

**JUSTICE BEN BARBATO**  
**Part 21 Court Rules**<sup>1</sup>

Supreme Court of the State of New York  
12 Judicial District-Bronx County  
851 Grand Concourse Boulevard  
Bronx, New York 10451  
SJT Part 21, Room: 704  
Part Phone: (718) 618-1205  
Chambers: (718) 618-1557<sup>2</sup>  
Principal Law Clerk/Court Attorney: Fidel E. Gomez, Esq.  
Part Clerk: Robert Lupano

**Inquiries**

- All inquiries should be made to the appropriate clerk's office when possible. Inquiries should only be directed to chambers when attempts to resolve a matter with the appropriate clerk prove fruitless.
- Facsimiles to chambers are not permitted unless prior authorization is obtained.
- E-mail correspondence with chambers staff is not permitted unless prior authorization is obtained.
- Attorneys shall not call chambers during the daily lunch hour which is from 1PM to 2 PM.

**Motion Procedure**

**Generally**

- All papers must comply with CPLR §§2101, 2103 and 2214.
- Tabs must be used when submitting exhibits with any motion.
- All cited material shall be fully viewable without having to remove staples or binding.
- All submissions shall be fully and securely bound.
- No exhibits shall be double sided.
- Courtesy copies shall not be submitted unless requested.
- 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 motion papers will be considered exhibits, treated as such, and may be disregarded.
- Failure to appear at a calendar call will result in denial of any motion made by the non-appearing party and the granting of any

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<sup>1</sup> These rules are effective January 1, 2017.

<sup>2</sup>.Although the number to chambers has been provided use of said number is subject to the limitations set forth herein.

motion on default when the opposing party fails to appear.

●Counsel must advise the Court in writing and as soon as practicable if any submitted motions have been resolved, withdrawn, or if the motion is moot because the case has been settled.

●This part generally only entertains substantive non-discovery motions. However, this part will entertain motions for pre-action and non-party discovery.

●No motion for substantive relief shall be joined with any application for discovery. Discovery related motions are heard by the Judge presiding in the DCM Part, IAS Part 11. In the event that a party makes a discovery cross-motion in response to a substantive motion, the Court shall refer the discovery related application to the DCM Part, IAS Part 11 and upon resolution of the discovery motion, shall resolve the substantive motion.

**●Effective January 1, 2017, 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.**

●Generally, the Court shall not mail courtesy copies to all parties of all decisions rendered. Once issued, decisions can be obtained online at <http://bronxcountyclerkinfo.com/law/UI/Admin/login.aspx>.

●With respect to foreclosure matters where the Court appoints someone to handle an aspect of the case, and since decisions on matters pursuant to the Mental Hygiene Law cannot generally be obtained online, the Court shall provide copies of such decisions by mail.

●No sur-replies shall be considered absent leave of court to interpose the same.

**●Without exception all motions shall be securely bound and all exhibits submitted in support of any motion shall be one sided. Failure to adhere to this rule shall result of denial of the motion.**

#### **Motions Brought by Notice of Motion**

●Motions are returnable five (5) days a week in the Motion Support Office, Room 217. All opposition and reply papers must be submitted to the Motion Support Office on the return date of the motion. Opposition and reply papers will not be accepted prior to or after the return date.

●All non-disclosure motions will be deemed submitted on the return date.

●Stipulations of adjournment, compliant with the Uniform Court Rule §202.8(e) (1), submitted in Room 217 on the return or adjourned date of a motion, will be honored and the motion will be adjourned and kept in the Motion Support Office.

●Applications seeking an adjournment shall only be made upon failure to procure an adjournment on consent of all parties. Upon

such application, the motion and application will be forwarded to chambers for a ruling. Counsel will be advised of the ruling by telephone.

- Oral applications seeking an adjournment will not be considered.
- There shall be no oral argument and no personal appearance is required on any motion brought by notice of motion.

#### **Motions Brought by Order to Show Cause**

- Orders to Show Cause must comply with Uniform Rule 202.7(d) and be brought to the Motion Support Office. Thereafter, They are forwarded to chambers for consideration.
- All Orders to Show Cause are returnable on Mondays, except for court holidays, in IAS Part 21 at 10 AM, unless otherwise indicated. Personal appearances are required.
- Proof of service must be filed with the Clerk of IAS Part 21 by 10AM on the return date. Non-compliance will result in denial of the order to show cause.
- Stipulations adjourning an Order to Show Cause shall be filed with the Clerk of IAS Part 21 prior to the call of the calendar or can be faxed to chambers prior to the return date with prior approval.

#### **Infant Compromises and Other Ex Parte Applications**

- Ex Parte applications are to be submitted to the Motion Support Office.
- After review of Infant Compromise submissions, counsel will be notified when to appear by phone. Counsel shall also be notified of any deficiencies in the papers submitted and shall when appropriate, be given an opportunity to submit additional information to cure the deficiency.
- The infant and his guardian must be present on the date scheduled unless a prior waiver of their appearance has been obtained.
- All proposed infant compromise orders shall contain the following language:

It is further Ordered that the Guardian shall, within thirty days of the deposit of the funds due the infant herein in the above designated bank(s), submit to the Clerk's Office, Room 217, a copy of the Certificate of Deposit issued by said bank.

- The attorney's supporting affirmation shall set forth the policy limits of all available insurance.
- All infant's Compromise submissions shall comply with CPLR §§1207, 1208 and Uniform Rules §202.67.
- The Court will not entertain an Infant's Compromise Order where the medical evidence submitted is wholly inappropriate, e.g., a chiropractor rendering an opinion with regard to a wrist fracture,

an internist rendering an opinion regarding psychic trauma.

### **Summary Jury Trials**

●In addition to the rules promulgated by 12<sup>th</sup> Judicial District, w h i c h c a n b e f o u n d h e r e : <https://www.nycourts.gov/courts/12jd/bronx/civil/pdfs/THE%20SUMMARY%20JURY%20TRIAL%20PROCESS.pdf>., Summary Jury Trials shall also be governed by the rules hereinafter.

●Evidentiary Hearings shall be held before Fidel Gomez, Esq. Parties should have reviewed each others submissions in advance so as to quickly apprise Mr. Gomez about all evidence, PJI instructions, and verdict sheet provisions to which they agree. Any issues requiring a ruling by the Court shall be resolved by Mr. Gomez. As is a party's right, if any party refuses to be bound by Mr. Gomez' ruling, Judge Barbato will then make a final ruling.

●With rare exceptions, the contents of the Evidentiary Hearing Order shall be final with regard to jury charges, verdict sheets, and evidence to be presented at trial. Accordingly, please some prepared with all pertinent evidence you wish to have the Court submit to the jury and any authority in support thereof. The Court shall only consider post-hearing submissions and will only engage in post-hearing rulings under extraordinary and unanticipated circumstances.

●Any medical reports submitted to jury shall be bereft of any affirmations pursuant to CPLR 2106.

●Unless agreed to, any police reports presented to the jury shall be bereft of any hearsay information such as diagrams and descriptions of the accident. Such information, however, will be allowed if subject to a hearsay exception.

●Any documentary evidence submitted to the jury shall be bereft of any personally identifying information and any reference to insurance.

●Provided that they are not voluminous, cumulative or duplicative, demonstrative evidence such as charts, diagrams and models can be shown to the jury at trail.

●The only medical dictionary allowed to be used at trial and from which definitions can be read to the jury is Stedman's Medical Dictionary.

●Trials will start at 9AM sharp and parties and witnesses should arrive by 8:45AM.

●Should plaintiff fail to appear for trial, the case shall be dismissed. Should defendant fail to appear for trial, plaintiff shall be granted a default judgment and the trial shall proceed solely on the issue of damages and serious injury.

●Adjournments, specially of trials, shall be sparingly granted and only upon extraordinary and unanticipated circumstances.

●While the parties' requested jury charges and proposed verdict sheets shall be reviewed, and arguments in support thereof

entertained, the Court, by virtue of its experience, has standard charges for virtually all the cases tried before it. Unless the specifically circumstances warrant, the Court will not generally depart from its standard jury charges or verdict sheets.

●Should a party choose to produce a doctor at trial, that doctor's records cannot also be made part of the evidentiary hearing packet given to the jury.

### Trials

●Be prepared and well organized. Be punctual and professionally attired. Be civil to the Court and to one another.

●Prior to jury selection, counsel must ascertain the availability of all witnesses and subpoenaed documents. Counsel shall request the subpoenaed records and clerk's file as soon as possible after assignment to this Part.

●The Court will work with attorneys to resolve scheduling conflicts. However, all scheduling concerns and issues should be promptly discussed during the first conference.

●Any special requests, such as interpreters, blackboards, media equipment, shall made well enough in advance so as to not delay the trial.

●There shall be no time limits imposed upon the jury selection process but it is expected that the attorneys will select a jury as expeditiously as possible.

●When the case is first conferenced, plaintiff must submit a copy of the marked pleadings and all parties must submit copies of the proposed verdict sheet and requested jury instructions. Parties are allowed to amend any such submissions as the trial unfolds. Parties shall also furnish the Court with copies of any statutes that the parties claim are relevant to a particular case.

●Parties must provide the Court with copies of all transcripts to be used during the trial prior to their use at trial. Portions of any depositions to be read into evidence on a party's case in chief must be disclosed in advanced and the Court and all parties must be provided with all page and line numbers for the portions to be read.

●Parties shall provide the Court copies of all expert exchanges and reports.

●When the case is first conferenced in the Part, parties shall

■Alert the Court to all anticipated issues of law and fact and provide the Court with the relevant law applicable to their case.

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

■Apprise the Court of any anticipated motions *in limine*.

■Provide the Court with a list of anticipated witnesses.

■Provide the Court with any subpoenas it wishes to the Court to so-order, provided the same are relevant to the issues at hand.

- Alert the Court to any anticipated missing witness or document charge.
- Alert the Court as to the existence any defaulting parties or any culpable non-parties against who liability is sought to be apportioned.
- Motions *in Limine* should be supported by case law and copies of the same must be provided to the Court prior to the making of such motion.
- All trial exhibits must be pre-marked for identification, as well as any records stipulated in evidence.
- During the trial none of the attorneys, witnesses, or parties are to have any communication with the jurors.
- Speaking objections are prohibited. An objection shall be made by standing, saying "objection" and thereafter succinctly stating the basis for the objection. If the objection requires elaboration, parties should request a sidebar.
- Please keep requests to approach the bench during a trial to a bare minimum.
- While opportunity to preserve and make a record may not always be allowed when requested, all attorneys shall ultimately be granted ample opportunity to make a record.
- Any item which is sought to be shown to a witness must first shown to opposing counsel.
- Do not interrupt witnesses during examination, unless the answer is completely unresponsive and only then upon seeking a ruling from the Court.
- Due to the Court's motion calendar, there shall be no trials on Monday mornings.
- Due to the Court's Mental Hygiene Inventory, there shall be no trials conducted on Tuesdays and on some Fridays.