

HON. JAMES P. McCORMACK

Part 9
100 Supreme Court Drive
Mineola, NY 11501
Courtroom Clerk: Eric Justvig
Law Secretary: Gregg Roth
Secretary: Peggy Ward
Chambers: 516-493-3263
Courtroom: 516-493-3266
Fax: 516-493-3206 (not for filing of papers)
Judgemccormackremote@nycourts.gov

Courtroom: Located on the 4th Floor North

Unless otherwise ordered by the Justice in a specific case, matters before the Justice shall be conducted in accordance with the CPLR, the Uniform Civil Rules of the Supreme Court as amended by Administrative Order 270/2020, effective February 1, 2021, and the following:

Letters: Except as provided below, **letters to the court that contain substantive issues regarding the case, or discuss the facts of the case in any manner, are not permitted absent prior approval from the court.** Letters sent without prior approval will be disregarded. Repeated violations of this rule will result in sanctions.

Email: Parties may communicate with the law secretary by email, with permission of chambers. A party emailing the law secretary must include all the other parties to the case on the email. Parties may also email chambers at Judgemccormackremote@nycourts.gov, on notice of all other parties. **Emails sent to the court that contain substantive issues regarding the case, or discuss the facts of the case in any manner, are not permitted absent prior approval from the court**

Telephone Calls. Except as provided below, telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at the number listed above.

Faxes. Faxes to chambers are **not** permitted unless prior authorization is obtained or as set forth below.

Appearances. All appearances shall be made by attorneys with knowledge of the facts and vested with authority to enter into stipulations and/or dispositions which bind their respective clients. (See 202.1(f) and (g) of the Uniform Civil Rules for the Supreme Court and County Court, eff. February 1, 2021). The failure to comply with this rule or the failure to appear in timely fashion may subject counsel to one or more of the sanctions authorized by 22 NYCRR §202.27 and or 22 NYCRR Part 130-2. Attorneys shall comport themselves in accordance with the rules established in 22 NYCRR §700.4, the Rules of Professional Conduct, and the NYS Standards of Civility. This Part expects and requires all counsel to treat one another, the other litigants and all court personnel with professionalism and respect. Lack of civility toward one another will not be tolerated.

Attorneys of record must continue to appear for their clients until such time as the court has relieved counsel of that obligation or until a stipulation substituting counsel has been filed with the clerk of the court. See, CPLR §321. Self-represented litigants shall be subject to the same rules of practice as attorneys appearing in the part.

“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 the assigned judge via telephone, or email. This notification shall be made in addition to the filing of a stipulation with the county clerk” (Section 202.28(a) of the Uniform Rules for the Supreme Court and County Court, eff February 1, 2021).

“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 the assigned judge in writing.” (Section 202.28(b) of the Uniform Rules for the Supreme Court and County Court, eff February 1, 2021).

Preliminary Conferences. Preliminary conferences will be held according to the rules set forth in 22 NYCRR §202.19 and will be conducted in the Preliminary Conference Part of the Supreme Court Building. The conference will be scheduled by the clerk of that part. (telephone no. 516-493-3120). If Covid precautions are currently in place, then all preliminary conferences shall be held virtually. **The court expects parties to strictly adhere to the schedule contained within the preliminary conference order. That schedule cannot be changed without prior permission of the court. All dates and deadlines contained in the Preliminary Conference Order, including deposition/EBT dates, MAY NOT be changed without prior approval of the court.**

“Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery, including discovery of electronically stored information, and any other issues to be discussed at the conference, (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.” (Section 202.23 of the Uniform Rules for the Supreme Court and County Court, eff February 1, 2021).

Compliance Conference. The compliance conference date will be set down in the preliminary conference order and must be held no later than 60 days before the date scheduled for the completion of discovery (22 NYCRR §202.19[b][3]). All conferences will be held virtually unless chambers advises otherwise. **All parties will receive an email after the preliminary conference describing the court’s procedure for virtual conferences. Attorneys must ensure that the assigned attorney’s email has been listed on NYSCEF. The court will email parties through NYSCEF for the subject case, and will assume all emails are received once sent.**

Attorneys appearing at the compliance conference must have telephone access to their respective clients and shall be prepared to enter into good faith settlement discussions. Adjournments will be granted only for compelling reasons. In no event shall the compliance

conference be held later than the compliance requirement date as set forth in the DCM timetable accompanying the preliminary conference order. To adjourn a compliance conference on consent, call chambers (516-493-3263) not later than 4:00 p.m. the day before the conference to seek permission. A letter confirming the adjournment must be sent by facsimile (516-493-3206), email or efiled, with notice to all other parties, as directed by the court. No compliance conference may be adjourned by phone or stipulation more than once or more than four (4) weeks without permission from the court.

Certification Conference. Pursuant to the rules of the Administrative Judge, a certification conference will be held prior to the filing of a note of issue. The certification conference will be held no later than 90 days before the date fixed for the filing of the note of issue. Attorneys appearing at the certification conference must have telephone access to their respective clients and shall be prepared to enter into good faith settlement discussions. There shall be no adjournments of certification conferences without the permission of the court.

This Part will be conferencing most cases on Tuesdays and Thursdays.

Motion Practice.

A. *Return date and adjournments.* All motions are made returnable to the Hon. James P. McCormack, Part 9. Parties should contact the courtroom clerk with all questions regarding return dates and adjournments. If an adjournment of a motion is being requested, parties must first seek the consent of their adversary. If the adversary does not consent, a conference call with the law secretary can be requested. The court does not accept adjournments left by message on the chamber's or courtroom clerk's voice mail. **There shall be no appearance required on motion return dates.** If oral argument is requested, the court will consider the request, *after* reviewing the papers, and will then inform the parties of the date of the oral argument if the request is granted.

On non-e-filed cases, or cases where there is only "partial participation" in e-filing, each set of moving papers, opposition papers and reply papers must contain an active email address for the author of the papers and the adversary/adversaries.

Currently, the court does not require working copies or hard copies of motion papers on e-filed cases.

**DECISIONS AND ORDERS ON MOTIONS CAN BE FOUND, AFTER ENTRY, ON E-FILE SITE OR, IF NOT AN E-FILED CASE, ON THE COURT'S WEBSITE AT:
<http://decisions.courts.state.ny.us/10jd/nassau/decisions/search/supdecisions.htm>**

WHILE PARTIES MAY RECEIVE AN ELECTRONIC NOTIFICATION THAT A DECISION HAS BEEN RENDERED, IT IS EACH PARTY'S OBLIGATION TO REGULARLY CHECK THE WEBSITE FOR THEIR ENTERED DECISION AND ORDER

B. *Writs and Contempts:* All applications shall be calendared on the date returnable. No adjournments will be granted unless a stipulation consenting to the adjournment, signed by all parties and any alleged contemtor who is not a party, is received in Chambers no later than

1:00 p.m. of the day prior to the return date.

C. *Submission of papers.* All motion papers are to be addressed to and submitted through the Hon. James P. McCormack, Part 9. The court will not accept sur-reply papers unless **prior authorization** has been given by the court. Sur-reply papers submitted in violation of this rule will be disregarded.

Parties are directed to review Section 202.8-b of the Uniform Rules for the Supreme Court and County Court, eff February 1, 2021, regarding the length of motion papers. This rule must be adhered to strictly. Lawyers who ignore or disobey this rule may be subject to sanctions including, but not limited to, the striking of all their papers on the motion.

D. *Temporary restraining orders.* Temporary restraining orders issued by the court will remain in effect until a subsequent order is issued by the court. If the parties or counsel have an agreement regarding modifying or vacating a TRO, a stipulation may be submitted to the court to be so-ordered.

E. *Cross-Motions.* Submission of a cross-motion with a stated return date that is beyond the return date of the original motion will not serve to adjourn the original motion.

F. *Summary Judgment.* Motions for summary judgment shall be returnable no later than 60 days after the filing of a note of issue.

Parties are directed to review Section 202.8-g of the Uniform Rules for the Supreme Court and regarding summary judgment motions. Movants on summary judgment motions must supply a Statement of Material Facts that is in compliance with 22 NYCRR 202.8-g(a), and opposition papers must contain a Statement of Material Facts that is in compliance with 22 NYCRR 202.8(b). Movants who fail to comply risk the moving papers being found defective, and opposition papers that are not in compliance risk all facts that are not specifically controverted being deemed admitted.

G. *Discovery Motions.* All discovery motions must contain an affirmation of good faith that strictly complies with 22 NYCRR 202.7(c). Failure to comply will result in denial of the motion.

H. *Discovery in General.* Parties are directed to review, and be familiar with the following sections of the Uniform Civil Rules for the Supreme Court and the County Court, eff. February 1, 2021: 202.20 (Interrogatories limited to a maximum of 25); 202.20-a, (procedures related to privilege logs); 202.20-b (limitations on depositions); 202.20-c (rules regarding responses and objections to discovery demands); and 202.20-d (procedures regarding deposing entities and identification of matters).

As is discussed, *supra*, and as is confirmed by rule 202.20-e, parties are expected to strictly adhere to discovery schedules. Regarding discovery disputes, parties are required to meet and confer before involving the court or making a motion (Rule 202.20-f). It is the policy of this Part to not accept letters as good faith efforts, unless a series of letters indicates an interaction among counsel, and not just a one-sided statement or threat.

While prior approval *is not required* to bring a discovery motion, the court remains available to discuss discovery issues in an effort to avoid such a motion.

I. *Phone Conferences with Chambers*: If the parties believe, in good faith, a conference call with the law secretary may help resolve certain issues and obviate the need to make a motion, the parties may call chambers to ascertain the law secretary's availability. Conference calls will take place in the afternoon, at 2:30pm or later. If Covid precautions are in effect, conference calls with the law secretary can occur at any time during the day. During Covid precautions, this Part will be conferencing most cases on Tuesdays and Thursdays.

SUMMARY JUDGMENT MOTIONS (CPLR 3212, 3213) AND MOTIONS TO DISMISS (CPLR 3211) DO NOT STAY DISCOVERY

Trials.

Jury Trials. A trial conference with the Court shall be held immediately prior to the commencement of all jury trials. At the trial conference, counsel shall supply the Court with marked pleadings, amendments thereto and all bills of particulars served. Counsel shall further provide the Court with a list of proposed jury charges and the contentions of each party and proposed jury verdict sheets. A list of all pre-marked exhibits shall also be provided to the Court and to the stenographer. Counsel shall notify the Court and opposing counsel in the conference of any motions in limine and any supporting statutory or case law. Counsel shall notify the Court of their inability to stipulate to the admission of any exhibits to be offered at trial. Counsel shall further advise the Court of the witnesses to be called, and if any be experts, shall further provide the information required by CPLR 3101 (d)(1)(l). The filing of a note of issue is a condition precedent to the commencement of any trial.

Malpractice "Departures". In cases involving claims of professional negligence, on the next trial session after a party rests, or such other time as the Court may direct, each party [plaintiff] shall furnish the Court and counsel for all parties with a list of the departures from the standards of good and accepted practice which that party asserts were testified to by its expert witness or witnesses. Where the testimony has been transcribed, page references will be required.

Non Jury Trials. Non-jury trials are subject to scheduling upon forty-eight hours notice. A conference with the Court shall proceed the commencement of all non-jury trials at which counsel shall provide the following: 1) A copy of marked pleadings, amendment thereto, bills of particulars; 2) A list of pre-marked exhibits; and identification of those on which counsel could not agree as to their introduction at trial; 3) A list of witnesses and if any be experts, the information required by CPLR 3101(d)(1)(l); and 4) pre-trial memoranda of law. **The parties shall be required to provide a transcript of the trial.** The filing of a note of issue is a condition precedent to the commencement of any trial. It is the obligation of counsel or an unrepresented party or parties to contact the court 48 hours prior to the start of the trial to confirm all parties will appear. Failure to contact the court can result in the trial date being changed or vacated.

Miscellaneous Rules.

A. *Ex parte and miscellaneous communications*. The court will not accept any ex parte communications by telephone or letter from counsel or a self-represented litigant. The court will not accept any correspondence between counsel except as may be necessary to confirm a consent adjournment. Individual parties may contact the court to request a conference or to inquire about Part procedures that are not otherwise contained in these rules.

B. *Court personnel.* The court functions with the aid and support of the courtroom and chambers personnel. The court and the personnel assigned to the court will treat counsel, litigants and other persons present with dignity and courtesy which is indispensable to the proper administration of justice and the court expects the court personnel to be treated in like manner.

D. *Compromise Applications:* All applications for court approval of a proposed compromise of an infant or other disabled party's claim must be submitted through the Special Term, with proof of service on all remaining parties. Compliance with the provisions of CPLR 1207, 1208 and 22 NYCRR 202.67 and a proposed distribution of net amounts to be recovered by the disabled plaintiff that is consistent with the provisions of CPLR 1206 is required. The Court will not accept medical reports/affidavits executed more than six months prior to the submission date. The report must indicate whether the injured plaintiff has fully recovered, and if not, the nature and extent of the injuries and the costs of future treatment. Since the Court may direct that notice of the application be given to all persons who possess claims against the proceeds recoverable under the compromise, including those with statutory liens, the names and addresses of all such persons and the amount of their prospective claims must be set forth in the petition. If no person has asserted such a claim, the petition must so state. Once the submissions are complete, an appearance date shall be scheduled by the Court.

E. *Hearings/Inquests:* All hearings and/or inquests emanating from cases in the inventory of IAS Part 9 shall be scheduled by the Court. The filing of a note of issue is a condition precedent to the commencement of any hearing or inquest.

F. *Sanctions:* The Court will not consider a sanctions application unless the moving party first seeks withdrawal or discontinuance of the offending act or action or demands required or necessary action which is refused. Proof of such request must be made a part of the sanctions application.

G. If the deadline for filing a note of issue (NOI) has passed and the note of issue has not been filed, the complaint will be subject to dismissal. .

H. *Mandatory Alternative Dispute Resolution (ADR):* In light of the Mandatory ADR program, all cases before the court will be scheduled on two separate tracks. One track will be the settlement/ADR track, and appearances on the settlement track can be scheduled before the IAS Part, a JHO or volunteer mediators. The parties are also free, as always, to take part in private mediation. The second track will be the compliance/certification track and that shall remain with the IAS Part. However, parties should expect that EVERY conference before the IAS Part will also be a settlement conference, and parties should appear with the authority to settle the matter.