining doctors, etc. regarding their availability for EBTs, IMEs and the like.

Upon a party's second failure to appear for a conference, the case may be dismissed or the party's pleading may be stricken. Any motion to vacate such a default must be brought by Order to Show Cause and must fulfill the requirements of CPLR § 5015.

If a dispute arises about compliance with any discovery order, or if deadlines are passing without discovery being provided, DO NOT WAIT until the next conference to report, in effect, that nothing has been done. As an officer of the Court, it is counsel's responsibility to comply with court orders and to report non-compliance. If your good faith efforts to resolve the dispute fail, then immediately, before the deadline and without making a motion e-mail the Bronx Motor Vehicle Discovery Part (bxmvdiscovery@nycourts.gov). Upon the Court’s discretion, the

case will be scheduled for a resolution conference (in person or by telephone) or the date of the next scheduled conference will be advanced.

Absent good cause, failing to report discovery problems with DCM immediately, in advance of the deadlines, or failing to comply with any discovery order or DCM Discovery Reminder Notice, may result in the imposition of penalties upon the offending party and, where warranted, upon counsel. Penalties may include waiver of the discovery, preclusion, dismissal, striking the Answer, costs, sanctions and attorneys' fees.

All ordered discovery is important, but counsel should be particularly aware that severe penalties are likely to be imposed for the following noncompliance, because there is little excuse for counsel failing to provide/schedule discovery, since it is so routine:

(i) Plaintiffs failure to timely provide a Bill of Particulars and HIPAA compliant authorizations, (ii) Defendants failure to timely give notice of, designate physicians for, schedule or conduct IMEs of plaintiff and serve the resulting reports, (iii) Plaintiffs failure to attend the IMEs, and (iv) Either party's' failure to schedule and attend a deposition.

Instructions Applicable to CC Orders

Please write legibly with a black ball point pen. Press hard. Illegible orders will not be signed. You must indicate the names, addresses and telephone numbers of all counsel appearing at the conference.

The DCM Case Coordinators have been instructed not to make copies. Although you are free to take a picture of the stipulation with your phone, keep in mind that all orders will be scanned and will appear on NYSCEF. Use complete dates, including the correct year. Please remember that some of the dates you are selecting may be in the next calendar year.

Use firm cut-off dates (*e.g.*, "on or before December 31, 2018"). Do not use "within 45 days," etc. Because you are assumed to have consulted your clients and examining doctors regarding their availability for EBTs and IMEs, you will be held to the dates to which you commit. Pick a reserve date if you have any uncertainty.

If you have not complied with the "on or before" dates in the CSO/Preliminary Conference Order or the first Compliance Conference Order, then you must pick a

specific date during the second Compliance Conference for the EBTs, IMEs, etc. That is, you get two chances to comply with "on or before" dates. The second Compliance Conference Order must set forth specific dates and include penalty language (preclusion, etc.) for noncompliance and may add "unless good cause is shown for the noncompliance". **If you have not complied, then come prepared to the next Compliance Conference with affidavits, plane tickets, death certificates or proof of hospitalization to prove any claimed "good cause".**

Non-specific statements such as "all discovery not yet provided" or "unless otherwise provided" or "to the extent not yet provided" will not preserve any rights. Each attorney is expected to know what has been provided and what has not. Do not include this language in the discovery stipulations.

NOTES OF ISSUE ("NOI")

A NOI may NOT be filed unless a stipulation is so-ordered certifying that discovery is complete. Improperly filed NOI may be stricken sua sponte. Usually, the certification of completed discovery will be made at the final Compliance Conference. However, if all parties agree that discovery is complete before that date, then you can avoid the conference by e-mailing or faxing a stipulation to the DCM Coordinator (bxmvdiscovery@nycourts.gov) at least two days before the scheduled conference. The stipulation must certify that all discovery is complete and provide for the filing of the NOI. The DCM Coordinator will provide a date by which the NOI must be filed and the so-ordered stipulation will be scanned and will appear on NYSCEF.

MOTION GUIDELINES

Motions brought by Notice of Motion:

1. Moving papers are to be filed in the Clerk's Office in Room 217.
2. In all eFiled matters, a working copy of any motion papers must be submitted to Chambers prior to the motion's return date. Failure to submit a working copy may result in papers being disregarded, or the denial of the motion without prejudice.
3. No motion for substantive relief shall be joined with any application for discovery. In addition, discovery must continue during the pendency of a CPLR 3212 motion, unless good cause is shown for a stay. Consult the Court Attorney at the

conference regarding the "good cause"; the Court Attorney will consult with the Judge, if necessary. A stipulation will not suffice; any stay must be so-ordered.

4. All papers must comply with CPLR §§2101, 2103, and 2214.
5. Tabs must be used when submitting exhibits with any motion.
6. All submissions shall be fully and securely bound. All cited material shall be fully viewable without having to remove staples or binding
7. When submitting proposed orders or judgments in connection with a motion, the same shall be submitted as a separately bound document. Proposed orders or judgments incorporated within the motion papers will be considered exhibits, treated as such, and may be disregarded.
8. Counsel must advise the Court in writing and as soon as practicable if any submitted motions have been resolved, withdrawn, or if the motion is moot because the case has been settled.
9. No sur-replies shall be considered absent leave of Court to interpose the same.
10. All motions are on submission only. Any party requesting oral argument shall make that request on the face of the moving or opposing papers. It is the requesting parties' burden to thereafter contact Chambers or the Part to determine whether the request was granted and to arrange for an argument date.
11. **EFFECTIVE MARCH 26, 2018, PURSUANT TO CPLR 3212(a), A MOTION FOR SUMMARY JUDGMENT SHALL BE MADE NO LATER THAN SIXTY (60) DAYS AFTER THE FILING OF THE NOTE OF ISSUE, EXCEPT WITH LEAVE OF COURT ON GOOD CAUSE SHOWN.**

Motions brought by Order to Show Cause:

1. Orders to Show Cause must comply with Uniform Rule 202.7(d) and be brought to the Motion Support Office. Thereafter, they are forwarded, by Motion Support, to Chambers for consideration.
2. All Orders to Show Cause are returnable on Fridays, except for Court holidays, in Part 15, at 9:30 AM, unless otherwise indicated.
3. Proof of service must be filed with the Clerk of Part 15 by 9:30 AM on the return date. Non-compliance shall result in denial of the Order to Show Cause.

4. Any party seeking immediate injunctive relief within an OSC must appear with the affected adversary (or with proof the adversary has been notified, but declined to appear) when the application is presented for signature.

5. For an OSC to be relieved as Counsel, do not bring your adversary. Make sure you provide enough information for the Judge to fashion a method of service likely to reach your client.

6. PERSONAL APPEARANCE AND ORAL ARGUMENT IS REQUIRED ON ALL MOTIONS BROUGHT BY ORDER TO SHOW CAUSE.

RULES FOR ORAL ARGUMENT ON MOTIONS

1. Check- In: At the start of any oral argument calendar, check in with the Clerk of the Part, or the Court Officer, so that (s)he will be aware of your presence.

2. Courtroom Comments and Demeanor: All remarks should be directed to the Court. Comments should not be made to opposing counsel. Personal remarks, including name-calling and insults, to or about opposing counsel will not be tolerated. Remember do not try to "talk over" each other; only one person speaks at a time or the record of the proceeding will be incomprehensible. Simple requests (*e.g.*, a request to submit additional papers), should be accomplished in a manner which does not disrupt the proceedings or your adversary. If you require a significant discussion with your adversary, such as a possible stipulation, ask for permission to approach the bench. I will grant that request, and you will have a chance to talk to each other.

3. Full authority to settle: Any counsel appearing for oral argument on a motion, no matter the nature of the motion, must be prepared to engage in settlement discussions, if appropriate, and **must have full authority to completely resolve the matter.**

ALTERNATIVE DISPUTE RESOLUTION

In keeping with the “Presumptive Alternative Dispute Resolution” systemwide initiative, launched by Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks, this Court will set matters down for settlement conferences to be held on Mondays.

Counsel are expected to appear in the Part promptly with the authority to settle and have access to insurance adjusters, as well as the party, for meaningful discussions. Per Diem attorneys not authorized to settle will not be permitted to appear. Any appearances by Per Diem attorneys in contravention of this rule may result in sanctions chargeable to the attorney of record for wasting the Court’s time.

Counsel who are currently interested in engaging in settlement negotiations may contact this Court’s Principal Law Clerk, Scott Krompinger, via e-mail at skrompinger@nycourts.gov, after communicating with all parties.