

NEW YORK COUNTY SUPREME COURT, CIVIL BRANCH



Main Courthouse:
60 Centre Street
New York, New York 10007

Satellite Courthouses:
80, 100 and 111 Centre Street
71 Thomas Street
New York, New York 10013

RULES OF THE JUSTICES

**[EMINENT DOMAIN RULES ADDED MAY 19, 2010, EFFECTIVE MAY 24, 2010;
BACKGROUND INFORMATION UPDATED: FEBRUARY 24, 2020]**

The following constitute the rules of the Justices of the Supreme Court, Civil Branch, New York County (hereinafter “the Rules” or “the Local Rules”) with the exception of the Justices of the Commercial Division. A separate set of uniform rules governs cases assigned to the Commercial Division.

STRUCTURE OF THESE RULES: The rules of the court are set forth immediately hereafter. These rules are applicable in the Parts of the court (excluding the Commercial Division) unless otherwise indicated in the Basic Information section that follows after the main body of the rules. The Basic Information section lists the Justices of the court in alphabetical order and a summary of the operational details of their Parts (e.g., motion days). Variations exist among the Parts in regard to such details. An attorney who wishes to know the requirements followed in a particular Part should consult the main body of the Rules together with the portion of the Basic Information section that pertains to that Part.

CASE INFORMATION: Information on the status of cases and activity therein and copies of decisions and other case documents are available in the Supreme Court Records On-Line Library (“*Scroll*”), which is accessible at no charge through the website of this court (at www.nycourts.gov/supctmanh).

RULES

In addition to the Rules that follow, procedures have been developed to simplify and expedite the submission of papers to the court in electronically-filed cases. Counsel are advised to consult the court’s Protocol on Courthouse Procedures for Electronically Filed Cases (posted on the “E-Filing” page of this court’s website at www.nycourts.gov/supctmanh). Parts II and IV of these Rules are inapplicable to condemnation and tax certiorari cases. Emergency medical hearings and proceedings under the Mental Hygiene Law have their own special rules. Part V is applicable to matrimonial cases only.

I

RULES REGARDING THE PUBLIC ACCESS ON-LINE PROJECT

("SCROLL")¹

Rule A-1. Redaction of Information in Documents Filed with the County Clerk and the Court. Attorneys filing documents with the County Clerk or the Court, including those that fall within a category of document that is, as explained in the Court's Notice to the Bar on the Public Access Project, included in the *Scroll* (*Supreme Court Records On-Line Library*) Public Access Project system or that shall hereafter be so included, shall omit or redact from such documents confidential personal information as provided in Uniform Rule 202.5 (e).

Rule A-2. Application for Restriction of Access to Records. A party or person who claims that the availability of a document in the *Scroll* Public Access Project system may cause harm to that party or person or who seeks to limit access in compliance with Rule A-1 may apply to the Court for a directive restricting access. Any such application shall be made as follows. If the case has been assigned to a Justice, a request shall be made to the Justice by letter describing the document as to which a restriction on access is sought and explaining the reasons why such a restriction is appropriate. If the case has not been assigned to a Justice, the party shall direct such a request to the Administrative Judge. The Court on its own initiative may direct that access be restricted. An interested party or person may apply by letter to remove a document from the *Scroll* database if, notwithstanding these rules, a document is posted on the Public Access Project system that contains sensitive information access to which in this form causes harm to that party or person.

Rule A-3. Form of Restriction on Access to Records. Where the Court grants a request to limit access to a document in the *Scroll* Public Access Project system or issues a directive sua sponte, the directive shall take the form of an administrative direction to the staff of the Court that the document in question not be included in the *Scroll* system or, if already included therein, that it be deleted from the database. Any such directive as may be issued in a case in which documents are otherwise available in the *Scroll* system shall not affect the status of the County Clerk hard-copy case file, which is open to the public unless otherwise ordered by the Court pursuant to Part 216 of the Uniform Rules for the Trial Courts.

II GENERAL RULES

Rule 1. Appearances by Counsel; Knowledge and Authority. Counsel who appear at preliminary conferences must have sufficient familiarity with the case and authority to be able to discuss a discovery schedule in a meaningful way and to enter into agreements with regard thereto. Counsel who appear at other conferences and at the argument of motions must be familiar with the entire case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients.

Rule 2. Settlements and Discontinuances; Change of Counsel.

¹ The Rules set out in Part I were first promulgated in a different form by Notice to the Bar dated July 7, 2006, with an effective date of Sept. 15, 2006.

(a) If an action is settled or discontinued, a stipulation shall be submitted promptly to the County Clerk with the appropriate fee (Cashier's Office, Room 160) and a copy shall be forwarded to the Part in question. If the case is otherwise disposed of, in whole or in part, counsel for the defendant affected shall immediately file a letter with the Clerk of the Part. If at the time of a settlement, discontinuance or other disposition a submitted motion is sub judice that is rendered moot, in whole or in part, by the disposition, or where a motion previously submitted is withdrawn, it is imperative that the Part be informed immediately.

(b) If counsel is changed on consent, a copy of the form shall be filed in the General Clerk's Office (Room 119). Filing with the County Clerk does not suffice. Absent submission of a consent form, an attorney of record will continue as such unless a motion for leave to withdraw is granted. If such an order is issued, counsel must serve a copy on the General Clerk's Office and all other counsel. A notice of appearance shall be filed by substitute counsel with the General Clerk's Office and the Clerk of the Part.

Rule 3. Information on Cases. County Clerk data, case history information from the court's Civil Case Information System, and many documents from the case file of most cases in the court (e.g., pleadings, decisions, orders, notes of issue, judgments) are available on-line in the *Supreme Court Records On-Line Library (Scroll)* of the County Clerk of New York County and the New York County Supreme Court, accessible on the court's website at www.nycourts.gov/supctmanh/. Decisions of the court with County Clerk entry stamp are posted in *Scroll* very promptly after their issuance. Information on scheduled court appearances and other case activity, including the issuance of decisions and orders, can also be obtained from *Scroll*, as well as from *e-Track*, the court system's case tracking and notification service, private services, courthouse terminals, or the New York Law Journal. The Clerk of the Part can also provide information about scheduling in the Part (trials, conferences, and arguments on motions in the Part). Counsel should not telephone Chambers.

Rule 4. Papers by Fax. Unless indicated otherwise by the court in a particular case or in the Basic Information section below, Justices do not accept papers by fax.

III CONFERENCES AND DISCOVERY

Rule 5. Preliminary Conferences; Requests.

(a) A preliminary conference will be held or, in Motor Vehicle cases and most tort cases against the City of New York, an automated Differentiated Case Management ("DCM") scheduling order issued (i) within 45 days of assignment of a case to a Justice, unless impracticable for unusual reasons; or (ii) where a Request for Judicial Intervention is accompanied by a dispositive motion, within 45 days following disposition of such motion (if the case is not mooted by that disposition). Cases will be assigned to a DCM track (see Uniform Rule 202.19 (b)) upon filing. The court will afford all parties an opportunity to raise objections to the track assignment or any DCM scheduling order issued without a conference. Requests for preliminary conferences in unassigned cases should be filed with an RJI in the General Clerk's Office (Room 119). In assigned cases, if the court itself does not direct a conference in a decision nor issue an order scheduling pretrial proceedings, counsel should contact the Part Clerk.

(b) The court utilizes distinct forms of preliminary conference order in General, Medical, Dental and Podiatric Malpractice, City, Matrimonial, and Motor Vehicle cases. See the website (at www.nycourts.gov/suptctmanh, under “Forms”) for these forms.

Rule 6. Adjournments of Conferences. Except as otherwise provided in the Basic Information section above or in Rule 26, adjournment of conferences will be allowed only as follows. The parties may adjourn any preliminary conference once for no more than 21 days, but only by submission of a written stipulation to the Part Clerk on or before the scheduled date thereof. Appearance by counsel is not required. Further adjournment of preliminary conferences and adjournments of compliance and pretrial conferences will be allowed only with permission of the court for good cause.

Rule 7. Consultation Prior to Preliminary and Compliance Conferences. Prior to a preliminary or compliance conference, counsel for all parties shall consult one another about, and shall make a good faith effort to reach agreement on, (i) resolution of the case, in whole or in part, and (ii) discovery and any other issues to be discussed at the conference.

Rule 8. Discovery Schedule. Strict compliance with all discovery orders is required. See *Kihl v. Pfeffer*, 94 N.Y.2d 118 (1999). Unexcused or unjustified failure to comply with deadlines fixed by the court, including those set out in Preliminary Conference Orders, may result in an award of costs, conditional or otherwise, or the imposition of another penalty authorized by CPLR 3126. Unless otherwise provided in the Basic Information section above or in the order, no extensions of deadlines set forth in a preliminary conference, compliance conference or other discovery order shall be allowed except with permission of the court for good cause shown.

Rule 9. Medical Authorizations. When a defendant in a personal injury action serves a demand for authorizations together with a demand for a bill of particulars, counsel for plaintiff shall serve the authorizations with the bill.

Rule 10. Disclosure Disputes. Prior to making a discovery motion, counsel shall consult one another in a good faith effort to resolve any discovery disputes (see Uniform Rule 202.7). If a dispute is not thus resolved, the party seeking disclosure, unless otherwise directed in the Background Information section above, is advised to contact the Part Clerk promptly, and within any applicable deadline, for the purpose of arranging a conference, in court or by telephone.

Rule 11. Expert Disclosure. Unless otherwise directed by the court in a preliminary conference order or otherwise, a party having the burden of proof shall serve a response to an expert demand pursuant to CPLR 3101(d) no later than 30 days prior to the date set by the court for trial. Within 15 days after receipt of this response any adverse party shall serve its response.

Rule 12. Conferences Regarding Settlement of Actions by Infants and Others. Any proposed infant’s compromise or other proposed settlement pursuant to CPLR 1207 shall be considered by the court at an appearance in court on the record. An attorney seeking approval of such a proposal shall serve on all parties, at least five days prior to the scheduled appearance, a Notice of Conference on Proposed Infant’s [or other] Compromise. This Notice shall indicate the date, time and place of the conference. A copy of the proposed order of approval shall be annexed to the Notice unless previously served upon all parties. Said attorney shall submit to the court at the conference proof of service of such Notice.

IV MOTIONS

Rule 13. Motions on Notice; Orders to Show Cause.

(a) Motions brought by notice of motion shall be made returnable in the General Clerk's Office Motion Submission Courtroom (Room 130. Relevant procedures are explained on the court's website (see "Courthouse Procedures" at www.nycourts.gov/supctmanh). Depending upon the assigned Part, contested motions submitted in the Motion Submission Part Courtroom are submitted without argument, or rescheduled for oral argument if so directed by the assigned Justice. For Justices who schedule argument on a case-by-case basis, notice of the argument date will be transmitted by the court. Counsel may ascertain how a motion submitted in Courtroom 130 was marked by consulting *Scroll* on the court's website, the *e-Track* application, or, on the two days immediately following the submission date, the New York Law Journal.

(b) Motions should be brought on by order to show cause only in a proper case (CPLR 2214 (d)). Unless otherwise directed in the Basic Information section above or in an order to show cause, original opposition papers on orders to show cause made returnable in the Part shall be delivered to the Part Clerk at least one business day prior to that date and reply papers should not be submitted.

Rule 14. Motion Papers.

(a) Counsel must attach to motion papers copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion. Documents in a foreign language shall be properly translated (CPLR 2101(b)). Whenever reliance is placed upon a decision or other authority not officially published or readily available to this court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers. Courtesy copies shall not be submitted unless requested by the court, but working copies are required in some Parts in electronically filed cases (see the court's Protocol for e-filed cases on the website (www.nycourts.gov/supctmanh, under "E Filing")). Exhibits should be tabbed and be legible; a typed version of any exhibit that is difficult to read should be submitted with the original. Exhibits printed on both sides of the page should be bound and tabbed on the side.

(b) Unless advance permission otherwise is granted by the court for good cause, memoranda of law shall not exceed 30 pages each (exclusive of table of contents and table of authorities) and affidavits/affirmations shall not exceed 25 pages each.

(c) The CPLR does not provide for sur-reply papers, however denominated. Papers or letters regarding a motion should not be presented to the court after submission of the motion in the Motion Submission Part Courtroom (Room 130), or after argument in the Part, if any, except with the advance permission of the court. Materials presented in violation of this Rule will not be read.

Rule 15. Oral Argument; Adjournments.

(a) Calendars of motions to be argued in the Parts are published on the morning of the argument date and on the day before in the New York Law Journal under each Part. Argument information is

available on a case-by-case basis in *Scroll*, and e-mail notifications are sent by *e-Track* to participating attorneys whenever a motion is scheduled for argument in the court's computer system.

(b) Unless provided otherwise in the Basic Information section: argument may be adjourned for good cause; there shall be only one adjournment, for no more than 14 days, unless otherwise directed by the court. A request for an adjournment shall be made prior to the scheduled date.

Rule 16. Orders.

(a) A copy of any order affecting the caption of a case (e.g., amendment, substitution, correction of errors) shall be served by counsel upon the General Clerk's Office (Room 119) and upon the County Clerk (Room 141B) so that the court's records and the County Clerk's records may be corrected. A copy of any order affecting the trial status of a case (e.g., striking a note of issue) shall be served on the General Clerk's Office.

(b) Proposed counter-orders submitted to the court pursuant to Uniform Rule 202.48 (c) (2) shall be marked to identify all respects in which the proposal differs from the submission to which it responds.

Rule 17. Motions for Summary Judgment. Unless otherwise provided in a particular case in the preliminary conference order or other directive of the Justice assigned, a motion for summary judgment shall be made no later than 120 days after the filing of the note of issue, except with leave of court for good cause shown.

Rule 18. Neutral Evaluation Program. City cases and many other cases will be referred to the court's Neutral Evaluation Program (informally known as "Mediation") after filing of the note of issue. The procedures of this program are available on the court's website (www.nycourt.gov/suptctmanh under "ADR Programs").

V TRIALS

This section sets forth trial procedures generally applicable to cases to be tried in pure IAS Parts (i.e., not including cases scheduled for trial through the Administrative Coordinating Part (Part 40 or Part 40 City for City cases). However, since the nature of particular cases may make departure from these rules efficient and appropriate, counsel should in every instance confirm with the court at the pre-trial conference the Justice's directive regarding applicability of these procedures to the case.

Rule 19. Pretrial Conference. In cases to be tried in IAS Parts (i.e., not including cases scheduled for trial through the Administrative Coordinating Part (Part 40 or Part 40 City)), the court will conduct a pretrial conference at which settlement will be explored and a trial date will be confirmed or a firm date set. Prior to the pretrial conference, counsel shall confer in a good faith effort to identify issues not in contention, resolve all disputed questions without need for court intervention, and settle the case. Unless otherwise directed by the court, each party must be represented at the pretrial conference by counsel

having full knowledge of the case and specific authority to settle or the ability immediately to contact by telephone a person with such authority. To permit the fixing of a trial date, counsel must, prior to the conference, consult their own schedules and those of their witnesses and be prepared to furnish a realistic estimate of the trial's length and discuss a suitable trial date unless previously fixed.

Rule 20. Trial Schedule in Pure IAS Parts.

(a) Insofar as possible, trials in pure IAS Parts will be scheduled at least one month in advance. As the schedules of counsel and witnesses will have been taken into account in determining the trial date, counsel will be expected to be ready to proceed at that time either to select a jury or to begin presentation of proof. Hence, once a firm trial date is set and counsel are so informed, counsel must immediately reconfirm the availability of witnesses and their own schedules. If for any reason, including trial commitments in other Parts or courts, counsel are not prepared to proceed on the scheduled date, counsel must inform the court of the difficulty within seven days of the date on which counsel were given the firm trial date. Absent extraordinary circumstances, failure of counsel to provide such notification will be deemed a waiver of any objection to the trial date.

(b) The court will endeavor, through contact with Justices in other Parts and courts, to resolve trial scheduling difficulties for counsel who notify the court in accordance with subdivision (a) of this Rule and in instances of extraordinary and unanticipated conflicts. The court will resolve such problems in accordance with Part 125 of the Rules of the Chief Administrator (Uniform Rules for the Engagement of Counsel), taking into account the need to conserve judicial trial time or the time of jurors, the demands upon trial counsel, and the importance of the clients' right to the attorney of his or her choice.

(c) The jury shall be selected in accordance with Uniform Rule 202.33.

Rule 21. Pretrial Identification of Exhibits and Deposition Testimony in Pure IAS Parts. Counsel for the parties shall consult prior to trial and attempt in good faith to agree upon the exhibits and portions of deposition testimony (with the deletion of irrelevant matter) that will be offered into evidence on the direct case without objection.

Rule 22. Marked Pleadings and Other Pre-Trial Submissions in Pure IAS Parts. In cases to be tried in IAS Parts, unless the court directs otherwise, at least ten days prior to trial or at such other time as the court may direct, counsel shall submit to the court marked pleadings, the bill of particulars, and a list of witnesses (direct case); and in a jury case, requests to charge, a proposed verdict sheet, and, as appropriate, a memorandum of law or copies of authorities addressed to any unusual jury charge requests; and, in all jury cases in which doing so will facilitate efficient presentation of proof and in all non-jury cases, pretrial memoranda. If counsel wishes the court to charge verbatim from the Pattern Jury Instructions, it is sufficient if the request cites the PJI charge by number only. All other requested charges should be written out in full.

Rule 23. Subpoenaed Records. Subpoenaed records should be directed to and may be reviewed at the Subpoenaed Records Office, 60 Centre Street, Room 145 M.

VI
MATRIMONIAL RULES

The following Rules shall apply to all matrimonial cases and shall take precedence over any inconsistent Rule set forth above. Otherwise, the foregoing rules are applicable in matrimonial cases.

Rule 24. Appearances at Conferences. Counsel and client must appear at the preliminary conference, all compliance conferences and the pre-trial conference. Failure to appear may result in costs or sanctions being imposed against the defaulting party.

Rule 25. Submissions at Preliminary Conference. Each party is required to submit at the preliminary conference a properly certified net worth statement and a copy of the retainer agreement in accordance with Section 202.16 of the Uniform Rules for the Trial Courts.

Rule 26. Adjournments. No stipulations of adjournment will be honored without prior approval of the court.

Rule 27. P.E.A.C.E. Program. Except for cases in which there has been a history of orders of protection, parties with unemancipated children should be aware that the Justice may assign the parties to the P.E.A.C.E. Program.

Rule 28. Pre-Trial Conference. Unless directed otherwise, all cases scheduled for trial must appear for a pre-trial conference on a date set by the court. All motions *in limine* must be presented at this time and counsel should be prepared to discuss all evidentiary issues.

Rule 29. Mandatory Pre-Trial Submissions. At the pre-trial conference, counsel shall provide his or her adversary and the court (a) marked pleadings (if grounds are in issue), (b) proposed statement of disposition, (c) child support worksheet (if applicable), (d) updated net worth statement, (e) list of all proposed exhibits, (f) witness list, (g) any expert report not previously provided, (h) pre-trial memoranda and (i) proof of filing of the note of issue.

VII EMINENT DOMAIN

These local rules supplement Uniform Rule § 202.61 with respect to the obtaining of Index Numbers for Claims and the Exchange and Filing of Appraisal Reports in Eminent Domain Proceedings.

Rule 30. Index Numbers for Fee Claims. Within sixty days from the expiration of the time set forth, pursuant to EDPL 503 (B), in an order of acquisition for the filing of written claims or notices of appearance, condemnor shall obtain an index number for each of the fee claims on file with the court pursuant to the said order so that the Clerk can separately maintain the claim and all further proceedings with respect thereto, and the condemnor shall notify the claimant or its attorney of record of the index number assigned to its claim. Thereafter, papers pertaining to each claim shall be separately prepared and filed under the index number assigned to the claim. A Request for Judicial Intervention is required to initiate proceedings before the court pertaining to a claim.

Rule 31. Index Numbers for Fixture Claims. Within six months after appraisals of fixtures have been exchanged pursuant to Uniform Rule § 202.61 (a)(1), condemnor shall obtain an index number for each individual claim for which an appraisal has been exchanged so that the Clerk can separately maintain the claim and all further proceedings with respect thereto, and the condemnor shall notify the claimant

or its attorney of record of the index number assigned to its claim. Thereafter, papers pertaining to each claim shall be separately prepared and filed under the index number assigned to the claim. A Request for Judicial Intervention is required to initiate proceedings before the court pertaining to a claim.

Rule 32. Submission and Filing of Appraisal Reports. In all proceedings for the determination of the value of property taken pursuant to eminent domain, counsel may request that the court modify the procedure set forth in Uniform Rule § 202.61 for the exchange of appraisal reports. Within the nine-month period for filing of appraisals set forth in Rule § 202.61 (a), the parties may agree by stipulation, and present same to the court for approval, to a direct exchange of appraisals without filing copies of appraisals with the court. Thereafter, the parties may extend the date for exchange of appraisal reports set forth in the stipulation by further stipulation, without court approval, for no more than an additional nine months, provided such stipulation(s) are filed with the Clerk of the court. In such event, a copy of each exchanged appraisal shall be provided to the court upon the earlier of (i) its request or (ii) a pre-trial conference called upon the filing of a note of issue. Original appraisals shall be retained for presentation as an exhibit at trial.

Rule 33. Index Numbers for Other Matters. If the condemnor seeks relief against a person who has not filed a claim, the condemnor shall commence a special proceeding or action as may be appropriate.