

RULES OF  
HON. DEBRA A. MARTIN  
ACTING SUPREME COURT JUSTICE



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## I

### GENERAL RULES

1. **Appearances by Counsel with Knowledge and Authority.** Counsel who appear in the Court must be fully familiar with the case and authorized to enter into agreements, both substantive and procedural, on behalf of their clients.

2. **Settlements and Discontinuances.** If an action is settled, discontinued, or otherwise disposed of, counsel should immediately inform the Court and provide a copy of the stipulation; filing a stipulation of discontinuance with the County Clerk is required by Law but does not provide notice to the Court.

3. **Fax and E-mail.**

(a) **Fax.** The Court does not accept filed papers by fax without prior approval. If approved, the timely submission of originals is still required. Correspondence related to a case may be faxed.

(b) **E-mail.** When appropriate, the Court may permit counsel to communicate with the Court secretary and Law Clerk by e-mail. Counsel should not communicate directly with the judge unless requested to do so and then only with visible email addresses to all counsel, never *ex parte*. Excessive communication by email will result in the Court's revocation of this form of communication. Email communication shall not be used if any party is *pro se*.

## II

### PRE-TRIAL MATTERS

4. **Conference Requests.** A conference will be scheduled upon a request of counsel, either by contacting chambers on a case assigned to Justice Martin or by the filing an RJI. Counsel shall send a copy of the pleadings and Bill of Particulars to the judge prior to the scheduled conference.

5. **Conference Agenda.** At any conference counsel shall be prepared to discuss (a) the facts; (b) resolution of the case, in whole or in part; (c) discovery and any issues that might impede progress of the litigation; and (d) the use of Alternate Dispute Resolution to resolve some or all of the issues.

6. **Adjournments of Conferences.** Counsel seeking an adjournment must first contact all counsel by email to request their consent and then email the consents to the Court's secretary. Adjournment is at the discretion of the Court and may be permitted for good cause shown.

7. **Non-Appearance at a Conference.** Phone conferences may be scheduled for the Court's convenience. If personal appearance by counsel is required, the Court will notify counsel to appear in person. The failure of counsel to appear by phone or in person for a conference without good cause will result in an order directing the appropriate sanction. See 22 NYCRR §130-2.1 and §202.27.

8. **Adherence to Discovery Schedule.** If deemed appropriate, the Court will issue a Scheduling Order. Parties shall strictly comply with discovery obligations and the dates set forth in all Scheduling Orders. Any request for an extension or amendment of the Scheduling Order must be made by a letter request to the Court on notice to opposing counsel at least five (5) days before the expiration of the scheduled date and must be accompanied by a proposed Amended Scheduling Order and an indication of consent by the opposing party. Non-compliance with a Scheduling Order will have penalties, including but not limited to those set forth in CPLR §3126.

9. **Disclosure/Discovery Disputes.** Counsel must consult in a good faith effort to resolve all disputes about disclosure. See 22 NYCRR §202.7. If counsel are unable to resolve a disclosure dispute, the aggrieved party may have the right to bring a formal motion to compel or for sanctions or other relief. **However, before filing a disclosure motion, the party seeking disclosure shall call chambers and schedule a phone conference. Discovery motions filed before scheduling a phone conference will result in the motion papers being returned.**

10. **Standards and Goals.** In accordance with the Excellence Initiative established by the Chief Judge, this Court will monitor compliance with the following Standards and Goals: (1) a standard case will either be resolved or a Note of Issue filed within 12 months of filing an RJI, 8 months for a qualified "expedited" case, or 15 months for a "complex" case; (2) all cases must be disposed of within 15 months of filing the Note of Issue.

### III

## MOTIONS

11. **Form of Motion Papers.** The movant must specify, clearly and comprehensively, in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief counsel seeks.

**If motion in not E-filed:**

(a) Motion papers must be submitted with the return date blank; the Court will advise movant of the assigned return date. The movant shall then fax a copy of the notice of motion with the return date inserted to all parties and the Court.

(b) The motion papers should be in a colored backing indicating the law firm name, with all submissions from a party being in the same color backing. The Court's copy of the papers should **not** be bound with an unremovable plastic fastener; the use of three-ringed binders for voluminous submissions is preferred. Remember—you don't want the Court to struggle to read, hold and carry your papers! Separate affidavits should be backed separately and not be "buried" in the exhibits or a memorandum of law.

(c) Motion papers should be double-spaced and contain print no smaller than twelve-point, on 8 ½ x 11-inch paper, with margins no smaller than one inch. The print size of footnotes shall be no smaller than nine-point.

(d) **Confidential Personal Information must be redacted or the motion papers will be returned. See 22 NYCRR §202.5 (e).** This includes SSN, dates of birth, and names of infants contained in attached medical records and police reports, and account numbers in financial cases.

(e) Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion, especially on motions pursuant to CPLR §3211 and §3212.

(f) Exhibits should be tabbed and legible. If a document referenced an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion (such as with a deposition transcript), attach excerpts as exhibits and submit the full exhibit separately. If exhibits are voluminous they should be backed separately and the parties should, whenever possible, refer to the exhibits already submitted by others.

(g) Photos should be in color and clear if you want the Court to consider them. Photocopies that do not show relevant details will not be considered. Documents in a foreign language shall be properly translated (CPLR Rule 2101[b]).

**If motion is E-filed:**

Within 3 working days of being notified of the judicial assignment, one working copy of **all motion** papers filed by the moving party (Notice of Motion, affidavits/affirmations, exhibits, memorandum of law) shall be delivered to Judge Martin at 144 Exchange

Blvd., Suite 500, Rochester, 14614. One copy of all papers filed in opposition and in reply shall be delivered to this address the same day they are e-filed.

This rule applies to all motions except those: (1) involving debt collection; (2) for default judgment; (3) involving discovery issues\*; and (4) for contempt arising from failure to respond to an information subpoena. For these motions, the Court does not require delivery of a working copy. If you have a simple motion that does not fall into these categories, contact chambers at 585-325-4500 to inquire whether a working copy is required.

A “working copy” shall have exhibit tabs and legible copies of documents and photos. If more than 1” thick, please staple or bind along the left side for easier reading.

**\*No discovery motion shall be filed without first requesting and participating in a phone conference with the Court.**

12. Whenever counsel cites a decision or other authority not readily available to this Court, a copy of it should be submitted with the motion papers.

13. Case law should not be placed in the Attorney’s Affirmation but in a separate Memo of Law. Memos of Law can be brief; not every case warrants pages of black letter law and string citations.

14. **Proposed Orders.** When appropriate, proposed orders should be submitted with routine motions, e.g., motions to withdraw, *pro hoc vice* admissions, etc. No proposed order should be submitted with dispositive motions.

15. **Adjournment of Motions.** Counsel seeking an adjournment must first contact all counsel to request their consent. Adjournment is at the discretion of the Court and may be permitted for good cause shown. Upon granting an adjournment, no additional papers shall be submitted without the permission of the Court. If no opposition papers have yet been submitted, or, if additional papers are specifically allowed by the Court, these papers must be submitted ten (10) days prior to the adjourned return date and reply papers must be submitted seven (7) days prior to the adjourned return date.

16. **Length of Papers.** Unless otherwise permitted by the Court for good cause, briefs or memoranda of law are limited to 25 pages each. Affidavits and affirmations shall be reasonable in length.

17. **Sur-Reply and Post-Submission Papers.** The CPLR does not provide for sur-reply papers, however denominated. Nor is the presentation of papers or letters to the Court after submission or oral argument of a motion permitted. Absent express permission in advance, such materials will be returned unread. Opposing counsel who

receives a copy of materials submitted in violation of this Rule should not respond in kind.

18. **Motions to Reargue/Renew.** These motions are always on submission, unless requested by the Court.

19. **Temporary Restraining Orders.** Generally, the Court will not issue a TRO on substantive issues unless the applicant has given notice to the opposing parties sufficient to permit them an opportunity to appear and contest the application. Therefore, the moving party shall submit to the Court contact information regarding counsel for the opponent, if known. Upon receipt of a TRO request, the Court may set a conference with all counsel as soon as possible to discuss the application.

20. **Oral Argument.** All motions will be set for oral argument on the assigned return date unless otherwise directed by the Court. The Motion Calendar is published on the return date in The Daily Record. No appearance for oral argument is required when (a) the Court approves the waiver of oral argument; (b) there is a Consent Order; (c) it is an uncontested motion; (d) the motion is withdrawn; or (e) the motion is to reargue or renew a prior motion.

21. **Motion Decisions and Orders.**

(a) **Unopposed motion.** As soon as possible after the return date, counsel should submit a proposed order, with an affidavit of service of the motion.

(b) **Consent.** Counsel should submit a Consent Order signed by all parties as soon as possible.

(c) If unopposed or consent orders are not timely received, the motion will be considered withdrawn, without prejudice.

(d) When the Court issues a Bench Decision, counsel will be directed to obtain and attach a transcript of the Bench Decision, and reference the transcript and bench decision in the Order.

(e) All proposed orders should be emailed to the Law Clerk, Amy Nichols, at [anichols@nycourts.gov](mailto:anichols@nycourts.gov) in Microsoft Word format.

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## IV

### TRIALS

#### 25. **Trial Schedule.**

(a) The Court's Trial Ready Calendar is comprised of cases in the order the Notes of Issue are filed. If counsel is aware of personal or witness scheduling issues, they should notify the Court as soon as the Note of Issue is filed because it is assumed that all cases are ready to be scheduled at any time after the NOI is filed.

(b) Counsel are expected to be ready to proceed either to select a jury or to begin presentation of proof upon a call from the Court scheduling a trial date.

(c) Once a trial date is set, counsel must immediately determine the availability of witnesses. If, for any reason, counsel are not prepared to proceed on the scheduled date, the Court is to be notified as soon as reasonably practicable. Failure of counsel to provide such notification will be deemed a waiver of any application to adjourn the trial because of the unavailability of a witness. Witnesses are to be scheduled so that all trial time is completely utilized. Videotaping of expert witness testimony is encouraged.

26. **Trial Order.** The Court will generally issue a Trial Order establishing a stand-by and/or date certain trial date, and setting forth the Rules of the Court specific to the Trial.

27. **Jury Selection.** The Court's Jury Selection process is set forth in a separately posted document entitled Trial Rules.

28. **Trial Schedule.** Unless otherwise directed by the Court, trials are conducted 9:30 A.M. until approximately 4:30 p.m., Monday through Friday. The Court holds Special Term on some Wednesday afternoons, so there will be no trial at that time. Generally, the jury is selected on a Friday, with trial testimony to commence the following Monday.

Failure of counsel to attend the trial at the time scheduled will constitute a waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel's absence.

29. **Settlement Conference.** The Courts will hold a Settlement Conference prior to scheduling a Trial. In preparation for the Settlement Conference, counsel shall determine coverage and have substantive conversations with their clients regarding

settlement authority. Also Counsel for all parties shall furnish the Court with a list of witnesses and a realistic estimate of the length of the trial.

30. **Motions *in limine*.** Motions *in limine* must be filed, with copies served on the court and opposing counsel at least seven (7) days before jury selection. Responses are due two (2) days before jury selection. Such motions shall be on submission unless otherwise directed by the Court.

31. **Pre-Marking of Exhibits.** Counsel shall consult prior to trial and, in good faith, attempt to agree upon the exhibits that will be offered into evidence without objection. With the Court Reporter, each side shall then mark the exhibits, with plaintiff using numbers for its exhibits and defendant using letters. If the exhibits are voluminous, the attorneys should consult with the Court's Clerk for another method of marking the exhibits.

32. **Identification of Deposition Testimony.** Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read questions and answers that are irrelevant to the point for which the testimony is offered. Prior to trial, each party shall submit to the Court a courtesy copy of any deposition testimony they intend to read at trial.

33. **Pretrial Matters.** The Court will set a pretrial conference immediately prior to commencement of the jury selection or trial. Prior to the conference, counsel shall make a good faith effort to identify issues not in contention and resolve all disputed questions without need for Court intervention. At the conference, counsel shall be prepared to discuss all matters in contention disagreement between the parties, evidentiary and scheduling issues, and settlement. At or before the conference, the Court may require the parties to prepare a written stipulation of undisputed facts.

The court may request pre-trial memoranda. The party who has filed the Note of Issue shall furnish the court with a copy of the marked Complaint and the Answer, along with copies of any prior Orders relevant to the trial issues. (CPLR R4012). Counsel shall also submit a list of trial exhibits and a copy of the exhibits for the Court's use.

In a jury trial, counsel must, pursuant to the Trial Order and prior to jury selection, provide the Court with case-specific paragraph references to **Pattern Jury Instructions**, as well as any requested jury verdict **interrogatories**. The failure to do so may waive your right to object to the Court's charge to the jury until after it is presented. The Court is aware that additional or different charges may be necessary based on the developments or testimony at trial, in which case, a supplemental request to charge will be permitted. The PJI charge and the jury verdict sheet shall be provided

to the Court in hard copy and attached to an e-mail directed to the Court's secretary and Court's Law Clerk in Microsoft Word format.

In preparing the request to charge, counsel should be aware that the Court will use an opening charge to the jury which will include information and directions to the jury as set forth in the Pattern Jury Instructions. The Court will also generally charge paragraphs 1:20, 2:325; 1:40; 1:37; 1:38; 1:25; 1:21; 1:91; 1:22; 1:90; 1:70; when appropriate.

34. **Scheduling Witnesses.** At least two weeks before trial, each party shall identify in writing for the Court and the other parties the names of the witnesses, the order in which they are scheduled to testify and the estimated length of their testimony.

If the matter involves the testimony of an expert, the parties must video tape the expert's testimony in advance of trial or secure their in-court testimony. If the trial has been scheduled more than 30 days after the Note of Issue is filed, the matter will NOT be adjourned because of the unavailability of an expert.

35. **Preclusion.** Except for good cause shown, no party shall present the testimony of a witness, portions of deposition testimony, or exhibits that were not identified as provided in these Rules and not identified during the course of disclosure in response to a relevant discovery demand of a party or an order of the Court.