

Rules: Part 22¹

Dated: April 1, 2024
HON. MARISSA SOTO
851 Grand Concourse
Bronx, NY 10451
Courtroom 709

***PLEASE CAREFULLY READ THESE RULES. FAILURE OF THE MOVANT(S) TO COMPLY WITH THESE RULES MAY RESULT IN THE DENIAL OF THE MOTION OR ADJOURNMENT REQUEST(S) WITH LEAVE TO RENEW UPON PROPER PAPERS.**

Chambers: (718) 618-1767

Court Clerk: (718) 618-1250

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Chambers Email: fserrano@nycourts.gov

THE COURT REQUIRES WORKING COPIES OF ALL E-FILED MOTION PAPERS AND EXHIBITS TOTALING MORE THAN 20 PAGES NO LESS THAN TWO (2) DAYS BEFORE THE SUBMISSION DATE. ALL SUCH COPIES SHOULD INCLUDE TABS THAT IDENTIFY EACH EXHIBIT.

ANYONE APPEARING WITHOUT COUNSEL WHO HAS TECHNOLOGY CONCERNS SHOULD CONTACT OPPOSING COUNSEL AND, TOGETHER, CONTACT CHAMBERS (718) 618-1767 AS SOON AS POSSIBLE TO ADDRESS SUCH CONCERNS

¹ Version 4.2

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GENERAL RULES

1. APPEARANCES

- a. Counsel who appear in this Part must be fully familiar with the case for which they appear and be fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. In addition, all Counsel must be prepared for settlement discussions and have their client or adjuster "on call" by telephone.
- b. Failure to comply with this rule may be regarded as a default.
- c. Every appearance is an opportunity for resolutions.

FAILURE TO APPEAR ON THE SCHEDULED APPEARANCE DATE WITHIN 15 MINUTES OF THE SCHEDULED TIME MAY RESULT IN DEFAULT PURSUANT TO 22 NYCRR 202.27.

2. SETTLEMENTS AND DISCONTINUANCES

- a. If an action is settled, discontinued, or otherwise disposed of, counsel must file the stipulation by BOTH:
 - i. Emailing chambers at fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov
 - AND
 - ii. file stipulation or notice to NYSCEF or the County Clerk.

3. E-MAIL

- a. ALL **PARTIES** MUST BE CC'D ON ANY EMAILS TO CHAMBERS.
- b. Case filings sent via e-mail are not deemed filed unless explicitly stated by Chambers.
- c. All conference requests should be by email. If no response is received within a week, please follow up by telephone.
- d. Any documents or materials submitted to Chambers by email must be separately filed on NYSCEF or with the County Clerk. Chambers will not file or consider such materials on litigant's behalf and same could leave the record incomplete.

4. ADJOURNMENTS

- a. On Consent

i. Not all adjournment requests will be granted.

1. NOTE: an adjournment request on consent filed after a deadline will not alter the deadline if denied.
2. The Court will post the adjournment approval on the docket.

3. Adjournments after the second one requested on an individual appearance or motion, will be closely scrutinized and will more likely than not be denied unless good cause is shown.
 4. Uniform Trial Courts Rule 202.8-a should be consulted before requests are made.
- ii. Adjournment requests on consent must be in writing and emailed to fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov for approval and submitted to NYSCEF – again all will be reviewed and may not be granted.
 - iii. All approved stipulated schedules will be enforced as written.
 - iv. Non-e-filed cases seeking adjournments must email fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov for approval.
 - v. Telephonic applications for adjournments will not be entertained except in emergency circumstances.
 - vi. Requests for adjournments for appearances from June through September will be more freely granted during this period to allow for the increased likelihood of vacations.
- b. Contested Adjournments
 - i. Contested adjournment requests must be submitted by email to fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov and NYSCEF for approval.

Failure to appear at the call of any calendar may result in an inquest or dismissal pursuant to 22 NYCRR§ 202.27

DISCOVERY

1. DISCOVERY

- a. No motion for substantive relief shall be joined with an application for discovery relief.
- b. With respect to any discovery-related disputes, the parties will adhere to 22 NYCRR 202.20-f before filing a motion; if the dispute persists, the parties shall make an application for a pre-motion conference, which will be scheduled on the Tuesday calendar for the part. Such applications shall be made via email to fserrano@nycourts.gov. The parties shall attach a letter to said email specifying the issues and attempts made to resolve such disputes.

MOTION GUIDELINES

1. Motions brought by Notice of Motion:

- a. Moving papers are to be filed to NYSCEF and/or County Clerk's Office in Room 118.

- b. In all e-filed matters, a working copy of any motion papers totaling more than 20 pages including exhibits with tabs must be submitted to Chambers at least two days prior to the motion's return date.
 - i. Failure to submit a working copy may result in papers being disregarded, or the denial of the motion without prejudice.
- c. Chambers does not require working copies of electronically-filed motion papers if motions and exhibits total is less than 20 pages.
- d. Moving papers can be dropped off in courtroom 709 when available.
- e. No motion for substantive relief shall be joined with any application for discovery.
- f. Discovery must continue during the pendency of any motion, unless a stay is explicitly requested for good cause.
 - i. A stipulation will not suffice; any stay must be so-ordered.
- g. All papers must comply with CPLR §§2101, 2103, 2214 and Uniform Rules for NY State Trial Courts part 202.5 and 202.8-A.
- h. Unless otherwise directed by the court, motions are marked submitted after ORAL ARGUMENT.

2. Motions for Summary Judgment

- 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.² The Court will not accept any s to adjourn or otherwise extend this deadline.**
- b. **Any good cause request for the extension of time to file a summary judgment motion must be argued by separate affirmation and be labeled accordingly.**
- c. **Only one (1) motion for summary judgment per party will be entertained.**
- d. Please contact the Court by email to fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov immediately if there have been any developments in a case that would affect the resolution of a pending motion (i.e., settlement, stipulation to adjourn, withdrawal, etc.). Please make sure to copy all other parties.
- e. Pursuant to Rule 202.8-G – this part does not require a material statement of facts, but if one is filed with the moving papers, then any opposition must include a response to the filed material

² Summary Judgment motions submitted prior to the dissemination of this Part's first rules on February 26, 2022, shall be accepted if filed later than 60 days after the Note of Issue is filed.

statement of facts with each paragraph of the statement of facts responded to (like an answer to a complaint).

- f. Proposed orders need to be emailed to fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov in Microsoft Word format.
- g. A motion for summary judgment filed before the completion of discovery will not stay discovery without cause shown.
- h. A motion for summary judgment shall be submitted by notice of motion only. This Court will not entertain motions for summary judgement submitted via orders to show cause.

5a. Motions Brought By Order To Show Cause

- i. Orders to Show Cause must comply with Uniform Rule 202.7(d). Thereafter, they are forwarded, by orders, to Chambers for consideration.
- j. Proof of service must be emailed to fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov by 9:30 AM on the return date. Non-compliance may result in denial of the Order to Show Cause.
- k. Pro Se litigants unable to email, must file proof of service with the Court by no later than the day prior to the return date. Non-compliance may result in denial of the Order to Show Cause.
- l. Any party seeking immediate injunctive relief within an OSC must appear with the affected adversary (or with proof the adversary has been notified but declined to appear) when the application is presented for signature.
- m. Please contact the Court immediately if there have been any developments in a case that would affect the resolution of a pending motion (i.e., settlement, stipulation to adjourn, withdrawal, etc.). Please make sure to copy all other parties in the case on any e-mail sent to fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov .
- n. Any proposed orders need to be emailed to Chambers in Microsoft Word format at to fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov.
- o. PERSONAL APPEARANCE AND ORAL ARGUMENT IS REQUIRED ON ALL MOTIONS BROUGHT BY ORDER TO SHOW CAUSE.**

WITHDRAWAL AS COUNSEL

1. ORDERS TO SHOW CAUSE SEEKING TO WITHDRAW AS COUNSEL

- i. Must contain the following decretal clause in bold typeface font:

ORDERED, that plaintiff/defendant (name) must appear in court, in person/virtually on the date and at the place indicated above.

- ii. Incorporate the following text (select the appropriate options) in the body of the Order to Show Cause:

NOTICE TO PLAINTIFF/DEFENDANT (name of client):

YOUR ATTORNEY DOES NOT WANT TO REPRESENT YOU OR IS PRECLUDED FROM REPRESENTING YOU.

THE COURT WANTS TO PROTECT YOUR RIGHTS, AND TO GIVE YOU AN OPPORTUNITY TO RESPOND TO THE STATEMENTS MADE BY YOUR ATTORNEY IN HIS/HER/THEIR AFFIDAVIT WHICH IS ATTACHED TO THESE PAPERS.

IN ORDER TO FULLY PROTECT YOUR RIGHTS, YOU MUST APPEAR IN PERSON/VIRTUALLY VIA MICROSOFT TEAMS IN COURT AT 851 GRAND CONCOURSE, AT (leave blank) A.M./P.M. ON (leave blank) . AT THAT TIME, YOU MAY OBJECT OR CONSENT TO THE APPLICATION, AND YOU MAY PROVIDE ANY AND ALL INFORMATION WHICH YOU BELIEVE IS IMPORTANT REGARDING THIS APPLICATION.

IF YOUR ATTORNEY IS PERMITTED AND/OR OBLIGATED TO WITHDRAW FROM YOUR CASE, YOU WILL BE REQUIRED TO FIND A NEW ATTORNEY OR REPRESENT YOURSELF IN CONTINUING TO PROSECUTE YOUR CASE/DEFEND YOURSELF IN THIS ACTION/PROCEEDING.

THE MICROSOFT TEAMS CONFERENCE NUMBER AND PHONE CONFERENCE ID FOR THE VIRTUAL APPEARANCE WILL BE E-MAILED TO YOU AT THE E-EMAIL ADDRESS PROVIDED BY MOVANT.

YOUR FAILURE TO APPEAR MAY RESULT IN YOUR ATTORNEY BEING RELIEVED AS YOUR COUNSEL AND YOU HAVING TO RETAIN NEW COUNSEL OR REPRESENT YOURSELF IN THIS MATTER.

- iii. The notice to the client must be in clear type of no less than 12 font, bold and uppercase font.
- iv. If the hearing is held virtually, the Movant is to forward the Microsoft Teams invite to the subject party.
- v. Failure to comply with these requirements may result in the rejection/denial of the motion.
- vi. When presented the Order to Show Cause must provide the
 1. email and
 2. all known addresses to reach your client.

2. MOTIONS TO WITHDRAW AS COUNSEL BROUGHT BY NOTICE OF MOTION

- i. No motions to withdraw as counsel will be decided without a noticed appearance before the Court.
- ii. Prior to filing a motion to withdraw as counsel by Notice of Motion, movant must contact Chambers for available return dates at fserrano@nycourts.gov
- iii. The initial filing should include a proposed order
- iv. Motion filed by notice of motion still require the verbiage set forth above

3. RULES FOR ORAL ARGUMENT ON MOTIONS

- a. All remarks should be directed to the Court. Comments should not be made to opposing counsel. Personal remarks, including name-calling and insults, to or about opposing counsel will not be tolerated.
- b. Counsel is expected to treat all parties and witnesses with respect.
- c. The Court will not tolerate abusive verbal or non-verbal conduct.

ALTERNATIVE DISPUTE RESOLUTION

1. PART 22 CASES OLDER THAN 2018 WILL BE SCHEDULED FOR A SETTLEMENT CONFERENCE

- a. Counsel are expected to appear promptly with the authority to settle and have access to insurance adjusters, as well as the party, for meaningful discussions. Per Diem attorneys not authorized to settle will not be permitted to appear. Any appearances by Per Diem attorneys in contravention of this rule may result in sanctions chargeable to the attorney of record for wasting the Court's time.
- b. The last Tuesday of every month, chambers will be conducting virtual cattle call for older cases that require a status conference/settlement.

2. PLEASE ADHERE TO THE FOLLOWING GUIDELINES TO REQUEST A STATUS OR SETTLEMENT CONFERENCE:

- a. All conferences will be held via Microsoft Teams.
- b. Parties shall confer with one another and come up with an agreeable date and time, e-mail the request to Chambers at fserrano@nycourts.gov , and cc all parties. In the request, please include the case name, index number, and contact information for any party or participant not receiving notice via NYSCEF.
- c. Make sure that all parties are included on any e-mail communication to the Court.
- d. Counsel are expected to appear promptly with the authority to settle and have access to insurance adjusters, as well as the party, for meaningful discussions. Per Diem attorneys not authorized to

settle will not be permitted to appear. Any appearances by Per Diem attorneys in contravention of this rule may result in sanctions chargeable to the attorney of record for wasting the Court's time.

PART 22 OPERATIONS

3. VIRTUAL AND IN PERSON APPEARANCES

- a. Appearances will be virtual unless ordered otherwise.
 - i. Without the express permission of the judge, only the litigants and approved witnesses are permitted in the virtual courtroom.
- b. Requests for in person appearances must be emailed, cc'ing all parties, to fserrano@nycourts.gov and bxsupciv-ia22@nycourts.gov.
- c. PHOTOGRAPHY OR AUDIO/VIDEO RECORDING, TRANSMISSION OR BROADCASTING OF ANY SORT, IN PERSON OR VIRTUAL, IS STRICTLY PROHIBITED.

***** IF YOU ARE EXPERIENCING ANY PERSONAL OR TECHNICAL ISSUES IN CONNECTION WITH A VIRTUAL APPEARANCE, PLEASE CONTACT THE PART CLERK OR CHAMBERS BY TELEPHONE IMMEDIATELY.**

TRIAL RULES

4. JURY TRIALS

- a. Upon assignment to Part 22 from STP, Chambers will contact the parties to schedule a Teams conference **that day**. Parties should be prepared to:
 - i. Identify and discuss any anticipated evidentiary **issues** and discuss motions in limine;
 - ii. Identify all anticipated witnesses and the dates and times available;
 - iii. Alert the Judge to any interpreter needs;
 - iv. Discuss the case and present in a short statement its position;
 - v. Alert the Judge as to the current demand and offer;
 - vi. Identify any technology or ADA related needs;
 - vii. Discuss the length of time needed for jury selection, otherwise the Court will limit jury selection to one day.
- b. While it is acknowledged that a trial may evolve differently than originally anticipated, each side should arrive at the first appearance for trial with a clear understanding of the details of the case, its opposition, and an anticipated strategy for the trial's progress.
- c. By the end of the first day of jury selection, parties must:

- i. Exchange proposed verdict sheets;
 - ii. Exchange proposed introductory and closing charges;
 - iii. Deliver to the Court a written witness list;
 - iv. Deliver no less than 3 business cards.
- d. Prior to the charging conference, parties should exchange updated proposed jury charges and verdict sheets and meet and confer regarding objections.
 - e. If a party proposes a PJI be modified, the complete PJI, incorporating the modified language must be submitted in hard copy as well as clean and redline Microsoft Word documents to Chambers and included in the exchanges referenced above.
 - f. All juries will include two (2) alternates.
 - g. Unless otherwise approved, the Struck method will be employed for jury selection.
 - h. Trials are to be conducted on a continuous daily basis unless good cause shown.
 - i. Generally, trials will begin promptly at 10:00 am and end at 4:45 p.m.
 - j. Trials will break at 12:45p.m and resume at 2:15p.m.

INFANT COMPROMISE RULES

5. INFANT COMPROMISE APPEARANCES:

- a. Arguments will be heard on Fridays.
- b. Medical letters must be timely and reflect the status of the infant within reasonable time of settlement.
- c. The Orders Department must first sign off on proposed infant compromise order before the matter will be scheduled by Chambers.
- d. The infant should be aware that the judge may inquire.
- e. Infants over 14 years old should have a thorough understanding of the terms of the settlement.
- f. Infant and guardian appearances may not be waived.
- g. The Court must be able to see and communicate directly with Plaintiff parties.
- h. Defense counsel appearance is expected unless explicitly excused.

3a. INFANT COMPROMISES MUST INCLUDE:

- i. Proposed order;
- j. Affidavit of the parent or guardian;
- k. Affirmation of the attorney who is handling the case;
- l. Affirmation by a doctor who has examined the infant within the last six months that addresses the explicit injury set forth in the litigation.

- i. If the action or claim is for damages for personal injuries to the infant or incompetent, one or more medical or hospital reports, which need not be verified, shall be included in the supporting papers.
- m. The affirmation of the attorney must contain information on the infant's present condition.
- n. Papers must contain all the information required by CPLR §§ 1207 and 1208.
- o. 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.

CHILD VICTIMS ACT

1. **MOTIONS**

- a. Justice Soto has only been assigned CVA motions to dismiss at present, Part Rules will be updated if those changes.
- a. Any discovery-related matters should be directed to Justice Sabrina B. Kraus