

**Honorable Sanford Neil Berland**  
**Supreme Court of the State of New York**  
**County of Suffolk**  
**Hon. Alan D. Oshrin Supreme Court Building**  
**1 Court Street, Part 6**  
**Riverhead, NY 11901**  
**Telephone: (631) 852-2584**  
**Fax: (631) 852-3854**

**Danielle M. Medeiros, Esq.**  
**Principal Law Clerk**

**John M. De Vito, Esq.**  
**Assistant Law Clerk**

**IAS/TRIAL PART 6 - RULES AND PROCEDURES**

**CORRESPONDENCE**

All correspondence with the Court shall be in writing. All correspondence to the Court on e-filed cases shall ONLY be e-filed. If the case is not e-filed, written correspondence shall be faxed to 631-852-3854. Calls to Chambers should only be reserved for extenuating circumstances.

**MOTION PRACTICE**

**CALENDAR:** All motions assigned to Judge Berland shall be made returnable on **Tuesdays at 9:30 am unless advised otherwise**. Any adjournments shall be handled per the procedures outlined below. Timely interposition of all papers in accordance with the CPLR is required, as the Court will not consider the merits of any papers, including cross motions or replies, which are untimely served.

**PRE-MOTION CONFERENCES:**

Prior to the making or filing of any pre-note of issue motion, counsel for the prospective moving party shall first discuss the issue(s) in question with his or her adversary. If the issue(s) in question cannot be so resolved, counsel for the prospective moving party shall contact the Court in writing requesting a pre-motion conference. This written communication shall be served upon all other counsel and pro se parties and contain an affirmation by counsel that there has been a good-faith attempt to resolve the dispute without judicial intervention. The pre-motion conference can be held in conjunction with any upcoming compliance conference. The movant shall schedule the conference with the Court and notify all parties in advance of any scheduled pre-motion conference.

## **FILING:**

Non E-Filed Cases: On non e-filed cases, courtesy or working copies should **not** be submitted, unless requested by the Court.

E-Filed Cases: On e-filed cases, a working copy (hard copy) of the e-filed motion papers (including confirmation sheet), any memorandum of law, opposition and reply papers as defined in Part 202.5 (b) of the Uniform Civil Rules for the Supreme Court and the County Court must be provided to the Court on or before the return date. Should the Court not receive working copies of e-filed papers, the e-filed motion may be denied or may be submitted without opposition on the return date.

Counsel are required to provide the court with **SELF-ADDRESSED, STAMPED** envelopes, stapled to the inside of the blue back of the submitted papers in order to facilitate delivery of the Court's decision.

Motion papers shall comply with the form prescribed in 22 NYCRR §202.8(c). All affidavits and exhibits shall be identified by separately and consecutively numbered or lettered tabs; no exhibits shall be double sided; no mini-scripts are accepted. Any attached transcripts shall include an index. Motions not consistent with this rule will be rejected and returned to counsel. Opposition papers need not duplicate deposition transcripts annexed to the moving papers and may reference to the relevant exhibit cited by the movant.

Legal memoranda must not exceed 15 pages in length, reply memoranda, five pages.  
**Citations to cases are required.**

Motions brought pursuant to CPLR §§ 3211, 3212 or 3213 **shall not** automatically stay discovery, unless otherwise indicated by the Court.

## **RETURN DATES/SUBMISSIONS:**

### Mandatory Appearances:

All of the following motions shall be conferenced with the Court on their return date: motions riding with a compliance conference, **discovery related motions**, motions to amend or supplement pleadings, motions for joinder or consolidation, motions to restore, motions to withdraw as counsel, motions for preliminary injunction or an "extension" of a stay or restraining order and any motion where a party is seeking emergency relief and/or the immediate intervention of the court. **Oral argument on the record will not take place unless otherwise advised.**

Failure to appear at a calendar call may result in denial of any motion made by the non-appearing party, granting of any motion on default when the opposing party fails to appear, and/or any other relief authorized by 22 NYCRR § 202.27.

### Submission

Unless otherwise specifically required by the Court, there are no appearances on CPLR §3212 motions, CPLR § 3211 motions, unopposed motions made pursuant to CPLR §3215, and pro hac vice motions.

Motions that do not require an appearance shall be marked fully submitted on the return date, unless the Court notifies the parties otherwise.

### **ADJOURNMENTS:**

Adjournments of motions may be obtained only on consent of all parties. Consent to adjourn must be obtained as to any and all motions in chief and cross-motions riding therewith. Requests to adjourn must be made in a written letter, indicating the consent of all parties thereto, and must be e-filed or, if the case is not e-filed, faxed to 631-852-3854. The letter should include: full names of all parties, the index number, a return date on a Tuesday no later than 60 days from the current return date, unless granted permission otherwise by the Court, and the reason for the adjournment. The applicant will be notified only if the request is **denied**.

Where the consent of all parties cannot be obtained, an application shall be made by conference call, with all counsel, no later than 3:00 p.m. of the day preceding the scheduled motion or conference. No requests for an adjournment will be entertained without all parties participating in the conference call. If an adjournment dispute cannot be resolved by telephone conference, an adjournment application shall be made personally before the Court on the return date of the motion. Counsel must, upon appearance, affirm that all non-consenting parties received notice that such application would be made to the Court. In the event that a non-consenting party fails to appear to oppose the application for an adjournment, the Court may entertain a further application for costs against such non-consenting, non-appearing party.

Adjournments requested because of the actual engagement on trial of counsel must be accompanied by an Affirmation of Engagement in conformity with 22 NYCRR Part 125.

**SETTLED OR WITHDRAWN MOTIONS:** The Court is to be advised immediately, in writing, of the settlement or withdrawal of any motion or of any portion of any motion, and/or settlement of any underlying case having pending motions before the Court. The failure to do so is sanctionable. Written confirmation of the settlement or withdrawal must be e-filed or, if the case is not e-filed, faxed to 631-852-3854.

**POST NOTE MOTIONS:** No pre-motion conferences or motion conference appearances are required for any post-note of issue motions, unless otherwise directed by the Court.

**ORAL ARGUMENT:** If oral argument on a motion is required, parties shall be advised and it shall be scheduled by the Court.

### **PRELIMINARY, STATUS, AND COMPLIANCE CONFERENCES**

In all actions requiring same, there shall be a preliminary conference at which the parties shall enter into a Preliminary Conference Order, which will thereafter be “so ordered” by the Court, which schedules the disclosure necessary in a given case and sets forth a Compliance Conference date.

The progress of the parties in completing disclosure and pursuing settlement or other resolution of the action shall be reported to the Court at any and all Compliance Conferences which are scheduled thereafter.

At the final Compliance Conference, the parties shall be prepared to report to the Court the status of the parties’ efforts to settle or otherwise resolve the matter. **The parties will not be able to certify a matter as ready for trial if the status of settlement and other resolution efforts has not been reported, or is unknown, to the Court.**

If the case is not resolved, the parties shall execute a Certification Conference Order which certifies that all discovery is complete, provides for the date by which the Note of Issue must be filed, and schedules the Pre-Trial Conference. A copy of the Certification Order must be filed with the Note of Issue. No order shall be entered certifying a case as ready “subject to” the completion of disclosure at a future date without express permission of the Court.

### **ADJOURNMENTS OF DISCOVERY DEADLINES AND CONFERENCES**

Requests to adjourn conferences shall be on consent of all counsel. Adjournment requests shall **only** be made to the Court **in writing** and on consent. Such requests shall be limited to two (2) in number, and shall be submitted no later than **3:00 p.m.** on the date prior to the scheduled conference. The applicant will be notified only if the request is **denied**. Any applications for further adjournments must be made in person before the Court at the scheduled conference.

Matters that have exceeded the standards and goals for the completion of discovery defined in Part 202.19 of the Uniform Civil Rules for the Supreme Court and the County Court shall only be adjourned upon good cause shown.

**SCHEDULING:** Status and Compliance conferences shall be calendared on Wednesdays at 9:30 a.m. unless advised otherwise by the Court.

**SETTLEMENT CONFERENCES:** The parties, on consent, may schedule a settlement conference at any other time by contacting the Court. Settlement conferences shall be scheduled on a Monday or Thursday, and it is expected that for each party to the matter, counsel or another person with authority to settle the matter will be readily available at the conference.

## **TRIALS**

**JURY TRIALS:** A pre-trial conference with the Court shall be held immediately prior to the commencement of all jury trials. At or before the pre-trial conference, counsel shall supply the Court with marked pleadings and any amendments thereto and all bills of particular served in the action. Counsel shall further provide the Court with a list of proposed jury charges (referencing the PJI) and any proposed jury verdict sheet(s)\*\*. A list of all pre-marked exhibits shall also be provided to the Court and to the stenographer. Counsel shall advise the Court of the number of witnesses to be called and if any are to be experts, shall provide the information required by CPLR 3101(d)(1)(i).

All hospital records and other items in evidence that are in excess of fifteen (15) pages must be paginated before use in the trial. In all malpractice cases, each attorney in anticipation of the charge conference and verdict sheet preparation, must make available to the Court for review the departure and causation testimony contained in the trial transcript.

**NON-JURY TRIALS:** Non-jury trials will be governed generally by the same procedures and requirements set forth for jury trials. In addition, counsel shall submit, at or before the trial conference, a joint pre-trial order limiting and framing the issues to be tried. A pre-trial memoranda of law, not to exceed 15 pages in length and in which case law citations are provided, must also be submitted by each side. The parties shall be required to provide the Court with a transcript of the full trial, with the allocation of the cost of such transcript among the parties to be determined by the Court. The filing of a note of issue is a condition precedent to the commencement of any trial.

### **\*\*ALL E-FILED DOCUMENTS ON TRIALS:**

Any trial-related documents submitted to the Court, which will be marked as Court Exhibits, including but not limited to: marked pleadings, pre-trial documents, post trial

memorandums, proposed jury charges, and proposed verdict sheets, shall be e-filed prior to delivery to the Court and shall have the e-file confirmation page affixed to the document.

### **MISCELLANEOUS**

**INQUESTS/HEARINGS:** All inquests and hearings will be scheduled promptly, on such day and time as the Court's schedule permits and may be continued from day to day if necessary to accommodate other pending matters.

**INFANT COMPROMISE APPLICATIONS:** Any proposed infant compromise orders must be submitted to the Court through the Special Term, along with proof of service on all remaining parties. Counsel will then be notified of the date for the infant's appearance before the Court. All such appearances will be conducted at the Court's earliest convenience. No infant compromise orders will be signed unless they are accompanied by an appropriate medical report dated no earlier than six months prior to the date the order is submitted to the Court. The medical report must state whether the infant has made a full recovery and, if not, a detailed statement as to the nature and extent of the injuries and course of future treatment is required.

*Effective November 1, 2018*