

PART RULES FOR MATTERS ASSIGNED TO GERARD J. NERI, J.S.C.

Part rules for matters assigned to Gerard J. Neri, J.S.C. shall be as follows. These rules are intended to supplement those set forth at 22 NYCRR Part 202. Counsel are expected to know and comply with these rules and those of Part 202. Where any conflict exists, Part 202 shall control.

1. Communication with Court: Rule 100.3 (B) (6)
 - a. Where counsel have need to communicate with the Court regarding some pending aspect of a matter assigned to the Court (e.g., pending motions, scheduling of Court conferences, etc.), it should be done on notice to opposing counsel.
 - b. Counsel shall not provide the Court with copies of routine correspondence between counsel and/or parties. If I need to know, I am sure it will be included with a motion.

2. Fax transmissions
 - a. Shall be limited to 20 double spaced pages unless counsel obtains specific approval for deviation from Chambers in advance.
 - i. Copies of any fax/or email to Chambers must be simultaneously delivered to all counsel. See 100.3 (B)(6)

3. Motions
 - a. General rules applicable to all motions:
 - i. It is expected that all motions will conform to the requirements of CPLR Article 22 and 22 NYCRR §§202.7-202.8.
 - ii. It is expected that counsel will **fully** set forth and describe the precise relief sought and the legal and factual basis for the relief. Conclusory or incomplete positions shall be deemed insufficient. For example, in matrimonial matters, it shall not be sufficient for counsel to request maintenance and/or child support without stating the amount sought, the calculations on which the relief is based, and the factual support on which the calculations rely.
 - iii. All motions shall be on submission. Request for oral arguments shall be considered on a case by case basis by the court.
 - iv. Adjournment of motions:
Motions may only be adjourned at the discretion of the Court.

 - b. Motions on notice:
 - i. Time limits for the service of motions, responding papers and reply papers are as set forth in CPLR Article 22 and will be strictly applied. The Court will not consider papers that are out of compliance with these limits except on a showing of good cause. CPLR § 2214

- ii. There shall be no sur-reply papers submitted without express consent of Court.

 - iii. Papers for motions should include where appropriate for the relief sought:
 - (1) Notice of Motion:
 - (2) Supporting factual evidence in admissible form; e.g., party and/or witness affidavits, relevant deposition testimony; documentary evidence, etc.
 - (3) Supporting legal foundation, inclusive of:
 - (a) Attorney affidavits or affirmations
 - (i) Please note that the attorney affirmation must contain an affirmation of good faith as more fully described in 22 NYCRR §202.7.
 - (b) Memoranda of Law
 - (4) Affidavit(s) of Service
- c. Motions on order to show cause:
- i. Papers for motions should include where appropriate for the relief sought:
 - (1) Proposed Order
 - (2) Supporting factual evidence.
 - (3) Supporting brief that sets forth the legal foundation for the relief sought and a detailed statement of the precise relief requested, inclusive of either or both of the following, as may be appropriate:
 - (a) Attorney affidavits or affirmations
 - (i) It is expected that counsel will include a statement that sets forth a basis for the Court to consider whether the motion is a proper one for an order to show cause; i.e., factors that warrant deviation from regular motion practice with respect to the time and method of service, place for return and/or need for temporary injunctive relief, etc. or the statutory basis on which the matter is brought by order to show cause.
 - (ii) Counsel shall comply with 22 NYCRR §202.7(d), particularly noting that there shall be included an affirmation that counsel has **conferred** with counsel for the opposing party in a good faith effort to resolve the

issues raised by the motion.

(b) Memoranda of Law.

- d. Ex parte motions (applications for temporary injunctive relief and/or temporary restraining orders)
 - i. Counsel shall comply with all requirements set forth in 22 NYCRR §202.7(f).

4. Engagement of counsel

- a. Adjournment of any proceeding because of the engagement of counsel shall be in accordance with 22 NYCRR Part 125.

5. Conferences

a. Preliminary conference

- i. A preliminary conference shall be conducted in all actions or proceedings in accordance with 22 NYCRR §202.12, except as specifically set forth below with regard to particular matters.
- ii. Cancellation of the preliminary conference shall be in accordance with 22 NYCRR §202.12(b).
- iii. Scheduling orders:
 - (1) Parties are expected to strictly comply with all scheduling orders.
 - (a) Discovery dates will not be granted that extend disclosure beyond 12 months from the date of the filing of a request for judicial intervention (15 months in the case of complex cases) except on good cause shown.
 - (b) Objections to disclosure that cannot be resolved through the good faith efforts of counsel shall be made on motion by the objecting party BEFORE expiration of the respective date for response thereof as set forth in the scheduling order. Failure to do so may result in sanctions as set forth in 22 NYCRR §202.12(f), and may include preclusion.
 - (c) Any extension of the dates set forth in the scheduling order must be on consent of Court
 - (i) A request for extension must be made BEFORE expiration of the respective dates specified in the scheduling order and must be either on consent of all counsel or on motion.
 - (ii) No extension of discovery dates will be granted that extend disclosure beyond 12 months from the date of the filing of a request for judicial intervention (15 months in the case of complex

cases) except on good cause shown.
(d) Sanctions for failure to comply will be considered as set forth in 22 NYCRR §202.12(f).

(e) If it appears to any attorney that a date within the Preliminary Conference Order cannot be complied with, the attorney shall promptly (no later than seven (7) days from knowing a part of the Order cannot be complied with, but in no instance beyond the deadline) notify the Court so that the matter may be conferenced and the Preliminary Conference Order modified. Failure to notify the Court of the impending violation *shall be construed as a violation pursuant to 22 NYCRR §202.12(f) and may result in the striking of pleadings, dismissal the action, or other appropriate sanction.*

b. Preliminary conferences in **matrimonial actions**

- i. A preliminary conference shall be conducted in all actions or proceedings in accordance with 22 NYCRR §202.16(f).
 - (1) It is particularly notable that a timetable for completion of all disclosure shall be in accordance with 22 NYCRR §202.16(f)(2)(iv) and shall be subject to a scheduling order that requires all disclosure to be completed within six months and is otherwise subject to the same requirements as above.

c. Preliminary conferences in **medical, dental and podiatric malpractice actions**

- i. A preliminary conference shall be conducted in all medical, dental and podiatric malpractice actions in accordance with 22 NYCRR §202.56(b).

d. Compliance conferences

- i. As a part of the scheduling order, the Court shall schedule a date for a compliance conference at which the parties shall advise the Court of their compliance with the scheduling order and explore

the potential for settlement. The date for the compliance conference shall be no less than 30 days and no more than 45 days before the date for the filing of the trial note of issue. In the event the parties agree that disclosure is proceeding in accordance with the scheduling order and that settlement discussions remain premature, the Court shall be notified thereof, in writing not less than 10 days prior to the compliance conference, that there is no need or value to proceed with the compliance conference. On receipt of such notice, the Court will cancel the compliance conference, unless it deems some value in proceeding. In either case, the Court will notify the parties.

- e. Settlement conferences
 - i. At any time after joinder of issue, any party may request a settlement conference with the Court, which the Court will schedule unless all opposing counsel indicate that there is no potential for settlement or that such a conference is premature. At any settlement conference, the parties shall be prepared to explore the potential for settlement in good faith.
- f. Settlement conference in **residential mortgage foreclosure actions**
 - i. A settlement conference shall be conducted in all actions or proceedings in accordance with 22 NYCRR §202.12-a that shall be in lieu of a preliminary conference.
- g. Settlement conferences in **medical, dental and podiatric malpractice actions**
 - i. A settlement conference shall be conducted in all medical, dental and podiatric malpractice actions in accordance with 22 NYCRR §202.56 and CPLR 3409.
- h. Pre-trial conferences
 - i. Following the filing of the note of issue, the Court will schedule a pre-trial conference that shall comply with the provisions of 22 NYCRR §202.26.
- i. Telephone/Remote conferences
 - v. Any conference set forth herein may be conducted by telephone or video conference (as may be available) on request of any counsel desiring to appear in such manner with permission from the Court, with the following condition:
 - (1) Any stipulation agreed upon during such conference shall be confirmed by the Court during the conference and reduced to an order as directed by the Court, and shall be deemed binding on any attorney appearing in such manner as though said counsel had been present and personally executed a written stipulation thereon.

6. Exhibits

- a. A list of all exhibits, except those exhibits to be used solely for credibility or rebuttal, must be served on opposing counsel and delivered to the IAS Justice no later than 10:00 a.m. on the Friday immediately preceding the trial date. The exhibit list must include a brief description of the exhibit. Counsel shall consult in good faith to agree upon the exhibits that will be offered into evidence without objection. Immediately following the final pre-trial conference, counsel for each party must proceed to the assigned courtroom and pre-mark all pleadings and trial exhibits.

7. Trial

a. Expert Disclosure - CPLR § 3101(d)(1)

- i. All expert disclosure must be made in compliance with any scheduling order in effect.
- ii. Objections to adequacy/completeness of expert disclosure:
- (1) If expert disclosure has been provided pursuant to a demand or a scheduling order and the other party objects to its adequacy or completeness, a written notice pursuant to CPLR § 3101(h) must be sent by the objecting party to the providing party within 20 days of receipt of the § 3101 expert disclosure stating how it is inadequate or incomplete. The notice must further state that a motion will be made to the court if the § 3101 material is not amended or supplemented. If the party who is requested to amend/supplement the § 3101 disclosure does not provide same within 10 days from receipt of the notice, the objecting party must then make a motion to preclude and/or other appropriate relief at the next regularly scheduled motion date of the court.
- (2) If the party objecting to the adequacy/completeness of the expert disclosure does not follow this procedure, he/she may be deemed to have waived the adequacy/completeness of the § 3101(d)(1) expert disclosure previously provided.

- b. All Motions in Limine before the trial commences **MUST** be in writing with case authorities cited and on notice to the opposition and the movant must file them with the County Clerk and pay the \$45.00 cost thereof. Only in exceptional circumstances will oral motions be allowed. Motions in Limine must be filed with the County Clerk office where the matter is pending, seven days prior to the trial date, not inclusive of the trial day by 10:00 a.m. Opposing papers if any, must be filed and served, no later than 3 business days prior to the trial date, not inclusive of the trial date. Motions in Limine are to be made returnable in Chambers at 12:00 p.m. one business day prior to the trial date.
- c. Have all witnesses you intend to call available on commencement of trial in non-

jury trials. The Courts trial schedule is 9:30 am - 12:30 pm and 1:30 pm - 4:00 pm. These times may vary based on the Courts calendar. Arrangements will be made for times for expert witness appearances.

- d. When you object, make your objection in generic terms, e.g. Irrelevant, leading”, bolstering”, hearsay. Do not argue the objection in the presence of the jury and do not argue with the ruling of the Court in the presence of the jury. Do not make motions (e.g., a motion for a mistrial) in the presence of the jury.
- e. No colloquy between counsel in front of the jury.
- f. Sidebar conferences should be kept to a minimum. This Court agrees with Standard 9.9 of the standards suggested by the American Bar Association Advisory Committee on the Judges Function (1972). ***Note that counsel are ethically required to follow these rules. See Disciplinary Rule 7-106(A), Code of Professional Responsibility. See also First Department Rule §604.1(d)(i)(ii).*** No later than 10:00 am, one business day prior to jury selection, pursuant to § 4110-b of the CPLR, counsel are **ORDERED** to submit written Proposed Jury Instructions and/or Requests to Charge. Mark each request separately, even if you are only referring to a PJI section number, e.g. Plaintiffs Request to Charge - Request No. 1 PJI §____; request No. 2. PJI §____; request No. 3 PJI §____. You may merely state PJI §____ with the introductory title. If you want particular language charged, you must cite the language in quotes exactly from the case you maintain authorizes such charge. Also state the page of that case with its citation.
- g. The Courts has Microsoft Word software and the electronic copy must be compatible with that software, submit your proposed charges and verdict by e-mail to jlammott@nycourts.gov and trschepp@nycourts.gov. Counsel **MUST** specify in regard to a requested instruction regarding expert witnesses what persons they intend to attempt to qualify as experts and the field of expertise of such person. Counsel **MUST** also submit a Proposed Verdict Sheet.
22NYCRR § 202.35 - Submissions of Papers for Trial.
 - i. Upon the trial of an action, the following papers, if not yet submitted, shall be submitted to the court by the party who has filed the note of issue.
 - (1) copies of all pleadings marked as required by CPLR 4012; and
 - (2) a copy of the bill of particulars, if any.
 - ii. Upon the trial of an action, a copy of any statutory provision in effect at the time the cause of action arose shall be submitted to the court by the party who intends to rely upon such statute.
- h. Conferences can be held with the Court on issues on trial days between 8:30 am - 9:00 am, 12:00 pm - 1:00 pm, and after Court recesses for the day.
- i. Subpoenas
 - i. All subpoenas necessary to be signed by the Court should be delivered to the Court at least 30 days prior to trial date. The Court will not grant an adjournment of the trial date for lack of receipt of materials subpoenaed if the subpoenas were not forwarded to the Court for signature at least 60 days prior to the trial date.

- ii. Subpoenas may not be used as a form of discovery. Counsel are directed to serve all subpoenas for documents/records at least 30 days prior to the day certain for trial. Counsel may make subpoenas *duces tecum* returnable ten days prior to the day certain of trial. If the subpoenaed documents/records are not of the type that are admissible without testimony pursuant to § 4518 and § 2306 and § 2307 of the CPLR, counsel should serve a separate subpoena on the person/entity who/which provided the documents/records returnable on the day certain for trial, or any recessed or adjourned date for that person or representative of the entity to give testimony for the purposes of admissibility of the documents/records.

- iii. Counsel must apply to the Court to review the documents/records received and may only review those materials received in response to subpoenas served by that attorney.
 - (1) Those materials may be reviewed at the Court Clerk's Office prior to the scheduled trial date.
 - (2) No motions for contempt regarding failure to comply with any production of documents/records will be entertained unless counsel certifies to the Court that they have complied with these requirements.
 - (3) Any objections regarding the completeness of the documents/records produced will not be entertained by the Court, except under exceptional circumstances, if counsel has not complied with this requirement and certifies thereto
- iv. Any judicial subpoena submitted for the Court's signature shall have the following disobedience language:

“Failure to comply with this JUDICIAL SUBPOENA may subject you to contempt of court, liable to pay all losses or damages sustained by the party aggrieved, a penalty not to exceed one hundred fifty dollars (\$150.00), and/or a warrant directing the sheriff of the county wherein you are located to commit you to jail until you comply with the requirements of the herein subpoena. Said warrant shall specify with particulars the cause of the commitment and if for refusing to answer a question(s), state the question(s) (see CPLR §2308).”

