

Hon. John J. Kelley

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PART 56 RULES

I. Contacting the Court

- a. Disputed issues arising in the course of an action shall not be litigated via letter or email, but only via a properly noticed motion or at a duly scheduled conference, unless the court directs otherwise.
- b. No attorney or unrepresented party shall send letters or emails to the court, unless expressly permitted by these Part Rules or requested by the court, except that attorneys and unrepresented parties may write or email the Part Clerk at SFC-Part56-Clerk@nycourts.gov (i) with respect to scheduling or logistical issues, (ii) to inform the Part Clerk that a motion is being withdrawn or that an action has been settled or discontinued, or (iii) to request a ruling in the course of a deposition. No attorney or unrepresented party shall discuss the merits of their case in emails or telephone calls to the Part Clerk. No attorney or unrepresented party shall request legal advice or guidance from the court, including from the Part Clerk or the Justice's law clerks. All letters or emails directed to the Part Clerk shall be copied to all other attorneys or unrepresented parties appearing in the action.

Attorneys or unrepresented parties may telephone the Part Clerk only with respect to scheduling or logistical issues, to inform the Part Clerk that a motion is being withdrawn or that an action has been settled or discontinued, or with respect to requests for rulings at depositions. If either the Justice or a law clerk is available to consider the application for such a deposition ruling, the Part Clerk shall forward the telephone call to the Justice or a law clerk.

- c. No attorney or unrepresented party shall telephone chambers, including the Justice's law clerks, unless expressly directed to do so.

- d. No party represented by an attorney shall call, write, email, or otherwise contact the court, unless expressly directed to do so by the court. If a party is represented by an attorney, only the attorney shall contact the court on behalf of that party.

II. Motions

- a. Until further notice, all motions shall be submitted and considered on papers only, without oral argument, except motions to be relieved as counsel, which shall be orally argued remotely via the Microsoft Teams conference application. Attorneys who seek to move to be relieved as counsel shall, immediately after they serve their motion papers, provide the court with their clients' contact information, including telephone number and email address, by emailing that information to SFC-Part56-Clerk@nycourts.gov. The court may, however, upon good cause shown, permit oral argument in other matters. Proof of good cause shall include a showing as to why the papers alone are insufficient to apprise or fully explain to the court the nature of the contested issues.
- b. If the parties stipulate to adjourn the initial return date of a motion initiated by notice of motion, or a special proceeding initiated by notice of petition, they shall upload a signed written stipulation to the NYSCEF system and choose the following designation from the drop-down menu: "stipulation-adjournment of motion-submissions part-rm 130." If the agreed upon return date is more than 60 days after the initial return date, the judge's signature shall be required, but the Motion Support Office will forward the uploaded stipulation to the court for signature. There is no need for the parties to submit a separate stipulation directly to the court for signature.

If one party seeks an adjournment of a motion or petition, but the other party refuses to stipulate to the adjournment, the party seeking the adjournment may submit a written request to the court by emailing it to SFC-Part56-Clerk@nycourts.gov. If the court approves the request, it shall "so order" the written application or shall issue an interim order adjourning the return date of the motion or petition.

- c. A motion or special proceeding shall only be initiated by order to show cause where required by statute (*see, e.g.*, CPLR 321[b][2], 5015[a]) or where emergency interim relief is sought. All proposed orders to show cause shall

include a provision for the service of responsive papers, with a space reserved for the date of service, which shall be filled in by the court. In accordance with Rule 13(b), section IV, of the Rules of the Justices of the New York County Supreme Court, Civil Branch, no reply papers shall be permitted in connection with motions or special proceedings initiated by order to show cause, except by express permission of the court.

- d. With respect to discovery motions, please refer to Section V(d), below.

III. Stipulations Other Than for Adjournments

- a. Stipulations of discontinuance signed by attorneys for all parties and all unrepresented parties in an action shall be uploaded to NYSCEF. Stipulations of discontinuance that are signed by fewer than the attorneys for all parties and all unrepresented parties shall be uploaded to NYSCEF **and** mailed or emailed to the Part Clerk with a request that the court “so order” the stipulation.
- b. Stipulations to amend the caption in an action shall be uploaded to NYSCEF **and** emailed to the Part Clerk with a request that the court “so order” the stipulation. After the court “so orders” the stipulation, one of the parties, as will be directed by the court in the so-ordered stipulation, shall, within 15 days of the entry of the so-ordered stipulation, serve a copy of the so-ordered stipulation upon the Trial Support Office (60 Centre Street, Room 148, New York, NY 10007), and shall separately file and upload the notice required by CPLR 8019(c) on a completed Form EF-22, whereupon the Trial Support Office shall thereupon amend the court records accordingly. Parties are cautioned that the failure to serve a copy of the so-ordered stipulation upon the Trial Support Office or to upload the notice required by CPLR 8019(c) will leave the caption unamended in the court’s records.

IV. So-Ordered Subpoenas

- a. If an attorney or unrepresented party seeks a so-ordered subpoena, the proposed subpoena shall be uploaded to NYSCEF **and** mailed or emailed to the Part Clerk with a request that the court “so order” the subpoena.
- b. If the court signs the subpoena, the signed copy will not be uploaded to NYSCEF, but, rather, shall be emailed to the attorney or unrepresented party requesting

it, or shall be retrieved in the courtroom by that attorney or unrepresented party, as the court directs.

V. Discovery Conferences and Disputes

- a. Unless otherwise directed by the court, forms for preliminary conference orders, compliance conference orders, and status conference orders (collectively discovery conference orders) shall be provided by the court to the plaintiff, who shall confer with the defendants, upon which the parties shall agree upon the terms and contents of the order. The plaintiff shall be responsible for filling out the proposed discovery conference order, leaving blank the spaces provided for the next discovery order submission date and note of issue filing deadline, and emailing the completed proposed discovery order to the Part Clerk. ***The parties shall not upload any proposed discovery conference order to NYSCEF.***
- b. If the parties cannot agree to the terms and contents of a discovery conference order, they shall request a conference by contacting the Part Clerk. The Part Clerk shall thereupon schedule a remote conference on the first available date and provide the parties with a link to access the remote conference. When the parties are directed by the court to submit a preliminary conference order, compliance conference order, or status conference order by a date certain, they shall adhere to the submission date directed by the court or shall request the Part Clerk to extend the submission deadline.
- c. If the court directs the parties to submit a proposed preliminary conference order, it shall not be an objection to the preparation and submission of such order that the plaintiff has yet to serve a bill of particulars. If that is the case, the preliminary conference order shall specify a deadline for the service of the bill of particulars.
- d. Discovery disputes shall not be litigated via telephone, letters, or email, except in the case of requests for rulings in the course of depositions. Rather, such disputes shall be resolved via a remote conference or a properly noticed motion. In connection with discovery motions, attorneys shall familiarize themselves with the provisions of 22 NYCRR 202.8(f) and 22 NYCRR 202.20-f(b), to which the court strictly shall adhere. Participation in a remote conference at which a disputed issue has been discussed will be deemed to constitute compliance with 22 NYCRR 202.20-f(b).
- e. If the parties initially cannot agree with respect to an item or items of discovery, and schedule a remote conference with the court to discuss that item or items,

but resolve the dispute or disagreement prior to the conference date, they shall contact the Part Clerk and cancel the conference.

- f. Requests for rulings in the course of depositions shall be made as set forth in Paragraph I(b), above.

VI. Using Microsoft Teams Remote Conference Application

- a. After receiving a link from the Part Clerk to access the Microsoft Teams Remote Conference Application for a particular conference, the parties are encouraged to test their computer link, video and audio connections, and peripheral equipment at least 30 minutes prior to that scheduled conference to insure that there will be no technical difficulties that could delay or unnecessarily extend the length of the conference.

VII. Trial Conference

- a. The Court will conduct a conference immediately before trial of every case. In those instances in which the court has been assigned to preside over a trial by the Administrative Judge a sufficient period of time prior to the scheduled date of commencement of trial, the court will attempt to conduct an initial conference as soon as practicable after the assignment to discuss scheduling and other issues.
- b. The attorneys who appear at the conference must be knowledgeable of the case and must have authority to enter binding stipulations.
- c. At any pretrial conference, counsel shall alert the Court of:
 - i. The proposed schedule for the appearance of witnesses and any scheduling conflicts;
 - ii. The need for an interpreter; and
 - iii. Any other special needs, (note that the Court does not have audio/visual or computer equipment available);
 - iv. Necessary court-ordered subpoenas; and
 - v. Any evidentiary issues that ought to be addressed before trial.
- d. Counsel shall submit motions in *limine* and trial memoranda **in writing** to the court as directed but, in any event, not later than the first day of jury selection.

Motions in limine ***shall not be uploaded to NYSCEF***, but emailed directly to the Justice's law clerks.

- e. Witnesses. Counsel shall provide to the court a list of potential witnesses in order in which they intend to call them at trial, including expert witnesses. Request for a missing witness charge should be made at this time.

VIII. Trial

- a. Unless otherwise directed by the Court, all attorneys must be present in court by 9:15 A.M. The morning session will run from 9:30 A.M. to approximately 12:55 P.M. Lunch will be from 1 P.M. to 2 P.M. Counsel must return to the courtroom by 2:05 P.M. The afternoon session will run from 2:15 P.M. to approximately 4:30 P.M. Because of the unique nature of the building at 71 Thomas St., no one is permitted to remain on the floor during the lunch hour. The Court requires the party who is presenting their case to have witnesses available to testify for the morning and afternoon sessions of each day. The Court also may direct other parties to produce their witnesses out-of-turn.
- b. Exhibits. Counsel shall pre-mark all exhibits in the order in which they intend to introduce them at trial. Plaintiffs will number their exhibits; defendants will letter their exhibits. On the first day of trial, each party will provide the court reporter with the exhibits to be officially marked.
- c. Subpoenaed Records. It is the responsibility of the attorneys to ensure that subpoenaed records have arrived in the Subpoenaed Records Room. Under most circumstances, the assigned court officer will retrieve the subpoenaed records and deliver them to the courtroom.
- d. Counsel are encouraged to stipulate to undisputed facts and to the admissibility of clearly admissible documents and records.
- e. Depositions. A copy of deposition transcripts intended to be used at trial should be made available for the Court's reference as needed. The deposition transcript should be marked as to all objections that counsel intends to make to deposition questions or answers.
- f. The Court may require representatives of insurance carriers, or other persons having an interest in any settlement, to appear in Court or to be available by telephone, as the Court deems appropriate. Failure of such person to appear pursuant to an Order, whether in writing or on the record, may be required to

show cause why they should not be held in contempt, and also may be subject to sanctions, as set forth in Part 130 and CPLR Section 3126.

- g. Proposed Jury Charges and Verdict Sheets.
 - i. The parties shall submit proposed verdict sheets and requests to charge (subject to amendment), citing the PJI sections, preferably before the commencement of trial, but not later than the start of the second day.
 - ii. All proposed jury charges and proposed verdict sheets shall be emailed to the Court (lagoldbe@nycourts.gov and hbarry@nycourts.gov) in an editable MS Word (.doc or .docx) format. Amendments thereto shall be permitted at the final charge conference. Counsel will be given the opportunity to make any objection or take any exception, on the record, to the court's ruling on the final jury charges and verdict sheet.
 - iii. If counsel relies on a Pattern Jury Instruction [PJI] without change, it should be referred to by PJI number and topic, only. If any changes to the PJI are suggested, counsel must submit the full text with all changes red-lined in Word format by email to the Justice's law clerks. Citations to appropriate statutory or common law authority shall be given in support of suggested non-PJI jury charges or suggested PJI modifications. Counsel should note that the Court has modified the language of some PJI charges to make them more readable and understandable. Counsel should review these modifications with the Justice's law clerks.
 - iv. Unless a marshaling of the evidence is waived, counsel should be prepared, at the final charge conference, to provide the court with the proposed facts that counsel believes are supported by the record.
- h. Trial Objections and Arguments: Speaking objections, except to the extent permitted below, are not permitted in the presence of the jury. To make a trial objection, counsel should stand and saying the word "objection," and, ***only if it is possible without suggesting a response to the witness***, counsel also may briefly state the grounds for the objection. If further argument is required, counsel should ask permission to approach the bench. Exceptions to trial rulings are not necessary, nor are they permitted. Upon request, counsel always will be given the opportunity to make a full record outside of the jury's presence. To preserve the record, counsel must make timely objections, including during opening and closing arguments.

- i. Certifying Experts: The Court does not certify witnesses as experts. Upon laying the foundation for admissibility, the witness may offer opinion testimony, subject to objections.
- j. All witnesses should be instructed, prior to being called to the witness stand, that they may make no mention of insurance during their testimony, whether on direct or cross-examination.
- k. Adverse Witnesses: If an adverse witness is called on a party's case-in-chief, such as the plaintiff calling a defense witness, then the defendant (in the example) shall elect to examine that witness either on cross-examination or recalling the witness on its case-in-chief, not both. In either case, leading questions of the attorney's client, employee, or former employee shall not be permitted unless they are deemed hostile.
- l. Cross Examination: Prior to taking the stand, witnesses should be advised that cross-examination questions calling for a yes or no answer should be answered accordingly, and the witness also may respond that he/she cannot answer the question with a yes or no.
- m. Courtroom Acoustics. Counsel and the parties should be aware that the jury room is not soundproof. Any matters to be addressed outside of the jury's presence should be raised at the bench or in chambers.
- n. Courtroom Comments and Demeanor: All remarks should be directed to the court, not to opposing counsel.
- o. For nonjury trials, the parties shall submit proposed findings of facts and conclusions of law within 10 calendar days of the close of the record, unless otherwise directed by the court.
- p. Counsel must retrieve their trial exhibits within seven days of the trial's conclusion. Any exhibit left with the court for more than fourteen days is subject to destruction without any further notice.

IX. Settlement Conferences

- a. Upon request of the parties, the court will meet remotely with the parties' attorneys for a settlement conference. The court will only schedule a settlement conference if there has been a demand made by the plaintiff and an offer made by the defendant prior to the conference. In medical and dental malpractice actions, the court will not schedule a settlement conference if a defendant's insurance policy requires the consent of an individual physician or

dentist to settle the action, and that physician or dentist has not yet consented to permit his or her insurer or attorney to settle the action on his or her behalf.

- b. In the case of an unrepresented party, the court will not speak separately to the plaintiff and the defendants in the course of a settlement conference.
- c. Prior to the settlement conference, the parties shall submit a short written statement of the facts underlying the action, and all parties shall inform the court of their estimation of the full value of the action if liability is proven, without set-offs for comparative fault or collateral sources.

X. Death of a Party

- a. If an attorney learns that his or her client has died, the attorney shall forthwith notify the Part Clerk of the client's death and the date of death, if known, and upload a death certificate to NYSCEF when available. If an attorney learns that an adversary of his or her client has died, and has yet to be informed of that fact by the adversary's attorney, that attorney shall forthwith notify his or her adversary's attorney and the Part Clerk thereof, and provide the Part Clerk with the date of death, if known.
- b. Upon the death of a party, the action is automatically stayed by operation of law as of the date of death, and any proceedings taken or orders issued after the date of death are nullities. The court nonetheless will issue an order memorializing the stay.

XI. The Court reserves the right to vary these rules in the interest of justice or for good cause shown.