PART RULES - JUSTICE BARBARA JAFFE
SUPREME COURT, CIVIL TERM, NEW YORK COUNTY
PART 12

Effective: March 1, 2021

PARTIES ARE REMINDED THAT THE SUPREME COURT'S NEW UNIFORM RULES ARE EFFECTIVE AS OF FEBRUARY 1, 2021. TO THE EXTENT THAT PART 12's RULES CONFLICT WITH THE NEW UNIFORM RULES, PART 12's RULES GOVERN.

In light of the COVID-19 pandemic, proceedings before Justice Jaffe are being held virtually. Parties are expected to check NYSCEF regularly for notices concerning updated procedures for motion practice, conferences, hearings, etc. To the extent notices posted on NYSCEF are inconsistent with these rules, the notices take precedence.
See ADDENDUM A – REMOTE DISCOVERY CONFERENCES at page 16.
See ADDENDUM B – VIRTUAL PROTOCOLS at pages 17-19.

Courtroom:	60 Centre Street, Room 341
Part Clerk:	Mike Kasper - 646-386-3273 or mkasper@nycourts.gov
Fax Number:	212-401-9191 (please reference "Part 12, Attention: Hon. Barbara Jaffe")
Chambers:	646-386-3727 (do not call chambers for adjournments or other clerk functions)
Principal Court Atty:	Catherine Paszkowska - cpaszko@nycourts.gov
Asst. Law Clerk:	Ryan Jerome - rmjerome@nycourts.gov

I. COMMUNICATIONS WITH THE PART AND CHAMBERS:

A. SCHEDULING MATTERS:

All scheduling inquiries must be directed to the part clerk. Please do not call or write chambers for questions relating to scheduling *unless asked to do so by the court*.

B. EX PARTE COMMUNICATIONS ARE STRICTLY PROHIBITED
except for scheduling matters with the part clerk.

Counsel and litigants, represented or self-represented, are advised that Justice Jaffe, her

law clerks, and part clerk may not engage in any *ex parte* communications relating to the substance of any matter pending before Justice Jaffe.

C. DO NOT CORRESPOND WITH COURT STAFF UNLESS YOU:

1. seek to withdraw a motion in whole or part or to advise the court that a motion has been rendered partially or wholly moot (Uniform Rule 202.28[b]);
2. wish to advise the court that a case is settled;
3. wish to request a settlement conference with the court; or
4. have been granted leave to do so by the court.

** No letters, whether e-filed, faxed, or hand-delivered, will be read. **

D. DO NOT COPY THE COURT ON CORRESPONDENCE BETWEEN COUNSEL:

It will not be read.

E. PROPOSED ORDERS AND STIPULATIONS:

must be e-filed to the case file using the proper category and/or designation. If not properly categorized, the document will not reach the court's attention. If the matter is not e-filed, a copy must be faxed to the part clerk at 212-401-9191, with a reference to Part 12/Jaffe and/or emailed to mkasper@nycourts.gov.

If the proposed order or stipulation was requested or directed by the court, it must also be emailed to the part clerk.

F. DELIVERIES:

The part clerk is unable to accept deliveries before 9:30am or between 1pm and 2pm or after 4:30pm. Please email the part clerk before making a delivery.

G. RESOLVED AND STAYED CASES (Uniform Rule 202.28):

(a) If an action is settled, discontinued or otherwise disposed of, counsel must, in addition to filing the stipulation with the court clerk, *immediately* inform the part clerk by submission of a copy of the stipulation or a letter directed to him at mkasper@nycourts.gov, along with a notice to chambers by email to cpaszko@nycourts.gov.

(b) Counsel, including self-represented litigants, are under a continuing obligation to notify the court as promptly as possible in the event that an action is settled, discontinued or otherwise disposed of or if a case or motion has become wholly or partially moot, or if

a party has died or filed a petition in bankruptcy. Such notification shall be made to the court by email to mkasper@nycourts.gov or cpaszko@nycourts.gov.

II. DISCOVERY CONFERENCES:

** These rules apply to in-person conferences only. If the Part is operating remotely, the Part's COVID-19 Procedures, attached as Addendum A, govern. **

Where: 60 Centre Street, Room 341
When: Wednesdays at 2:15pm or as otherwise directed

A. SCHEDULING:

Preliminary conferences may be requested in an RJI or once an RJI is filed and Justice Jaffe is assigned to the case, by contacting the part clerk (mkasper@nycourts.gov) when an RJI has been filed.

Compliance conferences: If another conference is not set forth in a prior conference or discovery order or decision on a motion, it may be scheduled by contacting the part clerk at mkasper@nycourts.gov.

Notes of issue must generally be filed within a week following the next conference date as set forth in a conference order; if no further conference is scheduled, the note of issue must be filed within 60 days after the last discovery deadline agreed to by the parties.

B. APPEARANCES:

1. By submission of proposed discovery stipulations:

If all parties to a case agree on a new discovery schedule, they may submit it for the court's approval and signature in lieu of appearing in person for a conference. The discovery stipulation must be emailed to cpaszko@nycourts.gov by 4pm on the day before the scheduled conference and copied to all sides.

The stipulation must be sent in Microsoft Word format if it is a compliance conference stipulation, and in PDF or Word form if a preliminary conference, downloadable form at http://ww2.nycourts.gov/courts/1jd/supctmanh/preliminary_conf_forms.shtml. The court will provide a PDF template upon request. All e-signatures must be affixed to it.

The parties are advised that generally, a new conference date will be inserted by the court for approximately three month later. All in-person conferences are scheduled for Wednesday afternoons and the parties may indicate in their email future dates for the conference on which they are not available to appear. A new note of issue date will be given for one week after the next conference date.

Once a stipulation has been received and reviewed, it will be submitted to Justice Jaffe for her signature and then e-filed. The parties should monitor NYSCEF for a copy of the signed stipulation.
Unless a stipulation has been timely received before the scheduled conference and is signed by all parties, the parties are expected to appear in-person for the conference.

2. In-person conferences:

If the parties are unable to agree to a discovery schedule or do not submit their proposed stipulation timely, they must appear for a conference either virtually (see Addendum B) or in-person.

A party may ask to appear at a conference by telephone or other electronic means by e-filed letter or email to mkasper@nycourts.gov, with a copy to all other parties, at least one week before the scheduled conference. The request must be supported by an explanation of why the party does not wish to appear in person. The parties will be notified if the request is granted; *if no notification is received by the conference date, it should be presumed that the request has been denied.*

As the court is setting aside a specific time for each conference and as there are occasions when the court's electronic or other notification system fails or where when a party fails to receive the court-generated notification, each attorney who receives notification of an appearance on a specific date and time must notify all other parties by e-mail that the matter is scheduled to be heard on that assigned date and time. All parties are directed to exchange e-mail addresses with each other at the commencement of the case and to keep these e-mail addresses current, in order to facilitate notification by the person(s) receiving the court notification. (See Uniform Rule 202.23[c]).

No default will be granted for a party's non-appearance at a conference unless the appearing party submits proof that the notification email was sent to all sides at least 48 hours before the scheduled conference.

C. ADJOURNMENTS:

* *Adjournments of compliance conferences are strongly discouraged*. *

All adjournments (motions, conferences, trials) require prior court approval on good cause shown. *Ex parte* applications for adjournments will not be considered.

Requests to adjourn a conference must be sent by email to the part clerk at mkasper@nycourts.gov and to all other parties at least 48 hours before the scheduled date, and must indicate whether the other parties consent to the adjournment. Adjournments by stipulation are not accepted without prior court approval on good cause shown.

An adjournment of a conference will not operate to alter a date in any court order, including but not limited to the preliminary conference order, unless otherwise directed by the court. (Uniform Rule 202.10[b]).

D. GENERAL PROCEDURES:

Counsel for all parties must consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) the use of alternate dispute resolution to resolve all or some issues in the litigation; (iii) discovery, including discovery of electronically-stored information (ESI), and any other issues to be discussed at the conference; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference. (Uniform Rule 202.23).

Counsel appearing at a discovery conference must be familiar with the case, be authorized to discuss all discovery issues *and* settlement, and bring to each conference a list of all outstanding discovery. *Failure to comply with this rule may be treated as a failure to appear or a default.* (Uniform Rules 202.2[f]).

Upon a party's failure to appear for a conference on two consecutive dates, the case will be dismissed or the party's pleadings will be stricken. *This is strictly enforced.*

E. REVIEW OF DOCUMENTS:

Parties are encouraged to use the most efficient means available to review documents, including ESI, consistent with the parties' disclosure obligations under CPLR article 31 and consonant with the needs of the case. Such means may include technology-assisted review, including predictive coding, in appropriate cases. The parties are encouraged to confer, at the outset of discovery and as needed throughout the discovery period, about technology-assisted review mechanisms they intend to use in document review and production.

F. ADHERENCE TO SCHEDULES (Uniform Rule 202.20-e[a]):

Parties must strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Applications for extensions of a discovery deadlines must be made as soon as practicable and before expiration of such deadline. *Non-compliance with such an order may result in the imposition of an appropriate sanction against that party or for other relief pursuant to CPLR 3126.*

G. NEW DISCOVERY RULES:

Parties are reminded that the New Uniform Rules contain specific sections dealing with

interrogatories (Rule 202.20), privilege logs (Rule 202.20-a), discovery of ESI from non-parties (Rule 202.11), limitation on depositions (Rule 202.20-b), responses and objections to discovery requests (Rule 202.20-c), and depositions of entities and identification of matters (Rule 202.20-d).

Parties are expected to be familiar with the new rules and to comply with them.

H. DISCOVERY DISPUTES (Uniform Rule 202.20-f):

(a) To the maximum extent possible, discovery disputes should be resolved through informal procedures, such as conferences, as opposed to motion practice.

(b) Absent exigent circumstances, before contacting the court about a discovery dispute, counsel must first consult with one another in a good-faith effort to resolve it. Such consultation must take place by an in-person, telephonic, or virtual conference. *If a discovery dispute cannot be resolved other than through motion practice, each such motion must be supported by an affidavit or affirmation from counsel attesting to having conducted an in-person, telephonic or virtual conference, setting forth the date, time, and duration of the conference, and the persons participating.* The unreasonable failure or refusal of counsel to participate in a conference requested by another party may relieve the requesting party of the obligation to comply with this paragraph and may be addressed by the imposition of sanctions pursuant to Part 130. *If the conference was not held due to the unreasonable failure or refusal of an adverse party to participate, then the moving party must, by affidavit or affirmation, detail the efforts made to obtain the conference and the responses received.*

(c) *The failure of counsel to comply with this rule may result in the denial of a discovery motion, without prejudice to renewal once the provisions of this rule have been complied with, or in such motion being held in abeyance until the informal resolution procedures of the court are conducted.*

III. MOTIONS:

A. SCHEDULING:

Motion Submission Part: the adjournment of motions that are not yet scheduled for oral argument must be made pursuant to the general procedures for the New York County Supreme Court at www.nycourts.gov/supctmanh/motions_on_notice.htm.

If a motion is pending in the motion submission part longer than 60 days, all further requests for an adjournment are made to the court.

If the parties cannot agree on an adjournment, they may contact the part clerk by email copied to all parties to mkasper@nycourt.gov. Parties are reminded to cooperate with one

another.

B. GENERAL PROCEDURES:

Motions are scheduled for oral argument by the court *at its discretion*. In-person oral argument is conducted on Wednesdays beginning at 9:30am in room 341 at staggered intervals. If the Part is operating remotely, motions will be decided without oral argument, unless an express request is granted; requests may be made by e-filed letter or email sent to mkasper@nycourts.gov and copied to all sides. Parties must provide a reason for the request.

Except for discovery motions, which are strongly discouraged, no prior permission is required before filing a motion.

The movant must specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Regardless of whether the papers are filed electronically or in hard copy or as working copies, counsel must submit as part of the motion papers 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. Counsel should use tabs on hard or working copies when submitting papers containing exhibits. Copies must be legible. (Uniform Rule 202.8-a[a]).

Each exhibit must be e-filed under its own document number and identified by label~~s~~ (e.g., complaint, contract dated 1/1/18, etc.). (Uniform Rule 202.8-a[a]).

If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel must attach such discrete portions and submit the full exhibit separately. (Uniform Rule 202.8-a[a]).

Documents in a foreign language must be translated as required by CPLR 2101(b). (Uniform Rule 202.8-a[a]).

Whenever reliance is placed on a decision or other authority not readily available to the court, a copy of the case or of pertinent portions of the authority must be submitted with the motion papers. (Uniform Rule 202.8-a[a]).

When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, *pro hac vice* admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion. (Uniform Rule 202.8-a[b]).

Absent express permission granted in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is

relevant to the pending issues, but there will be no additional argument unless directed by the court. *Materials submitted in violation hereof will not be read or considered.* Opposing counsel who receives a copy of materials submitted in violation of this Rule may not respond in kind. (Uniform Rule 202.8-c).

All motion papers, including notices of motion, opposition, reply, memoranda of law, exhibits, affirmations, and affidavits, *must reflect the respective motion sequence number in the upper right-hand corner of the first page.*

If a motion is held in abeyance pending further submissions or the parties are directed to supplement their motion papers, the parties must both e-file their new submissions and email it copied to all sides to the court at cpaszko@nycourts.gov.

If a motion is withdrawn or settled, whether or not pending, the parties must promptly fax a stipulation to the part clerk at 212-401-9191, with reference to Part 12/Jaffe, and email it to mkasper@nycourts.gov.

** All summary judgment motions must be filed*
*within 60 days after the filing of the note of issue. **

Information about decisions on motions may be obtained through the appropriate clerk's office or the court's website www.nycourts.gov/supctmanh under "case information" or www.nycourts.gov under the E-courts link.

** Please do not call the part clerk or chambers to check on the status of a decision. **

C. PAGE LIMITS:

Memoranda of law and affidavits/affirmations may not exceed 25 doubled-spaced pages each, exclusive of captions, tables of contents, tables of authorities, and signature blocks (7,000 words, excluding captions, tables of contents, tables of authorities, and signature blocks [Uniform Rule 202.8-b]);

Reply memoranda and reply affidavits/affirmations may not exceed 15 doubled-spaced pages, exclusive of captions, tables of contents, tables of authorities, and signature blocks (4,200 words, excluding captions, tables of contents, tables of authorities, and signature blocks [Uniform Rule 202.8-b]), and may not contain arguments that do not respond or relate to those made in the memoranda in chief.

If a party submits a memorandum of law, all legal arguments must be contained therein; arguments contained in a companion affidavit or affirmation will not be considered. If a party submits a combined affirmation and memorandum of law, it may contain legal arguments but must conform to the 25- or 15-page limit.

Every brief, memorandum, affirmation, and affidavit must include, on a page attached to the applicable document, the certification of the filer of the document that the number of words contained in the document does not exceed the maximum word counts set forth above. The certifying filer may rely on the count of the word-processing program used to prepare the document. (Uniform Rule 202.8-b[c]).

Each electronically-submitted memorandum of law, affidavit and affirmation, exceeding 4,500 words, must include bookmarks listing the document's contents and facilitating easy navigation within the document. (Uniform Rule 202.5[a][2]).

The court may, on letter application on notice to all parties, permit the submission of affidavits, affirmations, briefs or memoranda which exceed the limitations set forth in paragraph (a) above. In the event that the court grants permission for an oversized submission, the certification required by paragraph (b) above must set forth the number of words in the document and certify compliance with the limit, if any set forth by the court. (Uniform Rule 202.8-b[d]).

Upon a party's receipt of papers that exceed the aforementioned page limits without prior permission, the party should so alert chambers and all parties, by e-filed or hard copy letter as soon as practicable, and in any event, before the motion is fully submitted in the submissions part and before submitting any opposition or reply papers.

Before a motion will be scheduled for oral argument or considered, any party whose papers exceed the limits must file new motion papers that do not exceed the limits. If e-filed, the motion papers should be designated as "corrected." In a non-e-filed case, the corrected papers must be hand-delivered or mailed to Part 12 at 60 Centre Street, Room 341, New York, New York, and also emailed to the part clerk at mkasper@nycourts.gov.

No facts or arguments not contained in the original papers may be raised in the corrected papers. New opposition or reply papers are permitted on good cause shown by prompt letter to the court.

Once the corrected papers are filed, the motion may be given a date for oral argument and/or submitted without argument. Until then, the motion will be held in abeyance.

If corrected papers are not filed within 30 days of the date of this notice, the defective papers will not be considered. The motion, however, may be scheduled for argument.

The parties are reminded that CPLR 2101(a) requires that type may not be less than ten-point in size.

D. E-FILING:

** Part 12 is an e-filing part. At oral argument on motions, the court may request working*

*hard copies of e-filed affirmations and memoranda of law. Working copies must have attached confirmations that the original document is e-filed. **

Questions regarding e-filing are to be addressed to the E-filing Office at 646-386-3610 or at efile@nycourts.gov.

Answers to frequently asked questions may be found at https://iappscontent.courts.state.ny.us/NYSCEF/live/faq.htm

E. ORAL ARGUMENT:

After motions are fully submitted in the motion submission part, they are forwarded to Part 12, and may then be scheduled for oral argument *at the court's discretion*. Oral arguments may be conducted by the court by electronic means. The parties will be notified of the oral argument date via eTrack.

link to index/case search:
https://iapps.courts.state.ny.us/webcivil/FCASSearch?param=I

link to court calendars:
https://iapps.courts.state.ny.us/webcivil/FCASCalendarSearch

** All parties must appear unless oral argument has been properly adjourned. Failure to participate in eTrack, in and of itself, does not excuse a failure to appear and the party will be deemed to have defaulted on the motion. **

Motions submitted on default or without opposition are not scheduled for oral argument.

Requests to adjourn a motion scheduled for oral argument, in the first instance, must be directed to the part clerk by fax at 212-401-9191, with reference to Part 12/Jaffe and by email to mkasper@nycourts.gov copied to all sides. The parties must first consult with the part clerk before selecting a new date for the oral argument. Such requests must be made no later than 48 hours in advance of the scheduled argument. *Adjournments by stipulation are not accepted without prior court approval on good cause shown.*

F. DISCOVERY MOTIONS:

** Discovery motions are strongly discouraged. **

If a discovery dispute arises before the issuance of a preliminary or compliance conference order, and a formal discovery motion is filed, a conference will be scheduled for 2:15pm on the return date of the motion, or, if the Part is operating remotely, a virtual conference may be scheduled (see Addendum B).

If a discovery dispute arises *after* the issuance of a preliminary or compliance conference

order, it must be directed to the part clerk by email to mkasper@nycourts.gov and copied to all sides. A new in-person or virtual conference may be scheduled or the date of a previously-scheduled conference may be advanced.

G. ORDERS TO SHOW CAUSE:

** Motions may be brought by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. (Uniform Rule 202.8-d). **

When the court is not operating remotely, an order to show cause in an e-filed case must first be presented in hard copy to the *ex parte* office, and then brought to the courtroom. Otherwise, it will not be considered.

Reply papers are not accepted on an order to show cause absent the court's permission.

H. MOTIONS FOR SUMMARY JUDGMENT:

Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, there must be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. (Uniform Rule 202.8-g[a]).

The requirement applies to opposing papers as well: The papers opposing a motion for summary judgment must include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried. (Uniform Rule 202.8-g[b]).

Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed admitted unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party. (Uniform Rule 202.8-g[c]).

Each statement of material fact by the movant or opponent, including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion. (Uniform Rule 202.8-g[d]).

IV. PRE-NOTE SETTLEMENT CONFERENCES:

The court will conduct pre-note settlement conferences upon the request of all parties.

A. CONFERENCE REQUEST FORM:

The parties must complete and sign a conference request form which is available from the part clerk. Once the request is submitted, the court will contact the parties to schedule the date and time of the conference, usually on a Wednesday afternoon. If the Part is operating remotely, a virtual settlement conference may be requested by joint email to the court at mkasper@nycourts.gov. (See Addendum B).

B. RULES:

1. attorneys who appear for the conference must be knowledgeable about the case and bring any relevant documents;

2. only attorneys with authority to settle the case may appear;

3. if an insurance company is involved, an adjuster or someone from the company authorized to enter into a settlement must appear or be instantly accessible by telephone;

4. attorneys may, but are not required to, bring their clients to the conference;

5. if a settlement is reached, the parties, through their attorneys, will be expected to sign a stipulation of settlement at or soon after the conference; and

6. requests to adjourn the pre-note settlement conference must be in writing, signed by all parties, and e-filed to the court by 5pm the day before the conference; a copy of the request must be emailed to mkasper@nycourts.gov.

V. TRIALS:

A. PRE-TRIAL CONFERENCE (Uniform Rule 202.26[b]):

Prior to trial, counsel must confer in a good faith effort to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. Where a pre-trial conference is scheduled, or otherwise prior to the commencement of opening statements, counsel must be prepared to discuss all matters as to which there is disagreement between the parties and settlement of the matter, and the court may require the parties to prepare a written stipulation of undisputed facts.

B. REQUIREMENTS FOR ALL TRIALS:

All trial documents, whether used for evidentiary hearings or during trial, *must be provided to the court and opposing counsel electronically via flash drive* before the

hearing or start of trial. The flash drive should include the following, in Microsoft Word or text-searchable PDF format:

1. marked pleadings;

2. all prior decisions in the case;

3. notices to admit, with responses; and

4. copies of transcripts of depositions intended for use at trial.

Before the commencement of the trial, each party must identify in writing for the court the witnesses it intends to call, the order in which they will testify, and the estimated length of their testimony, and must provide a copy of such witness list to opposing counsel. Counsel must separately identify for the court only a list of the witnesses called solely for rebuttal or as to credibility. The court may permit for good cause shown and in the absence of substantial prejudice, a party to call a witness to testify who was not identified on the witness list submitted by that party. Estimates of the length of testimony provided by counsel are advisory and the court may permit further testimony from a witness notwithstanding that the time estimate for such witness has been exceeded. (Uniform Rule 202.37).

If an interpreter is needed for trial, it must be requested at least two weeks before the start of trial, by email to mkasper@nycourts.gov, with the name of the witness(es) needing the interpreter and the required language and dialect.

On or before the first day of trial, counsel must submit an indexed binder or notebook, or the electronic equivalent, of trial exhibits for the court's use. A copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses must be prepared and submitted. Plaintiff's exhibits must be numerically tabbed, and defendant's exhibits must be alphabetically tabbed. (Uniform Rule 202.20-h[b]).

Before the commencement of the trial, counsel for the parties must consult in good faith to identify those aspects of their respective experts' anticipated testimony that are not in dispute. Any agreements reached must be reduced to a written stipulation and submitted to the court. (Uniform Rule 202.26[c]).

C. REQUIREMENTS FOR JURY TRIALS:

No later than immediately before opening statements, the parties must furnish, by email to cpaszko@nycourts.gov, the court and opposing counsel with the *proposed jury instructions and verdict sheets* with the following provisos:

1. if the proposed instructions are taken verbatim from the Pattern Jury

instructions, PJI numbers are sufficient;

2. if a PJI instruction is not verbatim or requires a characterization or description of the evidence or the parties' contentions, the exact requested language must be submitted together with the authority for it;

3. the parties will be given the opportunity to amend/supplement their proposed instructions.

4. proposed instructions and verdict sheets must be *simultaneously* emailed as attachments in Microsoft Word format to cpaszko@nycourts.gov and to opposing counsel. Do not assume that the email has been received until a confirmation email is sent to you. If no confirmation is received within 24 hours of the email's transmission, please call the court attorney for further instructions.

5. parties are urged to have the court stenographer pre-mark all exhibits for identification and/or in evidence if without objection.

D. TRIAL MOTIONS AND ORDERS:

Any pre-trial relief, including motions *in limine*, must be submitted to the court immediately following jury selection and upon the parties' first appearance before the trial court, unless otherwise advised by the court.

E. PRE-MARKING OF EXHIBITS (Uniform Rule 202.34):

Counsel for the parties must consult before trial and in good faith attempt to agree on the exhibits that will be offered in evidence without objection. Each side must then mark its exhibits in evidence, subject to court approval, as to those to which no objection has been made. All exhibits not consented to must be marked for identification only. If the trial exhibits are voluminous, counsel is to consult with the part clerk for guidance. The court will rule on the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked.

F. DIRECT TESTIMONY BY AFFIDAVIT (Uniform Rule 202.20[i]):

The court may require that direct testimony of a party's own witness in a non-jury trial or evidentiary hearing shall be submitted by affidavit, provided, however, (a) that the court may not require the submission of a direct testimony affidavit from a witness who is not under the control of the party offering the testimony and (b) the opposing party shall have the right to object to statements in the direct testimony affidavit, and the court shall rule on such objections, just as if the statements had been made orally in open court. Where an

objection to a portion of a direct testimony affidavit is sustained, the court may direct that such portion be stricken. The submission of direct testimony in affidavit form does not affect any right to conduct cross-examination or re-direct examination of the witness.

VI. OTHER:

A. CHANGE OF COUNSEL:

If counsel is changed on consent, a copy of the consent form must be filed or e-filed to the attention of the Trial Support Office (Room 158). Filing with the County Clerk is insufficient. *Absent submission of a consent form, the attorney of record will remain on the case, if pending, unless and until a motion for leave to withdraw is granted.* If such an order is issued, outgoing counsel must serve a copy of the decision granting leave to withdraw on the Trial Support Office and on all other counsel. A notice of appearance must be filed by substitute counsel with the Trial Support Office and the Part Clerk.

B. ALTERNATIVE DISPUTE RESOLUTION (ADR):

If, at any point, the parties decide that they would benefit from mediation with the Commercial Division ADR or the MED-NJ programs, they should write a joint letter to the court asking for such a reference. The court may also order parties to the court's ADR programs without the parties' request or consent.

For more information regarding the ADR program, please visit:
http://www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml

C. SEALING DOCUMENTS:

Applications to seal documents must include the nature of the document, reason(s) for sealing and "good cause" therefor (22 NYCRR § 216.1). The court will consider the application only by order to show cause or notice of motion, not by stipulation.

To e-file documents under seal, if granted permission to do so, please follow the procedures set forth by the County Clerk at
https://www.nycourts.gov/courts/1jd/supctmanh/Efil-protocol.pdf

ADDENDUM A – REMOTE DISCOVERY CONFERENCES

While Part 12 is operating remotely, the parties are directed to conference among themselves and draft a proposed preliminary conference stipulation (downloadable at http://ww2.nycourts.gov/courts/1jd/supctmanh/preliminary_conf_forms.shtml) or a compliance conference stipulation.

As there is no available sample form for a compliance conference stipulation, the parties should draft a regular stipulation. **It must, however, be drafted in Microsoft Word format to permit the court to alter and/or add to it.** Proposed stipulations must be esigned by all parties before submission to the court.

The stipulation must be emailed to Justice Jaffe's principal court attorney Catherine Paszkowska at cpaszko@nycourts.gov. E-filing alone is insufficient.

If all parties agree to the proposed stipulation, no conference with the court will be scheduled and the stipulation will be reviewed, so-ordered, and entered by the court. The parties are then to proceed with discovery and appear in person at the next conference as scheduled by the court and entered in the stipulation or virtually if the Part is still operating remotely.

If the parties are unable to agree on a stipulation or new discovery schedule, they may seek a telephone or virtual conference with the court. To schedule a conference, the parties must jointly send an email to Ms. Paszkowska at cpaszko@nycourts.gov **and** to Assistant Court Attorney Ryan Jerome at rmjerome@nycourts.gov detailing all outstanding discovery issues and proposing **at least three** agreed-on dates and times for the conference (from 10am-1pm and 2pm-4pm). The court will select a date from those agreed on and advise the parties as to how to commence the conference.

If a party is unable to agree on a new discovery schedule and/or a conference stipulation and/or participate in a telephone conference, the party may send an email, copied to all parties, to cpaszko@nycourts.gov **and** rmjerome@nycourts.gov specifying the underlying reason(s). The email will then be reviewed and if warranted, an adjournment will be granted.

While discovery rules remain the same, the parties are reminded that cooperation and flexibility are essential under the circumstances. Parties must be sensitive to issues raised by their opponents, and while everyone should always work toward the amicable resolution of disputes, it is now, more important than ever.

All scheduling inquiries are to be directed to cpaszko@nycourts.gov **and** rmjerome@nycourts.gov, by email sent jointly or with a copy to all sides.

ADDENDUM B – VIRTUAL PROTOCOLS

In addition to the Part 12 Rules,[1] all virtual proceedings before Justice Jaffe are also governed by the following guidelines:

1. All virtual proceedings will be conducted via Microsoft Teams. All participants are expected to be familiar with Teams and to have tested their equipment, including their cameras and microphones, before the start of the proceeding to ensure that they are in working order for the proceeding.

2. All virtual proceedings are governed by the same disciplinary rules and requirements of civility as in-person court proceedings. Accordingly, all participants are to be properly attired, and the consumption of food or drink during proceedings is prohibited. The use of a phone during proceedings is prohibited, unless otherwise permitted by these protocols.

3. All participants are expected to locate themselves in an adequate area with a secure internet connection, limited background noise, and appropriate camera positioning and lighting. *The use of a virtual background is prohibited.* Parties may request to use a blurred background, if appropriate, either before the proceeding or when the proceeding begins. All participants' faces must be clearly visible, and participants must speak directly to the camera, which must always be kept on during the proceeding. When not speaking, participants must mute their microphones.

4. At least one business day before the scheduled appearance time, the parties are to send an email to mkasper@nycourts.gov disclosing the names and contact information, including telephone numbers, for all individuals attending the proceeding and on whose behalf they are appearing. Any individual not disclosed before the start of the proceeding is prohibited from participating unless everyone agrees to their participation.

5. Counsel will be provided with a Teams link before the start of the meeting. Counsel is responsible for providing the Teams link to their respective team members, clients, and witnesses who have been disclosed as participating individuals.

6. To ensure public access, the parties may apply at least 24 hours in advance for the press and members of the public to be provided with a restricted Teams link. Arrangements may be made for remote access to the virtual proceeding from a courthouse location where ample social distancing may be assured.

[1] A copy of the rules is available at: https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/Rules/part12-rules.pdf.

7. Participants are expected to be in the Teams "lobby" *at least 10 minutes* before the scheduled start time.

8. Recording of the proceeding by any means, other than the court-approved stenographer, is strictly prohibited. This prohibition includes, but is not limited to, voice and video recording, photographs and screenshots, transcribing software, and external recording devices.

9. At the court's discretion, breakout rooms may be used to facilitate private conversations between participants. When breakout rooms are in use, participants may return to the main room at any time. Before a breakout room is closed, a 60-second countdown will be provided before participants are automatically returned to the main room. Otherwise, participants must exchange mobile phone numbers in order to text one another when an *ex parte* conference is finished.

10. If, for any reason, during the proceeding a participant is able to hear or see confidential communications, he or she must immediately cease listening and/or viewing that communication and notify the affected individuals that their conversation is overheard or their screen is shared.

11. If a participant becomes disconnected or has a technical issue during the proceeding that cannot be remedied within two minutes, he or she is to contact the court immediately by emailing mkasper@nycourts.gov. If the court deems it unfair to any party to continue the virtual proceeding because of a technical failure, the court may postpone or terminate the proceeding at any time and take such other steps as may be necessary to ensure the fairness and integrity of the proceedings.

The following guidelines govern all virtual hearings and trials:

1. Prior to the start of the hearing or trial, all trial documents, as described in the Part Rules, must be provided via email to cpaszko@nycourts.gov and all opposing parties.

2. Counsel is expected to be familiar with Teams's screen sharing function and be prepared to display sets of exhibits at any time in order to verify that documents do not bear any annotations.

3. Witnesses are to testify in rooms in which they are entirely alone. Before a witness begins testifying, they will be sworn in or affirm that the testimony they are about to give is the truth, and opposing parties will be permitted voir dire as to whether there is anyone else present in the remote rooms where the witnesses are testifying, and any other condition they deem appropriate. The parties are deemed to agree that they do not object to the

administering of the oath virtually over Teams. Witnesses may be asked to provide a 360-degree view of the remote venue to confirm that no unauthorized persons are present.

4. Witnesses are prohibited from relying on notes or receiving off-screen instruction during the hearing and are required to give testimony from a desk or table that is clear of all documents and objects, except for the exhibits and witness statements previously disclosed and necessary for the testimony. Witnesses may be asked to provide a closer view of materials in his or her possession to verify that they are not using or relying on unauthorized information while testifying. This ensures that the virtual proceeding as closely replicates an in-person proceeding as possible. Counsel who calls the witness for direct examination is responsible for ensuring the witness's compliance with these protocols.

5. To avoid unauthorized communications, Teams's "chat" feature will be disabled.

6. Any objections or proposed additions to these virtual proceeding protocols must be emailed to cpaszko@nycourts.gov no less than 24 hours before the start of the trial or hearing.