

**SUPREME COURT
CIVIL TRIAL RULES
Hon. James W. McCarthy**

PLEASE BE ADVISED OF THE FOLLOWING:

1. Expert Disclosure - CPLR § 3101(d)1
 - A. All expert disclosure must be made in compliance with any scheduling order in effect.
 - B. Objections to adequacy/completeness of expert disclosure:
 - (1) If expert disclosure has been provided pursuant to a demand or a scheduling order and the other party objects to its adequacy or completeness, a written notice pursuant to CPLR § 3101(h) must be sent by the objecting party to the providing party within 20 days of receipt of the § 3101 expert disclosure stating how it is inadequate or incomplete. The notice must further state that a motion will be made to the court if the § 3101 material is not amended or supplemented. If the party who is requested to amend/supplement the § 3101 disclosure does not provide same within 10 days from receipt of the notice, the objecting party must then make a motion to preclude and/or other appropriate relief at the next regularly scheduled motion date of the court.
 - (2) If the party objecting to the adequacy/completeness of the expert disclosure does not follow this procedure, he/she may be deemed to have waived the adequacy/completeness of the § 3101(d)1 expert disclosure previously provided.
2. All Motions in Limine before the trial commences (other than 1, above) **MUST** be in writing with case authorities cited and on notice to the opposition and the movant must file them with the County Clerk and pay the \$45.00 cost therefor. Only in exceptional circumstances will oral motions be allowed. The motion must be **received** by the court and opposing counsel at least 21 **working days** before the trial date. Answering affidavits to the Motions in Limine must be **received** by the court and opposing counsel at least 10 **working days** before the trial date. Reply papers must be **received** by the court and counsel at least three **working days** before the trial date.
3. Have all witnesses you intend to call available on commencement of trial. The Court's trial schedule is 9:30 am - 12:30 pm and 1:30 pm - 4:30 pm. These times may vary based on the Court's calendar. Arrangements will be made for times for expert witness appearances.
4. When you object, make your objection in generic terms, e.g., "irrelevant", "leading", "bolstering", "hearsay". Do not argue the objection in the presence of the jury and do not argue with the ruling of the Court in the presence of the jury. Do not make motions (e.g., a motion for a mistrial) in the presence of the jury.
5. No colloquy between counsel in front of the jury.
6. Sidebar conferences should be kept to a minimum. This Court agrees with Standard 9.9 of the standards suggested by the American Bar Association Advisory Committee on the Judge's Function (1972). *Note that counsel are ethically required to follow these rules. See Disciplinary Rule 7-106(A), Code of Professional Responsibility. See also First Department Rule §604.1(d)(i)(ii).*

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7. No later than 10:00 am of the first day of jury selection, pursuant to § 4110-b of the CPLR, counsel are **ORDERED** to submit written "Proposed Jury Instructions and/or Requests to Charge". Mark each request separately, even if you are only referring to a PJI section number, e.g. Plaintiff's Request to Charge – Request No. 1, PJI § ____; Request No. 2, PJI § ____; Request No. 3, PJI § _____. You may merely state PJI § ____ with the introductory title. If you want particular language charged, you must cite the language in quotes exactly from the case you maintain authorizes such charge, stating the page of that case with its citation. Also, your proposed charges and verdict sheet are to be sent to the court's Principal Law Clerk by e-mail [awolfe@courts.state.ny.us] as a submitted attachment that can be opened in Word or WordPerfect. Counsel **MUST** specify in regard to a Requested Instruction as to an "Expert Witness" what persons they intend to attempt to qualify as "experts" and the field of expertise of such person. Counsel **MUST** also submit a "Proposed Verdict Sheet".
8. 22 NYCRR §202.35 – Submissions of Papers for Trial
 - [a] Upon the trial of an actions, the following papers, if not yet submitted, shall be submitted to the court by the party who has filed the note of issue:
 - [1] copies of all pleadings marked as required by CPLR 4012; and
 - [2] a copy of the bill of particulars, if any.
 - [b] Upon the trial of an action, a copy of any statutory provision in effect at the time the cause of action arose shall be submitted to the court by the party who intends to rely upon such statute.
 - [c] If so ordered, the parties shall submit to the court, before the commencement of trial, trial memoranda which shall be exchanged among counsel [see 13 herein].
9. Conferences can be held with the Court on issues of trial between 8:30 am - 9:00 am, 12:00 pm - 1:00 pm, and after Court recesses for the day.
- 10A. All subpoenas necessary to be signed by the Court and/or Calendar Judge should be delivered to the Court at least 60 days prior to trial date. The Court will not grant an adjournment of the trial date for lack of receipt of materials subpoenaed if the subpoenas were not forwarded to the appropriate Court Part for signature at least 60 days prior to the trial date.
- 10B. Subpoenaed Materials: Subpoenas may not be used as a form of Discovery. Counsel are directed to serve all subpoenas for documents/records at least 30 days prior to the day certain for trial. Counsel may make the subpoena Duces Tecum for production of documents/records only returnable five days prior to the day certain of trial. If the subpoenaed documents/records are not of the type that are admissible without testimony pursuant to §4518 and §2306 and §2307 of the CPLR, counsel should serve a separate subpoena on the person/entity who/which provided the documents/records returnable on the day certain for trial, or any recessed or adjourned date for that person or representative of the entity to give testimony for the purposes of admissibility of the documents/records. Counsel must apply to the Calendar Judge to review the documents/records received and may review all materials they subpoenaed at the Court Clerk's Office prior to the scheduled trial date. No motions for contempt regarding failure to comply with production of documents/records will be entertained unless counsel certifies to the Court that they have complied with these requirements. Any objections regarding the completeness of the documents/records produced will not be entertained by the Court, except under exceptional circumstances, if counsel

has not complied with this requirement and certifies thereto.

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11. Pursuant to Uniform Rules of the Trial Courts § 202.15(g)(3)(i), if any videotapes are used, **the party who noticed the videotape testimony** must provide the videotape accompanied by a transcript of the testimony within ten (10) days from the transcription or the first day of trial, whichever is earlier. That party must note all objections with highlighter and sticky tabs. The court will rule on the objections referencing the pages and lines of such transcription. Those objections sustained will direct the specific pages/lines to be muted during the trial videotape testimony.
12. Please provide the court with a copy of any agreed-upon stipulations.
13. In the event there are evidentiary issues in dispute which a party can reasonably expect to arise during trial, that party is directed to provide authority (statutory and/or case) for his/her position. Please photo copy said authority (statutory and/or case) for the benefit of the Court.
14. If the trial date was set at least 60 days in advance thereof, no adjournments will be granted for counsel being otherwise engaged. (New York Court Rules, 22 NYCRR 125.1(g)).
15. Counsel are ordered to pre-mark all proposed exhibits [regardless whether they will ultimately be admitted] on the day of trial prior to jury selection. Plaintiff's exhibits are to be marked 1, 2, 3, etc. Defendant's exhibits are to be marked A, B, C, etc.

NOTE WELL

Revised July 9, 2013