

Part 23 Rules
Hon. Eric Schumacher, J.S.C.

Supreme Court of the State of New York
New York County, Civil Term
71 Thomas Street Room 304
New York, New York 10013-3821

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I. Overview

- A. The Supreme Court's [Uniform Rules of the Justices](#) apply in this part. Where the Part 23 Rules supplement or differ from the Uniform Rules, unless otherwise indicated, the Part 23 Rules shall control.
- B. This part uses customized conference forms. You must obtain them from the part clerk by email or in person. Only barcoded forms generated by the part clerk for your case and conference date will be accepted. You may not strike through or ignore any preprinted court directive therein during the preparation of your form unless it is clearly inapplicable to your case type.
- C. Typically, the court conducts discovery conferences and oral arguments on Wednesdays, beginning at 9:30 a.m. and 2:15 p.m., respectively.
- D. All appearances before the court shall be in person.
 - 1. The court encourages the participation in court proceedings of attorneys who have significantly contributed to the underlying matter but do not ordinarily appear or speak in court.

II. Discovery Conferences

- A. You shall obtain your case conference form from the folder on the bulletin board in the hallway. Complete the form with all parties and place the form in the intake bin located in the courtroom behind the bar. Cases are called in the order in which completed forms are placed in the bin. All parties must be present for the case to be heard when called.
 - 1. You must fill out the entire form, setting forth all remaining discovery. Blank, incomplete, "must see the judge," etc. fill will be rejected.
- B. You are strongly encouraged to complete the conference form with all parties prior to your scheduled conference time and bring a copy with you to the appearance for review. Email the part clerk to obtain your custom form.

1. Proposed conference orders submitted in advance and in lieu of in-person appearances are not permitted.
 2. All parties shall meet and confer at least three days before any conference and make a diligent, good-faith effort to address outstanding discovery obligations and resolve any discovery dispute.
- C. You must appear for all discovery conferences with access to all case filings. You must be familiar with the underlying case and have the authority to discuss and resolve all discovery and case issues, including settlement.
1. Every attorney appearing on behalf of a party at a conference must be fully prepared to discuss the details of the underlying action and have a working knowledge of any material issues. This includes attorneys who are of counsel, “per diem,” junior associates, etc.
 2. Attorneys must be able to provide information about any pending appeals, prior motion practice, or pending or future motions.
 3. Failure to comply with this rule may result in a default (see 22 NYCRR § 202.1[f]).
- D. Scheduled EBTs may **NOT** be adjourned without leave of court. You must email the part clerk as soon as possible prior to the scheduled deposition date to request leave. No party may unilaterally adjourn a deposition.
- E. Post-EBT demands shall be served within 10 days of the completion of the EBT. Responses are due within 30 days of service of the demand.
- F. If a defendant fails to appear for an EBT, the next scheduled EBT must proceed.
- G. Plaintiff’s IMEs must be designated within 10 days of the completion of plaintiff’s EBT. IMEs must be held within 60 days of receipt of the notice of IME. Copies of the report shall be exchanged within 45 days of the exam.
- H. Impleader shall be completed on or before 120 days after the preliminary conference unless good cause is shown by notice of motion.
- I. Unless otherwise scheduled by the court, a party that fails to appear within 1.5 hours of the scheduled conference time may have a default judgment entered against it or have the case dismissed based upon the failure to appear (see 22 NYCRR § 202.27).
- J. Any requests for adjournments of conferences must be made at least 48 hours prior to the scheduled appearance by stipulation both filed to NYSCEF and emailed to the part clerk.
1. The court will not consider any requests to adjourn made fewer than 48 hours prior to the scheduled conference absent a real emergency.
 2. Failure to appear by any party without prior approval of the court may result in a default being entered against it.

- K. If the court directs you to obtain a copy of the transcript of an appearance at a conference, the transcript is to be ordered and paid for as directed within 10 days of the appearance and filed within five days of its receipt by you.
- L. You are not to file the certificate of readiness and note of issue without first filing a stipulation, or receiving an order, as to that all discovery is complete.
- M. You may file the note of issue at any time after stipulating or receiving an order that all discovery is complete. You need not wait to receive a new note of issue date or for a conference. The party filing the note of issue shall then email the part clerk to request cancellation of any upcoming conference.

III. Motions

- A. For all motions pending in the submissions part, you must follow that part's rules regarding adjournments, scheduling, and withdrawals.
 - 1. If a motion is resolved after it is fully submitted, the movant shall immediately inform the court by filing and emailing to the part clerk a stipulation withdrawing the motion.
- B. This is a "paperless" e-filing part, meaning you need only e-file your motion submissions to have them considered. [NYSCEF](#) is used for all filings.
- C. You must file all documents under separate document numbers and give them meaningful names. This includes, but is not limited to, notices of motion, affidavits, affirmations, memoranda of law, and exhibits.
 - 1. You shall file each exhibit under its own NYSCEF document number. The first page of each filing must bear the index number of the case and the motion sequence number, where ascertainable, of the motion in the upper right-hand corner of the page.
 - 2. You shall format all papers submitted to this part in compliance with the form of papers as set forth in 22 NYCRR § 202.70(g) Rule 6, "Form of Papers" of the rules of practice of the commercial division.
 - a. Hyperlinking is required (see id. at [c][1]).
 - 3. You may not file omnibus affidavits, affirmations, memoranda of law, etc. Do not submit papers intended to be applicable to multiple motions (e.g., a party submitting the same affirmation in motion seq. nos. 001–003 must file it once in each sequence number, labeling each accordingly). Exhibits are exempt if you hyperlink any citation to such a document. The court strongly prefers that only one copy of any given exhibit be filed to NYSCEF.
 - 4. All substantive legal arguments, including references to statutes and case law, shall be made in memoranda of law, **only**, which shall be filed **separately** from any affirmations or affidavits. **Legal arguments**

are not to be included in affirmations. Do not cite cases in affirmations. Instead, file a memorandum of law.

5. Each deposition transcript shall be submitted as a separate exhibit. Parties shall include a word index with all transcripts. Deposition transcripts shall be labeled to indicate both their exhibit number/letter and to identify the deposed individual.
 6. Any reference to deposition testimony must cite to the exact page and line numbers relied upon rather than merely attaching the entire transcript or “relevant portions.”
 7. Any reference to any other voluminous exhibit annexed to a motion must include pinpoint citations so that the exact location within the exhibit can be easily located.
 - a. For example, a citation to physical therapy notes contained within an exhibit of medical records could be identified as “see physical therapy notes dated xx/xx/xx, exhibit B, at 9.”
 8. Any piece of media that cannot ordinarily be filed to NYSCEF (e.g., surveillance video) must be submitted to the court electronically by emailing a download link to the part clerk. Physical media such as USB drives are not accepted and will be destroyed if received. The media must relate to a placeholder exhibit page and be addressed in the appropriate affirmation, etc., so that it is in admissible form.
 9. The failure to comply with any rule in this section may result in the rejection of the entire motion submission of the offending party.
- D. All applications for admission **pro hac vice** shall be made by notice of motion. The motion shall include an affidavit of support from a member of the Bar of the State of New York, an affidavit from the applicant, and a recent certificate of good standing from the applicant. The applicant’s affidavit must advise the court as to the total number of times the applicant has applied to be admitted in New York pro hac vice and how many times the application has been granted and/or denied. The affidavit must also state whether the pro hac vice applicant has ever been or is presently the subject of a disciplinary proceeding.
- E. Motions brought by Order to Show Cause (OSC):
1. Any questions regarding the procedure for e-filing proposed orders to show cause must be directed to the ex parte office, (646) 386-3125.
 2. Any party seeking immediate injunctive relief upon the signing of the OSC (e.g., a stay, a temporary restraining order) must appear in person before the court to present the OSC either with all affected adversaries or bearing proof that all affected adversaries were properly noticed. Contact the part clerk to schedule the appearance.
 - a. Stays related to CPLR 321(b)(2) or of discovery generally are exempt from the advance in-person appearance requirement.

3. The court will either sign or decline to sign an OSC transmitted to it from ex parte. Unless otherwise directed, signed OSCs are returnable to the part on submission, no appearance.
 4. Opposition papers must be filed at least one business day prior to the return date of the motion unless otherwise directed. No reply.
 5. OSCs seeking relief pursuant to CPLR 321(b)(2) must set forth that service of the papers on the client to be served shall be made by personal service pursuant to CPLR 308, 311, etc. Substituted service pursuant to Business Corporation Law § 306 may not be used.
- F. Discovery motions are **strongly discouraged**.
1. If a discovery dispute arises which cannot be resolved by the parties' diligent, good faith efforts, the party seeking relief may move per the CPLR. The motion must include a sufficiently specific and detailed affirmation of good faith if applicable pursuant to 22 NYCRR § 202.7.
 2. Discovery motions may only be filed with leave of court set forth in a discovery conference order. Any affirmation of good faith that fails to affirm that the court granted leave after attempting to resolve the dispute with the parties at a discovery conference shall be defective.
- G. Summary Judgment Motions: All summary judgment motions must be filed within 60 days of the filing of the note of issue. The affirmation in support must include the note of issue filing date, if applicable, and must annex a copy of the certificate of readiness and note of issue.
1. Motions for summary judgment prior to the completion of discovery are strongly discouraged (see CPLR 3212[f]).
- H. Unless otherwise indicated in an order of this court, discovery **is not automatically stayed** pending the determination of any motions in cases assigned to this part (see CPLR 3214 [b]). This includes not only dispositive motions such as CPLR 3211 motions to dismiss and CPLR 3212 motions for summary judgment, but also discovery motions, motions to withdraw as counsel, other motions brought by order to show cause, etc.
- I. Any requests for adjournments of oral arguments must be made at least five business days prior to the scheduled appearance by stipulation both filed to NYSCEF and emailed to the part clerk.
1. The court will not consider any requests for an adjournment made fewer than five business days prior to the scheduled oral argument absent a real emergency.
 2. All oral arguments before this court are scheduled upon the court's determination that oral argument is necessary and indispensable for motion resolution. Accordingly, the failure of any party to appear at the oral argument may result in the motion being decided against it.

IV. Communications

- A. You may email the part clerk as indicated in these rules or for the purpose of seeking adjournments.
- B. If a motion has been withdrawn or a case has been settled or discontinued, the responsible party or parties must immediately notify the part clerk by email as appropriate.
- C. You may email the part clerk to schedule an emergency appearance on an OSC involving a request to stay or for a temporary restraining order.
- D. You may email the part clerk jointly to request a settlement conference. All parties must have agreed to the conference, and every party appearing at the conference must have full settlement authority. Direct client participation is permitted where agreed on by all parties. If approved, the court will issue further instructions to you as to confidential memoranda.
- E. You may email the part clerk unopposed or joint requests to so-order (e.g., seeking leave to amend). All such requests must contain the appropriate language, including any directives as to the clerk's office, etc., where required, or they may be rejected.
- F. Other or further types of email to the part clerk are not permitted without leave of court.
- G. Other types of correspondence with the court such as letters, whether filed or in paper, or in-person paper submissions of any type are not permitted without leave of court.
- H. Ex parte communications with the court of any type are not permitted.
- I. The court does not accept faxes and does not have a fax number.
- J. Calls to the part clerk are strongly discouraged except in the case of a real emergency.
- K. Calls or emails to chambers for any reason are not permitted without leave of court. The court does not accept arguments by email, letter, etc.
- L. Virtual meetings, conferences, etc. (e.g., using Teams) are not available, excepting [ADA accommodations](#) made by the court as appropriate.
- M. You are strongly encouraged to sign up for [eTrack](#) for calendar updates.