

PRACTICE RULES FOR PART 61
JUSTICE BARRY R. OSTRAGER

Courtroom hours are from 9:30 a.m. to 4:30 p.m. in Room 341 at 60 Centre Street. Lunch recess is from 1:00 p.m. to 2:15 p.m., with the courtroom closed at that time.

1. The Uniform Civil Rules for the Supreme Court govern all cases before Justice Ostrager, unless modified or changed below. Additionally, for those cases designated as Commercial Division cases, the Rules of the Commercial Division shall apply unless modified by the individual Rules of Justice Ostrager set forth below.

<http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>

2. All documents submitted to the Court for review or signature, whether stipulations, orders or letter applications, must contain the full caption of the case, the Index Number, and the motion sequence number, if relevant, on the first page, along with any scheduled date. Working copies of all such papers shall be delivered to Room 341 with an explanatory cover letter, in addition to e-filing.

3. Working copies of all motion papers, including any opposition and reply papers, shall be prepared with Exhibit tabs and delivered to Room 130, the Motion Submission Part, on the date the motion is calendared in Room 130. Additional courtesy copies are not required. Working copies shall not be delivered to the courtroom unless expressly requested by the Court in writing. If the motion is made by Order to Show Cause, counsel shall follow the separate procedure set forth below.

4. The Part Clerk is unable to accept deliveries between 1:00 p.m. - 2:15 p.m. or after 4:30 p.m. No deliveries to Chambers will be accepted.

Communications with the Court

1. Neither Justice Ostrager nor the Law Clerk will speak to any attorney or self-represented litigant regarding any matter without all parties to the action on the line. No calls to Chambers shall be placed, nor emails sent, unless authorized in advance by the judge or a member of the staff or as permitted by the rules.

2. All inquiries regarding the scheduling of appearances for discovery conferences or oral arguments must be directed to the Part 61 Clerk, Alex Giuffre, who can be reached at (646) 386-3169 between 9:30 a.m. and 1:00 p.m. and between 2:15 p.m. and 4:30 p.m. Please have the Index Number of the case readily available when you call. Any adjournment granted shall be confirmed in writing by the applicant with copies sent to all parties.

3. Any request for the adjournment of a settlement conference, a pre-trial conference or a trial, or for an extension of time to comply with a court order or page limits, shall be made by letter to Justice Ostrager delivered to the courtroom. A party seeking any such adjournment or extension must receive Court permission at least 48 hours before the scheduled date. To the extent that the adjournment or extension must be ordered by the Court, the party seeking the adjournment or extension shall submit a proposed order.

4. All counsel are expected to appear in a timely fashion for any scheduled appearance and to promptly check in with the Part Clerk. No party will be excused from a scheduled appearance without first seeking and receiving leave from the Court.

5. Correspondence to the Court must be e-filed with a working copy delivered to the Part 61 courtroom and sent to all parties. Each party recipient's email address shall be included.

Discovery Disputes and Conferences

1. Discovery disputes are to be resolved through a court conference — not through motion practice — unless the Court expressly grants leave in advance to file a discovery motion. The court conference for any General Commercial case shall be scheduled with the Part Clerk for a Tuesday morning 9:30 a.m. appearance in the courtroom. Conferences to resolve discovery disputes for Commercial Division cases shall be scheduled with the Park Clerk for a Wednesday or Thursday morning at 11:00 a.m. in the courtroom. Any specially arranged conference regarding a discovery dispute, as well as any adjournment granted, shall be confirmed in a writing to all parties and the Court, e-filed and delivered to the Part Clerk.

2. No pre-conference letter is required. However, counsel shall bring to the conference all documentation and case law necessary to resolve the dispute. It is assumed that counsel will meet and confer to resolve discovery disputes before requesting court intervention.

3. If a satisfactory resolution of the discovery dispute is not achieved through a court conference, the Court in its discretion may grant leave for the parties to file the appropriate motion. Failure to abide by this rule requiring prior permission for a discovery motion will result in a motion being denied in the discretion of the Court.

Motion Practice

1. All motion papers are required to have the appropriate Motion Sequence Number to which they are related placed on the front page below the Index Number.

2. All working copies submitted in connection with a motion must include the motion sequence number, be properly backed, and, where necessary, include proper exhibit tabs.

3. All submitted papers shall have an e-file confirmation sheet and any redaction sheet attached to the back of the document, over the litigation back.

4. Statements of Material Facts are required when moving for or opposing a motion for summary judgment. Any dispositive motion must be made within 60 days of the filing of the Note of Issue.

5. Affirmations submitted in support of or in response to dispositive motions must be separate from any memoranda of law submitted in relation to the motion. Affirmations should not include arguments of law.

6. Upon the receipt of a fully submitted motion, oral argument will be scheduled by the Court via an official Court Notice transmitted through the e-filing system. At the conclusion of oral argument, the movant shall order the transcript and have a copy sent to the Court, delivered to the Part 61 Clerk in the courtroom, to be So Ordered by the Court and e-filed by the Clerk.

Motions by Notice of Motion

1. Working copies of all e-filed papers and exhibits for motions returnable in Room 130, the Motion Submissions Courtroom, must be delivered to Room 130 on the return date of the motion, and not to the Part Clerk in Room 341.

2. Any application to adjourn a motion pending in Room 130 shall be directed to Room 130. No more than three adjournments for an aggregate of 60 days from the original return date shall be permitted absent a Stipulation So Ordered by Justice Ostrager.

Motions by Order to Show Cause

1. An Order to Show Cause shall be initiated by filing the appropriate papers with the Ex Parte Clerk in Room 315, or with the Commercial Division Clerk in Room 119 for Commercial Division cases, with proof of e-filing. Counsel are responsible for retrieving the Order to Show Cause from the Clerk's office after it has been processed and delivering the jacket with a complete set of working copies to the Part Clerk in the courtroom 341.

2. Working copies of e-filed opposition and any permitted reply papers and exhibits related to an Order to Show Cause must be delivered to the Part 61 courtroom, Room 341, between the hours of 9:30 a.m. - 1:00 p.m. and 2:15 p.m. - 4:30 p.m., by the date specified in the Order to Show Cause for service of the papers. No cross-motion will be accepted absent the prior permission of the Court sought by conference call.

3. Absent compelling circumstances, all parties must be present when any temporary restraining order or other injunctive relief is sought.

Trial Rules

1. No adjournment of the trial date will be granted absent exceptional circumstances. Any request for an adjournment must be made in writing to the Court and not by telephone call and must be made a reasonable number of days before the scheduled trial date.

2. All materials used during the trial must be removed within 48 hours of the conclusion of trial. All materials not timely removed will be discarded.

3. The parties are expected to meet and confer regarding the timely submission of pre-trial materials well in advance of the deadlines listed below. A notebook of trial exhibits shall be prepared for the Court. Counsel are expected to e-file any exhibits admitted into evidence at the conclusion of the trial.

14 Days Prior to Jury and Non-Jury Trials

After meeting and conferring, the parties are each to submit the following at least fourteen (14) days prior to the start date of the trial:

- (a) Pre-trial memorandum briefs.
- (b) Proposed facts to be proven at trial.
- (c) A list of witnesses each party expects to call at trial. The witness list must state whether each witness is a fact witness or an expert witness. If a witness is listed as an “expert,” state: (i) the subject of the expert’s testimony and (ii) whether the parties agree or dispute the witness’s status as an expert for purposes of the trial. Compliance with CPLR §3101(d) is expected.
- (d) A list of exhibits that each party may use at trial. The exhibit list must state for each exhibit whether the exhibit is agreed to or disputed by the parties as admissible evidence. Exhibits that are agreed to by the parties as admissible evidence will be immediately entered into evidence upon introduction at trial.
- (e) Marked pleadings, transcripts of any deposition testimony that may be read, and copies of any expert disclosure statements.

5 Days Prior to a Jury Trial

- (a) At least five (5) days prior to the start date of the trial the parties are to each e-file all motions in limine and submit working copies to the Part Clerk in the Courtroom with a cover letter indicating the trial date. Any opposition is due two (2) days before the trial.
- (b) If the trial is by jury, counsel are required to submit proposed jury charges and a proposed verdict sheet. The Court will also accept submissions of proposed opening jury charges to be read at the onset of the trial. All submissions must be submitted in hard copy and on CD or thumb drive in Wordperfect or Word format five days before trial. Any modifications to the PJI shall be highlighted.
- (c) The Court typically supervises jury selection. Parties may submit proposed questions for use by the Court during jury selection. Each party is expected to make a three-minute presentation to the jury panel regarding its case at the beginning of voir dire. If there are multiple plaintiffs or defendants, each side shall have a maximum of four minutes for its presentation, with the time to be divided among the parties’ attorneys as they wish.