

Part 13 Rules
Hon. Eric Schumacher, J.S.C., Coordinating Judge
New York City Asbestos Litigation (NYCAL)

Supreme Court of the State of New York
New York County, Civil Term
71 Thomas Street Room 304
New York, New York 10013-3821

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I. Overview

- A. The Supreme Court’s [Uniform Rules of the Justices](#) apply in this part. The [Case Management Order \(CMO\)](#), et seq., applies in this part. Where the Part 13 Rules supplement or differ from either the Uniform Rules or the CMO, unless otherwise indicated, the Part 13 Rules shall control.
- B. All appearances before the court shall be in person.
 - 1. The court encourages the participation in court proceedings of attorneys who have significantly contributed to the underlying matter but do not ordinarily appear or speak in court.
 - 2. Nonparticipating observers of court proceedings shall not appear in the courtroom in person but may stream the proceedings [here](#).
 - 3. All parties must appear at all scheduled conferences but may appear by a single counsel representing the interests of multiple parties.
 - 4. Oral argument will be scheduled separately from conferences and on notice provided to all parties.

II. Conferences

- A. You must appear for all conferences with access to all case filings. You must be familiar with the underlying case and have the authority to discuss and resolve all case issues, including settlement.
 - 1. Every attorney appearing on behalf of a party at a conference must be fully prepared to discuss the details of the underlying action and have a working knowledge of any material issues. This includes attorneys who are of counsel, “per diem,” junior associates, etc.
 - 2. Attorneys must be able to provide information about any prior, pending, or future appeals or motions, and about settlement history.
 - 3. Failure to comply with this rule may result in a default (see 22 NYCRR § 202.1[f]).

- B. A party that fails to appear within 1.5 hours of the scheduled conference time may have a default judgment entered against it or have the case dismissed based upon the failure to appear (see 22 NYCRR § 202.27).
- C. Any requests for adjournments of conferences must be made at least 48 hours prior to the scheduled appearance by stipulation both filed to NYSCEF and emailed to the part clerk.
 - 1. The court will not consider any requests to adjourn made fewer than 48 hours prior to the scheduled conference absent a real emergency.
 - 2. Failure to appear by any party without prior approval of the court may result in a default being entered against it.
- D. If the court directs you to obtain a copy of the transcript of an appearance at a conference, the transcript is to be ordered and paid for as directed within 10 days of the appearance and filed within five days of its receipt by you.
- E. Unless otherwise indicated by the court or agreed to by all parties, all conferences scheduled in Part 13 are for pretrial and settlement purposes and are nonfinal. The court will provide advance notice to the parties as to whether a pretrial conference is final. The outcome of the final pretrial conference may be a referral to jury selection, assignment of a judge for trial, etc. Part 13 is the central trial assignment part for NYCAL.

III. Motions

- A. For all motions pending in the submissions part, you must follow that part's rules regarding adjournments, scheduling, and withdrawals.
 - 1. If a motion is resolved after it is fully submitted, the movant shall immediately inform the court by filing and emailing to the part clerk a stipulation withdrawing or otherwise resolving the motion.
- B. This is a paperless e-filing part, meaning you need only e-file your motion submissions to have them considered. [NYSCEF](#) is used for all filings.
- C. You must file all documents under separate document numbers and give them meaningful names. This includes, but is not limited to, notices of motion, affidavits, affirmations, memoranda of law, and exhibits.
 - 1. You shall file each exhibit under its own NYSCEF document number. The first page of each filing must bear the index number of the case and the expected motion sequence number, where ascertainable, of the motion in the upper right-hand corner of the page.
 - 2. You shall format all papers submitted to this part in compliance with the form of papers as set forth in 22 NYCRR § 202.70(g) Rule 6, "Form of Papers" of the rules of practice of the commercial division.
 - a. Hyperlinking is required (see id. at [c][1]).

3. You may not file omnibus affidavits, affirmations, memoranda of law, etc. Do not submit papers intended to be applicable to multiple motions (e.g., a party submitting the same affirmation in motion seq. nos. 001–003 must file it once in each sequence number, labeling each accordingly). Exhibits are exempt if you hyperlink any citation to such a document. The court strongly prefers that only one copy of any given exhibit be filed to NYSCEF.
 4. All substantive legal arguments, including references to statutes and case law, shall be made in memoranda of law, **only**, which shall be filed **separately** from any affirmations or affidavits. **Legal arguments are not to be included in affirmations.** Do not cite cases in affirmations. Instead, file a memorandum of law.
 5. Each deposition transcript shall be submitted as a separate exhibit. Parties shall include a word index with all transcripts. Deposition transcripts shall be labeled to indicate both their exhibit number/letter and to identify the deposed individual.
 6. Any reference to deposition testimony must cite to the exact page and line numbers relied upon rather than merely attaching the entire transcript or “relevant portions.”
 7. Any reference to any other voluminous exhibit annexed to a motion must include pinpoint citations so that the exact location within the exhibit can be easily located.
 - a. For example, a citation to physical therapy notes contained within an exhibit of medical records could be identified as “see physical therapy notes dated xx/xx/xx, exhibit B, at 9.”
 8. Any piece of media that cannot ordinarily be filed to NYSCEF must be submitted to the court electronically by emailing a download link to the part clerk. Physical media such as USB drives are not accepted and will be destroyed if received. The media must relate to a placeholder exhibit page and be addressed in the appropriate affirmation, etc., so that it is in admissible form.
 9. The failure to comply with any rule in this section may result in the rejection of the entire motion submission of the offending party.
- D. All applications for admission **pro hac vice** shall be made by notice of motion. The motion shall include an affidavit of support from a member of the Bar of the State of New York, an affidavit from the applicant, and a recent certificate of good standing from the applicant. The applicant’s affidavit must advise the court as to the total number of times the applicant has applied to be admitted in New York pro hac vice and how many times the application has been granted and/or denied. The affidavit must also state whether the pro hac vice applicant has ever been or is presently the subject of a disciplinary proceeding.

- E. Motions brought by Order to Show Cause (OSC):
1. Any questions regarding the procedure for e-filing proposed orders to show cause must be directed to the ex parte office, (646) 386-3125.
 2. Any party seeking immediate injunctive relief upon the signing of the OSC may appear in person before the court to present the OSC either with all affected adversaries or bearing proof that all affected adversaries were properly noticed. Contact the part clerk to schedule the appearance.
 3. The court will either sign or decline to sign an OSC transmitted to it from ex parte. Unless otherwise directed, signed OSCs are returnable to the part on submission, no appearance.
 4. Unless otherwise directed, opposition papers must be filed at least one business day prior to the return date of the motion. No reply.
 5. OSCs seeking relief pursuant to CPLR 321(b)(2) must set forth that service of the papers on the client to be served shall be made by personal service pursuant to CPLR 308, 311, etc. Substituted service pursuant to Business Corporation Law § 306, etc. may not be used.
- F. Summary Judgment Motions
1. All summary judgment motions must be filed within 30 days of the filing of the note of issue.
 2. Motions for summary judgment prior to the filing of the note of issue are strongly discouraged (see CPLR 3212[f]).
 3. Any application for summary judgment on consent (“NOSJM”) that is fully executed by the parties to be bound shall have the same force and effect as a voluntary stipulation of discontinuance. If the outcome is with prejudice this must be explicitly stated. The NOSJM is effective once filed to NYSCEF and does not require so ordering.
 - a. Any emailed request to so order a NOSJM, stipulation of discontinuance, etc. is and shall be deemed denied. Applications to discontinue requiring an order of the court must be made by motion on notice (see CPLR 3217[b][2]).
- G. Any requests for adjournments of oral arguments must be made at least five business days prior to the scheduled appearance by stipulation both filed to NYSCEF and emailed to the part clerk.
1. The court will not consider any requests for an adjournment made fewer than five business days prior to the scheduled oral argument absent a real emergency.
 2. All oral arguments before this court are scheduled upon the court’s determination that oral argument is necessary and indispensable for motion resolution. Accordingly, the failure of any party to appear at the oral argument may result in the motion being decided against it.
- H. This court may refer any motion to a trial judge (e.g., a motion in limine).

IV. Communications

- A. You may email the part clerk as indicated in these rules or for the purpose of seeking adjournments.
- B. If a motion has been withdrawn, resolved, etc., or the entirety of a case has been settled or discontinued, the responsible party or parties must immediately notify the part clerk by email as appropriate.
- C. You may email the part clerk to schedule an emergency appearance on an OSC involving a request to stay or for a temporary restraining order.
- D. You must email the part clerk filed stipulations, proposed orders, etc. with requests to so-order (e.g., proposed orders as to the release of medical records or as to compromises). Mere NYSCEF filing is insufficient, and such is not before the court. All such requests must contain the appropriate language, including any directives as to the clerk's office, etc., where required, else be rejected.
- E. Other or further types of email to the part clerk are not permitted without leave of court.
- F. Other types of correspondence with the court such as letters, whether filed or in paper, or in-person paper submissions of any type are not permitted.
 - 1. For the procedure concerning the submission of proposed orders for so-ordering, refer to Part 13 R. IV(D).
- G. Ex parte communications with the court of any type are not permitted.
- H. The court does not accept faxes and does not have a fax number.
- I. Calls to the part clerk are strongly discouraged except in the case of a real emergency. When in doubt, use email.
- J. Calls or emails to chambers for any reason are not permitted without leave of court. The court does not accept arguments by email, letter, etc.
- K. Virtual meetings, conferences, etc. are not available, excepting pro se/[ADA accommodations](#) made by the court as appropriate.
- L. Participating in streamed proceedings does not constitute an appearance before the court. Participants shall not be seen or heard by the court.
- M. You are strongly encouraged to sign up for [eTrack](#) for calendar updates.