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Civil Term, Queens Supreme Court

Civil Term - Part Rules, Part 16 Courtroom 44A

Justice Jeffrey D. Lebowitz 88-11 Sutphin Blvd. Jamaica, NY 11435 Chambers Ph: (718) 298-1219 Courtroom Ph: (718) 298-1126 Fax: (917) 522-4825 Law Secretary: Candace Hesse Secretary: Lisa Loughlin Clerk: Theresa Benigno

Preliminary Conference | Compliance Conference | Motions | Infant's Compromise Orders

Preliminary Conference

A preliminary conference shall be scheduled automatically by the Court within forty-five (45) days after filing a Request for Judicial Intervention, pursuant to 22 NYCRR 202.12(b); or upon filing a written Request for Preliminary Conference with the Clerk's Office (Room 140) in compliance with 22 NYCRR 202.12(a); or an appropriate notice is filed in malpractice or certiorari cases pursuant to 22 NYCRR 202.56 and 202.60.

All preliminary conferences will be held on Tuesdays at 9:30 a.m. in the Preliminary Conference Part (Room 3002), and are presided over by the court-appointed referee, unless otherwise directed by the Court. Failure to appear at the scheduled preliminary conference may result in discovery being ordered exparte or any other appropriate sanction, including preclusion or dismissal ordered. Any inquiry pertaining to preliminary conferences shall be made to the Preliminary Conference Part at (718) 298-1046.

Compliance Conference

Compliance conferences shall be held before Justice Ritholtz in Room 313 of the courthouse.

Compliance conferences shall be held on Wednesdays at 9:30 a.m. on the date scheduled in the Preliminary Conference Order, or any other date ordered by Justice Ritholtz.

Any inquiry pertaining to compliance conferences shall be made to the Compliance Conference Part at (718) 298-1093.

NOTICE TO THE BAR

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All motions that initiate after the matter has been assigned to Justice Lebowitz, must comply with Part Rules regarding motion practice. All exhibits must be tabbed and all relevant portions of the affixed documents must be highlighted either within Counsel's affirmation in support or in opposition to the motion and/or by physically highlighting those portions deemed relevant by Counsel in the documents themselves. Failure to comply with these rules will result in the papers being rejected by the Court and requiring re-submission in proper form.

Motions

Motions Noticed BEFORE October 1, 2012 Returnable Before Judge Lebowitz:

The Motion Calendar for Justice Lebowitz will be called in Courtroom 44A every Wednesday at 9:30 a.m.; second call at 11:00 a.m.

MANDATORY APPEARANCE IS REQUIRED by counsel with knowledge of the case and with full authority to settle or enter into binding stipulations on the return date. In the case of e-filed motions, a hard copy must be submitted to the Court on the return date. On the return date, motion will be conferenced and or orally argued at the discretion of the Court.

DO NOT CALL CHAMBERS FOR ADJOURNMENTS

Motions may be adjourned on consent provided a faxed written stipulation of counsel is submitted to the Court at least twenty-four (24) hours before the return date. All stipulations must contain the signature of the attorney consenting to the adjournment. A form which contains only the name of the firm on the stipulation will not be accepted. Stipulations must also contain a schedule for exchange of opposition and reply papers occurring prior to the adjourned date. If consent for an adjournment cannot be obtained, an application must be made to Justice Lebowitz by counsel on the return date. Calendar service or non-attorneys will not be permitted to make applications for adjournments. Counsel are expected to notify their adversaries of their intention to seek an adjournment.

ALL ADJOURNMENTS ON CONSENT MUST BE REQUESTED PRIOR TO THE RETURN DATE. NO APPLICATIONS FOR ADJOURNMENTS ON CONSENT WILL BE ENTERTAINED AT THE CALENDAR CALL.

WHERE CONSENT TO AN ADJOURNMENT IS UNREASONABLY WITHHELD, COURT COSTS WILL BE IMPOSED.

Adjournments will be limited to two, absent extenuating circumstances. The answering papers, including cross motions, affirmations in opposition and reply affirmations contained within the motion schedule will be accepted only on the return or adjourned date in the Part. The court will not consider papers sent to Chambers or to the Part after full submission of the motion or cross motion(s). Nor will it accept cross-motions that do not have proof of payment of the appropriate fee. (CPLR § 8020[a]).

Motions Noticed After October 1, 2012:

Motions noticed after October 1, 2012 are subject to the Centralized Motion Part Rules (CMP) located at www.nycourts.gov/courts/11jd/supreme/civilterm/Centralized_Motion_Part_Rules.pdf. All motions shall be returnable in the CMP, not in Part 16. The telephone number for CMP is (718) 298-1728.

Motions, other than motions for discovery, that have been marked submitted in the CMP may be set down for oral argument by a separate decision of the Justice presiding in Part 16, at the discretion of the Court.

The calendar for motions that are set down for oral argument shall be called every Wednesday at 9:30am.

Provided by CourtAlert A second calendar call will follow at 11:00 am.

Mandatory appearance is required by counsel with knowledge of the case and with full authority to settle or enter into binding stipulations on the date of oral argument.

All Motions:

All motions and ex-parte applications submitted shall be in compliance with Uniform Rule § 202.5. All exhibits are to be preceded by a numbered/lettered exhibit tab which protrudes from the stack of papers. All relevant decretal paragraphs or relevant document paragraphs must be highlighted in the exhibits and brought to the Court's attention within the accompanying affidavit or affirmation. All submissions are to be securely fastened so as to prevent the papers from being lost. Failure to comply with the requirements of this section will result in rejection of the non-complying papers.

Copies of decisions on motions will be mailed to attorneys and pro se litigants who provide the Part with a stamped, self-addressed envelope at the time of final submission of their motion. If no stamped, selfaddressed envelope is provided, it will be the responsibility of the respective attorneys and pro se litigants to follow up with the appropriate clerk's office to obtain a copy of the decision.

ALL INQUIRIES TO CASE OR CALENDAR STATUS ARE TO BE MADE TO THE APPROPRIATE CLERK'S OFFICE:

> Centralized Motion Part (718) 298-1728 IAS Motion Support Office (718) 298-1009 Ex-Parte Support Office (718) 298-1018 Trial Term Office (718) 298-1015

Infant's Compromise Orders

Before submission of an infant's compromise order, counsel shall obtain from the Clerk of Part 16 an infant's compromise checklist to ensure the submission of all necessary information and documentation. Infant's compromise orders sent to chambers without the required completed worksheet will be returned to counsel. Proof of payment of any appropriate fee is required.

Infant compromise hearings will be scheduled by the Court and the plaintiff will be informed of the hearing date by mail.

Civil Trials

These rules apply to all civil trials before the Court.

Plaintiff's counsel shall requisition the file to the Part 16 courtroom immediately after assignment of the case to this Court. Counsel should ascertain the availability of all witnesses and subpoenaed documents. Any special needs, i.e., interpreter, easels, blackboards, shadow boxes, television, subpoenaed material, etc., must be reported to the Court Officer in advance so as not to delay the progress of the trial.

Motions in Limine: On the first appearance in the Part for trial, any party intending to make a motion in limine shall submit a brief written affirmation setting forth the nature of the application and any supporting statutory or case law. The party shall furnish the Court with an original and one copy and provide counsel for all parties with a copy.

With regard to suggested jury charges and a suggested verdict questionnaire, amendments thereto shall be permitted at the final charge conference. Jury charges should refer to the PJI number and topic. If any changes to the PJI are suggested, then the entire proposed charge should be set forth and the changes should be highlighted. Citations to appropriate statutory or common law authority must be given in support of suggested non-PJI jury charges or suggested PJI modifications.

Provided by CourtAlert Not later than prior to selection of the jury, or if already selected prior to opening statement, each counsel shall provide to the other and submit to the Court:

1. marked pleadings in accordance with CPLR Rule 4012;

2. a statement, joint if possible, of the relevant facts that are not in dispute;

3. a list of witnesses whom the party expects to call at trial, stating the address of each witness and the general subject matter as to which each identified witness is expected to testify:

4. a list of all exhibits for each party indicating whether such exhibits are stipulated into evidence or marked for identification. As to those exhibits marked for identification, the Court will address their admissibility In limine or during the trial, as may be appropriate;

5. copies of the exhibits intended to be offered by counsel. Said exhibits are to be pre-marked by the court reporter, with the plaintiff's exhibits numbered sequentially and the defendant's exhibits lettered sequentially;

6. a list of all expert witnesses with copies of their reports.

7. any other information that the Court has determined to be appropriate in the action.

Not later than prior to jury selection, or if a jury is selected prior to opening statement, each counsel shall provide to the other a statement setting forth any objection to the exhibits identified in the list provided by opposing counsel and the specific basis thereof. Any exhibit as to which no objection is identified shall be admitted into evidence on consent. The failure to provide such statement of objections on a timely basis may be deemed to be consent to the admission of all of the exhibits included in the list submitted by the opposing party.

On the day of trial, both sides shall have available at least four (4) copies of all exhibits which are expected to be introduced into evidence.

On the day of trial, both sides shall have available at least four (4) copies of all deposition transcripts which are expected to be read into the record or utilized on cross examination at the trial.

The Court expects counsel to stipulate to as many facts as possible on matters that are not and should not be in dispute. If it appears during the course of the trial that no bonafide attempt was undertaken to secure such stipulation, the Court will likely recess and delay the trial until there is compliance.

Tort Actions are generally bifurcated. The Court expects, and for the convenience of the jurors, that any trial on damages will follow immediately after a verdict finding the defendant liable.

Counsel should alert the Court at the pretrial conference as to any anticipated problem regarding the attendance at trial of the parties, attorney or essential witnesses, and any other practical problems that the Court should consider in scheduling.

No adjournments or delays during trial will be accepted unless exigent circumstances exist.

Settlements and Discontinuances

If an action is settled, discontinued or otherwise disposed of, counsel shall immediately inform the Court by submission of a copy of the stipulation of settlement or a letter directed to the Clerk of the Part. All stipulations of discontinuance must be accompanied by proof of payment of the appropriate fee. (CPLR §8020(d)(1)).

Matrimonial Trials

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These rules apply to all matrimonial trials before the Court as well as those before a judicial hearing officer or referee where an order of reference has been made by this Court.

(A) Trial Dates: Trial dates established by the Court are to be considered firm, subject only to minor adjustments based upon the Court's availability. Counsel should be prepared to commence the trial at the scheduled time on the scheduled date. Counsel should check with the Part clerk after 2:00 p.m. on the day prior to the scheduled trial date to verify that the Court will be available to commence the trial as scheduled.

Requests for adjournment of a trial date shall be made to the Part Clerk in Part 16. Adjournments of trial dates will not be granted except upon a showing of unusual and unanticipated circumstances. As required by Section 202.32 of the Uniform Rules, adjournments requested by reason of the engagement of counsel must be accompanied by the affidavit required by Part 125 of the Rules of the Chief Administrator. Anticipation that the matter will settle is not considered a legitimate basis for adjournment. No adjournment will be granted within the three days prior to the scheduled trial date except upon the most exigent circumstances. Failure to be ready to proceed to trial will result in the case being dismissed, sanctions being imposed or both.

Where the matter has been set for trial for more than sixty (60) days in advance, substitute counsel is required where the attorney of record is actually engaged in an unrelated matter.

(B) Trial Rules: Not later than five days prior to the scheduled trial date, each counsel shall provide to the other and submit to the court:

(I) marked pleadings in accordance with CPLR Rule 4012;

(ii) a statement, joint if possible, of the relevant facts that are not in dispute;

(iii) a list of witnesses whom the party expects to call at trial, stating the address of each witness and the general subject matter as to which each identified witness is expected to testify;

(iv) a list of all exhibits for each party indicating whether such exhibits are stipulated to be in evidence or marked for identification. As to those exhibits marked for identification, the Court will address their admissibility In limine or during the trial, as may be appropriate;

(v) copies of the exhibits intended to be offered by counsel. At least one day prior to trial, said exhibits are to be pre-marked by the court reporter, with the plaintiff's exhibits numbered sequentially and the defendant's exhibits lettered sequentially;

(vi) an updated net worth statement and statement of proposed disposition submitted at the settlement conference;

(vii) a list of all expert witnesses with copies of their reports.

(viii) any other information that the Court has determined to be appropriate in the action.

The Court may, in its discretion, relieve counsel from all or part of these requirements upon a showing that the issues to be tried are sufficiently narrow that the required documents are not necessary or that the interests of justice otherwise require such relief. Such a request will be entertained only at the settlement conference.

Not later than one day prior to the scheduled trial date, each counsel shall provide to the other a statement setting forth any objection to the exhibits identified in the list provided by opposing counsel and the specific basis thereof. Any exhibit as to which no objection is identified shall be admitted into evidence on consent. The failure to provide such statement of objections on a timely basis may be deemed to be consent to the admission of all of the exhibits included in the list submitted by the opposing party.

Provided by CourtAlert On the day of trial, both sides shall have available at least four (4) copies of all exhibits which are expected to be introduced into evidence.

On the day of trial, both sides shall have available at least four (4) copies of all deposition transcripts which are expected to be read into the record or utilized on cross examination at the trial.

Counsel are urged to stipulate that any issue relating to an award of counsel and expert fees be resolved by the Court upon the submission of affirmations and other appropriate documentation from counsel.

The Court expects counsel to stipulate to as many facts as possible on matters that are not and should not be in dispute. If it appears during the course of the trial that no bonafide attempt was undertaken to secure such stipulation, the Court will likely recess and delay the trial until there is compliance.

11. Dispositions

(A) Settlement: A stipulation of settlement may be placed on the record and "so ordered" by the Court on any date that the case appears on the calendar and the parties are present. If an action is settled out of court, counsel shall immediately inform the Part clerk. Upon placing a stipulation on the record in open court or receiving written confirmation that a stipulation of settlement has been executed by all parties, the action will be marked "settled" and placed on the judgment submission calendar.

(B) Judgments: Judgment documents must be submitted within sixty (60) days of the date the action was marked settled or a decision was rendered, unless extended by the Court for good cause shown. The documents will be prepared by the counsel for the plaintiff unless the parties agree in Court or the Court directs otherwise. Judgment documents shall be in accordance with the requirements of Section 202.50 of the Uniform Rules and Appendix B thereto.

Any action in which the judgment documents are not timely submitted will be deemed abandoned pursuant to Section 202.48(b) of the Uniform Rules and may be the subject of a conditional order of dismissal establishing a date on which the action will be dismissed as abandoned unless closing papers are received.

Proposed judgment documents that are rejected for non-compliance with Section 202.50 of the Uniform Rules or any other deficiency must be resubmitted to the Court within thirty (30) days of notice of the rejection. If corrected documents are not submitted by that date, the action will be treated as if no documents had been submitted.

Electronic Filing Of Legal Papers

Electronic filing is available for filing legal papers with the Court. Parties interested in electronic filing should read the materials set forth at https://iapps.courts.state.ny.us/fbem/mainframe.html and at the Queens County website. The rules and user's manual for electronic filing are available on this website.

On the return date, all parties must submit hard copies of any motion/responsive papers that are electronically filed.

Web page updated: August 26, 2013