

Part 53 Practice Rules

(Revised October 17, 2011)

1. Absent extraordinary circumstances, no motion scheduled for oral argument in Part 53 will be adjourned unless the **request for adjournment** is received by the Part Clerk no later than noon the day prior to the scheduled argument. Otherwise, **only one adjournment** is allowed per argument on motion or conference, no matter which side requests it or even if all parties agree.
2. **No party shall contact the Part or Chambers to inquire as to whether an order has been signed** UNLESS it is an emergency because the order is time sensitive OR it was submitted more than 45 days prior. In the meantime, parties are directed to check SCROLL, E-Filing, E-Courts and the County Clerk's file for orders. If the order is not there, it has not been signed. SCROLL can be accessed here: <http://iapps.courts.state.ny.us/iscroll/>
3. **Motion sequence numbers** shall appear on ALL motion papers: the notice of motion, memos of law, exhibits, affirmations, AND settled orders.
4. **MOTIONS WILL NOT BE SCHEDULED FOR ORAL ARGUMENT UNTIL PART 53 HAS A COMPLETE SET OF ALL MOTION PAPERS.** In light of recent changes in the E-filing office, **Part 53 will not schedule newly filed motions for oral argument unless and until all parties to the motion have submitted "Working Copies" in hard copy form to the E-Filing office** (SEE Rule #13 regarding E-filing).
5. **MOTION PAPERS SHALL NOT BE TAKEN APART** subsequent to filing in the Motion Support or E-Filing offices. Each set of motion papers, affidavits and memos of law shall contain the following legend prominently displayed on the face thereof: **"By order of Justice Ramos, these motion papers may not be taken apart or otherwise tampered with."**
6. **Rule 19-A statements (Statements of Undisputed Facts)** are required on all summary judgment motions.
7. **Memos of Law ARE REQUIRED on ALL motions.** Failure to submit separate memos of law (not incorporated into attorney affirmations) may result in the denial of the motion.
8. **Dispositive motions** must be initiated within 30 days after the filing the Note of Issue.
9. There shall be **oral argument** on all motions **except motions to reargue.**

10. Subsequent to each oral argument held on a motion, either party shall request from the court reporter a **transcript** of the proceedings and **promptly provide a copy** to the Court, to be delivered to the Part Clerk. Failure to provide a copy of the transcript to the Court when specifically directed by chambers will result in the motion being marked abandoned. The Part Clerk can provide the name and contact information of the court reporter.
11. In the event that a party requests that a **transcript be “So Ordered”** by the Court, the following procedure must be adhered to: Transcripts shall be submitted together with an errata sheet correcting all errors in the record, including presumed court errors. If all parties consent to the proposed corrections or agree that no corrections are required, a stipulation to that effect shall accompany the errata sheet or transcript. In the absence of consent, the requesting party shall notice the record for settlement pursuant to CPLR 5525 [c].
12. **Proposed Orders submitted in connection with a motion** must be **settled on NOTICE**, contain the **motion sequence number**, and be sent directly to the Part or Chambers (unless the proposed order is submitted in connection with a default judgment, in which case, the proposed order should be sent to the Commercial Support Office).
13. **E-Filing:** Please note that as of May 24, 2010, E-filing is **mandatory** in all commercial cases filed in New York County. For any questions with respect to E-filing rules and procedures, call the **E-filing Office at (646) 386-3610**. E-filing sample forms and notices are available at:
<http://www.nycourts.gov/supctmanh/E-Filing.htm>
 - a. **Opt-out:** If parties are eligible and wish to opt-out from participating in mandatory E-filing, they must file a **Notice of Opt-Out** (Note: all forms can be found on the E-Filing Website).
 - b. **Hard Copy Documents:** All documents in mandatory E-filed cases or E-filed cases in which consent has been given must be filed electronically. Any **hard-copy documents** in E-filed cases, including correspondence and requests for adjournment, that are sent to the Part or to Chambers **MUST be E-filed**.
 - c. **Note: CONFIRMATION NOTICES MUST BE ATTACHED TO THE LAST PAGE** and not as a cover page, as was previously directed. Hard copy documents **will be rejected** if they are accompanied **by a Confirmation Notice** as a cover page.

- d. **Courtesy Copies (a.k.a. “Working Papers,” “Originals,” “Duplicate Originals”):**
- i. Counsel shall submit courtesy copies to the E-Filing office ONLY (NOT TO THE PART) pursuant to the E-filing rules, **on the return date of the motion** (see #4 above). These courtesy copies shall be in the identical form that motion papers in non-E-Filed cases are submitted to the Part 53, and shall include: original signatures, notaries, proofs of service, and all exhibits without redaction.
 - ii. Upon the Court’s disposition of the motion, ALL original motion papers in an E-filed action will be discarded, UNLESS counsel affixes a legend on the face of the motion papers requesting that they not be discarded. Counsel shall have 30 days from the date of entry of the disposition of the motion to retrieve the original motion papers from Part 53, or they will be discarded.
14. Parties shall use the approved **confidentiality agreement** and order available at <http://www.nycourts.gov/courts/comdiv/newyork.shtml>.
15. Part 53 holds **telephone conferences** everyday after 4 pm. Even if you are in the building on another matter, you shall not appear in person in either chambers or the Part for a scheduled telephone conference. Any party in the case may initiate the call with all parties on the line before contacting the court. A reservation is not necessary. **WHEN CONTACTING THE PART OR CHAMBERS, THE PARTIES MUST HAVE THE INDEX NUMBER AVAILABLE.**
16. When **discovery deadlines** are ordered by the Court, service of discovery requests, responses or motions shall be made in hand by 5pm on the date specified.
17. **No party shall send a letter to chambers** without first calling the adversary, having a “meet and confer” on the issue, and only when it cannot be resolved, then calling chambers for a conference. With prior permission, a party may send correspondence e-mail at RCE53@courts.state.ny.us, fax at 212-401-9057, hand delivery, U.S. mail or overnight delivery to chambers, but **not by more than one method of delivery.**
18. **Electronic Discovery:** After service of demands for discovery, and prior to the deadline for written responses and inspection/production of documents, parties shall confer in good faith in order to identify whether documents sought are computer stored data. Parties shall discuss the associated costs of production, the method and scope of the search to be conducted, and attempt to agree to search terms, and/or sampling. The responding party will produce the information sought in some form of electronic means (i.e. on a disc), unless the

parties agree otherwise, and shall be accompanied by an index that identifies the document(s) produced in response to each demand, the electronic file where the document has been stored, and an affidavit, where requested. Any issues relating to electronic disclosure will be raised with the Court at the next compliance conference.

19. **Interrogatories are limited to 25** in number unless another limit is specified in the PC order. This limit applies to consolidated actions as well. Unless otherwise ordered by the court, **interrogatories are limited to the following topics:**
 - (1) seeking names of witnesses with knowledge of information relevant to the subject matter of the action;
 - (2) the computation of each category of damages alleged; and
 - (3) the existence, custodian, location and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, or information of a similar nature.

20. To clarify Rule 11d of the Commercial Division Rules, the presumption is that **discovery is not stayed** by the filing of a dispositive motion unless otherwise directed by the Court.

21. Except for discovery motions, no prior permission is required before making a motion. Commercial Division **Rule 24 letters are NOT required** in Part 53.

22. **Expert Disclosure:** No later than thirty days prior to the completion of fact discovery, the parties shall confer on a schedule for expert disclosure, which shall include the identification of experts, the exchange of expert reports, and depositions. In the event that a party withholds consent to this procedure, the parties shall consult with the Court. Unless otherwise stipulated or ordered by the court, expert disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:
 - (1) a complete statement of all opinions the witness will express and the basis and the reasons for them;
 - (2) the data or other information considered by the witness in forming them;
 - (3) any exhibits that will be used to summarize or support them;
 - (4) the witness's qualifications, including a list of all publications authored in the previous 10 years;
 - (5) a list of all other cases in which, during the previous four years, the witness

testified as an expert at trial or by deposition; and

(6) a statement of the compensation to be paid for the study and testimony in the case.

23. All attorneys or pro se litigants must provide their **contact information** to the Trial Support Office, located in Room 158M.

24. All orders on motions or stipulations to **consolidate or change captions** shall be sent to the Trial Support Office, located in room 158M. Sample orders are available at http://www.nycourts.gov/supctmanh/other_forms.htm

25. **Procedures for Inquests:** A party requesting an inquest in Part 53 shall submit the following information or documents to the Court:

A. An affidavit from a person with knowledge of the facts setting forth how damages are computed.

B. Attorney's affirmation setting forth a brief recitation of the facts and the grounds for liability. The affirmation should also discuss the damages incurred by the party.

C. Exhibits should be submitted in support of all requests for damages. For example:

- if the relief is attorneys' fees, the attorney's affirmation should attach the billing statements describing the activity, the identity and title of the person performing the activity, time, date, and billing rate.

- if the relief is for lost profits, financial statements for comparative time periods should be provided.

D. Whenever counsel believes it would assist the Court, affidavits from experts (i.e., accountants, appraisers, etc.) should be submitted.

E. Proof of service must be filed indicating that all papers and exhibits submitted to the Court have been served on opposing parties.

F. A proposed finding of fact and a proposed order for this Court should be submitted, by e-mail at RCE53@courts.state.ny.us.

G. Any additional submissions that will be helpful to the Court should be provided.

H. Papers in opposition should follow the same format as set forth above.

I. For inquests that were not granted on default, do not submit evidence on causes of action that have been previously dismissed or on which no liability was found.

J. Failure to properly document damages will result in the rejection of the inquest.

26. Class Action Settlements: The settlement of class actions pending in Part 53 shall be governed by the following guidelines (when circumstances warrant, exceptions will be made).

A. All notices to members of the proposed class shall be in plain English. A typical member of the class should be able to easily comprehend each notice. Class counsel must draft such notices consistent with their professional obligation to fully disclose to their clients the significance of the information provided.

B. The issue of class certification is not a matter for stipulation between the parties unless prior permission from the Court is obtained, or settlement is without prejudice as provided below in Paragraph 3. Otherwise, a finding that certification of the class is appropriate will be made at an adversarial hearing.

C. The failure to opt out of the class will **not** result in a release unless a class member accepts the settlement benefit or knew or should have known that a failure to opt out will result in a release. Proof of actual delivery of a pre-approved intelligible notice, written in plain language will suffice. In addition, this Court will approve the terms of a settlement that provides for a portion of the settlement fund to be held in escrow following discontinuance of the class action and pending the expiration of any applicable statute of limitations period, to be used toward any separate, potential claims by those who have not responded or have not opted in. In such event, any unused funds would be released to the original class following expiration of the limitations period. Unless permitted by this Court, the terms of the settlement shall **not** require the class members to opt out or take other action to preserve an existing right.

D. Where applicable, the procedure to be followed by class members in applying for the settlement benefit shall be simple and shall not require the class member to provide information or documents not required in the first instance to purchase the product or service other than what is reasonably necessary, such as name, address and proof of purchase (if not otherwise determinable from the parties own records). When practicable, the benefit shall be forwarded to the class members in the manner of an

account credit or a refund on a product return.

E. A summary of counsel's application for fees, which shall include the basis and justification for the calculation, shall accompany any notice of proposed settlement. This is required without regard to the source of the fee payment. No fee shall be approved unless it bears a reasonable relationship to the benefit actually accepted by the members of the class and is reasonable in light of the risk to counsel of no recovery. Fee calculations may not be based on the potential value of the settlement; rather, fee awards will be awarded in light of the benefits actually received by class members.

F. The Court may appoint independent counsel to represent the proposed class members on the question of class certification, fees to be awarded class counsel or any other issue where the Court is unable to determine the relative strengths of the parties' positions, or if the settlement raises questions about collusion or the ability of plaintiffs' counsel to represent the interests of the class.

G. The Court will not "preliminarily" approve any settlement prior to the hearing on fairness.

H. A member of the proposed class may object orally at the fairness hearing or in writing without the need to notify counsel or to file written objections prior to the hearing.

I. Notwithstanding Paragraph 1 above, a copy of these rules must be appended to each notice to class members.

27. **Request for admission pro hac vice**, whether made by motion or stipulation, shall be accompanied by a proposed order and an affidavit in support from a member of the Bar of the State of New York and an affidavit of the applicant and a recent certificate of good standing from the applicant. (See the form of Order below).

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FORM OF PROPOSED ORDER FOR
PRO HAC VICE APPLICATIONS

_____, Esq., having applied to this court for admission pro hac vice to represent [plaintiff/defendant] _____ in this action, and said applicant having submitted in support thereof a stipulation of all parties dated _____, an affidavit of _____, Esq., a member of the Bar of the State of New York and attorney of record herein for _____, an affidavit of the applicant dated _____, and a Certificate in Good Standing from the jurisdiction in which the applicant was admitted to the practice of law, and the court having reviewed the foregoing submissions and due deliberation having been had, it is now therefore

ORDERED that the motion is granted on consent and _____, Esq. is permitted to appear and to participate in this action on behalf of _____; and it is further

ORDERED that he/she shall at all times be associated herein with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the party in question and all pleadings, briefs and other papers filed with the court shall be signed by the attorney of record, who shall be held responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted pro hac vice shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the Rules of the Courts governing the conduct of attorneys and the Disciplinary Rules of the Code of Professional Responsibility; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction which affects his/her standing as a member of the Bar.

ENTER:

J.S.C.