

Justice Lucindo Suarez

Labor Law, Products Liability and Non-Medical Professional Malpractice (“LPM”) Part

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Part Rules
Effective January 2015
Amended March 2016
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GENERAL

1. Labor Law, products liability and non-medical professional malpractice cases, except those involving the City of New York (except insurance takeovers) or a public authority subject to assignment to Part 17, are assigned to this Part, for all purposes except trial, upon the filing of the Request for Judicial Intervention. Cases where the RJI was filed prior to December 2014 remain in their original IAS assignment and will not be transferred to the LPM inventory.
2. These rules apply to cases in the LPM Part; they do not apply to any other cases assigned to Justice Suarez.
3. Counsel are expected to maintain professional decorum at all times when interacting with each other and the court.
4. Set cell phones and other devices to silent and/or vibrate when in the courtroom, and do not use cell phones while in any part of the courtroom.
5. Interpreters. The need for assistance of an interpreter of any language other than Spanish must be communicated to the court as soon as known, and in any event at least one week before the date of the proceeding.
6. Communications with chambers.
 - a. General questions regarding motions are generally best directed to the Motion Support Office (Room 217) at (718) 618-1310 or the Part Clerk at (718) 618-1238.
 - b. If documents, other than motion papers, are to be sent directly to chambers, the preferred method is by .pdf attachment to an email sent to jflores2@nycourts.gov, provided that permission to send such documents has been requested and granted, and provided that no other method of service has been prescribed.

- c. Courtesy copies of motion papers are unnecessary and will not be accepted unless specifically requested by the court. All motions in e-filed actions require submission of working copies of all papers to the Motion Support Office, as per the rules of the Twelfth Judicial District. Working copies should not contain original documents, as they will be recycled upon disposition of the motion.
- d. *Ex parte* communications on substantive matters are not permitted without prior notice to and agreement of opposing counsel.
- e. Requests for compliance and other discovery-related conferences should be sent directly to chambers. See below.

MOTION PRACTICE

Please refer to <http://www.nycourts.gov/courts/12jd/BRONX/civil/filingrules.shtml> and <http://www.nycourts.gov/courts/12jd/BRONX/civil/filingrules-efile.shtml> for general rules regarding paper and e-file motion practice in the Twelfth Judicial District.

1. Papers

The parties are reminded of 22 NYCRR § 202.5(a), including the provision that

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 every paper, other than an exhibit or printed form, shall contain writing on one side only, and if typewritten, 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.

In addition to the foregoing, every paper, **including exhibits and printed forms**, shall contain writing on one side only. Deposition transcripts submitted as exhibits shall be submitted in “mini” (four pages per sheet) form where possible. Staples and bindings shall not obscure any matter in the papers. Each exhibit shall be separated with tabs. For voluminous exhibits, submit only those portions to which reference is made.

If including a proposed order, separate it from the motion papers. Any proposed order attached to the motion papers will be treated as an exhibit.

2. Orders to Show Cause

- a. Orders to Show Cause made returnable in the LPM Part require an appearance in the LPM Part on the return date of the application, at which time the affidavit(s) of service shall be submitted to the court. Oral argument is conducted solely at the discretion of the court, upon its review of the papers submitted. Oral argument is granted only in the most

extraordinary circumstances; parties therefore need not be prepared to argue orally on the return date of the application but should, nevertheless, have included in their papers all arguments of which they wish the court to be made aware.

- b. Orders to Show Cause made returnable in the Motion Support Office (Room 217) do not require an appearance by counsel; affidavit(s) of service shall be filed in Motion Support on the return date in accordance with the general filing rules.

The failure to submit the affidavits of service by 11:00 a.m. on the return date will result in denial of the application and/or dismissal of the proceeding, where appropriate.

Think before submitting an order to show cause. The court will decline to sign an order to show cause if the relief requested could be sought in a motion on notice or by some other means.

3. Sur-replies

The service of sur-replies and other post-reply answering papers requires an application to the court for leave to do so.

4. Adjournments.

Adjournments require a stipulation, signed by all parties, submitted to the Motion Support Office on the return date of the motion. Adjournments to a date beyond sixty days after the original return date of the motion are honored conditionally, upon approval of the court. Refer online or to your calendar service to see if the adjournment was granted. Chambers will entertain stipulations to adjourn submitted after the return date of the motion. An application for an adjournment of a motion should be made in writing on sufficient notice (e.g. not on the return date) to the other parties and submitted to the Motion Support Office on the return date. The parties will be advised in writing of the court's ruling on the application.

5. Discovery Motions

Discovery motions, except those seeking to vacate a note of issue, require prior court authorization, which may be sought via fax or email, on notice to all parties, describing in detail the issues and efforts undertaken to resolve them without resort to motion practice. A discovery motion made without prior authorization will be denied and a conference scheduled if deemed necessary. If a conference is already scheduled, it is expected that the issues will be resolved thereat. Discovery motions are not calendared for oral argument, unless deemed necessary as per the above.

6. Summary Judgment

Motions for summary judgment shall be made within 120 days after the filing of the note of issue.

7. Motions in E-Filed Cases.

Motions will be decided solely on the working copies submitted to the Motion Support Office, room 217, as of the return date of the motion. Do not submit working copies directly to chambers unless specifically requested. If a working copy of a paper has not been so submitted, it will not be considered. Working copies may be submitted to Motion Support in person on or before the return date of the motion or by mail or overnight delivery; however, stipulations to adjourn motions in e-filed cases must be submitted on the return date. All working copies submitted by mail or overnight delivery shall be marked “NYSCEF Matter” on the outside envelope to expedite processing. As working copies will be recycled upon disposition of the motion, original documents should not be submitted.

Also see the rules of the Twelfth Judicial District regarding motion practice in e-filed cases.

8. Infant compromise Orders

- a. Appearance of counsel, infant plaintiff and the infant plaintiff’s guardian may be excused for good cause shown. *See* CPLR 1208(d).
- b. All proposed infant compromise orders should contain the following language where appropriate:

“It is further ordered that the guardian shall, within thirty (30) days of the deposit of the money due the infant herein, in the above-designated bank, submit to the clerk’s office, room 217, a copy of the certificate of deposit issued by said bank.”

9. Receivers and Guardians

Proposed orders submitted on applications for the appointment of a receiver or guardian shall contain the following language:

“ORDERED, that the Receiver(s)/Guardian(s) shall not make any secondary appointments without the prior written approval of the Court, and that the Receiver(s)/Guardian(s) shall comply with Part 36 of the Rules of the Chief Judge.”

10. Guardians *at Litem*

Proposed orders submitted on applications for the appointment of a guardian *ad litem* (shall contain the following language:

“ORDERED, that a copy of this order and the papers upon which it was granted be served upon the Public Administrator of Bronx County pursuant to CPLR 2103(b)(1), (3), (5) or (6) at 851 Grand Concourse, Room 336, Bronx, New York 10451, tel. (718) 992-1428, facsimile (718) 293-7851.”

PRELIMINARY CONFERENCES

Upon receipt of a request made pursuant to 22 NYCRR § 202.12(a), the court will schedule the case for a preliminary conference and notify the parties named in the conference request and/or request for judicial intervention. All Conferences begin promptly at 9:30 a.m. on Tuesdays. Only counsel fully familiar with and authorized to stipulate or dispose of the action may appear at the conference.

Parties are reminded of 22 NYCRR § 202.12(a), which states that

A party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses and telephone numbers of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention together with the request for a preliminary conference. The request shall be served on all other parties and filed with the clerk for transmittal to the assigned judge. The court shall order a preliminary conference in any action upon compliance with the requirements of this subdivision.

The court endeavors to schedule the preliminary conference within forty-five days of the filing of the Request for Judicial Intervention requesting a preliminary conference, per 22 NYCRR § 202.12(b). Parties are reminded however, that such time frame is observed “unless the court orders otherwise.”

No preliminary conference shall be held without plaintiff having served a bill of particulars responsive to each requesting defendant. Any objection to previously served discovery demands not raised at the preliminary conference is waived. It is expected that the parties will collaborate, without court intervention, to complete the preliminary conference order. Only if the parties cannot agree after reasonable effort may the parties apply for a ruling from an available court attorney. Submit completed preliminary conference orders to the law secretary for the judge’s signature. There is no formal call of the calendar, except for cases where the parties have not submitted a signed preliminary conference order or consulted with any staff present in the courtroom within a reasonable time after 9:30 a.m. When the case is called and there is no appearance, the court will take appropriate action against the non-appearing attorney or non-appearing party, applying such penalties or sanctions as are authorized by the CPLR and the Rules of the Chief Administrative Judge.

A Compliance Conference will be scheduled at the Preliminary Conference. As the compliance conference date is reflected in the preliminary conference order, the parties will not receive additional notice of it.

Parties are reminded of the provisions of 22 NYCRR § 202.12(b) allowing for **WAIVER OF PERSONAL APPEARANCE AT A PRELIMINARY CONFERENCE CALENDAR** under the following circumstance: “If all parties sign the [preliminary conference] form and return it to the court before the scheduled preliminary conference, such form shall be ‘so ordered’ by the

court, and, unless the court orders otherwise, the scheduled preliminary conference shall be cancelled. If such stipulation is not returned signed by all parties, the parties shall appear at the conference.”

COMPLIANCE CONFERENCES

A Compliance Conference will be scheduled at the Preliminary Conference. The compliance conference monitors the progress of discovery, explores potential settlement, and sets a deadline for the filing of the Note of Issue. *See* 22 NYCRR § 202.19(b)(3).

Counsel attending the Conference must be fully familiar with the case, the status of disclosure proceedings, and any settlement negotiations. Counsel **MUST** bring a copy of the Bill of Particulars, medical reports, the Preliminary Conference order and all previous orders in the case and **MUST** be prepared and authorized to enter into binding stipulations regarding disclosure and disposition of the case.

All Conferences begin promptly at 9:30 a.m. on Tuesdays. The due date for filing the Note of Issue is set at the Compliance Conference. Any objection to previously served discovery demands not raised at the compliance conference is waived. It is expected that the parties will collaborate, without court intervention, to complete the compliance conference order. Only if the parties cannot agree after reasonable effort may the parties apply for a ruling from an available court attorney. Submit completed Compliance Conference Orders to the part clerk for the judge’s signature. There is no formal call of the calendar, except for cases where the parties have not submitted a signed compliance conference order or consulted with any staff present in the courtroom within a reasonable time after 9:30 a.m. When the case is called and there is no appearance, the court will take appropriate action against the non-appearing attorney or non-appearing party, applying such penalties or sanctions as are authorized by the CPLR and the Rules of the Chief Administrative Judge.

It is expected that discovery will be completed without the necessity of any additional conference; therefore, none shall be scheduled at the compliance conference. However, in lieu of a formal motion, parties may make written application to schedule a Discovery Status or Compliance Conference. All such requests shall explain in detail why the conference is necessary, explicitly state any discovery claimed to be outstanding and the efforts to obtain or secure compliance with same and identify all prior discovery-related orders. The requested must be cc’d to all appearing parties and contain email addresses for response. Do not assume that any such request will be granted.

The availability of a conference in lieu of motion practice is not an excuse for the parties not to exercise their best efforts in resolving disputes collaboratively and in good faith without resort to court intervention.

POST-NOTE CONFERENCES

Because this is a self-contained part, cases are not sent to Pre-Trial, Mediation, Special Trial, or any other post-note conference part. While the initial goal of post-note conferences is early and

expeditious resolution through means other than resort to the trial process, if the case does not settle in LPM, it will be sent out for trial.

Upon the filing of a Note of Issue an initial pre-trial conference will be scheduled. The Court will notify you of the pre-trial conference date. If the Court has not notified you of the conference date within 90 days after filing the Note of Issue, check eTrack at <https://iapps.courts.state.ny.us/webcivil/etrackLogin> or eLaw at <http://www.elaw.com> before contacting the Court Clerk.

Conferences start at 9:30 a.m. on Tuesdays. Plaintiff's counsel must have conveyed a settlement demand to all defendants' counsel well in advance of the initial pre-trial conference, preferably on or before the filing of the Note of Issue, and counsel for defendants should promptly convey the demand to the carrier. Each attorney attending the initial settlement conference must bring a copy of all documents relevant to the issues of liability and damages, be fully familiar with every aspect of the case, and be fully authorized to engage, in good faith, meaningful settlement negotiations and make binding concessions. Counsel are responsible for having their clients and/or claims adjusters available by telephone. The parties themselves may also appear in Court, if such would be especially instrumental in effectuating a settlement.

If there are factors that may affect the timing in which the action may move forward to trial, e.g., open motions, discovery issues, special preferences, decisions on summary judgment, bench trial requests, consolidations, stays for bankruptcy or withdrawal of counsel, this shall be brought to the attention of the Court. Requests for adjournments are not favored, but will not even be considered unless all counsel consent and a settlement conference worksheet is completed.

For all cases other than "trial ready" cases, the Court will endeavor to schedule interim settlement conferences before it is deemed necessary to provide a "final settlement conference" date and a trial date shortly thereafter.

Counsel are encouraged not to discount the utility of a one-day Summary Jury Trial in disposing of appropriate issues which may be too unwieldy for a summary judgment motion. The Summary Jury Trial may serve to narrow and/or eliminate issues and streamline the trial of the action or assist in evaluation for settlement.

This court may refer matters for immediate same-day jury selection and trial, strike the Note of Issue or make such other determinations as it deems appropriate in the event that counsel fail to negotiate in good faith, fail to demonstrate readiness to proceed to trial, or fail to comply with these rules.

If a case settles, Counsel shall promptly notify chambers in writing, which may be faxed to 718.537.5076.

INQUEST

The inquest and assessment of damages against any defendant against whom a default judgment

has been entered shall be conducted at the time of trial or other disposition of the action against the remaining defendant(s). If plaintiff has been granted a default judgment against all defendants or the only remaining defendants have been found in default, the action will be referred to the Inquest Part upon the filing of the Note of Issue, provided plaintiff submits supporting documentation of same.

SUMMARY JURY TRIAL (SJT)

1. Please refer to the website of the Bronx County Bar Association (bronxbar.com/?page=SJT) for Bronx SJT rules and procedures. The rules at <http://www.courts.state.ny.us/courts/12jd/BRONX/Civil/filingrules.shtml> and <http://www.courts.state.ny.us/courts/12jd/BRONX/Civil/pdfs/THE%20SUMMARY%20JURY%20TRIAL%20PROCESS.pdf> are outdated.
2. A ten-minute DVD introduction to SJTs is available from chambers for borrowing. The video, and several other resources, are available at nycourts.gov/COURTS/8jd/sjt.shtml.
3. Upon transfer to the SJT inventory and referral to this part, the court will contact the parties to schedule the pre-trial conference and evidentiary hearing, to be held in chambers, at which time the schedule of pre-trial disclosures and trial date will be established and motions *in limine* will be addressed.
4. On the day of trial, counsel are expected to be present and ready to proceed by 9:00 a.m. The prospective jurors will be seated by 9:20 a.m.

EX PARTE APPLICATIONS

1. Subpoenas

Subpoenas should be submitted to and retrieved from chambers.

2. Depositions

Requests for deposition rulings may be made to this part or to the *ex parte* Judge.