

Part 53 Practice Rules

(Revised July 20, 2009)

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. **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.”**
3. All attorneys or pro se litigants must provide their **contact information** to the Trial Support Office, located in room 158M.
4. 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.
5. **No party shall send a letter to chambers** without first calling the adversary, trying to resolve the problem and calling chambers. With permission of the court, a party may send correspondence to the court by e-mail at RCE53@courts.state.ny.us or fax 212-401-9057 or hand delivery or U.S. mail or overnight delivery, but not by more than one method of delivery.
6. Parties shall use the approved **confidentiality agreement** and order available at <http://www.nycourts.gov/courts/comdiv/newyork.shtml>.
7. There shall be **oral argument** on all motions except motions to renew and reargue.
8. **Motion sequence numbers** shall appear on ALL motion papers: the notice of motion, memos of law, exhibits, affirmations, etc. AND settled orders.
9. 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, delivered to the Part 53 Clerk, Room 238.
10. 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].

11. **E-Filing:** No party shall convert a case to E-Filing while a motion is pending. Otherwise, cases initiated in or converted to E-Filing shall submit motion papers in the following manner:

A. Counsel shall submit courtesy copies to the E-Filing office pursuant to the E-filing rules. 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. Otherwise, an affidavit of hardship must be provided explaining why original motion papers cannot be submitted.

B. Upon the Court's disposition of the motion, ALL original motion papers 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, whereupon they will be discarded.

12. All orders on motions or stipulations to **consolidate or change captions** shall be served on the Trial Support Office in room 158.

13. Part 53 holds **telephone conferences** everyday after 4 pm. Any party in the case may initiate the call with all parties on the line before contacting the court. A reservation is not necessary.

14. **Interrogatories** are limited to 25 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:** seeking names of witnesses with knowledge of information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, or information of a similar nature.

15. To clarify Rule 11d, the presumption is that **discovery is not stayed** by a dispositive motion unless otherwise directed by the Court.

16. Except for discovery motions, no prior permission is required before making a motion. **Rule 24 letters are never required.**

17. **Rule 19A statements (Statements of Undisputed Facts)** are required for all summary judgment motions

18. **Dispositive motions** must be initiated within 30 days of filing the note of issue.

19. Procedures for Inquests: A party requesting an inquest on papers in Part 53 shall do so in accordance with the following procedures: A party 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.

20. 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. Defendants shall not be released by members of the class unless the class member accepts the settlement benefit. The failure to opt out will not result in a release. 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.

I. 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.

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

21. **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.

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.