

RULES OF HONORABLE EVELYN FRAZEE

JUSTICE OF THE SUPREME COURT



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<http://nycourts.gov/courts/7jd/judgesrules.shtml>

GENERAL RULES

Rule 1. Appearances by Counsel¹ with Knowledge and Authority (22 NYCRR § 202.28[b]). Counsel are expected to be familiar with all aspects, both substantive and procedural, of the case on which they appear and authorized to enter into agreements on behalf of the client. Counsel are expected to be on time for scheduled appearances, whether in court or in chambers or by telephone. Failure to comply with this rule will be addressed, as appropriate, in accordance with 22 NYCRR §§ 130-2.1 and 202.27.

Rule 2. Settlements and Discontinuances. If a matter is settled, discontinued, or otherwise disposed of, counsel shall promptly inform the Court by submission of a copy of the stipulation or by letter (facsimile acceptable), telephone call, or e-mail. A stipulation of discontinuance must be filed with the County Clerk and a time-stamped copy provided to the Court in order for a case to be closed and removed from the Court's calendar (22 NYCRR § 202.28).

Rule 3. Alternate Dispute Resolution (ADR). Settlement discussions are encouraged. Upon the parties' consent, the Court will refer a matter to the Court Mediator, Adrian J. Burke, Esq.

Rule 4. Facsimile and E-mail.

(a) Papers by Facsimile or E-mail. The Court accepts papers of 25 pages or less by facsimile or e-mail. All papers submitted by fax or e-mail must be followed by timely submission of the originals. See Rule 14 for e-filed cases.

(b) Correspondence by E-mail. Counsel may communicate with the Court by e-mail provided the Court's secretary (Lynn DiMartino, ldimarti@nycourts.gov) and all counsel and any self-represented party are copied on all e-mails. The Court, in its discretion, may permit information to be provided electronically and, in some instances, may require electronic submission. The Court will respond to e-mail either directly or via its secretary.

Rule 5. Information on Cases. Information on scheduled court appearances or other case activity can be obtained from the Supreme and County Court Clerk (Assignment Office), 545 Hall of Justice, or Chambers. Motion term calendars are published on the return date in *The Daily Record* and are also available online: <http://www.nycourts.gov/courts/7jd/monroe/calendars.shtml>. Information regarding the status of a case may also be found at NY E-Courts: <https://iapps.courts.state.ny.us/webcivil/FCASMain>. Any concerns about the accuracy of on-line information should be addressed by contacting Chambers.

¹While the term "counsel" is used, these rules also apply to self-represented litigants.

Rule 6. Confidential Personal Information. To avoid potentially harmful disclosure of confidential information, **any paper filed with the Court should not contain an individual's full birth date, social security number, taxpayer identification number, or financial account number.** To the extent some identification needs to be made, it can be done by using the last four digits of the social security number, taxpayer identification number, or financial account number or just the year of the individual's birth. Relief from this Rule may be made by letter (e-mail or facsimile acceptable) application to the Court. See 22 NYCRR § 202.5(e).

CONFERENCES

Rule 7. Request for Conference and Adjournment of Conference. A conference may be requested by letter, facsimile or e-mail to Chambers on notice to opposing counsel and any self-represented party OR for the first conference by filing an RJI requesting a conference. Conferences will be conducted both in-person and via telephone (22 NYCRR § 202.10). Generally, the Court will initiate/place any telephone conference call.

Requests for adjournment of a conference should be made by contacting Chambers by any of the above-noted methods. Counsel requesting an adjournment of a conference should indicate the position of all other counsel regarding the requested adjournment. Any adjournment will be at the discretion of the Court.

Rule 8. Submission of Information Prior to Preliminary Conference (22 NYCRR § 202.12). The initial Preliminary Conference will, in most cases, be conducted by telephone and will be principally focused on issuance of a Scheduling Order. However, the Court may also inquire as to whether settlement discussions would be worthwhile.

At least two (2) days prior to the conference, counsel shall provide the Court with the following: (i) a copy of all pleadings containing a complete caption and the index number; (ii) the name, address, e-mail address, telephone, mobile phone (if counsel uses for business) and fax numbers of counsel; (iii) a brief written statement regarding the case background, client's contentions, any anticipated matters of law in dispute, status of discovery, and whether settlement negotiations have taken place and, if so, the most recent demand and offer; (iv) a statement as to what motions, if any, are pending; and (v) copies of any decisions and orders previously rendered in the case or the Record on Appeal, if applicable.

Counsel shall be prepared to discuss (i) discovery; (ii) any motions that have been submitted and are outstanding; (iii) resolution of the case, in whole or in part; and (iv) the use of ADR to resolve some or all of the issues in the litigation. Counsel are expected to have their calendars available for future scheduling.

Rule 9. Pre-trial Conference (22 NYCRR § 202.26). Upon filing of the Note of Issue and Statement of Readiness, the Court will schedule a Pre-trial Conference. The purpose of the Pre-trial Conference is to clarify the issues, discuss trial procedure, and provide an opportunity for settlement discussions (see 22 NYCRR § 202.26[c]). The Pre-trial Conference will, in most cases, be conducted in person and will be principally focused on attempts to settle the case, to determine if there will be motion practice or any special or unusual issues, and to schedule a trial date. The parties are each encouraged to submit to the Court a brief written statement addressing the nature of their contentions, any outstanding issues, and an indication of the demands/offers to date.

At least one of the attorneys who will be conducting the trial for each of the parties and any self-represented litigants must attend this conference (see 22 NYCRR §§ 202.26[e] & 202.31), unless attendance is waived by the Court. Attendance of the parties and the insurance representative(s) may be required by the Court (22 NYCRR 202.26[e]). When the Court has indicated that in-person attendance is required, any request for a party or insurance representative to appear by phone must be made to the Court in writing (e-mail or fax acceptable) **at least three (3) days** prior to the conference date.

If the matter does not settle at the conference, a trial date may be set during the conference or at a later time by the Court's staff. In setting a trial date, counsel are advised that the Uniform Rules for the Engagement of Counsel (22 NYCRR Part 125 and § 202.32) will govern any representation as to unavailability and any requested trial postponement. The Court reserves the right to request an affidavit or affirmation, as provided by those rules. Counsel are expected to have their calendars available at the Pre-trial Conference for the purpose of setting the trial date or a date for other matters.

Rule 10. Settlement Conference (22 NYCRR § 202.33[b]). Within a month to two months prior to jury selection, the Court will schedule a Settlement Conference to explore settlement and discuss the particulars of the trial, such as, motions *in limine*, trial memoranda, trial scheduling and anticipated length of trial, any evidentiary or special issues, pre-marking exhibits, and any stipulations regarding exhibits or facts. Prior to the conference, counsel shall make a good faith effort to identify issues not in contention and resolve those disputed questions that can be resolved without need for Court intervention. The Court may require the parties to prepare a written stipulation of undisputed facts.

At the Settlement Conference, each party may be requested to identify for the Court and other parties the witnesses it intends to call (except for confidential witnesses, *e.g.*, medical malpractice cases), the order in which they shall testify and the estimated length of their testimony.

At least one of the attorneys who will be conducting the trial for each of the parties and any self-represented litigants must attend this conference (22 NYCRR §§ 202.26[e] & 202.31). Attendance of the parties and the insurance representative(s) may be required

by the court (22 NYCRR 202.26[e]). When attendance is required, any request for a party or insurance representative to appear by phone must be made to the Court in writing (e-mail or fax acceptable) **at least three (3) days** prior to the conference date.

DISCOVERY

Rule 11. Scheduling Order. The Court will issue the first Scheduling Order with counsel being responsible for providing any Amended Scheduling Orders in accordance with the language contained in the Court's Scheduling Order, that is, a request for extension or amendment of the Scheduling Order **must** be made in writing to the Court on notice to opposing counsel at least ten (10) business days in advance of the date to be extended and **must** be accompanied by a proposed Amended Scheduling Order. Parties are expected to strictly comply with discovery obligations and the dates set forth in all scheduling orders.

Rule 12. Sanctions for Non-compliance with Scheduling Order. Non-compliance with a Scheduling Order may have the following consequences:

if any party fails to produce documents in timely fashion, an appropriate sanction may be imposed against that party pursuant to CPLR § 3126;

if a party seeking an examination before trial (EBT) fails to proceed with the EBT on the scheduled date or by the deadline fixed, that party may be held to have waived it;

if a party fails to submit to an EBT as scheduled, that party may be precluded from introducing testimony at trial regarding any physical injury claims or another sanction may be imposed;

Rule 13. Disclosure/Discovery Disputes. Counsel must consult with one another in a good faith effort to resolve all disclosure/discovery disputes (22 NYCRR § 202.7). If counsel are unable to resolve a disclosure dispute in this fashion, then the aggrieved party may bring a motion to compel or for sanctions or other relief. If opposed, such motion may, at the discretion of the Court, be addressed in a conference rather than by oral argument at Special Term. Dispositive motions, such as motions for summary judgment or to dismiss, will not be entertained by the Court as cross-motions to motions for discovery.

MOTIONS

Rule 14. Motion Procedures.

(a) Motion Return Dates. Special Term will be held every other Thursday at 9:30 a.m. unless such date is a legal holiday or otherwise scheduled by the Court. **Return dates for all motions and orders to show cause will be set by the Court.** For a notice of motion, this can be accomplished by counsel contacting the Court's secretary for a return date and inserting the assigned date in the notice of motion prior to filing and service OR by submitting the notice of motion with the return date blank. The Court will advise the movant of the assigned return date by phone, but may, in some instances, communicate the date by letter, fax or e-mail. For an order to show cause, the papers must be submitted to the Court with the dates blank. The dates will be inserted in the order to show cause by the Court and communicated to counsel as noted above. If the notice of motion or order to show cause with blank dates was provided to the other parties, it is the movant's responsibility to timely advise all parties, in writing, of the return date and any other dates provided by the Court.

(b) E-filing. Within three (3) working days of being notified of the judicial assignment, one working copy of all motion papers filed by the party (notice of motion, affidavits/affirmations, exhibits, memorandum of law) shall be delivered to Justice Frazee at 545 Hall of Justice, 99 Exchange Boulevard, Rochester, New York 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 (NB: working copies must be provided for all foreclosure motions); (2) for default judgment; (3) for contempt arising from failure to respond to information subpoenaed; and (4) name change request. 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) 371-3659 to inquire whether a working copy is required. A "working copy" shall comply with all the rules set forth under Rule 14. The Court retains discretion to request one working copy for Chambers, as deemed necessary in the Court's discretion. **PLEASE NOTE:** The Court requires only one working copy of motion papers (see Rule 17).

(c) Service and Submission of Motion Papers. Papers are to be served upon the Court when served on opposing counsel. To facilitate the Court's preparation for Special Term, all papers, including replies and memoranda of law, are to be received by the Court **no later than 12:00 p.m. on the Tuesday preceding the Special Term date.** The Court recognizes that this deadline may conflict with CPLR 2214 or 2215. To

the extent such a conflict arises, counsel should contact the Court, on notice, to opposing counsel or party *pro se*, for an adjournment in accordance with Rule 14(h) below. The Court reserves the right to adjourn the return date if papers are not received in accordance with the above. Papers not received in accordance with the above may not be considered by the Court. Affidavits of service of the motion papers and proof that the moving party notified all other parties/attorneys of the return date shall be submitted to the Court at least two (2) days prior to the return date.

(d) Documents to be Provided. 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.

(e) Photos and Photocopies. Photos should be in color and clear if you want the Court to consider them. Photocopies that do not show relevant details or that are in less than 12 point font size or that are not legible and easily read will not be considered. Documents in a foreign language shall be properly translated (CPLR Rule 2101[b]).

(f) Form of Motion Papers. To facilitate the framing of a decision and order, the movant must specify, clearly and comprehensively, the relief sought in the notice of motion or order to show cause.

Motion papers shall comply with CPLR Rule 2101, and 22 NYCRR § 202.5(a), that is (in part), be double-spaced on 8½ x 11 inch paper, contain print no smaller than twelve-point for text and no smaller than nine-point for footnotes, and bear margins no smaller than one inch.

Double-sided motion papers and exhibits are not permitted unless they are bound along the left margin.

Motion papers should be bound in a backer, indicating the law firm name, with all submissions from a party being bound in the same color backing.

Separate affidavits shall be bound separately or marked by a tab, and should not be “buried” in exhibits or a memorandum of law.

All exhibits shall be legible. For the ease of the Court in reviewing the papers, a list setting forth all motion exhibits should be submitted when there are more than six (6)

exhibits. Counsel must use tabs when submitting exhibits.

If a document to be annexed to an affidavit or affirmation is very voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately, *e.g.*, for transcripts.

All parties shall, where possible, refer to the exhibits already submitted, rather than submit multiple copies of an exhibit.

Whenever reliance is placed upon a decision or other authority not readily available to the Court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

Unless otherwise permitted by the Court, briefs or memoranda of law are limited to 25 pages each.

NOTE: Any law that counsel wish the Court to consider must be set forth in a memorandum of law or brief (*not* in an affidavit or affirmation). Factual allegations *must* be set forth in an affidavit, affirmation, or verified pleading (22 NYCRR 202.8[c]. “Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law.”). Factual allegations only set forth in a memo of law will not be considered by the Court and, therefore, will also not be before any appellate court (*Brown v Smith*, 85 AD3d 1648 [4th Dept 2011]).

(g) Proposed Orders. When appropriate, proposed orders may be submitted with motions, *e.g.*, *pro hac vice* admissions, open commissions. A proposed order should not be submitted with dispositive motions.

(h) Adjournment of Motions. Adjournment of a motion is allowed on consent of all the parties *and* with the permission of the Court. In most instances, adjournments of motions will be routinely granted if they are by consent of all attorneys. A request for an adjournment should be made as soon as possible, but **no later than 12:00 p.m. on the Friday preceding the Special Term return date.** All requests regarding adjournments should, in the first instance, be directed to the Court's law clerk or secretary. If a request for an adjournment is not consented to by all

parties, the Court may discuss the adjournment with counsel by telephone conference call to determine whether to grant an adjournment.

Counsel for the party requesting the adjournment shall provide written confirmation of the adjourned return date to the Court and all parties within **one (1) business day** of obtaining the adjournment.

Rule 15. Sur-Reply and Post-Submission Papers. Counsel are reminded that 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.

Rule 16. Temporary Restraining Orders (TRO). It is the Court's policy, in most instances, to issue a temporary restraining order only after giving opposing counsel the opportunity to be heard. Therefore, upon receipt of a TRO request, the Court may set a conference or telephone conference call with counsel as soon as possible to address the application. The party requesting a TRO must submit an affirmation demonstrating compliance with 22 NYCRR 202.7(f).

Rule 17. Courtesy Copies. Courtesy copies or extra copies of motion papers and memos of law should *not* be submitted unless requested by the Court. Submission of an "extra copy" by e-mail may be requested by the Court.

Rule 18. Oral Argument. All motions shall be orally argued at the place and time assigned by the Court and noted in the motion papers, unless otherwise directed by the Court. The Motion Calendar is published on the day of the return date in *The Daily Record*. No appearance for oral argument is required when the Court agrees to accept a matter on submission, the Court is notified in advance that a consent order has been reached, or the motion is withdrawn prior to the return date. Oral argument of contested motions should be limited to **ten minutes (10)** per side unless otherwise directed by the Court.

Rule 19. Motion Decisions, Orders, and Judgments. An affidavit of service of the motion must be submitted on an **unopposed motion** at least three (3) days prior to the return date. An order must be submitted on any **motion resolved by consent** of counsel. If such orders are not timely received (CPLR 2219, 22 NYCRR § 210.33), the Court may consider the motion as withdrawn, without prejudice. When the Court issues a **bench decision** on a motion, a transcript of the bench decision is to be attached to the order and referenced in the order. When decision is **reserved on a motion**, counsel may be requested to provide the Court, via e-mail attachment, the memoranda of law formatted for Microsoft Word or WordPerfect. No other submissions on reserved

decisions will be accepted unless specifically directed by the Court. Written decisions will be filed by the Court in the Monroe County Clerk's Office or uploaded to the e-filing system if the matter is e-filed with counsel being provided a copy of the decision by the Court via letter, facsimile or e-mail.

The original and a copy (for the Court's file) of all orders and judgments (except uncontested divorces) shall be submitted to the Court for signature. Such submissions are requested to be made within twenty (20) days from the date of decision, but in no event exceeding the time requirements (60 days) contained in CPLR 2219 and 22 NYCRR § 210.33. Approval from opposing counsel is to be sought prior to submission of the order or judgment to the Court for signature. In the alternative, a copy of the proposed judgment or order may be served on opposing counsel together with written notice advising that it is being presented to the Court for signature and unless opposing counsel raises an objection within a stated time frame (usually five [5] business days), the order is to be deemed approved as to form. **All judgments and orders will be returned to the Supreme and County Court Clerk's Office (Assignment Office) for retrieval by counsel unless counsel has submitted a self-addressed stamped envelope with sufficient postage for return by mail.**

TRIALS

Rule 20. Trial Procedures.

(a) Trial Schedule. In general, matters will be scheduled for trial in the order of filing the Note of Issue and Statement of Readiness, subject to the availability of the Court, counsel, parties and witnesses.

If a case is on standby for trial, counsel will be expected to be ready to proceed either to select a jury or to begin presentation of proof within one day after receiving notice from the Court.

Once a trial date is set, counsel should immediately determine the availability of parties and witnesses. If, for any reason, counsel will not be prepared to proceed on the scheduled date, the Court is to be notified within five (5) business days after scheduling of the trial date or, in extraordinary circumstances, 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.

(b) Trial Order. The Court will issue a Trial Letter/Order establishing the trial date as a date certain and setting forth the rules of the Court specific to the trial. Counsel are urged to read the Trial Letter/Order carefully and completely.

(c) Jury Selection. The jury shall be selected in accordance with procedures set forth in the Court's Jury Selection Rules (see *Appendix A*).

(d) Trial Times. Unless otherwise directed by the Court, trials will commence each court day promptly at 10:00 a.m. and will proceed on a day-to-day basis until approximately 4:30 p.m., Monday through Friday. The Court holds Motion Term every other Thursday morning, and, therefore, the start time for trial on those dates will usually be later. Special Term will be noted in the Court's Trial Letter/Order because the trial will not be in session when Special Term is held.

Rule 21. Bifurcation. Applications for bifurcation will be considered in light of whether judicial economy can be achieved thereby.

Rule 22. Motions *in Limine*. Unless otherwise directed by the Court, notice of a motion *in limine* shall be provided at least ten (10) business days prior to jury selection, or, for bench trials, trial commencement. A notice of motion *in limine*, must be filed with the Monroe County Clerk's office. Motions *in limine* will be deemed submitted unless the Court advises counsel that oral argument is requested.

Rule 23. Exhibits - Pre-Marking. Prior to the commencement of proof, counsel shall meet with the assigned Court Reporter to pre-mark exhibits using numbers for plaintiff's exhibits and letters for defendant's exhibits. At the time of marking exhibits, counsel shall attempt, in good faith, to agree upon the exhibits that will be offered into evidence without objection and request that the Court Reporter mark those items as received by stipulation.

Whenever a subject matter will reasonably require itemization, computation or illustration, counsel may prepare such diagrams, photographs or other similar exhibits as may reasonably be necessary for a clear presentation of the subject matter.

Rule 24. Identification of Deposition Testimony. Counsel for the parties shall consult prior to trial and attempt, in good faith, 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 intended to be read at trial.

Rule 25. Pre-trial Memoranda, Exhibit Book, and PJI Charge. Any trial memoranda shall be submitted at least one week prior to commencement of trial unless the Court directs otherwise. A memoranda in response need not be submitted.

For a *non-jury trial*, counsel must submit a notebook of trial exhibits for the Court's use at least one week prior to the trial commencement date. Medical records do not need to

be included in the notebook.

For a *jury trial*, requested charges and a proposed Special Verdict must be submitted in accordance with the Court's Trial Letter/Order. Failure to do so may be deemed a waiver of the right to object to the Court's charge to the jury. The Court is aware that additional or different charges may be necessary based on developments or testimony at trial. Therefore, a supplemental request to charge will be permitted. The proposed PJI charge requests and proposed jury verdict sheet shall be provided to the Court in hard copy *and* attached to an e-mail to the Court at efraze@nycourts.gov, ldimarti@nycourts.gov and shigginb@nycourts.gov in Microsoft Word or WordPerfect format.

In preparing the request to charge, counsel should be aware that the Court will pre-charge the jury using Pattern Jury Instructions (PJI) 1:1, 1:2, 1:2A or B (where appropriate), 1:3, 1:4, 1:5, 1:6., 1:7, 1:8, 1:9, 1:10 (where appropriate), 1:11, 1:12, 1:13, 1:103 (where appropriate), 1:13A, and 1:14. At the conclusion of the trial, the Court will, in most cases, charge PJI 1:20, 1:21, 1:22, 1:23 and/or 1:60, 1:24, 1:25, 1:25A (where appropriate), 1:26, 1:27, 1:28, 1:35A or B (where appropriate), 1:37, 1:38, 1:39, 1:40, 1:41, 1:90, 1:91, and 1:92 (where appropriate) in addition to the case-specific PJI charges. Therefore, it is not necessary to request these charges.

Rule 26. Scheduling of Witnesses/Video Testimony. Counsel may be required to videotape a witness' testimony for trial if that witness becomes unavailable for trial. In most instances, the Court will not adjourn a trial due to the unavailability of a witness absent exigent circumstances.

Rule 27. 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 **Rules 23 and 24** above and not identified during the course of disclosure in response to a relevant discovery demand of a party or an order of the Court.

Rule 28. Summary Jury Trial Rules. Summary Jury Trial forms are set forth at *Appendix B*.

Rule 29. Medical Malpractice Cases. The Court's procedures and rules for medical malpractice actions are set forth at *Appendix C*.

APPENDIX A
Justice Evelyn Frazee

JURY SELECTION RULES

These rules may be adapted as a particular case requires.

SELECTION WITHOUT SPECIAL JURY QUESTIONNAIRE

1. **METHOD.** The “Struck Method” of jury selection will be used (see 22 NYCRR § 202.33[f][2], as modified to reflect that the Court will ask the general questions per [a][i-xi] below). It is anticipated that for a non-complex trial without special jury questionnaires, jury selection will be accomplished in a half (½) day.

(a) Court Participation - For Cause Challenges. Jury selection will take place in the courtroom with the Court initially asking general questions (see [i-xi] below) of the entire pool to determine any jurors who should have service excused or postponed or who should be removed “for cause.” If an attorney has a request for additional questions directed toward eliciting for cause challenges, he/she should submit the proposed questions to the Court for consideration, with a copy to opposing counsel, at least one week in advance of the date for jury selection.

After questioning by the Court is completed, the Court will rule on for cause challenges after consultation with counsel. Those individuals removed for cause will be told to report back to Central Jury Room for possible reassignment.

(i) Are you available for the anticipated duration of the trial? (ii) Do you have any opinions about the civil justice system? (iii) You will be instructed by the judge on the law that applies to this case – will you follow the law in your deliberations, even if you do not agree with it? (iv) Do you know any of the parties? (v) Are you an employee of a party to the action? (vi) Are you a shareholder or stockholder of a party that is a corporation? (if applicable) (vii) Do you know any of the potential witnesses? (viii) Do you know any of the attorneys or their law firms? (ix) Does anyone have any medical concerns which would make service difficult or for which accommodation may be made? (x) As appropriate, a brief description of case subject matter will be given and jurors will be asked if they, their family members or someone close to them has had a similar experience. (xi) For personal injury or property damages actions: Are you a shareholder, stockholder, director, officer or employee, or in any manner interested in any insurance company issuing policies for protection against liability for damages for injury to persons or property? (CPLR §4110)

(b) Counsel's Questioning. Once the for cause challenges have been ruled upon, the Judge will leave the courtroom and the Court Clerk will oversee the selection process, unless the Court determines to oversee the selection process. Prior to the commencement of voir dire, sixteen (16) jurors will be randomly called into the jury box and counsel provided with a copy of each juror's completed court system questionnaire. Upon completion of jury selection, or upon removal of a prospective juror, all copies of the questionnaire shall be either returned to the juror or collected and discarded by the Court Clerk in a manner that ensures the juror's privacy.

Counsel for the plaintiff shall question the prospective jurors, followed by questioning by defendant's counsel. In cases with multiple parties, questioning shall be undertaken by counsel in the order in which the parties' names appear in the caption. If a juror needs to be asked questions outside the presence of the rest of the jurors to avoid tainting the panel, a request to do so should be discretely made to the Court Clerk. **The Court Clerk shall be apprised of any challenge for cause, Batson challenge or other objections as soon as the reason therefore becomes apparent.** If necessary, the Court will be called back to the courtroom to question the juror privately with counsel and the Court Clerk present and to make a ruling.

After a challenge for cause is granted, a new juror will be randomly seated from the pool as Juror #16. Counsel for each party then shall question the replacement juror pursuant to the procedure set forth above. Prior to exercising peremptory challenges, all challenges for cause to any prospective juror on the panel must have been exercised.

After all prospective jurors in the panel have been questioned, and all challenges for cause have been made, counsel for each party, one at a time beginning with counsel for the plaintiff, shall then exercise allowable peremptory challenges by alternately striking a single juror's name from a list or ballot passed back and forth between or among counsel until all challenges are exhausted or waived. In cases with multiple plaintiffs and/or defendants, peremptory challenges shall be exercised by counsel in the order in which the parties' names appear in the caption, unless following that order would, in the opinion of the court, unduly favor a side. In that event, the Court, after consulting with the parties, shall specify the order in which the peremptory challenges shall be exercised in a manner that shall balance the interests of the parties.

An attorney who waives a challenge may not thereafter exercise a peremptory challenge.

After all peremptory challenges have been made, the trial jurors (including the non-designated alternates) shall be selected in the order in which they have been seated from those prospective jurors remaining on the panel.

(c) **Time Limit.** Each side shall have forty-five (45) total minutes for the questioning of prospective jurors unless otherwise advised by the Court. This time may be adjusted when there are multiple parties per side with adverse interests. Counsel are permitted to ask follow-up questions, so the 45 minute time limit may be split between initial questioning and follow-up questioning.

2. **NUMBER OF JURORS.** There shall be a total of seven (7) or eight (8) jurors selected (depending on the anticipated length of trial), with the last one or two jurors selected being designated but not disclosed alternates (*i.e.*, counsel and the Court will know that the last selected juror(s) are alternates, but the jurors will not know this).

3. **NUMBER OF PEREMPTORY CHALLENGES.** Each side shall have four (4) peremptory challenges. Where there is more than one party per side, the Court may divide or grant additional challenges, as appropriate, after consultation with counsel. Peremptory challenges are to be exercised outside the presence of the panel of prospective jurors.

4. **COUNSEL'S COMMENTS.** Each attorney may generally state the contentions of his/her client(s). Counsel may also identify the parties, the attorneys who will be involved in the case, any prospective witnesses and may state the anticipated length of trial. Counsel may not read from pleadings or mention the amount of money in issue or discuss legal concepts (*e.g.*, burden of proof) which are the province of the Court. There shall be no mention of insurance, since the Court will have asked the relevant question concerning insurance pursuant to CPLR §4110.

5. **OBJECTIONS.** Objections or for cause challenges are to be made outside the presence of the prospective jurors by quietly discussing the issue at counsel's table. If the issue requires extensive discussion, counsel are to remove themselves to the jury room or corridor for discussion. If there is a for cause challenge to a juror or an issue that cannot be resolved, counsel shall immediately advise the Court Clerk.

SELECTION WITH SPECIAL JURY QUESTIONNAIRE

Struck Method (see #1 above) will be used. Jury selection will, ideally, be completed in one (1) day but may take up to two (2) days. In addition to Rules 1-5 above, the following rules apply to jury selection with special questionnaires.

6. **PROCESS FOR COURT APPROVAL OF SPECIAL QUESTIONNAIRE.**

(a) At least three (3) weeks before the date scheduled for jury selection, the attorneys are to circulate among themselves for comment and agreement a proposed questionnaire. See item #7 below for rules for preparation of the questionnaire.

(b) At least two (2) weeks before the date scheduled for jury selection, plaintiff's counsel is to provide to the Court the proposed special juror questionnaire reflecting all counsels' agreed questions. If counsel cannot agree on a question, that should be set forth in the cover letter to the Court for resolution by the Court.

(c) At least one (1) week before the date scheduled for jury selection, the Court will advise counsel whether it approves the questionnaire or has request(s) for additional changes.

(d) By 12:00 p.m. of the business day prior to the date scheduled for jury selection, plaintiff's counsel shall deliver to the assigned Court Clerk or Central Jury sufficient copies of the special juror questionnaire for the number of jurors scheduled to be brought in for the selection process.

7. **FORMAT OF SPECIAL QUESTIONNAIRE.** When preparing the special questionnaire, the questions that are most likely to elicit a for cause challenge shall be placed at the beginning of the questionnaire (*e.g.*, questions listed at [1][a][i-xi] above), with instructions that if a juror responds in such a way that there may be a for cause issue, they are to stop answering the questionnaire and report to the courtroom. Counsel will then question those individuals to determine whether they can agree regarding removal of the juror for cause. If not, the Court will be summoned to make a determination. The goal is to complete for cause challenges quickly and then move to resolution of individual juror issues and voir dire.

8. **REVIEW OF COMPLETED SPECIAL QUESTIONNAIRE.** After completing the special juror questionnaire and preliminary screening regarding for cause challenges, jurors will be excused for a break during which completed questionnaires will be copied and circulated to counsel for review. Upon conclusion of the break, any issues that may lead to a for cause removal will continue to be explored by individual questioning of the affected jurors. Once it appears that for cause challenges based on the questionnaire have been exhausted, in-court voir dire by counsel will begin.

APPENDIX B
Justice Evelyn Frazee

SUMMARY JURY TRIAL FORMS

Plaintiff,

- vs -

Defendants.

**SUMMARY JURY
TRIAL STIPULATION**

Index No.

IT IS HEREBY STIPULATED AND AGREED that this action shall be resolved by Summary Jury Trial in accordance with the Court's Rules for Summary Jury Trial and the Summary Jury Trial Order of this Court and that all parties shall be bound by the Summary Jury Trial verdict, [except that the Plaintiff shall recover no less than \$ _____, and no more than \$ _____.]

IT IS ALSO STIPULATED AND AGREED that the right to move to set aside the verdict, or to appeal, is limited to instances in which the rights of a party were significantly prejudiced by corruption, fraud or gross misconduct. **All other rights of appeal are waived.**

Attorney for Plaintiff

Attorney for Defendant

DATED:

So Ordered:

EVELYN FRAZEE
Justice Supreme Court

- vs -

Plaintiff,

**SUMMARY JURY
TRIAL ORDER**

Index No.

Defendants.

ORDERED, that upon the stipulation of the parties dated _____, the issues in this matter shall be heard and decided by Summary Jury Trial in accordance with this Order, as follows:

I. Jury Selection

The Struck Method will be used. The Summary Jury Trial Jury Selection shall commence promptly on _____. Each side shall be allowed twenty (20) minutes of questioning. Counsel will select six (6) jurors with each party being permitted two peremptory challenges. There will be no alternates.

II. Trial Presentation

1. Strict Time Limits: Each side shall be entitled to a ten (10) minute opening and closing and sixty (60) minutes for presentation of its case. The time allotted to each side shall include the presentation of their case in chief and the cross examination of opposing witnesses. The Court Clerk will keep track of the time and remind counsel of allotted time at appropriate intervals.

2. Witnesses: Presentation of the case by counsel will involve a combination of witnesses, comment on admissible evidence and trial summation. Each side may call no more than two witnesses who will testify under oath on direct and cross-examination.

3. Presentation Generally: Attorneys may not independently testify but may comment and focus the attention of the jury on admissible evidence. Counsel may quote from depositions, affidavits, and verified bills of particulars using only the most recent answers where an amended bill of particulars has been provided. Counsel may also use and comment on exhibits admitted into evidence. Counsel may not refer to or comment on "evidence" which would not be admissible at trial.

4. Medical Evidence: In presenting medical "testimony" or evidence, counsel may call a doctor(s) to testify as one (or both) of the two witnesses or may submit medical records and comment on the medical records presented with emphasis on those

portions of the record that counsel believes are relevant. Opposing counsel may also comment on such record and may do so in a manner consistent with cross-examination or during his or her own case. A summary of medical records can be presented and provided to the jury for their consideration in deliberation as long as each record provided is, as stipulated by the parties or in the discretion of the Court, “fair and complete.” Hearsay contained in medical records or any summary of medical records shall be redacted from any records, documents or summary received into evidence and provided to the jury.

5. Rules of Evidence: The rules of evidence will be liberally construed. In the interest of time, “non-essential” leading questions may be asked in the discretion of the Court.

6. Statement of the Case: All counsel will submit to the Court a narrative summary statement of the case, including a summary of the evidence, no longer than one page in length, which will be used in explaining the case to the jurors.

III. Trial Submissions:

1. Submissions by email: All submissions to the Court for Summary Jury Trial, including without limitation, the statement of the case, the summary of the evidence, requests to charge, and proposed verdict sheets, must be sent to the Court by mail, fax or e-mail (efraze@nycourts.gov with a copy to ldimarti@nycourts.gov) at least two (2) weeks prior to jury selection.

DATED: _____, 20__

Honorable Evelyn Frazee
Supreme Court Justice

APPENDIX C
Justice Evelyn Frazee

PROCEDURES AND RULES
FOR MEDICAL MALPRACTICE CASES

- (1) Upon assignment of a case to Justice Frazee, a phone conference will be scheduled for the purpose of ascertaining status of the case and, if needed, to issue a scheduling order.
- (2) Scheduling orders will address each phase of discovery not yet completed (*i.e.*, document, *Arons* authorizations and interviews, examinations before trial [EBT] and nonparty depositions, defense medical examination[s]), as well as a date for an initial settlement conference; dates for CPLR §3101(d) expert disclosure; filing of the note of issue/statement of readiness; dates by which motions for summary judgment and motions *in limine* must be brought; and trial date.
- (3) Regarding scheduling defendant depositions, whenever counsel for plaintiff and counsel for the defendant being deposed have reached a mutually agreed date, all other counsel must make themselves available for that date or send someone to represent them (if they wish to participate in the EBT) except that counsel for any defendant involved in a cross-claim with the defendant to be deposed must also agree to the deposition date.
- (4) Both primary and trial counsel must attend all Court conferences unless attendance of trial counsel is excused by the Court.
- (5) For pre-trial and settlement conferences with the Court, someone with authority must be present, or, if Court permission is given, available by phone.
- (6) In order to expedite the case and reduce motion practice any disagreement about medical, psychiatric, or speaking (*Arons*) authorizations will be attempted to be resolved via a conference call with the Court. Therefore, counsel are directed to contact the Court to schedule a telephone conference when such a dispute arises. If the matter cannot be resolved amicably and a record is needed, the matter will then be set down for motion(s). This same procedure may be utilized for other procedural matters as counsel and the Court deem appropriate.
- (7) OCA Official Form No. 960 modified, as appropriate, for the individual case, shall be used for the release of health information pursuant to HIPAA, and Form UCS-575 shall be used for *Arons* authorizations and interviews (forms can be found under HIPAA at www.nycourts.gov/forms).
- (8) *Arons* authorizations issues will be handled on a case-by-case basis.

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