

## JUSTICE W. FRANC PERRY, III – PART 23 RULES and PROCEDURES

**HON. W. FRANC PERRY, III** Part 23, IAS General Assignment Part, Room 543, 60 Centre Street, New York, NY 10013.

Part Clerk: Charlene Phillip, Courtroom Phone: (646) 386-3754

Part Clerk's email: [sfc-part23-clerk@nycourts.gov](mailto:sfc-part23-clerk@nycourts.gov)

Principal Law Clerk: Nina Cangiano, Esq.

Assistant Law Clerk: Shane A. Miller, Esq.

Part 23 email: [sfc-part23@nycourts.gov](mailto:sfc-part23@nycourts.gov)

Part 23 is a paperless part and all submissions are to be electronically filed through the New York State Courts E-Filing (NYSCEF) system. Courtesy or working copies are not required. The court strongly encourages all cases to be converted to e-filing using the form found at:

<https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/stipulation.and.consent.pdf>

The parties are encouraged to identify as early as possible any case where Alternative Dispute Resolution (ADR) would be appropriate. In addition, and if at any point, the parties decide that they would benefit from the Supreme Court's ADR program, they should write a joint letter to the Court asking to be referred to ADR.

### I. GENERAL MATTERS

- A. All parties or their counsel must familiarize themselves with the Part 23 Rules and the Uniform Civil Rules for the Supreme Court and the County Court, Part 202. <http://ww2.nycourts.gov/rules/trialcourts/202.shtml>
- B. Attorneys and *pro se* litigants must always keep their contact information current, including email addresses. The court will supply court notices using the email addresses registered in NYSCEF.
- C. "eTrack" is a case tracking service that enables parties to track active Civil Supreme Court cases and to receive notice of scheduled appearances. Parties and their counsel must be registered for the eTrack service for all Part 23 cases. To register or log-in, please visit: <http://iapps.courts.state.ny.us/webcivil/etrackLogin>.
- D. Communication with the court. Please do not call chambers, unless authorized in advance or as permitted by the Part Rules. All correspondence directed to Part 23 must be copied to all counsel.
- E. Letters seeking affirmative relief will not be considered by the court. Please do not copy the court on letters exchanged between counsel, unless directed to do so by the court.

- F. Counsel must notify the court, as soon as practicable, of any settlement or resolution of active cases or pending motions. If the case has settled and a motion is pending, or if a motion has been withdrawn, the parties must immediately e-file a stipulation and email it to the court, executed by all affected parties, indicating that the matter has settled and/or that the motion has been withdrawn.

## II. ADJOURNMENTS

- A. Motions pending in Room 130: Note that pursuant to 22 NYCRR 202.8(e)(1), no more than three stipulated adjournments for an aggregate period of 60 days shall be submitted without prior permission of the court (22 NYCRR 202.8(e)(1)); the parties must submit a stipulation of adjournment to the court for approval. If approved, the So-Ordered version of the stipulation will be e-filed, so that the parties may present the signed order to the Submission Part on the return date. Counsel shall follow the rules for adjournments set by the General Clerk's Office, Motion Support:  
[http://ww2.nycourts.gov/courts/ljd/supctmanh/motions\\_on\\_notice.shtml](http://ww2.nycourts.gov/courts/ljd/supctmanh/motions_on_notice.shtml).  
<https://www.nycourts.gov/LegacyPDFS/courts/ljdpctmanh/Efil-protocol.pdf>.
- B. Motions/conferences scheduled on the Part 23 calendar: Court permission is required to adjourn any scheduled appearance. *Ex parte* applications for adjournments will not be considered. Please address questions about scheduling and adjournments to the Part 23 Clerk, Charlene Phillip, at (646) 386-3754 or [sfc-part23-clerk@nycourts.gov](mailto:sfc-part23-clerk@nycourts.gov). Do not call chambers with scheduling questions and uncontested requests for adjournments; those requests will be directed to the Part 23 Clerk. Requests for adjournments must be e-filed and emailed to [sfc-part23@nycourts.gov](mailto:sfc-part23@nycourts.gov) not less than two business days in advance of the scheduled appearance. The court will deny untimely requests absent a showing of good cause.
- C. Absent agreement of the parties or approval from the court, the parties must appear on the scheduled date, after due notice to all parties, for an oral application requesting the adjournment. The parties are reminded of the importance of professional courtesy and cooperation when dealing with one another.

## III. DISCOVERY CONFERENCES and MOTIONS

### A. Conferences

1. All parties are strongly encouraged to meet and confer, and email a proposed preliminary, compliance or status conference order to [sfc-part23@nycourts.gov](mailto:sfc-part23@nycourts.gov), for review and signature, in lieu of appearing for a preliminary, compliance or status conference. Part 23 Conference Order forms can be found at:  
[http://ww2.nycourts.gov/courts/ljd/supctmanh/judicial\\_assignments.shtml#P](http://ww2.nycourts.gov/courts/ljd/supctmanh/judicial_assignments.shtml#P)
2. Preliminary conferences, compliance conferences and status conferences are held on Tuesdays at 9:30 a.m. at 60 Centre Street, Room 543, unless otherwise directed by the

court. All cases are heard in the order in which they are ready. All counsel must be present for the case to be deemed ready. Do not check in with the Part Clerk until all sides are present and the proper forms have been completed by all counsel. All counsel must appear promptly. Default applications will be heard by the court at 11:00 a.m. (22 NYCRR 202.27).

3. Parties may request a conference by email to the court at [sfc-part23@nycourts.gov](mailto:sfc-part23@nycourts.gov), copied to all counsel. Counsel must state the reason for the conference; the court shall determine whether a conference is necessary and if so, the appearance dates will be scheduled in e-courts. The court, in its discretion, may issue a case scheduling order in lieu of conducting a preliminary conference, compliance conference, or status conference.
4. Prior to a preliminary, compliance or status conference, all counsel shall consult and attempt to narrow any discovery issues, including agreed upon dates for depositions. All counsel are expected to be familiar with the underlying case and have authority to stipulate and resolve all discovery issues, including pending motions and settlement, this includes “per diem” attorneys, junior associates and attorneys covering for the lead attorney appearing before the court at the conference. Failure to adhere to deadlines and comply with discovery orders may result in penalties authorized by CPLR 3126.
5. If a discovery dispute arises, or the parties are unable to agree on a proposed discovery order, **prior to filing a discovery motion**, they are to email the court at [sfc-part23@nycourts.gov](mailto:sfc-part23@nycourts.gov), with copy to all counsel, and succinctly state the nature of the issue requiring the court’s intervention. The court will determine whether a conference should be scheduled, or will permit the party seeking relief to file a discovery motion in accordance with Motions Rule (B) (4) below and upon proof of compliance with 22 NYCRR 202.20-f (b), Disclosure Disputes, which provides: “Absent exigent circumstances, prior to contacting the court regarding a disclosure dispute, counsel must first consult with one another in a good faith effort to resolve all disputes about disclosure. Such consultation must take place by an in-person or telephonic conference.”

## **B. Motions**

1. All motions received in Part 23 from Room 130 will be reviewed by the court and will either be marked submitted or scheduled for oral argument on Thursdays at 10:00 a.m.
2. Transcripts: Following all conferences and oral argument conducted on the record, the party requesting the conference or the movant is required to obtain and e-file a copy of the transcript to NYSCEF. Motions will not be marked fully submitted until the transcript is e-filed. In addition, where directions of the court and stipulations of counsel are recorded by a reporter, the parties shall procure and share equally the cost of a transcript thereof, unless the court in its discretion otherwise provides. The transcript corrected if necessary, on motion or by stipulation of the parties approved by the court, shall have the force and effect of an order of the court.

3. Timely interposition of all papers in accordance with the CPLR is required. The court will not consider the merits of any papers, which appear to have been interposed in an untimely or otherwise inappropriate manner. The CPLR does not provide for sur-reply papers; the court will not read sur-reply papers. Letters should not be sent to the court concerning a motion after the motion has been marked submitted, unless on consent of all parties or order of the court or pursuant to 22 NYCRR 202.8-c.
4. Discovery motions are strongly discouraged and shall not be filed without first conferencing the matter with the court. If a discovery dispute arises, and prior to making any discovery motion, any party, may request a conference by submitting an email to: [sfc-part23@nycourts.gov](mailto:sfc-part23@nycourts.gov) pursuant to Conferences Rule (A) (3) above. The court will determine whether a conference should be scheduled. If the dispute cannot be resolved by court conference, then the party seeking relief may file a discovery motion. If such a motion is filed, the affirmation of good faith submitted in support must “indicate the time, place and nature of the consultation and the issues discussed and any resolution or shall indicate good cause why no such conferral with counsel for opposing parties was held” (22 NYCRR 202.7(c)). Failure to comply with these requirements may result in the denial of the motion. Discovery motions may also be decided on submission or at a discovery conference scheduled to resolve the motion.
5. Parties are encouraged to resolve motions by stipulation with a request to be So Ordered whenever possible. A stipulation resolving a motion which requires a Clerk to act, such as a motion to consolidate, change venue, or amend a caption or pleading, must contain language directing the Clerk to take such specific action in accordance with CPLR 8019(c) and, in e-filed cases, must be accompanied by NYSCEF form EF-22. Where such a stipulation resolves a motion, or extends a deadline previously set by the court, it must also be e-mailed to the Part 23 Clerk at [sfc-part23-clerk@nycourts.gov](mailto:sfc-part23-clerk@nycourts.gov) to be So Ordered
6. All summary judgement motions must be filed within 120 days after the filing of the Note of Issue. Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, each party must comply with Section 202.8-g by submitting a separate statement of material facts.

### **C. Orders to Show Cause**

1. Motions shall be brought on 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. (NYCRR 202.8-e). Absent advance permission of the court, reply papers shall not be submitted on orders to show cause. Opposition papers to an OSC will be accepted on the return date unless otherwise directed by the Court. Motions brought by order to show cause will be heard on Thursdays at 60 Centre Street, Room 543, at 9:30 a.m., unless otherwise directed by the Court.

2. Any party seeking a Temporary Restraining Order or interim relief must appear with the affected adversary or provide proof to the court that the adversary was notified but declined to appear when the application is presented for signature. Opposition papers will be accepted on the return date unless otherwise directed by the court.

#### **IV. NOTE OF ISSUE**

Absent a showing of good cause and/or substantial compliance with the preliminary, compliance and status conference orders, the Note of Issue date will not be extended. The Note of Issue may be filed, and a future compliance conference may be avoided, if all parties who have appeared in the action, stipulate in writing that all discovery is complete and provide for the filing of the Note of Issue. The stipulation must be e-Filed with a request to be So Ordered by the court.

#### **V. TRIAL RULES AND REQUIREMENTS**

Once a trial is assigned to Part 23, a trial conference shall be held with the court and all counsel will be provided with Justice Perry's trial rules.