

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX (12TH JUDICIAL DISTRICT)**

851 Grand Concourse Boulevard
Bronx, New York 10451

**PART 31 - PART RULES
HON. FIDEL E. GOMEZ, J.S.C.**

Contact Information:

Chambers: 6M-16

Courtroom: 403

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- **The Uniform Civil Rules For the Supreme Court & The County Court, 22 NYCRR 202 et seq., are incorporated herein by reference, subject to minor modifications described below.**
- **Where appropriate, the Part Rules reference certain portions of 22 NYCRR 202 et seq. to emphasize the importance of the same.**
- **Pursuant to 22 NYCRR 202.5-bb, all newly filed actions in the Commercial Division must be e-filed on NYSCEF.**

INQUIRIES/CORRESPONDENCE

All inquiries concerning scheduling, appearances, adjournments, and case status shall be directed to the Part Clerk by email. **Inquiries are not to be made via NYSCEF.**

All correspondence with Chambers must be by email. Telephone calls to Chambers are permitted only in situations requiring

immediate attention that cannot otherwise be obtained by email.

All inquiries/correspondence to the Court must indicate that a copy was sent to all other parties simultaneous with transmittal to the Court.

When parties file a letter on NYSCEF that requires the Court's attention, an email must be sent to the Part Clerk to indicate the same.

CONFERENCES

Unless the Court directs otherwise, all conferences in this Part will be held in-person.

In accordance with 22 NYCRR 202.1, counsel who appear before the Court must be familiar with the case with regard to which they appear and be fully prepared and authorized to discuss and resolve the issues which are scheduled to be the subject of the appearance. **Failure to comply with this rule may be treated as a default for purposes of 22 NYCRR 202.27 and/or may be treated as a failure to appear for purposes of 22 NYCRR 130-2.1.**

Adjournment of Conferences

A request to adjourn a conference must be made in writing by email to the Part Clerk at least forty-eight (48) hours in advance of the scheduled conference. The request must be copied to all parties.

All applications for adjournment must state: (1) the reason for the adjournment request; (2) whether the request is being made on consent of all of the parties; and (3) the length of the adjournment sought.

The Court will advise the parties by reply email whether the requested adjournment has been granted.

Preliminary Conference

At least seven (7) days prior to the Preliminary Conference, the parties must jointly submit a completed Preliminary Conference Order to the Part Clerk by email. The parties must use this Part's standard form Preliminary Conference Order, which is available on the Bronx County Supreme Court's webpage.

Upon receipt of the completed Preliminary Conference Order, the Court will cancel the scheduled Preliminary Conference, unless the parties indicate at the time of submission of the completed Preliminary Conference Order that there is a discovery dispute requiring Court intervention.

Parties are advised that the Court may alter the deadlines set by the parties, schedule a Compliance Conference, and/or prescribe a Note of Issue filing date. An executed copy of the Preliminary Conference Order will be filed on NYSCEF.

At the Preliminary Conference, the parties must be prepared to discuss the topics listed in NYCRR 202.11.

Failure to provide a completed Preliminary Conference Order may result in the adjournment of the Conference.

Compliance Conference

At least seven (7) days prior to the Compliance Conference, the parties must jointly submit a completed Discovery/Compliance Conference Form to the Part Clerk by email. The parties must use this Part's standard form Discovery Conference Form, which is available on the Bronx County Supreme Court's webpage.

Upon receipt of the completed Discovery/Compliance Conference Form, the Court will cancel the scheduled Compliance Conference, unless the parties indicate at the time of submission of the completed Discovery/Compliance Conference Form that there is a discovery dispute requiring Court intervention.

Parties are advised that the Court may alter the deadlines set by the parties, schedule a Settlement Conference, and/or prescribe a Note of Issue filing date. An executed copy of the Discovery/Compliance Conference Form will be filed on NYSCEF.

Failure to provide a completed Discovery/Compliance Conference Form may result in the adjournment of the Conference.

Pursuant to CPLR § 3216, every Compliance Conference Order contains language indicating that the failure to file the Note of Issue as prescribed therein will result in dismissal of the action for failure to prosecute.

Settlement Conference and Pretrial Conference

The parties shall request a settlement conference with the Court

prior to filing a note of issue. If the parties fail to make such a request, the Court will schedule one.

Counsel attending the Settlement Conference must be fully familiar with the action and authorized to discuss all factual and legal issues presented by the litigation, settlement demands or offers. Counsel must be authorized to enter into binding settlement. Counsel are advised that, in an effort to foster open settlement discussions, the Court may meet with counsel separately during the discussions. Counsel are presumed to have consented to the Court doing so unless an objection is made beforehand.

After more than one unsuccessful Settlement Conference, the Court will schedule a Pretrial Conference after which the case will be referred to STP Part for trial assignment.

DISCOVERY DISPUTES

In the spirit of 22 NYCRR 202.20-f(a), discovery motions may not be made without a prior conference with the Court. Accordingly, pursuant to 22 NYCRR 202.20-f(b), before seeking judicial intervention, the parties must first consult with one another in a good faith effort to resolve all discovery disputes. If a dispute cannot be resolved after such good faith effort, the parties follow the protocol prescribed by Commercial Division Rule 14 (202 NYCRR 202.70), which, *inter alia*, requires that the party seeking judicial intervention submit a letter requesting a conference and advising the Court of the nature of the dispute and the efforts made to resolve it. The request must be submitted to the Part Clerk by email. Failure to comply with the foregoing, will result in the denial of any discovery motion.

SEALING/REDACTION OF DOCUMENTS

Parties may not stipulate to seal or redact documents or information beyond those permitted by Redaction Rules (22 NYCRR 202.5[e] [i.e., date of birth, social security number, and account numbers]). The Court will consider an application for additional sealing or redaction of documents only by order to show cause. An application to seal or redact documents shall set forth the nature of the document, the reason for the request, and must establish "good cause" pursuant to 22 NYCRR 216.1. All documents to be sealed shall be clearly identified in the moving papers, including by the specific NYSCEF Doc. No.

If the Court permits additional sealing or redaction of a

document in whole or in part, the parties shall e-file both the redacted copy publicly and the unredacted copy of the document under seal. Working copies of both the redacted and unredacted papers shall be delivered to the Court, with a designation clearly indicating on the cover page whether the papers are redacted or unredacted.

MOTION PROCEDURE

All motions made before the Court must contain official citations rather than unofficial Westlaw or Lexis citations.

E-Filing

Papers submitted by e-filing shall comply with the Bronx Supreme Court Filing Rules for E-filed Motions. The Filing Rules are available at:

<http://www.nycourts.gov/courts/12jd/BRONX/civil/filingrules-efile.shtml>.

Working hard copies of all motion papers, including opposition and reply papers ("Working Copies"), shall be submitted to Chambers by mail, with proof of e-filing, no later than the return date of the motion. Working copies of exhibits are not necessary. **E-filed motions that are submitted without Working Copies shall be denied without prejudice.**

General Motion Rules

All papers must comply with CPLR §§ 2101, 2103 and 2214.

All submissions to this Part (**applicable only to Working copies**):

1. Shall comply with 22 NYCRR 202.5(a)(1);
2. Shall be fully and securely bound, with all text legible and viewable without having to remove staples or binding;
3. Shall, not be double-sided;
4. Shall not exceed the word count set forth in 202.8-b absent leave of court; and
5. Shall have the Motion Sequence Number to which they are related placed on the front page.

Motions which do not adhere to the foregoing rules shall be

denied without prejudice.

Pursuant to CPLR §3212(a), a motion for summary judgment shall be made **no later than thirty (30) days after the filing of the Note of Issue**, except with leave of court on good cause shown.

Unless an order indicates otherwise, CPLR § 3214(b) is expressly rendered inapplicable to motions to dismiss (CPLR § 3211), motions for summary judgment (CPLR § 3212), and motions for summary judgment in lieu of complaint (CPLR § 3213). Accordingly, the filing of the foregoing motions does not automatically stay discovery pending resolution of any such motions.

Statements of Material Facts pursuant to 22 NYCRR 202.8-g are not required for motions seeking summary judgment.

No sur-replies shall be submitted absent leave of court.

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 as exhibits and will be disregarded.

Where the Court issues a Bench Decision and a party desires a written Decision and Order, the party may submit a proposed Order to the Court, together with the transcript of the proceedings at which the Bench Decision was rendered to be "So Ordered".

Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will not be signed unless an affidavit of service and notice of settlement for a date designated in accordance with 22 NYCRR 202.48 has been included.

Failure to appear at a calendar call will result in the 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.

The parties must advise the Court in writing by email to the Part Clerk as soon as practicable if any submitted motions have been resolved, withdrawn, or if the motion is moot because the case has been settled.

Motions Brought by Notice of Motion

E-filed Motions: Motions are returnable five (5) days a week. All opposition and reply papers must be e-filed by the return date of the motion. Opposition and reply papers will not be accepted after the return date.

Non-E-filed Motions: 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 by the return date of the motion. Opposition and reply papers will not be accepted after the return date.

All motions will be deemed submitted on the return date.

There shall be no oral argument or personal appearance required on any motion brought by notice of motion unless directed by the Court.

Motions Brought by Order to Show Cause

22 NYCRR 202.8-d is strictly enforced and an application brought by Order to Show Cause that fails to demonstrate that exigent or urgent relief is required will be not be signed.

All Orders to Show Cause are returnable on Mondays, except for court holidays, unless otherwise indicated. **Appearances are required.**

E-Filed Motions: Proof of service must be e-filed by 9:00 a.m. on the return date. Non-compliance may result in a denial of the order to show cause.

Non-E-Filed Motions:

1. Orders to Show Cause must comply with 22 NYCRR 202.7(d) and be brought to the Motion Support Office, Room 217.
2. Orders to Show Cause must include a fax number or an email address to permit a conformed copy of the signed Order to be sent to the movant.

3. Proof of service must be emailed to the Part Clerk by 9:00 a.m. on the return date. Non-compliance may result in a denial of the order to show cause.

If a Temporary Restraining Order is sought within an Order to Show Cause, the papers must comply with 22 NYCRR 202.8-e and the parties must appear on the date the Order to Show Cause to argue the necessity of a Temporary Restraining Order.

Adjournment of Motions

E-filed Motions: Stipulations of adjournment, compliant with 22 NYCRR 202.8(e)(1), shall be e-filed and emailed to the Part Clerk prior to the return date of the motion. A party seeking to adjourn an already submitted motion shall also follow the foregoing protocol.

Non-E-filed Motions: Stipulations of adjournment, compliant with 22 NYCRR 202.8(e)(1), shall be emailed to the Part Clerk prior to the return date of the motion.

All Motions: In accordance with 22 NYCRR 202.8-a(c), no motion may be adjourned on consent more than three times or for a cumulative total of more than sixty (60) days.

Applications seeking an adjournment shall only be made upon the failure to procure an adjournment on consent of all parties.

A request to adjourn a motion must be made in writing by email to the Part Clerk at least forty-eight (48) hours in advance of the motion's return date. The request must be copied to all parties.

All applications for adjournment must state: (1) the reason for the adjournment request; (2) the attempts made to adjourn the motion on consent; and (3) the length of the adjournment sought.

The Court will advise the parties by reply email whether the requested adjournment has been granted.

SUBPOENAS

The Court will only so-order the subpoenas that require the

Court's signature as prescribed by the CPLR. Significantly, the CPLR only requires that a subpoena be issued by the Court when, it seeks "production of an original record or document where a certified transcript or copy is admissible in evidence, or to compel attendance of any person confined in a penitentiary or jail" (CPLR 2302[b]), or where the same is "served upon a library, or a department or bureau of a municipal corporation or of the state, or an officer thereof, requiring the production of any books, papers or other things" (CPLR 2307). Accordingly, please do not submit any subpoenas for signature, which do not fall within the ambit of the foregoing statutes.

Any subpoenas submitted for the Court's signature should be accompanied by a statement detailing the relevance of the information sought.

TRIALS

All cases in the Bronx County Supreme Court that are ready for trial are forwarded to the Special Trial Part (STP Part). The Judge presiding in the STP Part then assigns trials to any one of the trial judges in the Bronx County Supreme Court.

Cases will be forwarded to the STP Part once all dispositive motions have been decided and when it is clear that the action cannot be settled. All parties should keep in mind that if a case cannot be settled by the Court or through mediation, it must be tried as soon as possible.

Due to the Court's conference and motion calendars, there shall be no trials on Mondays.

Pre-Trial Conference

When a case is assigned to this Part for trial, the Court will hold a Pre-Trial Conference prior to jury selection. The parties must be prepared to:

1. Alert the Court to any scheduling concerns and issues.
2. Alert the Court to all anticipated issues of fact and law and provide the Court with the relevant law.

3. Apprise the Court of any anticipated/pending motions *in limine*. If a motion *in limine* concerns jury selection, it is to be made orally prior to jury selection. If a motion *in limine* does not concern jury selection, it is to be made orally prior to the commencement of or during the trial. The parties are not required to submit any motions *in limine* in writing, unless otherwise directed by the Court.

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

5. Alert the Court to the existence of any defaulting parties or any culpable non-parties against whom liability is sought to be apportioned.

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

7. Provide the Court with any subpoenas it wishes the Court to so-order.

8. Make any special requests, such as requests for an interpreter, blackboards, media equipment, and etc.

9. Prior to jury selection, counsel must ascertain the availability of all witnesses and subpoenaed documents. Counsel shall request the subpoenaed records and the Court's file as soon as practicable.

10. The parties shall e-file and submit hard copies to the Court of the following documents on the date jury selection begins or within 1 (one) day thereafter:

1. A copy of the marked pleadings; proposed verdict sheets and requested jury instructions; all expert exchanges and reports; a procedural history; and all transcripts to be used during the 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.

Jury Selection

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.

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, stating "objection", and succinctly stating the basis for the objection. If the objection requires elaboration, parties should request a sidebar.

Requests to approach the bench during a trial should be kept to a bare minimum.

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.

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.

Be prepared and organized. Be punctual and professionally attired. Be civil to the Court and to one another.

Exhibits

Within seven (7) days of the conclusion of trial, the parties shall e-file a list of the exhibits that were admitted into evidence and file the hard copies with the Part Clerk.

