HON. MARY ANN BRIGANTTI

Part Rules: Part IAS-25 (Revised February 2024).

851 Grand Concourse, Bronx, NY 10451, Courtroom 407

Part Clerk: (718) 618-1252

I. GENERAL RULES

1. Communications with Chambers

Under no circumstances will *ex parte* communications be accepted.

Telephone calls to Chambers are permitted ***only*** in emergency situations requiring immediate attention. 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.

Any letters or emails sent to the Court shall copy all parties to the case.

2. Appearance by Counsel with Knowledge and Authority

Counsel appearing before the court must be familiar with the case with regard to which they appear and be fully prepared and authorized to discuss and resolve the issues which are scheduled to be the subject of the appearance. It is important that Counsel be on time for all scheduled appearances, remote or otherwise.

In addition, all Counsel, at any stage of the case, must be prepared for settlement discussions and have their client or adjuster "on call" by telephone.

Failure to comply with this rule may be treated as a default for purposes of Rule 202.27 and/or may be treated as a failure to appear for purposes of Rule 130.2.1. (See Section 202.1 Uniform Civil Rules for the Supreme Court and the County Court [subdivisions (f) and(g)]).

3. Settlements and Discontinuances

If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the assigned judge or court part by submission of a copy of the stipulation or a letter directed to the clerk of the part along with notice to the chambers of this Part via email (at mpomerantz@nycourts.gov and jastone@nycourts.gov). This notification shall be made in addition to the filing of a stipulation with the county clerk.

Counsel, including self-represented litigants, are under a continuing obligation to notify the court as promptly as possible in the event that an action is settled, discontinued or otherwise disposed of or if a case or motion has become wholly or partially moot, or if a party has died or

filed a petition in bankruptcy. Such notification shall be made to this Part in writing within two weeks of said event or earlier. (Section 202.28 Discontinuance of Civil Actions and Notice to the Court).

4. Electronic Submission of Papers

Papers and correspondence filed by fax shall comply with the requirements of section 202.5 except that papers shall not be submitted to the court by fax without advance approval of this Part. Papers and correspondence sent by fax or submitted electronically **should not be followed by hard copy unless requested**.

In cases not pending in the court's Filing by Electronic Means System, the court may permit counsel to communicate with the court and each other by e-mail. Papers and correspondence filed by fax shall comply with the requirements of section 202.5 except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. In the court's discretion, counsel maybe requested to submit memoranda of law by e-mail or by other electronic means, such as by a computer flash drive, along with an original and courtesy copy. (Section 202.5-a of the Uniform Civil Rules for the Supreme Court and the County Court subsection [a] and [b]).

5. Form of Papers

The party filing the first paper in an action, upon payment of the proper fee, shall obtain from the county clerk an index number, which shall be affixed to the paper. The party causing the first paper to be filed shall communicate in writing the county clerk's index number forthwith to all other parties to the action. Thereafter such number shall appear on the outside cover and first page to the right of the caption of every paper tendered for filing in the action. Each such cover and first page also shall contain an indication of the county of venue and a brief description of the nature of the paper and, where the case has been assigned to an individual judge, shall contain the name of the assigned judge to the right of the caption. In addition to complying with the provisions of CPLR 2101, every paper filed in court shall have annexed thereto appropriate proof of service on all parties where required, and if typewritten, shall have at least double space between each line, except for quotations and the names and addresses of attorneys appearing in the action, and shall have at least one-inch margins. In addition, every paper filed in court, other than an exhibit or printed form, shall contain writing on one side only, except that papers that are fastened on the side may contain writing on both sides, and shall contain print no smaller than 12-point, or 8 ½ x 11-inch paper, bearing margins no smaller than one inch. The print size of footnotes shall be no smaller than 10 point. Papers that are stapled or bound securely shall not be rejected for filing simply because they are not bound with a backer of any kind. Do not submit a hard copy of papers filed in an electronically filed case.

Each electronically submitted memorandum of law, affidavit and affirmation, exceeding 4500 words, shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document (see Subdivision (a) of section 202.5of the Uniform Civil Rules for the Supreme Court and the County Court).

6. 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. 1252).

7. Availability of Decisions and Orders

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

8. Remote appearances via Microsoft Teams

Microsoft Teams is an audio video communication and cooperative platform that the Courts use for their conferences. Microsoft Teams has many features conducive to having an informative session, for example break out rooms for private settlement discussions and a shared screen feature to present and enlarge pdfs, photos, and other documents for all parties to view. The download is free. The training is available in the virtual court resource center at the NY court portal website. Take advantage of this resource. For more information, please visit nycourts.gov/appear.

In the event that a conference is scheduled by the Court, please be aware of the following requirements. First, all parties are required to appear for the conference unless specifically excused by the Court (Section 202.23[b]). Tardiness may result in a default. In order for the court to be able to address any and all matters of concern to the court and in order for the court to avoid the appearance of holding *ex parte* communications with one or more parties in the case, even those parties who believe that they are not directly involved in the matter before the court must appear at the appointed date and time assigned by the court unless specifically excused by the court. Second, each attorney who receives notification of an appearance on a specific date and time is responsible for notifying all other parties by e-mail that the matter is scheduled to be heard on that assigned date and time (Section 202.23[c]). Finally, requests for adjournments shall be transmitted in writing to the court and to all parties no later than 48 hours before the conference, and shall set forth whether the other parties consent to the adjournment (Section 202.23[d]).

Proper attire for all participants is required for conferences. Prior to the conference, please make sure that you are in a quiet, office-like environment—**NOT** a motor vehicle, have access to your computer and case file, and that your camera and microphones are in working order. It is best if the Judge can see all parties and for the parties to see one another. If you are not speaking, please mute yourself. Finally, please make sure that your equipment does not produce an echo.

9. Settlement Conferences

At any time during the pendency of an action, as long as all parties sign a Stipulation requesting a settlement conference, the Court will be available to facilitate settlement

conferences. Any such request must be emailed to jastone@nycourts.gov and mpomerantz@nycourts.gov and filed by letter on NYSCEF.

All attorneys appearing at conferences must be fully prepared to proceed and be familiar with the facts of the proceedings. If another attorney is appearing for the attorney of record, they must have authority to settle on behalf of the client. The parties should be "on call" or available to their attorneys, on the date of the settlement conference.

10. Pre-Trial Conference

After the NOI has been filed, and there has been no summary judgments filed pursuant to the rules herein, a pre-trial IN PERSON conference will be scheduled by and with the Court. If a party does not appear at the Pre-trial conference, the Court may take appropriate action pursuant to 22 NYCRR 202.27, which may include dismissal of the matter or granting judgment by default. At the pre-trial conference the Court will facilitate a discussion as to settlement of the case.

If summary judgment motions are filed, then any Pre-Trial Conference, if any, will be held after the motions have been decided by the Court.

The parties shall also be aware during negotiations as to other options for resolutions of the litigation such as Summary Jury Trial, bench trials or ADR and be able to discuss these options with the Court.

11. Infant Compromise Orders

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 22 NYCRR 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.

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.

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

To avoid delay and ensure that all required documentation is submitted, counsel or unrepresented litigants shall utilize an Infant Compromise Order checklist, uploaded to the New York Courts website and found in Room 217, before submitting a proposed ICO. Proposed ICOs without the required documentation will delay processing and may eventually be rejected.

All ICO applications must be supported with the following documents:

A. Proposed ICO. The proposed ICO shall provide (i) 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; (ii) whether the attorney is waiving expenses/disbursements or the Attorney's fee is inclusive of the expenses/disbursements.

B. Attorney Affirmation. To the extent not mandated by CPLR 1208 and section 202.67, the affirmation shall also provide (i) an itemized list of the expenses/disbursements that are not waived or inclusive of the attorney's fee; (ii) the amount of available insurance, including excess insurance; (iii) whether there are any applicable liens and their amount; and (iv) 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. 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; and (3) waive the guardian's claim, if any, for loss of the infant's services.

D. Physician Affirmation/Medical Record(s) or Hospital Report(s). The Court requires an affirmation from a physician or medical records indicating infant has been examined within the six months prior to the submission of the proposed order. The affirmation, records, or report must include: (i) history obtained; (ii) infant's complaints of pain and/or limitations (past, recent and present); (iii) treatment rendered; (iv) details of the examination recently rendered upon which current opinion and conclusion is based; (v) diagnosis; (vi) prognosis, especially if the infant does have any current, or in the recent past has had, any limitations or complaints of pain; and (vii) whether the infant has fully recovered from the injuries or requires additional treatment; and (viii) any additional opinions, conclusions, and treatment recommendations. Failure to submit a physician affirmation, or recent medical/hospital record(s) or report(s) with an ICO application will delay approval of the ICO.

E. Infant-Consent Affidavit. If the infant is 14 or more years old, an affidavit from the infant attesting to his or her understanding of the settlement and consenting to is required.

F. Additional supporting exhibits may include: (i) the infant's birth certificate; (ii) a police accident report; (iii) a settlement offer letter or other such correspondence; (iv) a lien letter; and (v) proof of the applicable insurance policy limits, including, if applicable, excess insurance.

Once the Infant Compromise Order and necessary documents have been submitted to the Clerk's Office in Room 217 and reviewed by the Court, the parties will be advised of the hearing date by email. All ICO proceedings will be held via virtual conference. Please note that the infant(s)' appearance will not be waived. Plaintiff's counsel must make all arrangements to have the infant and the parent/natural guardian appear on the hearing date.

A request for an interpreter for an ICO proceeding should be made via email to mpomerantz@nycourts.gov and jastone@nycourts.gov at least seven (7) days before the proceeding. .

II. MOTIONS

1. Generally

All motions will be decided "on submission" unless specifically scheduled for oral argument/conference before the Court. Please contact the Court immediately if there has been any developments in a case that would affect the resolution of a pending motion (i.e., settlement, stipulation to adjourn, withdrawal, etc.). Parties MUST copy all other parties in the case on any e-mail sent to the Court.

Chambers does not require working copies of e-filed motion papers (see Administrative Order AO/121/20).

Form of Motion Papers. (Section 202.8-a. [a]). The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Regardless of whether the papers are filed electronically or in hard copy or as working copies, counsel must submit as part of the motion papers copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should use tabs on hard or working copies when submitting papers containing exhibits. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be translated as required by CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

Proposed orders. (Section 202.8-a. [b]). When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, pro hac vice admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion.

2. Motion Adjournments

Adjournment of Motions. (Section 202.8-a. [c]). Unless the court orders otherwise, no motion may be adjourned on consent more than three times or for accumulative total of more than 60 days.

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 ensure 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, e-Filed, and e-mailed to Chambers at mpomerantz@nycourts.gov and jastone@nycourts.gov 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.**

Any 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.

3. Sur-Reply and Post-Submission Papers

(See Section 202.8-c.) Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule shall not respond in kind.

4. Summary Judgment Motions

A. 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.

B. Motions for Summary Judgment; Statements of Material Facts. (See generally section 202.8-g)

i. Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

ii. In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

iii. Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted, to the extent such statement is supported by the cited evidence, unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

iv. Each statement of material fact by the movant or opponent pursuant to subdivision (i)or (ii), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

5. Oral Argument

A. Dispositive Motions: All dispositive motions will be scheduled for oral argument by the Court. Oral arguments will be held in-person. Notice of the date selected by the court shall

be given, if practicable, at least 14 days before the scheduled oral argument. On the date of the oral argument, Counsel shall be prepared to argue the motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing. All attorneys appearing at the oral argument must have authority to settle, be fully prepared to proceed, and be familiar with the facts of the proceedings. If another attorney is appearing for the attorney of record, they must have authority to act on behalf of the client. If an attorney appearing to argue does not have authority to discuss settlement, the Court will adjourn the oral argument to a different date.

Parties may request that oral arguments are held virtually by filing a letter or stipulation with the court at least one week in advance of the scheduled argument date and emailing a copy of such letter to mpomerantz@nycourts.gov and jastone@nycourts.gov.

B. Other Motions: Any party may request an oral argument on a non-dispositive motion by letter accompanying the motion papers. Oral arguments for non-dispositive motions will be held via Microsoft Teams. Notice of the date selected by the court shall be given, if practicable, at least 14 days before the scheduled oral argument.

6. Orders to Show Cause

(See Section 202.8-d.) Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required, or a statute mandate so proceeding (see Section 202.8-e). Absent advance permission of the court, reply papers shall not be submitted on orders to show cause.

Orders to Show Cause must comply with Uniform Rule 202.7(d).

All Orders to Show Cause are returnable on Fridays, except for Court holidays.

Proof of service must be filed with the Clerk, and e-mailed to the Court (mpomerantz@nycourts.gov and jastone@nycourts.gov) by 9:30 AM on the return date. Non-compliance shall result in denial of the Order to Show Cause.

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. The parties shall contact chambers to arrange for their appearance via Microsoft Teams.

Upon receipt of a signed order to show cause, the parties shall e-mail the Court (mpomerantz@nycourts.gov and jastone@nycourts.gov) to confirm their appearance on the return date via Microsoft Teams.

7. Requests to "So-Order"

When submitting a request to "so-order", to the extent feasible, ensure the signature lines are not on a separate page from the content of the proposed order or stipulation. If not feasible, include at the end of the content of the stipulation or proposed order "[INTENTIONALLY LEFT BLANK]". On the signature page, include a header in the top right-hand corner of the page containing the following information:

The stipulation/proposed order must emailed to jastone@nycourts.gov and mpomerantz@nycourts.gov and filed on NYSCEF.

III. TRIAL RULES

1. Be Prepared:

Prior to jury selection, counsel is cautioned to ascertain the availability of all witnesses and subpoenaed documents. Plaintiff's counsel shall requisition the file to the Courtroom as soon as possible after assignment of the case to this part. If you have non-English speaking witnesses, or any other special needs, e.g., easels, blackboards, shadow boxes, television, subpoenaed material, etc., it is your responsibility to notify the Court Officer, in advance, so as not to delay the progress of the trial.

2. Marked Pleadings Plus:

Plaintiff's counsel shall furnish the Court with copies of the following:

A. Marked pleadings as required by CPLR 4012;
B. A copy of any statutory provisions in effect at the time the cause of action arose upon which either the plaintiff or defendant relies;
C. The bill(s) of particulars;
D. All expert reports relevant to the issues;
E. All reports, depositions and written statements which may be used to either refresh a witness' recollection and/or cross-examine the witnesses; and
F. If any part of a deposition is to be read into evidence (as distinguished from mere use on cross-examination) you must, well in advance, provide the Court and your adversary with the page and line number of all such testimony so that all objections can be addressed prior to use before the jury.

3. Pre-Marked Exhibits:

All trial exhibits should be pre-marked for identification, and copies of a list of exhibits must be given to the Court before the trial actually begins. Failure to comply with this rule may result in sanctions, which may include an order precluding the offering of such exhibits at trial (*see Davis Eckert v. State of New York*, 70 NY2d 633, 518 N.Y.S. 2d 957).

4. Assignment Conference:

At this conference counsel should be prepared:

A. To alert the Court as to all anticipated disputed issues of law and fact and provide the Court with citations to all statutory and common law authority upon which counsel will rely.

B. To stipulate to undisputed facts and the admissibility of clearly admissible documents and records.

C. To alert the Court to any anticipated in limine motions or evidentiary objections which counsel believes will be made during the course of the trial.

D. To provide the Court with a copy of all prior decisions and orders which may be relevant to said in limine applications.

E. To discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial.

F. To provide a list of the names of all witnesses (other than rebuttal Witnesses) to be called by you and for each such witness the elements of proof to be supplied (in the case of plaintiff) or addressed (in the case of defendant) by such witness.

G. To alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling

H. To alert the Court to any anticipated requests for a jury instruction relating to missing witnesses and/or documents.

I. To alert the Court to any anticipated request for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.

5. No Communication with Jurors:

In order to maintain the appearance of total impartiality, once the jury has been selected no one is to communicate in any form at any time with any juror. This includes both verbal and non-verbal communication, including, without limitation, nods, shrugs and shaking the head. Do not even say "hello" or "good morning".

6. Check- In:

At the start of each day on trial, check in with the clerk of the Court and or the Court Officer so that (s)he will be aware of your presence.

7. Trial Objections and Arguments:

If a lawyer wishes to make an objection, it can be accomplished by standing and saying the word, "objection", and by adding thereto up to three more words so as to state the generic grounds for the objection, such as "hearsay," "bolstering," "leading," or "asked and answered." If you believe further argument is required, ask permission to approach the bench. This request will almost always be granted. Keep in mind that you will always be given the opportunity to make a full record.

8. 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 for a document or an exhibit), 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 outside the presence of the jury. In addition, no grandstanding in the presence of the jury, i.e., making demands, offers or statements that should properly be made outside the presence of the jury.

9. Use Of Proposed Exhibits:

Do not show anything, including an exhibit or proposed exhibit to a witness without first showing it to opposing counsel. If this procedure is claimed to compromise trial strategy, a pre offer ruling outside the presence of the jury should be first obtained.

10. Examination of Witnesses:

Do not approach a witness without permission of the Court. Please allow the witness to complete his/her answer to your question before asking another question. Do not interrupt the witness in the middle of an answer, unless it's totally unresponsive in which event you should seek a ruling from the Court. Direct examination, cross, redirect and re-cross are permitted. However, the Court does not ordinarily permit re-redirect examination of a witness.

11. Jury Charge & Verdict Sheet:

At the commencement of the trial all counsel shall submit suggested jury charges and a suggested verdict questionnaire. Amendments thereto shall be permitted at the final charging conference. If counsel relies on a Pattern Jury Instruction [PJI] without any change thereto, it should be referred to by PJI number and topic only. If any changes to the PJI are suggested, then the entire proposed charge should be set forth and the changes should be highlighted or otherwise called to the Court' s attention. Citations to appropriate statutory or common law authority shall be given in support of suggested non-PJI jury charges or suggested PJI modifications. In addition, unless a marshaling of the evidence is waived, Counsel should, at the final charging conference, provide the Court with the proposed facts which counsel believes should be marshaled by the Court, and the respective contentions of the parties.

12. Summary Jury Trials:

Evidentiary packages must be presented to the Court at least 24 hours before jury selection.