

CIVIL TERM – Part 6 Rules

Hon. Kathy J. King

Room 351

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*****COMMENCING MARCH 2, 2023, ALL CONFERENCES AND MOTIONS WILL BE HELD IN-PERSON.***

INQUIRIES MADE TO CHAMBERS: Do not call or email Chambers regarding clerical or administrative matters, including but not limited to the following: calendar inquiries, scheduling of oral arguments, case status, entry of signed orders, e-filing issues, etc. or information that can be found in these Part Rules. Inquiries should be directed to the Part Clerk or the appropriate court employee. The court directory can be accessed on the court website.

If a communication to Chambers is necessary, it must be made by email with all parties cc'd and the case name and index number in the subject line.

PART 6 MOTION CALENDAR

Motion Submission Part: the adjournment of motions that are not yet scheduled for oral argument must be made pursuant to the general procedures for the New York County Supreme Court at http://ww2.nycourts.gov/courts/1jd/supctmanh/motions_on_notice.shtml.

Requests for an adjournment of a motion pending in the Motion Submission Part beyond 60 days must be made to the Court.

All motion papers must be filed electronically through NYSCEF, or where the action does not participate in NYSCEF, by mail to the General Clerk's Office (Room 119). Unrepresented persons are automatically exempt from obligation to e-file, and will only participate in e-filing if they choose to do so. Motion papers, answering affidavits and reply affidavits must be served in accordance with CPLR § 2214 or the most recent Administrative Order, unless otherwise stipulated or ordered.

Oral argument on motions will be heard on alternating Tuesdays each month. The first calendar call will take place at 10:00 a.m. The second and final calendar call will take place at 11:00 a.m. Attorneys appearing for oral argument are expected to be fully familiar with the issues raised in the motion(s).

Motions are scheduled for oral argument at the Court's discretion. Courtesy copies are to be delivered to Part 6, Room 351 **one week** in advance of the oral argument date. **Any exhibit**

exceeding 25 pages must be submitted to the Court on a flash drive, and attached to the courtesy copy.

Except for discovery motions, no prior permission is required for filing a motion. Justice King does not accept Commercial Division Rule 24 letters, unless expressly requested.

Each exhibit must be e-filed under its own document number and labeled as to the nature of the exhibit (e.g., complaint, contract dated 1/1/18, etc.).

Sur-replies are not permitted; letters and papers are not accepted after the return date without the court's permission.

All motion papers, including notices of motion, opposition, reply, memoranda of law, exhibits, affirmations, and affidavits, must reflect the respective motion sequence number in the upper right-hand corner of the first page.

If a motion is withdrawn or settled, whether or not sub judice, the parties must promptly email the pertinent stipulation to the Part Clerk and Law Clerks.

*** All summary judgment motions must be filed within 90 days after the filing of the Note of Issue.**

*** All summary judgment motions must adhere to 22 NYCRR §§ 202.8-b; 202.8-g(a); 202.8-g(c); and 202.8-g.**

Requests for adjournment of a motion are permitted on consent of all parties by e-filing and emailing a fully executed stipulation to Chambers and the Part Clerk seven days prior to the appearance date. Stipulations and applications to the Court seeking an adjournment will not be entertained if made less than seven days prior to the motion return date. The oral argument date will be scheduled at the Court's discretion.

*** Please do not call the Part Clerk or Chambers to check on the status of a decision. ***

DISCOVERY CONFERENCES

In-person discovery conferences will take place each Thursday, commencing at 10:00 a.m. There will be a calendar call at 11:00 a.m. If a party is not present for the calendar call a default may be taken.

*Adjournments of discovery conferences are strongly discouraged. The first request for adjournment of a conference will automatically be granted, however subsequent adjournment requests will not be granted except for good cause shown. Upon a party's failure to appear for a conference on two consecutive dates, the case will be dismissed, or the party's pleadings will be stricken. This is strictly enforced.

***DISCOVERY MOTIONS ARE NOT PERMITTED WITHOUT PRIOR COURT APPROVAL. If a discovery dispute arises, the parties shall advise the Part Clerk by email, and a conference will be scheduled, or the date of a previously scheduled conference will be advanced. Counsel shall consult with one another and make a good faith effort to resolve any discovery disputes in compliance with Uniform Rule § 202.7(a)(2).**

General Rules:

Prior to the conference date the parties shall:

1) review all prior court orders in each respective medical malpractice case (to the extent that prior orders exist); 2) confer with one another regarding outstanding discovery; and 3) complete and submit the preliminary conference or compliance conference stipulation and order on the date of the conference.

Counsel appearing at a discovery conference must be familiar with the case, be authorized to discuss all discovery issues, and have available a list of all outstanding discovery.

In general, the Court encourages the parties to work diligently to resolve disputes prior to requesting the Court's intervention. To facilitate agreement, and avoid the need for the Court's intervention in all but extenuating circumstances, the Court submits the general rules for guidance:

1. **Medical Authorizations:** When a defendant serves a demand for authorizations together with a demand for a bill of particulars, counsel for the plaintiff shall serve the authorizations with the bill of particulars.
2. **Scheduling of compliance conferences following the preliminary Conference:** The date for a compliance or status conference shall be set by the Court in the preliminary conference order. Absent extenuating circumstances, a compliance conference will be scheduled no later than three to four months after the preliminary conference order.
3. Parties are expected to adhere to all discovery deadlines contained in preliminary, compliance and status conference orders. Unexcused failure to comply with the requirements and deadlines fixed by the Court in the subject orders may result in the imposition of costs, sanctions, penalties, or other applicable remedies upon the offending party, pursuant to sec. 130.21 of the Rules of the Chief Administrator, 22 NYCRR § 202.27 (*see Kihl v Pfeffer*, 94 NY2d 118 [1999]).
4. The Note of Issue filing date will be provided by the Court on the date of the conference.

SETTLED CASES

If a case has settled, the parties must promptly advise the Part Clerk and Law Clerks by email, and attach a copy of the stipulation of discontinuance. Attorneys are expected to appear for scheduled conferences and/or motions until the stipulation is sent to the Court unless the Court has directed otherwise.

SETTLEMENT CONFERENCES

Settlement conferences will take place on alternating Tuesdays each month. The parties will be advised by the Part Clerk of the date and time of the conference. Counsel must be fully familiar with the case and be authorized to enter into agreements, both substantive and procedural. Only one settlement conference will be held, and in the event the case does not settle at that time the parties will be given a firm trial date.

If a summary judgment motion has been filed and there is a scheduled settlement conference, the parties are to notify the Part Clerk and the Law Clerks immediately by email.

Settlement conferences will not be adjourned absent good cause shown. If a summary judgment motion is pending, the Court will provide a new date for the conference.

PRE-TRIAL CONFERENCE

Counsel appearing for the pre-trial conference shall submit to the Court: 1) motions in limine and trial memoranda; (2) a list of potential witnesses in the order in which they intend to call them at trial, including expert witnesses; (3) marked pleadings and bills of particulars; (4) proposed final jury charges citing to PJI sections (if applicable, the former PJI section should also be provided parenthetically); and (5) proposed jury verdict sheet.

All proposed jury charges and proposed verdict sheets shall also be emailed to the Court at dsantelm@nycourts.gov and woverstreet@nycourts.gov in editable MS Word (.doc) format. Amendments shall be permitted at the final charge conference.

If counsel intends to rely on the PJI without modifications, it should be referred to by PJI number and topic only. If there are proposed modifications to the PJI charge(s), counsel must submit the full text with all changes red-lined in Word format. Counsel shall submit the appropriate statutory or common law authority in support of suggested non-PJI jury charges or suggested PJI modifications.

TRIAL

Exhibits: Before opening statements, counsel shall pre-mark all exhibits in the order in which they intend to introduce them at trial. Plaintiffs will number their exhibits; defendants will letter their exhibits. On the first day of trial each party will provide the court reporter with the exhibits to be marked.

Subpoenaed Records: It is the responsibility of the attorneys to ensure that subpoenaed records have arrived in the Subpoenaed Records Room.

Depositions: A copy of the deposition transcripts a party intends to use at trial must be provided to the Court immediately before the witness takes the stand.

TRIAL OBJECTIONS AND ARGUMENTS

Speaking objections are not permitted. When making an objection at trial, counsel shall stand, saying the word “objection.” If further argument is required, counsel should ask for permission to approach the bench. Upon request, counsel will be given the opportunity to make a full record outside of the jury’s presence.

TRIAL EXHIBITS

Counsel must retrieve their respective trial exhibits within seven days of the trial’s conclusion. Any exhibit left with the Court for more than fourteen days is subject to destruction without further notice.

INFANT COMPROMISE AND DEATH COMPROMISE ORDERS

Petitions for an Infant Compromise Order must comply with CPLR § 1208 and 22 NYCRR § 202.67. Petitions for Death Compromise Orders must comply with EPTL § 5-4.6 and SCPA § 207.38. The petition and supporting documentation is reviewed by Chambers. In the event that additional documentation is needed, or the submission is incomplete, Chambers will notify the

attorney by email. All documents requested by the Court must be uploaded to NYSCEF and followed up with an email to the Law Clerks, with the above enumerated documents attached.

Infant Compromise hearings will be scheduled by Chambers only upon a determination that all required documentation has been submitted.