

HONORABLE MARIA G. ROSA

New York State Supreme Court
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Part Rules

(Effective 3/25/24)

These Rules are subject to change.

PRELIMINARY CONFERENCES:

In most cases, a blank stipulation and order shall be provided to the parties and/or counsel to establish a timetable for discovery within parameters set forth by the Court after determination as to whether a matter should be designated a “standard” or a “complex” case. Except in matrimonial actions, if all parties sign the stipulation and return it to chambers prior to the scheduled conference, such form shall be “So Ordered” by the Court and, unless the Court orders otherwise, appearances will not be required at the preliminary conference. No modifications are permitted except by written consent of the Court. In matrimonial cases the parties and counsel must appear at the preliminary conference.

MATRIMONIAL ACTIONS:

- (a) Parties must be present at all conferences unless their appearance is excused by the Court.
- (b) At least one business day prior to the preliminary conference, each party shall e-file or file with chambers and serve upon the opposing side copies of the following documents:
 - 1. retainer agreement
 - 2. original net worth statement
 - 3. most recent paystub and most recently filed income tax return with all forms and schedules.
- (c) At least one week before trial, each party shall submit to the court a Statement of Proposed Disposition in accordance with 22 NYCRR §202.16(h).

COMPLIANCE CONFERENCES (In all cases):

- The preliminary conference order shall provide a date and time for the parties to appear at a compliance conference.
- (a) All conferences are held in person.
 - (b) At the compliance conference, the Court will endeavor to ensure that discovery

is proceeding as scheduled and address any discovery issues. Further compliance conferences will be scheduled, as needed.

- (c) The note of issue shall be filed as soon as discovery is complete.

MOTIONS AND PROPOSED ORDERS/JUDGMENTS:

IN GENERAL:

- (a) Motions are returnable on any day of the week on papers only. Follow 22 NYCRR §§ 202.8 – 202.8-c regarding motion papers.
- (b) Original initiating motions should be e-filed or submitted directly to the County Clerk accompanied by an affidavit/affirmation of service and the required fees. The affidavit of service shall be filed before the return date.
- (c) Motion papers submitted to chambers must be accompanied by proof of payment to the County Clerk of all required fees.
- (d) Affirmations, affidavits and memoranda of law must contain numbered pages and all documents and exhibits must be referenced by its NYSCEF document number. Citations must be to an official state reporter, if available.
- (e) The Court does not accept discovery motions before a preliminary conference. Further, if after a preliminary conference a discovery dispute arises, counsel must contact chambers to meet with the Principal Court Attorney to try to resolve the dispute. If it cannot be resolved, either a conference with the Judge will be scheduled or permission to make a motion will be granted.
- (f) The Court does not accept sur-reply papers or substantive correspondence.
- (g) In a non-e-filed case, hard copies of motion papers must be bound together with exhibits and exhibit tabs.
- (h) In a non-e-filed case, motion papers and proposed orders and judgments should be accompanied by a stamped, self-addressed envelope, and counsel should provide an additional copy of any order and/or judgment submitted if counsel wants to receive a copy of the signed order/judgment in the mail.
- (i) In e-filed cases, courtesy copies are not required.
- (j) Motions will be decided by submission. Personal appearances/oral arguments on the return date are not entertained unless the Court specifically so directs.
- (k) **COUNSEL SHALL IMMEDIATELY NOTIFY THE COURT WHEN IT BECOMES UNNECESSARY TO DECIDE A MOTION.**

SUMMARY JUDGMENT MOTIONS

- (a) **ANY SUMMARY JUDGMENT OR OTHER DISPOSITIVE MOTIONS MUST BE MADE WITHIN 60 DAYS AFTER FILING THE NOTE OF ISSUE.**
- (b) Cross-motions for summary judgment are timely as long as the original motion was timely.

- (c) Statements of Material Facts and responses are required in accordance with 22 NYCRR § 202.8-g.

MOTIONS IN LIMINE

- (a) Any motions seeking to exclude or admit potential evidence shall be made in writing and shall be **RETURNABLE at least 30 days in advance of trial**, absent good cause shown.
- (b) Any other motions with respect to the timing or conduct of trial (e.g., bifurcation or unification of liability and damages) shall be made as promptly as possible.
- (c) If adjournment of a motion would result in a return date within 30 days of the trial, the adjournment will be denied, absent good cause shown.

PROPOSED ORDERS / JUDGMENTS

- (a) All proposed orders and judgments must be submitted on notice, whether accompanying a motion or pursuant to 22 NYCRR § 202.48, unless the Court otherwise permits.
- (b) Any proposed order or judgment submitted in a non-e-filed case must be accompanied by a copy and a self-addressed stamped envelope and, in all cases where notice is required, by an affidavit of service and timely notice of settlement. For example, where service of a proposed order is by first class mail, at least ten days' notice of settlement is required (22 NYCRR § 202.48(c) and CPLR §2103(b)(2)).

EXPERT DISCLOSURE:

- (a) No later than 30 days after filing a note of issue, the Plaintiff(s)/Petitioner(s) shall serve all other parties with expert disclosure per CPLR 3101(d). Defendant(s)/Respondent(s) shall then have 60 days to serve any expert disclosure per CPLR 3101(d).
- (b) Adjournment of the above deadlines, and any amended or supplemental expert disclosure, shall be allowed only with leave of Court. The statutory stay of disclosure (CPLR 3214[d]) upon service of a dispositive motion under CPLR 3211 shall not apply to service of expert disclosure. Unless the Court directs otherwise, a party who fails to comply with this rule is precluded from offering at trial the testimony and opinions of the expert.

PRE-TRIAL CONFERENCES:

- (a) There shall be one or more pre-trial conferences after the note of issue is filed.
- (b) The Court will explore limitation of issues for trial.

- (c) The Court will schedule a date certain for trial of all outstanding issues.
- (d) Counsel should be prepared to discuss settlement and should have full authority from their respective clients.
- (e) At any pre-trial conference held 30 days or fewer before trial, the parties shall be present or available by phone and counsel and the parties shall be prepared to discuss any matter any party believes should be brought to the Court's attention including those delineated below in the "Notes to Trial Counsel".
- (f) Only the parties and attorneys fully familiar with the action and authorized to make binding stipulations, or a person empowered to act on behalf of the party represented, should appear at a pre-trial conference.
- (g) Counsel shall advise as to the availability of all witnesses and subpoenaed documents. If any party or witness needs an interpreter, the Court must be notified at least 30 days before trial to allow the clerk time to arrange for the presence of a New York State certified interpreter.

REQUEST FOR CONFERENCES

Requests shall be made on notice to all counsel and *pro se* parties. The attorney or party making the request shall provide three dates within the next 30 days (not all during the same week) when all counsel/parties are available for a conference at 9:15 a.m.

VIDEOTAPED EXPERT TESTIMONY:

Requests for an adjournment due to an expert's unavailability for testimony generally cannot be granted due to the large number of matters pending for trial. Counsel may use videotaping of experts when necessary.

EXPERT TESTIMONY PRECLUSION:

- (a) Any motion by a party to preclude or limit expert testimony under the expert disclosure part of the rules or pursuant to CPLR 3101(d) must be made at least 30 days before trial, absent good cause shown.
- (b) Where a party's summary judgment motion is or will be based in whole or in part upon the granting of a motion to preclude or limit expert testimony, the motion for summary judgment and motion to preclude shall have the same return date and must be made within 60 days of the filing of the note of issue.

ADJOURNMENTS:

- (a) Adjournments of scheduled trials and hearings are generally not permitted. Any application for an adjournment of a trial must be made in writing and must be supported by an affirmation of counsel establishing the requisite grounds set forth in 22 NYCRR § 125.1.
- (b) Adjournments of motions and conferences may be requested on consent of all

counsel and self-represented parties of record. After obtaining such consent, the requesting party must send a letter to the Court by e-filing or by fax to (845) 431-1726 to obtain a new date. All requests must include the current return date(s) of any pending motion(s) and date of any conference scheduled, and fax numbers for all attorneys if it is not an e-filed case, and must include three dates within the next 30 days (not all during the same week) when all counsel /parties are available for a 9:15 a.m. conference.

- (c) **A REQUEST TO ADJOURN A CONFERENCE SHOULD BE E-FILED OR FAXED TO THIS COURT AT LEAST ONE FULL BUSINESS DAY IN ADVANCE OF THE SCHEDULED APPEARANCE TO ENSURE THAT IT MAY BE CONSIDERED. THE COURT MUST APPROVE ANY ADJOURNMENT. IF NO APPROVAL IS RECEIVED IN ADVANCE OF THE CONFERENCE, APPEARANCES ARE REQUIRED AND ANY NON-APPEARING PARTIES MAY BE DEEMED IN DEFAULT PURSUANT TO 22 NYCRR § 202.27.**
- (d) **WHEN REQUESTING TO ADJOURN A CONFERENCE, THE REQUEST MUST INCLUDE AT LEAST THREE DATES WITHIN THE NEXT 30 DAYS (NOT DURING THE SAME WEEK) CONVENIENT TO ALL CONSENTING PARTIES FOR A 9:15 A.M. CONFERENCE.**
- (e) **No more than three adjournments shall be permitted for any motion or conference unless good cause is shown upon written application approved by the Court.**

SETTLED AND DISCONTINUED CASES:

Counsel shall immediately notify the Court of a case disposition and provide the Court with any stipulation of settlement or discontinuance as soon as practicable. If a stipulation of settlement or discontinuance is not filed at least one business day before the scheduled jury selection or trial, all parties/counsel must appear ready to proceed or risk dismissal of the case or entry of a default judgment.

CORRESPONDENCE WITH THE COURT:

Letters to the Court should not address substantive issues in the case. Such letters will not be read or considered. No motion papers or exhibits may be faxed to the Court without the Court's prior consent. No fax of more than ten pages may be sent without prior permission of the Court.

CHILD VICTIMS ACT CASES:

Actions brought pursuant to the Child Victims Act are subject to the following court rules:

- 1. **Assignment to Part:** **immediately upon filing of the RJJ**

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| 2. Preliminary Conference (PC): | within 30 days of filing the RJI* |
| 3. Status/Compliance Conferences: | every 60 days after the PC* |
| 4. Conclusion of discovery and note of issue: | within 365 days of PC* |
| 5. Dispositive motions: | fully submitted within 60 days of the conclusion of discovery; decided within 30 days of full submission.* |
| 6. Trial: | scheduled to be held, if practicable, within 60 days of the note of issue, or if a dispositive motion has been filed, within 60 days of the decision on the motion, except with leave of court on good cause shown. |

*subject to transfer to the Hon. Leonard D. Steinman.

7. Counsel for all parties shall consult prior to any preliminary or status conference on all issues likely to be addressed at the conference, including but not limited to (1) resolution of the case in whole or in part and early Alternative Dispute Resolution (ADR); (2) outstanding issues relating to insurance coverage of the parties; (3) outstanding discovery issues, including the voluntary informal exchange of information for settlement purposes; (4) adoption of a confidentiality order; (5) scheduling; (6) anticipated use of experts; and (7) anticipated requests to obtain records from earlier cases related to the allegations in the revived case.

8. Counsel at all Court appearances should be fully familiar with the case, fully prepared to discuss pending matters competently, authorized to enter into substantive and procedural agreements on behalf of their clients including a disposition of the case.

9. Any party claiming a preference under CPLR 3403(7) may apply to the Court in the manner prescribed by that section.

10. Any person who intends to appear without a lawyer in a case revived under CPLR 214-g is advised to review the information set forth at <http://www.nycourts.gov/courthelp/>.

NOTES TO TRIAL COUNSEL

1. **BIFURCATED TRIALS:** In the Second Department, personal injury trials other than medical malpractice and wrongful death cases are bifurcated. The damages

portion commences with the same jury immediately following a liability verdict unless the Court orders otherwise or the parties agree otherwise with the Court's approval. Counsel should have medical testimony and any other damages witnesses ready to proceed at such time.

2. **MOTIONS IN LIMINE:**

See page 3 above.

3. **TRIAL "NOTEBOOKS" and PRE-TRIAL CONFERENCES:**

A. At least one week before trial, all counsel and *pro se* parties shall provide the court with the following. **PLEASE DO NOT SUBMIT BINDERS.**

In all cases:

A list of all probable trial witnesses
Marked pleadings

For Jury Trials:

1. Requests to charge:

A complete list of requested charges drawn from the Pattern Jury Instructions (PJI). A list of the PJI numbers of all charges requested is sufficient. If deviations from or additions to the PJI are requested, the full text of such request must be submitted together with any supporting legal precedent.

2. Proposed verdict sheets

3. Plaintiff's counsel shall contact the Court by e-file no later than 2:00 p.m. on the business day preceding jury selection to confirm that the matter is NOT settled and that summoning potential jurors remains necessary.

B. In matrimonial cases, at least one week before trial, all counsel and *pro se* parties shall provide the court with statements of proposed disposition per 22 NYCRR 202.16(h).

C. At any pre-trial conference counsel shall:

1. Stipulate to undisputed facts and the admissibility of clearly admissible documents and records;
 2. Alert the Court as to all anticipated disputed issues of law and/or fact, and provide the Court with citations to all statutory and common law authority upon which counsel will rely;
 3. Alert the Court as to any significant or unusual evidentiary objections which counsel believes will be made during the trial;
 4. Discuss scheduling as well as the number of witnesses to be called at trial, and the estimated length of the trial;
 5. Alert the Court as to any anticipated problems regarding the attendance at trial of parties, attorneys or essential witnesses, and any other practical problems which the Court should consider in scheduling;
 6. Alert the Court as to any anticipated request for apportionment as to alleged culpable non-parties pursuant to CPLR Article 16.
4. **PRE-MARKED EXHIBITS:** Counsel shall endeavor to have all trial exhibits pre-marked by the court reporter.
5. **JURY SELECTION:** Attorneys shall employ “White’s Method” of selecting the jury panel, unless counsel agree otherwise. In each round, questioning shall be conducted first by plaintiff’s counsel. Unless the parties/counsel agree otherwise, this part uses *undesignated* alternates; alternates will be randomly designated at the conclusion of the trial, following summations and the Court’s charge.
6. **NO COMMUNICATION WITH JURORS:** In order to maintain the appearance of total impartiality, once the jury has been selected no one is to communicate in any form at any time with any juror. This includes both verbal and non-verbal communication, including, without limitation, nods, shrugs and shaking the head. For example, do not even say “hello” or “good morning.”
7. **COURTROOM DEMEANOR:** All remarks should be directed to the Court. Comments should not be made to opposing counsel. If you require a significant discussion with your adversary, such as a possible stipulation, ask for permission to conduct a side bar so you can talk to each other outside the presence of the jury.
8. **EXAMINATION OF WITNESSES:** Counsel shall not approach a witness without permission of the Court. Direct examination, cross, redirect and re-cross are permitted.

RULES FOR ELECTION LAW CASES

1. **Orders to Show Cause to validate or invalidate designating or nominating petitions will be made returnable no later than five (5) days after the last day to statutorily commence such proceedings.**
2. **The calendar call on the return date must be answered by counsel or the litigant(s) (self-represented), who shall provide the Part Clerk with their addresses and telephone numbers. Non-lawyer “representatives” of the parties are not permitted to answer the calendar call. Proof of service of the Orders to Show Cause, as well as any interposed Counterclaims or Answers, shall be filed with the Part Clerk at or before the initial appearance.**
3. **ON OR BEFORE THE RETURN DATE AND TIME:**
 - (a) **a written offer of proof in any matter alleging a question of residency of a candidate shall be filed with the court clerk and served on the opposing party;**
 - (b) **specifications of objections or bills of particulars not previously served and/or filed with the Board of Elections shall be filed with the court clerk and served on the opposing party;**
 - (c) **a complete written offer of proof in all matters alleging fraud including identification of witnesses to be called, their names and addresses, together with the status of each candidate, signatory, notary, expert, subscribing witness, etc. shall be filed with the court clerk and served on all opposing parties.**

FAILURE TO COMPLY WITH SECTION A, B, OR C OF THIS PARAGRAPH SHALL BE DEEMED A WAIVER, AND FURTHER PROOF MAY BE PRECLUDED, EXCEPTING THE TESTIMONY OF A WITNESS THE COURT DETERMINES COULD NOT BE IDENTIFIED BEFORE THE RETURN DATE.

MENTAL HYGIENE LAW PROCEEDINGS:

- (a) **All proceedings instituted pursuant to the Mental Hygiene Law (MHL) will generally be returnable on a Thursday morning at a date and time to be determined by the Court unless counsel requests a different day. The failure to make such request indicates consent to scheduling beyond any 72 hour or other deadline which the applicable statute would otherwise impose.**
- (b) **Proposed orders to show cause must conform with the MHL.**
- (d) **Proposed orders to show cause must contain separate decretal paragraphs for service.**
- (d) **Proposed orders should be submitted to the Court for consideration following the hearing and after review by opposing counsel either in Court or on notice with sufficient time for proper notice of settlement, if necessary.**

FIDUCIARY APPOINTMENTS:

- (a) In order to be eligible for appointments to serve as a referee, court evaluator, guardian *ad litem*, receiver, attorney for receiver or attorney for an alleged incompetent person, or a minor, counsel must appear on the Part 36 list promulgated by the Office of Court Administration.
- (b) In order to be eligible for appointment to serve as an attorney for a child, counsel must be a member of the appropriate panel.
- (c) Court evaluators and appointed attorneys must complete and file each of the following forms:
 - 1. Notice of Appointment (UCS-830.1)
 - 2. Statement of Approval of Compensation (UCS-830)
 - 3. Certification of Compliance (UCS-830.3)
 - 4. Affirmation of legal services
- (d) Any attorney declining an appointment more than 30 days after assignment will be subject to financial sanctions and/or removal from the list of Fiduciaries, absent good cause shown.

FORECLOSURES:

Proposed orders of reference and proposed judgments of foreclosure and sale must include the name and phone number of the appropriate mortgage servicer. If not, the proposed order and/or judgment may not be considered.

The Court thanks you for your attention to these part rules.