

**JUSTICE NELSON S. ROMAN**  
**Part 26 Court Rules<sup>1</sup>**

Supreme Court of the State of New York  
12 Judicial District-Bronx County  
851 Grand Concourse Boulevard  
Bronx, New York 10451  
I.A.S. Part 26, Room: 407  
Part Phone: (718) 618-1250/1251  
Chambers: (718) 618-1433<sup>2</sup>  
Principal Law Clerk/Court Attorney: Fidel E. Gomez, Esq.  
Confidential Secretary: Tara Zurheide  
Part Clerk: Cassandra Smith

**Inquiries**

- All inquiries should be made to the appropriate clerk's office when possible. Inquiries should only be directed to chambers when attempts to resolve a matter with the appropriate clerk prove fruitless.
- Facsimiles to chambers are not permitted unless prior authorization is obtained.
- E-mail correspondence with chambers staff is not permitted unless prior authorization is obtained.
- Attorneys shall not call chambers during the daily lunch hour which is from 1PM to 2 PM.

**Motion Procedure**

**Generally**

- All papers must comply with CPLR §§2101, 2103 and 2214.
- Tabs must be used when submitting exhibits with any motion.
- All cited material shall be fully viewable without having to remove staples or binding.
- All submissions shall be fully and securely bound.
- No exhibits shall be double sided.
- Courtesy copies shall not be submitted unless requested.
- When submitting proposed orders or judgments in connection with a motion, the same shall be submitted as a separately bound document. Proposed orders or judgments incorporated within motion papers will be considered exhibits, treated

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<sup>1</sup> These rules are effective November 1, 2007.

<sup>2</sup>. Although the number to chambers has been provided use of said number is subject to the limitations set forth herein.

as such, and may be disregarded.

- Failure to appear at a calendar call will result in denial of any motion made by the non-appearing party and the granting of any motion on default when the opposing party fails to appear.
- Counsel must advise the Court in writing and as soon as practicable if any submitted motions have been resolved, withdrawn, or if the motion is moot because the case has been settled.
- This part generally only entertains substantive non-discovery motions. However, this part will entertain motions for pre-action and non-party discovery.
- No motion for substantive relief shall be joined with any application for discovery. Discovery related motions are heard by the Judge presiding in the DCM Part, IAS Part 11. In the event that a party makes a discovery cross-motion in response to a substantive motion, the Court shall refer the discovery related application to the DCM Part, IAS Part 11 and upon resolution of the discovery motion, shall resolve the substantive motion.
- **Effective November 1, 2007, 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.**
- The Court shall mail courtesy copies to all parties of all decisions rendered, except for those decisions related to matters pursuant to the Mental Hygiene Law. Such matters shall be faxed to petitioner's counsel.
- No sur-replies shall be considered absent leave of court to interpose the same.
- **Without exception all motions shall be securely bound and all exhibits submitted in support of any motion shall be one sided. Failure to adhere to this rule shall result of denial of the motion.**

#### **Motions Brought by Notice of Motion**

- Motions are returnable five (5) days a week in the Motion Support Office, Room 217. All opposition and reply papers must be submitted to the Motion Support Office on the return date of the motion. Opposition and reply papers will not be accepted prior to or after the return date.
- All non-disclosure motions will be deemed submitted on the return date and forwarded to chambers.
- Stipulations of adjournment, compliant with the Uniform Court Rule §202.8(e)(1), submitted in Room 217 on the return or adjourned date of a motion, will be honored and the motion will be adjourned and kept in the Motion Support Office.
- Applications seeking an adjournment shall only be made upon failure to procure an adjournment on consent of all parties. Upon such application, the motion and application will be forwarded to chambers for a ruling. Counsel will be advised of the ruling by telephone.
- Oral applications seeking an adjournment will not be considered.
- There shall be no oral argument and no personal appearance is required on any

motion brought by notice of motion.

### **Motions Brought by Order to Show Cause**

- Orders to Show Cause must comply with Uniform Rule 202.7(d) and be brought to the Motion Support Office. Thereafter, They are forwarded to chambers for consideration.
- All Orders to Show Cause are returnable on Mondays, except for court holidays, in IAS Part 26 at 10 AM, unless otherwise indicated. Personal appearances are required.
- Proof of service must be filed with the Clerk of IAS Part 26 by 10AM on the return date. Non-compliance will result in denial of the order to show cause.
- Stipulations adjourning an Order to Show Cause shall be filed with the Clerk of IAS Part 26 prior to the call of the calendar or can be faxed to chambers prior to the return date with prior approval.

### **Infant Compromises and Other Ex Parte Applications**

- Ex Parte applications are to be submitted to the Motion Support Office.
- After review of Infant Compromise submissions, counsel will be notified when to appear by phone. Counsel shall also be notified of any deficiencies in the papers submitted and shall when appropriate, be given an opportunity to submit additional information to cure the deficiency.
- The infant and his guardian must be present on the date scheduled unless a prior waiver of their appearance has been obtained.
- All proposed infant compromise orders shall contain the following language:  
It is further Ordered that the Guardian shall, within thirty days of the deposit of the funds due the infant herein in the above designated bank(s), submit to the Clerk's Office, Room 217, a copy of the Certificate of Deposit issued by said bank.
- The attorney's supporting affirmation shall set forth the policy limits of all available insurance.
- All infant's Compromise submissions shall comply with CPLR §§1207, 1208 and Uniform Rules §202.67.
- The Court will not entertain an Infant's Compromise Order where the medical evidence submitted is wholly inappropriate, e.g., a chiropractor rendering an opinion with regard to a wrist fracture, an internist rendering an opinion regarding psychic trauma.

### **Trials**

- Be prepared and well organized. Be punctual and professionally attired. Be civil to the Court and to one another.
- Prior to jury selection, counsel must ascertain the availability of all witnesses and

subpoenaed documents. Counsel shall request the subpoenaed records and clerk's file as soon as possible after assignment to this Part.

- The Court will work with attorneys to resolve scheduling conflicts. However, all scheduling concerns and issues should be promptly discussed during the first conference.

- Any special requests, such as interpreters, blackboards, media equipment, shall be made well enough in advance so as to not delay the trial.

- There shall be no time limits imposed upon the jury selection process but it is expected that the attorneys will select a jury as expeditiously as possible.

- When the case is first conferenced, plaintiff must submit a copy of the marked pleadings and all parties must submit copies of the proposed verdict sheet and requested jury instructions. Parties are allowed to amend any such submissions as the trial unfolds. Parties shall also furnish the Court with copies of any statutes that the parties claim are relevant to a particular case.

- Parties must provide the Court with copies of all transcripts to be used during the trial prior to their use at trial. Portions of any depositions to be read into evidence on a party's case in chief must be disclosed in advance and the Court and all parties must be provided with all page and line numbers for the portions to be read.

- Parties shall provide the Court copies of all expert exchanges and reports.

- When the case is first conferenced in the Part, parties shall

- Alert the Court to all anticipated issues of law and fact and provide the Court with the relevant law applicable to their case.

- Stipulate to undisputed facts and the admissibility of clearly admissible documents.

- Apprise the Court of any anticipated motions *in limine*.

- Provide the Court with a list of anticipated witnesses.

- Provide the Court with any subpoenas it wishes to the Court to so-order, provided the same are relevant to the issues at hand.

- Alert the Court to any anticipated missing witness or document charge.

- Alert the Court as to the existence any defaulting parties or any culpable non-parties against who liability is sought to be apportioned.

- Motions *in Limine* should be supported by case law and copies of the same must be provided to the Court prior to the making of such motion.

- All trial exhibits must be pre-marked for identification, as well as any records stipulated in evidence.

- During the trial none of the attorneys, witnesses, or parties are to have any communication with the jurors.

- Speaking objections are prohibited. An objection shall be made by standing, saying "objection" and thereafter succinctly stating the basis for the objection. If the objection requires elaboration, parties should request a sidebar.

- Please keep requests to approach the bench during a trial to a bare minimum.

- While opportunity to preserve and make a record may not always be allowed when requested, all attorneys shall ultimately be granted ample opportunity to make a record.
- Any item which is sought to be shown to a witness must first be shown to opposing counsel.
- Do not interrupt witnesses during examination, unless the answer is completely unresponsive and only then upon seeking a ruling from the Court.
- Due to the Court's motion calendar, there shall be no trials on Monday mornings.
- Due to the Court's Mental Hygiene Inventory, there shall be no trials conducted on Tuesdays and on some Fridays.

### **Mental Hygiene Law Article 81 Proceedings**

- Hearings shall begin promptly at 10AM on Tuesdays.
- Since these proceedings are time sensitive, adjournments will be granted only under exigent circumstances and with the prior approval of this Court.
- Applications for adjournments must be requested from the Judge or the Principal Law Clerk and thereafter in writing. Written requests for adjournments can be made via letter on notice to all parties and served upon the Court via facsimile.
- It is expected that the Court Evaluator assigned to any particular proceeding shall fully verse him/herself with his duties and responsibilities and execute the same properly and completely.
- Should the AIP request counsel, the Court Evaluator shall notify the Court in writing as soon as practicable and the Court shall appoint counsel in the appropriate case.
- Applications for alternate service upon the AIP shall be made by ex-parte Order to be submitted to the Guardianship Office, Room 221, and shall be accompanied by proof supporting the basis for alternate service.
- Applications by the Court Evaluator seeking to examine AIP's medical records or seeking to have the AIP examined by an independent medical doctor, shall be made by Order to Show Cause.
- The report of the Court Evaluator shall be provided to the Court on the day of the hearing and shall not be published to any other party until the day of the hearing.
- Any adjournment or appointment of counsel shall be memorialized and authorized by short form Order.
- Unless otherwise told, all hearings must be conducted in the presence of the AIP. Accordingly, any discussions regarding the waiver of the AIP's appearance shall be discussed with the Court prior to the date of the hearing.
- Unless an exception is made, all applications related to Article 81 of the Mental Hygiene Law shall be brought by Order to Show Cause and not by Notice of Motion.