IAS Part 20 Practices and Procedures

HON. VERONICA G. HUMMEL

Supreme Court of the State of New York
County of Bronx, Civil Term
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Bronx, NY 10451

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EFFECTIVE MARCH 27, 2023

Justice Hummel is no longer assigned to the Motor-Vehicle Part, IAS Part 31. Part 31's inventory has been transferred to the Hon. Patsy D. Gouldborne in Part 13. Accordingly, any request concerning a motor-vehicle case previously pending in Part 31 should be directed to Justice Gouldborne's chambers as permitted by her individual practices and procedures.

I. GENERAL

1. Substantive participation in court proceedings by women and diverse attorneys, who historically have been underrepresented in the bar, as well as by attorneys who have been practicing for less than five years, is **strongly encouraged**. A representation by letter that oral argument will be made by an attorney whose participation will enhance diversity or by an attorney admitted to practice for fewer than five years will weigh in favor of the Court deciding to hold oral argument on a motion. The letter shall identify the attorney and the portion of the motion that the attorney will argue.

2. All parties shall be familiar with the Uniform Civil Rules for the Supreme Court & the County Court, 22 N.Y.C.R.R. § 202 *et seq.* (the Uniform Rules). The Uniform Rules are available online at https://ww2.nycourts.gov/rules/trialcourts/202.shtml.

3. All cases and submissions in Part 20 shall be filed electronically through the New York State Courts E-Filing (NYSCEF) system. This rule does not apply to *pro se* litigants, although they are strongly encouraged to make use of e-filing through NYSCEF.

4. Attorneys, and *pro se* litigants who choose to use NYSCEF, shall be familiar with NYSCEF procedures. For assistance with NYSCEF e-filing, parties may contact the NYSCEF Resource Center during weekdays, from 8:00 a.m. to 5:30 p.m., at (646) 386-3033 or nyscef@nycourts.gov. *Pro se* litigants may create a NYSCEF account and access instructions for its use at https://iapps.courts.state.ny.us/nyscef/UnRepresentedHome.

5. **Until further notice, unless otherwise specifically notified, all Part 20 appearances, excepting trials, shall be virtual via Microsoft Teams.** Parties shall be familiar with the use of Teams, including the use of the conversation panel, and proficient in the use of the computer and video technology necessary for Teams conferences.

6. If the Court schedules a virtual appearance, chambers will send a Teams calendar invitation and link to the email addresses registered for service in NYSCEF. **No other notice of the appearance will be provided by chambers**. It is imperative, therefore, that parties ensure that their registered email addresses for service remain current in NYSCEF at all times. Attorneys must also register for eTrack for all Part 20 cases and regularly check eCourts for scheduled appearances. To create an eTrack account or to log into eTrack, please visit https://iapps.courts.state.ny.us/webcivil/etrackLogin. **Failure to appear at a scheduled virtual conference will be deemed a default under Uniform Rule 202.27 and may result in the imposition of sanctions, including, where appropriate, the dismissal of the complaint or striking of a pleading. Defaults will not be excused for lack of notice.**

7. In non–e-filed cases, *pro se* litigants and attorneys must provide contact information to chambers and the Part Clerk so that Teams invitations and links, as well as other important communications, can be sent to the parties.

8. **Part 20 is a paperless part.** No hard copies of motion or other filings shall be sent to chambers without prior approval.

9. Parties, including *pro se* litigants, are under a continuing obligation to notify the Court as promptly as possible should: (a) an action settle, be discontinued, or otherwise be disposed; (b) a motion be resolved, be withdrawn, or become wholly or partially moot; or (c) a party die or the filing of a petition in bankruptcy. The required notice shall be by letter e-filed to NYSCEF or, *as to* pro se *litigants only*, by email to courtattorneypart20bx@nycourts.gov.

10. **The Court does not manage or oversee discovery in cases filed in Part 20.** Preliminary, compliance, and discovery conferences, and any discovery-related motions, are handled by the Justice presiding in the DCM Part (Hon. Raymond P Fernandez). Accordingly, all inquiries concerning discovery in a Part 20 case shall be directed to the DCM Part. This does *not* include, however, rulings on disputes arising during a deposition, which disputes shall be directed to the Justice then on *ex parte* duty.

11. Attorneys shall have access to a laptop and NYSCEF for all virtual and in-person appearances.

II. COMMUNICATIONS WITH CHAMBERS

12. Inquiries concerning scheduling, appearances, adjournments, and case status shall be directed to the Part Clerk (bxsupciv-ia20@nycourts.gov). Do *not* contact the Part Clerk concerning the status of a decision on a motion. Neither the Part Clerk nor the Court will provide such information or estimate when a decision might issue.

13. **All communications with chambers shall be by letter filed to NYSCEF.** Chambers receives immediate notification of such filings and will promptly review them and, if necessary, respond.

14. **Parties shall *not* telephone chambers.** The *only* exception to this rule is emergency situations requiring immediate Court intervention. If a call is not answered, leave a voicemail message with your name, telephone number, email address, index number, and a short explanation of the issue, and chambers will return your call as soon as possible.

15. **Parties shall *not* email chambers or the law clerks.** The exceptions to this rule are: (a) responding to an email from chambers or the law clerks; (b) the parties

have received prior Court permission; or (c) an email is expressly authorized in these rules. If an email to chambers is authorized, all parties must be copied to avoid *ex parte* communication. **Justice Hummel shall *not* be included on any emails sent to chambers.**

16. Chambers does *not* accept faxes.

III. ADJOURNMENTS

17. All requests for an adjournment shall be made by letter e-filed to NYSCEF. Requests made by email or telephone will not be considered. This rule does not apply to *pro se* litigants, however, who may request an adjournment by email to courtattorneypart20bx@nycourts.gov. The Part Clerk is not authorized to grant adjournments.

18. **Appearances.**

a. All adjournments of a conference, oral argument, hearing, trial, or other appearance require prior Court approval.

b. Requests to adjourn a conference, oral argument, or hearing must be made at **least 48 hours** prior to the scheduled date and time. Unless the reason for a request made within 48 hours of the scheduled appearance is truly an emergency, such a request will be denied.

c. Any adjournment request must state: (i) whether the request is on consent of all parties; (ii) the reason for the request; and (iii) the length of the adjournment sought. Requests that do not contain the required information will be denied.

d. An appearance will not be adjourned simply because all parties consent; adjournment remains within the Court's discretion. If an adjournment request is opposed, a responsive letter shall be e-filed to NYSCEF **within 24 hours**, and the failure to do so will result in the waiver of any objection.

e. The Court will advise the parties by e-filed Court Notice whether the requested adjournment has been granted or denied.

f. For adjournment requests concerning a trial, please see *infra* Section VII.

19. **Motions.**

a. Motions may be adjourned by stipulation, subject to Uniform Rules 202.8(e)(2) and 202.8-a(c). Specifically, without a Court order, a motion may *not* "be adjourned on consent more than three times or for a cumulative total of more than 60 days." The Motion Support Office (Room 217) is not authorized to grant an adjournment that exceeds those permitted on consent under the Uniform Rules.

b. Any request to adjourn a motion in excess of the adjournments permitted on consent under the Uniform Rules must state: (i) whether the request is on consent of all parties; (ii) the reason for the request; and (iii) the length of the adjournment sought. Requests that do not contain the required information will be denied.

c. A motion will not be adjourned simply because all parties consent; adjournment remains within the Court's discretion. If an adjournment request is opposed, a responsive letter shall be e-filed to NYSCEF **within 24 hours**, and the failure to do so will result in the waiver of any objection. Parties should *not* assume that an adjournment request will be granted, especially if the request is made near the relevant deadline or after that deadline has already passed.

d. The Court will promptly advise the parties by e-filed Court Notice whether a requested adjournment has been granted or denied. **Denial of an adjournment after a deadline has already passed will not alter that deadline.**

IV. CONFERENCES

20. As previously stated, Part 20 does not conduct discovery-related conferences. All such conferences are conducted by the DCM Part. Do *not* contact chambers seeking to conference a discovery issue.

21. The Court is available to conduct settlement conferences in all actions pending before Part 20 at any stage of the litigation. Before the Court will schedule a settlement conference, however, all parties must first agree to the conference and its usefulness.

22. All requests for a settlement conference shall be made by stipulation or letter e-filed to NYSCEF. Requests made by email or telephone will not be considered. This

rule does not apply to *pro se* litigants, however, who may request a settlement conference by email to courtattorneypart20bx@nycourts.gov.

23. If a request for a settlement conference is made by letter rather than by a stipulation signed by all parties, the request shall expressly indicate whether all parties have been consulted and agree that the conference may serve to advance the case toward settlement or other resolution. Requests that omit this information will be denied.

24. Settlement conferences will be scheduled by the Court according to its availability.

25. Pursuant to Uniform Rule 202.1(f), attorneys who appear for a settlement conference (*or any other conference before Part 20*) must be fully familiar with the facts and circumstances of the case and authorized to enter into binding agreements on behalf of their clients. Clients and/or adjusters must be available by telephone during the conference. Failure to comply with this rule—*including by sending a per diem attorney lacking knowledge or authority*—may be regarded as a default under Uniform Rule 202.27 and result in appropriate sanctions against the attorney of record.

V. MOTIONS

26. **Motions on Notice.**

a. Motions brought on notice are returnable Monday through Friday in the Motion Support Office (Room 217).

b. **Working copies of e-filed motion papers shall *not* be submitted.** This rule does not apply to video or other similar media filed in connection with a motion. These materials shall be mailed to chambers on CD or flash drive, and a duplicate copy shall be sent to all other parties to the case. The CD or flash drive shall be clearly labeled with the corresponding index number, motion sequence, and exhibit letter/number. In NYSCEF, the party submitting the media exhibit shall file a placeholder exhibit indicating that a copy of the video was sent to chambers, along with an affidavit of service indicating that the CD or flash drive was served on opposing counsel. Failure to properly submit and file the foregoing may result in a delay in deciding the motion.

c. All motion filings shall conform with the applicable requirements of the CPLR and Uniform Rules 202.5, 202.8, 202.8-a, and 202.8-b. The word limits contained in Uniform Rule 202.8-b(a) shall be strictly enforced, and

any portion of a filing that exceeds the word limit will be disregarded in deciding the motion.

i. Requests to expand the word limit for any particular filing shall be made well in advance of the deadline for that filing. The Court grants expansion requests sparingly, only upon good cause shown, and any expansion will very likely be less than requested. Expansion requests made on the eve of the filing deadline will not be viewed favorably, and no adjournments will be granted solely on the basis of a denial of an expansion request. Attorneys are, therefore, strongly encouraged to determine at a very early stage in the drafting process whether an expansion of the word limit may be necessary and to make the request promptly. The Court will inform a requesting party whether the expansion is granted or denied by e-filing of a Court Notice.

d. Motion filings must include the contact information of the filing attorney or *pro se* litigant, **including a current email address**.

e. Parties shall individually upload and identify by concise label all motion papers, including exhibits (*e.g.*, "Plaintiff's Deposition Transcript," "Police Report," etc.).

f. Because Part 20 does not handle discovery disputes, no discovery motion shall be joined with a substantive motion. If this rule is violated, the motion will be denied with leave to renew as two or more separate motions. Discovery motions shall be filed separately and addressed to the Justice presiding in the DCM Part.

g. Motions are generally decided on submission (*i.e.*, on the papers). If the Court believes that oral argument on a particular motion may prove useful, the Court will schedule oral argument according to its availability and circulate a Microsoft Teams calendar invite and link to the parties' registered email addresses.

i. As previously noted, parties may request oral argument by letter e-filed to NYSCEF, and a representation in any such letter that the motion will be argued, in whole or in part, by a diverse or newly admitted attorney will be looked upon favorably when deciding whether to schedule oral argument.

h. The filing of any motion shall *not* stay discovery. A stay of discovery may be requested separately for good cause shown; however, such stays will be granted rarely.

i. If a Court order requires that the County Clerk make an entry to or amend the docket (*e.g.*, the order directs the amendment of the caption), the moving party shall e-file to NYSCEF a completed form EF-22 (CPLR § 8019(c)), available online at https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf.

j. ***Motions for Summary Judgment.***

i. All motions for summary judgment must be filed **within 60 days** of the filing of the Note of Issue.

ii. Unless sufficient justification is demonstrated,[1] or unless expressly authorized by the Court in a prior order, each party shall be afforded only *one* opportunity to make a motion for summary judgment. Otherwise, a successive motion for summary judgment will be denied.

iii. All motions for summary judgment shall be accompanied by a Uniform Rule 202.8-g(a) statement of material, undisputed facts (SOMF). Motions filed without an SOMF will be denied with leave to renew.

iv. Opposition to a motion for summary judgment shall be accompanied by a Uniform Rule 202.8-g(b) SOMF responding to the movant's SOMF. **Parties are hereby on notice that failure to submit a responsive SOMF will result in all properly supported statements of fact contained in the moving SOMF being deemed admitted.**

v. Pursuant to Uniform Rule 202.8-g(d), "[e]ach statement of material fact by the movant or opponent . . . must be followed by citation to evidence submitted in support of or in opposition to the motion." The Court construes this requirement strictly. If, in any paragraph in the moving SOMF, the movant fails to cite to evidence submitted in

[1] *See Maggio v. 24 W. 57 APF, LLC*, 134 A.D.3d 621, 625 (1st Dep't 2015) ("Successive motions for summary judgment should not be entertained without a showing of newly discovered evidence or other sufficient justification.).

support of the motion, then that paragraph or particular fact, as the case may be, will not be afforded any weight whatsoever and will not be deemed admitted if the opponent fails to submit a responsive SOMF. Likewise, if, in any paragraph in the responsive SOMF, the opponent fails to cite to evidence submitted in opposition to the motion, then that paragraph or particular fact, as the case may be, will be deemed admitted. In other words, a responsive SOMF paragraph that simply states "Denied," "Premature," or "Lacks Knowledge," or provides a similar response as if the moving SOMF were a pleading or discovery demand, is insufficient and will not prevent the corresponding paragraph or fact from being deemed admitted.

27. **Motions by Order to Show Cause.**

a. Pursuant to Uniform Rule 202.8-d, motions may be brought by Order to Show Cause (OTSC) *only* when: (i) there is genuine urgency (*e.g.*, applications for provisional relief); (ii) a stay is required; or (iii) a statute mandates proceeding by OTSC. If the OTSC fails to demonstrate that at least one of these circumstances applies, the OTSC will be denied with leave to renew as a motion on notice.

b. In any signed OTSC, the Court will indicate: (i) on whom the movant must serve the signed OTSC, the method of service, and the deadline(s) for completing such service; (ii) the deadline for e-filing proof of service to NYSCEF; (iii) whether reply papers are authorized (*see* Uniform Rule 202.8-d); and (iv) whether appearances and oral argument will be required on the motion and, if so, when, where, and how such oral argument will take place.

i. If the Court does not indicate in the signed OTSC that an appearance is necessary, *then no appearance is necessary*, and the motion will be decided on the papers, unless the Court subsequently decides that oral argument is necessary. In that case, the Court will contact the parties to scheduled oral argument.

ii. If the movant does not comply literally with the service directed in the signed OTSC, or fails to e-file proof of service by the deadline set in the signed OTSC, the motion will be denied.

iii. To facilitate service, the attorney affirmation in support of the OTSC *must* include, to the extent known, email addresses for all parties that are required to be served with respect to the relief requested in the OTSC.

c. **OTSCs with TRO Requests.**

i. OTSCs containing requests for temporary restraining orders (TRO) will generally not be heard *ex parte*. *See* Uniform Rule 202.7(f), 202.8-e. In the absence of significant prejudice, a movant seeking a TRO must email their motion papers to opposing counsel and the Court (courtattorneypart20bx@nycourts.gov) **at least 24 hours** prior to when the movant wishes to be heard on the application. The movant must then immediately e-file proof of service of such notice to NYSCEF. The proof of service *must* contain opposing counsels' email addresses. Failure to e-file proof of service of such notice may result in delayed consideration of the TRO application or even outright denial.

ii. Pursuant to Uniform Rule 202.8-e, "[u]nless the moving party can demonstrate significant prejudice by reason of giving notice, or that notice could not be given despite a good faith effort to provide notice, a temporary restraining order should not be issue ex parte." Thus, if a movant wishes its TRO application to be heard *ex parte*, the movant must e-file an affidavit justifying the request accordingly. If *ex parte* relief is authorized or warranted, the movant must still email the application papers to the Court as soon as practicable.

iii. After receiving the required email from the movant providing the OTSC papers, the Court will notify the parties: (1) when letters in opposition to the TRO application must be e-filed and emailed to the Court; and (2) when a virtual conference via Microsoft Teams or, if deemed necessary, an in-person appearance will be held to the address the application. The Court will simultaneously provide the parties with a Teams invitation and link. Please note that, absent an emergency, if notice of the TRO application is provided on a Friday, the Court may not hear the application until the following week. Further, the ability to file a letter in opposition to the TRO

application shall be without prejudice to submitting formal opposition.

VI. INFANT COMPROMISE ORDERS

28. An Infant Compromise Order (ICO) is required to settle or otherwise discontinue the claims of an infant plaintiff. ICO applications are governed by CPLR §§ 1207 and 1208, Judiciary Law § 474, and Uniform Rule 202.67. If an ICO application does not strictly comply with the requirements set forth in these provisions, approval of the ICO will be delayed until full compliance is reached through additional or amended submissions.

29. Where an action has already been initiated by the filing of a Summons and Complaint, an ICO should be sought through an *ex parte* application filed to NYSCEF using the label "Infant Compromise Order (Proposed)." Where no action has yet been initiated, the ICO should instead accompany the filing of a petition initiating a special proceeding. Where a petition is used, the petition must take the form of a pleading.

30. **All ICO applications must be supported with the following documents:**

a. A proposed ICO

i. In addition to e-filing the proposed ICO to NYSCEF, the movant shall also send a Word-format copy of the proposed ICO to the Court by email (courtattorneypart20bx@nycourts.gov).

ii. The proposed ICO shall provide the name and address of a savings bank (as opposed to a commercial bank) in Bronx County in which the settlement funds will be deposited.

b. Attorney affirmation

i. Must include the information mandated by CPLR § 1208(b) and Uniform Rule 202.67(d).

ii. To the extent not already mandated by CPLR § 1208(b) and Uniform Rule 202.67(d), the attorney affirmation must also address: (1) the amount of available insurance, including excess insurance; (2) whether there are any applicable liens and their amount; and (3) whether the guardian or others involved in the accident received

settlements and, if so, the others' injuries and the amount paid to each.

c. Guardian affidavit

i. Must include the information mandated by CPLR § 1208(a) and Uniform Rule 202.67(b).

ii. To the extent not already mandated by CPLR § 1208(a) and Uniform Rule 202.67(b), the guardian affidavit must also: (1) state the guardian's relationship to the infant; (2) specifically set out the medical treatment that the infant received, the names of the physicians rendering the treatment, the charges incurred for the treatment, and whether any balance remains due on those charges; (3) waive the guardian's claim, if any, for loss of the infant's services.

iii. Like any affidavit, the guardian affidavit must be notarized.

d. Medical or hospital report(s), as mandated by CPLR § 1208(c).

e. Physician affirmation

i. In addition to the medical or hospital report(s) mandated by CPLR § 1208(c), the Court also *requires* an affirmation from a physician who has examined the infant recently. The affirmation must: (1) address whether the physician reviewed the infant's prior medical records; (2) specify in detail the infant's injuries resulting from the accident; (3) describe the treatment the infant received; and (4) state whether the physician believes the infant has made a full recovery or requires additional treatment.

ii. Failure to submit a physician affirmation with an ICO application will delay approval of the ICO.

f. Infant-consent affidavit

i. An affidavit from the infant attesting to his or her understanding of the settlement and consenting to it is *only* required if the infant is 14 or more years old.

ii. To maintain the anonymity of the infant, the infant's first and last initials should be used in place of the infant's full name, including when the infant signs the affidavit.

iii. Like any affidavit, the infant-consent affidavit must be notarized.

31. Additional supporting exhibits may include: (a) the infant's birth certificate; (b) a police accident report; (c) a settlement offer letter or other such correspondence; (d) a lien letter; and (e) proof of the applicable insurance policy limits, including, if applicable, excess insurance.

32. **An ICO application involving a structured settlement must be supported by the following additional documents (in addition to the documents listed above in paragraph 30):**

a. Structured settlement broker's affidavit;

b. Proposed settlement agreement;

c. Proposed assignment agreement;

d. Proposed annuity contract;

e. Proposed guaranty agreement; and

f. Accepted structure (annuity) proposal and at least two rejected alternative structure proposals for the same cost and payout terms as the accepted proposal.

33. The infant's full name (other than initials) and date of birth (other than year) shall be **redacted** in **all** e-filed documents.

34. Where there are multiple infants whose claims are sought to be compromised in an action, a separate ICO application must be filed, and a separate filing fee paid, for each infant.

VII. TRIALS

35. Trials are assigned to Part 20 under the direction of the Special Trial Part (STP). When STP assigns a trial to Part 20, it does so by order that the parties and their witnesses are ready for trial from the time of assignment through the conclusion of the trial. **Accordingly, all attorneys, parties, and witnesses shall be ready to**

proceed with trial on the assignment date and to continue day-to-day until verdict. If any party is not ready to proceed with trial, prior to being assigned, that party shall inform the Justice presiding in STP so that he or she may make the appropriate ruling.

36. All trials shall begin promptly at 9:30 a.m. and end at 4:45 p.m. Trials will break at 12:45 p.m. and resume at 2:15 p.m.

37. Trials shall be conducted on a continuous daily basis beginning after jury selection is complete.

38. Adjournments of trials shall be granted only upon *extraordinary* and *unanticipated* circumstances. The unavailability of a witness whose testimony was known to be necessary to a party's case prior to the assignment of the case to Part 20 for trial will *not* constitute such a circumstance.

39. **Pre-Trial Conference.**

    a. Regardless of the type of trial (bench, summary jury, or jury), the Court will hold an **in-person** pre-trial conference with the parties' attorneys **on the day of assignment**.

    b. During the pre-trial conference, the attorneys shall be prepared to:

        i. Discuss the case, including any anticipated issue of fact and law, and present in a short statement each party's position.

        ii. Discuss the current settlement offer and demand and potential settlement of the case.

        iii. Discuss and resolve any anticipated evidentiary issue and motions *in limine*.

        iv. Identify all anticipated witnesses and the dates and times of their availability.

        v. Stipulate to undisputed facts and the admissibility of clearly admissible documents.

        vi. Identify any defaulting parties or any culpable nonparties against whom liability is sought to be apportioned.

vii. Make any special requests, such as requests for an interpreter, media or other technology equipment, etc.

viii. Discuss the length of time needed for jury selection.

c. **Any pre-trial issues, including motions *in limine*, not raised during the pre-trial conference may be deemed waived**.

40. **Summary Jury Trials.**

a. Summary jury trials are governed by the rules promulgated by the 12th Judicial District, located at https://ww2.nycourts.gov/COURTS/12jd/BRONX/Civil/filingrules.shtml#summary.

41. **Bench and Jury Trials.**

a. Although there shall be no time limit imposed upon jury selection, the attorneys shall select a jury as expeditiously as possible.

b. No later than the end of the first day of jury selection, if a jury trial, or the end of the day of the pre-trial conference, if a bench trial, the parties shall exchange and submit to the Court, by both e-filing to NYSCEF and email, the following:

i. Marked pleadings.

ii. A written witness list, including whether the witness is a fact or expert witness, the anticipated order in which each witness will testify, and the anticipated length of direct examination.

iii. Expert reports.

iv. A written list of any deposition testimony designations and cross-designations, including the pages and lines, as well as full copies of each transcript.

v. Any stipulations as to undisputed facts and the admissibility of documents.

vi. If a jury trial:

1. Proposed verdict sheets.

2. Proposed introductory and closing jury charges, including the text of the applicable PJI instructions from the most current volume. If a party proposes that a PJI instruction be modified, the complete PJI instruction must be submitted to chambers in Word format with the proposed amendment clearly visible in redline. Appropriate caselaw citations must also be provided in support of any proposed amendment to a PJI instruction. PJI instructions are not modified unless good cause is shown.

c. Prior to the charging conference, the parties shall exchange updated proposed jury charges and verdict sheets and meet and confer regarding any objections**. The parties shall work together to craft a mutually agreeable verdict sheet and list of proposed charges**. At the charging conference, the parties shall be prepared to discuss only those proposed jury charges that are *not* agreed upon in advance.