

HONORABLE JUSTICE MARY V. ROSADO
SUPREME COURT, CIVIL TERM

60 Centre Street, New York, New York 10007
COURTROOM 442, PART 33

Courtroom Part Clerk: Megan Whitlow, SFC-Part33-Clerk@nycourts.gov, (646)
386-3894

All motions, conferences and trials will be heard in person.

BE PROMPT AND PREPARED

It is fully expected that motions, hearings, and trials begin as scheduled. Cell phone numbers of respective counsel should be provided to opposing counsels and the Court when there is a hearing or trial expected to proceed for more than one day. In the event of an unavoidable delay, it is expected that counsel contact opposing counsel and the Court as soon as possible. Failure to appear on time, without good cause, may result in the consideration of sanctions. Bench trials are usually “back to back” and jury trials involve the coordination of numerous witnesses and any unnecessary delays are inherently unfair to the jurors, litigants, counsel, other litigants awaiting trial, and the Court.

COURT DECORUM

The pressures of the courtroom are well-known and will be considered by the Court in the context of robust oral argument. However, all attorneys are expected to treat each other, the parties, court personnel and the Court with civility and respect. Anything less will not be tolerated. Good advocacy is not incongruent with the highest aspirations of the profession and good manners. Attorneys and clients are expected to dress appropriately at all times. Attorneys should provide business cards to the Part Clerk when checking in, and be prepared to discuss the case fully, and to have settlement authority.

EX PARTE COMMUNICATIONS

There are to be no *ex parte* communications with the Court. If counsel needs to speak with Chambers about scheduling or other issues, he or she should first speak with his or her adversary and work out a proposal to present to the Court. Either party may contact the Part Clerk if the scheduling or other type of administrative

matter has been worked out between counsel. If there is a disagreement, the parties should contact the Part Clerk who will schedule a conference call with the Court.

HEARINGS AND TRIALS

All parties must be present in Court by 9:30 A.M., or at such time as scheduled with the Court.

Bench trials will proceed in the order they are referred to the Court. If a party is not ready to proceed and a matter was marked “final”, the Court will default the party unless good cause is shown.

All trials are scheduled for a date and time certain. All counsel must be aware of the schedules of their respective witnesses. Counsel shall alert the Court of: (1) any scheduling conflicts; (2) the need for an interpreter; (3) any other special needs, *e.g.*, easels, blackboards, shadow boxes, or television, subpoenaed material, etc.; (4) necessary Court-Ordered subpoenas; (5) any evidentiary issues that ought to be addressed before jury selection; and (6) a list of the witnesses they intend to call and the order, including expert witnesses.

Please bring marked pleadings to be marked as Court Exhibits.

ADJOURNMENTS

Once a trial or hearing is scheduled, adjournments will only **be granted upon unforeseen extraordinary circumstances**. Although the Court will work with all parties to schedule a mutually convenient hearing date, it is counsel’s responsibility to come to the conferences with full knowledge of when they, their clients, and their witnesses will be available.

SETTLEMENT CONFERENCE

After the trial date is scheduled, a settlement conference may be scheduled and all parties are required to attend the settlement conference. Respective counsel is encouraged to provide the Court with cases determining relevant damages. Insurance adjusters for both primary and excess carriers are required to be readily available by phone.

MOTIONS IN LIMINE

Counsel shall submit motions in *limine* and trial memoranda in writing to the Court as directed, but in any event, not later than the first day of jury selection. Counsel is encouraged to provide written memoranda of law, with copies of the relevant case law and statutes. Motions in *limine* are not to be uploaded to NYSCEF.

PROPOSED JURY INSTRUCTIONS AND VERDICT SHEETS

The deadline for Counselors to send proposed PJI charges and interrogatory verdict sheets is at least two weeks prior to trial. All proposed jury charges and proposed verdict sheets shall be emailed to the Court (SFC-Part33-Clerk@nycourts.gov) in editable MS Word (.doc) format.

If counsel relies on a Pattern Jury Instruction [PJI] without change, it should be referred to by PJI number and topic only. If any changes to the PJI are suggested, then the proposed charge should be set forth, and should be highlighted or otherwise called to the Court's attention. When a requested charge calls for added information, modification, or the addition of a statute, please provide that information to the Court in your request to charge. Citations to appropriate statutory or common law authority shall be given in support of suggested non-PJI jury charges or suggested PJI modifications. Counsel should note that the Court has modified the language of some PJI charges to make them more readable and understandable. Please use the most recent New York Pattern Jury Instructions, Civil Third Edition, as there are changes.

Counsel should be prepared to provide the Court with the proposed facts that counsel believes are supported by the record.

EVIDENTIARY ISSUES

Any evidentiary issues must be resolved prior to jury selection and certainly before the first day of trial. Copies of case law supporting evidentiary issues should be readily given to the Court and to opposing counsel at a conference. It is the responsibility of the attorneys to ensure that subpoenaed records have arrived in the Subpoenaed Records Room. Counsel is encouraged to stipulate to undisputed facts and to the admissibility of clearly admissible documents and records.

MARKED PLEADINGS

Prior to the opening statements, counsel shall furnish to the Court marked pleadings and Bills of Particulars, pursuant to CPLR Section 4012.

EXHIBITS

It is strongly urged that counsel pre-mark all exhibits in the order in which they intend to introduce them at trial. Plaintiffs will number their exhibits; Defendants will letter their exhibits. On the first day of trial, each party will provide the Court Reporter with the exhibits to be officially marked.

Counsel must retrieve their trial exhibits within seven days of the trial's conclusion. Any exhibit left with the court for more than sixty days is subject to destruction without any further notice.

DEPOSITIONS

A copy of depositions intended to be used at trial should be furnished to the Court at the commencement of the trial.

OBJECTIONS

No speaking objections. If you raise an objection during the course of the hearing or trial, please stand and use one word to describe the grounds for the objections (i.e. "objection – relevance", "objection – hearsay", "objection – no foundation"). Never argue in front of jurors; if further discussion is warranted, the Court will have a 'sidebar' in the robing room.

MOTIONS, PRELIMINARY, COMPLIANCE, AND STATUS CONFERENCES

After the final appearance in the Submissions Part, the motion may be scheduled for oral argument at the Justice's discretion. If an oral argument is scheduled, you will be notified electronically, and the appearance will indicate "IAS Part 33."

Motions scheduled for oral argument in IAS Part 33 will be held on Tuesdays at a time certain.

All conferences in IAS Part 33 will be held on Wednesdays and/or Thursdays, at a date and time certain.

Failure to appear at any scheduled conference will be considered a default subject to sanctions.

There is no calendar call.

For motions only, please check-in with the Part Clerk.

For preliminary conferences, please confer with all parties, fill out the preliminary conference order, compliance conference order, or stipulation, and present it to the Part Clerk. If counsel must appear in another part, notify the Part Clerk and all other parties, and provide a telephone number at which you may be reached. You need not appear if you provide the Court the conference order one day in advance of your conference date. The preliminary conference orders should be typed or written legibly and neatly.

It has come to the Court's attention that updated discovery stipulations have been prepared and agreed to but that months pass and when parties conference again, the same requests are being asked of the Court. Please pay attention to the dates set at your Court appearances – cases marked “Final Extension” will need to submit an Affidavit setting compelling reason for the delay in requesting additional time to complete discovery. At this time, it applies to cases 2021 and older. Filing an Affidavit requesting additional time to complete discovery will not stay discovery. Remember justice delayed is justice denied.

Withdrawing Motions

If you wish to withdraw a motion pending in the Submissions Part, e-file the stipulation or letter from the movant to withdraw the motion under the appropriate motion sequence number. For further inquiries, notify the Submissions Part (60 Centre Street, Room 130, 646-386-3030) and/or contact the e-filing resource center at the same number or efile@nycourts.gov.

If you wish to withdraw a motion that is pending in Part 33 (after submission in room 130, whether or not oral argument has been scheduled), please e-file the stipulation or letter from the movant withdrawing the motion and advise the Part 33 Clerk in writing immediately.

Adjournments

Motions Returnable in the Motion Submissions Part (Room 130 of 60 Centre Street): Requests to adjourn motions returnable in the Motions Submissions Part must be made by contacting that particular Part (646-386-3030). However, if you

require a so-ordered stipulation to adjourn a motion in the Submissions Part, see “Items to be ‘So-Ordered’” below.

Please do not communicate with chambers by any means concerning adjournments of a matter. **ALL requests for adjournment of Part 33 appearances are to be directed to the Part Clerk (SFC-Part33-Clerk@nycourts.gov).**

Where all parties are amenable to adjourning oral argument or a conference, contact the Part 33 Clerk for approval, and follow-up with a hard copy of the stipulation of adjournment via hand delivery or e-mail to the Part Clerk at SFC-Part33-Clerk@nycourts.gov. The stipulation must also be e-filed.

A stipulation to adjourn a conference or motion scheduled for oral argument must indicate the reason for the adjournment.

Such stipulation must be sent to the Part Clerk and e-filed at least one (1) business day before the scheduled appearance. (Be mindful of court holidays). Any stipulation received less than one (1) business day before the scheduled appearance may not be entertained by the Court, except in emergency situations. Parties not in compliance may be defaulted for nonappearance. In such situations where the parties have not provided a timely request, the parties should appear and make an in-person application for the adjournment to the extent possible.

If the parties are unable to consent to an adjournment, the parties should contact the Part Clerk to request a conference call with the Court. Alternatively, the parties may appear at the scheduled appearance and make an application for the adjournment before the Court.

Papers

Although this is an e-file Part, once you learn that you are assigned to Part 33, courtesy paper copies in advance of your Court date are appreciated.

If reliance is placed on a decision or other authority not officially published or readily obtainable by the Court, a copy of the case of the authority shall be submitted with the motion papers.

No sur-reply papers are permitted. Papers or letters regarding a motion should not be presented to the court after submission of the motion in the Motion Submission Part (Room 130), or after argument in Part 33, if any, except with the advance permission of the court. Materials submitted in violation of this rule will be disregarded by the court.

Each document or exhibit submitted electronically shall be separately filed and described in the “Additional Document Information” section when uploaded to NYSCEF (e.g., Exhibit A, Bill of Particulars; Exhibit B, 50-h Transcript), so that it is known what document is without the need to open it. Failure to comply with this provision may result in rejection of the filing.

Discovery Motions

The parties may not file a motion relating to discovery without Court leave.

Prior to filing a discovery motion, and after good faith efforts to resolve the discovery issue(s), the parties are required to confer with the law clerks regarding the issue(s) to be raised by the motion. If, after the parties confer with the law clerks, it is necessary for a discovery motion to be made, leave from the Court must be requested in the form of an affidavit delineating the need for the requested motion, including any efforts made to resolve the disputed issue(s). Discovery motions made without leave of the Court will be denied.

RULES SPECIFIC TO HEARINGS VIA MICROSOFT TEAMS

While in-person trials and/or hearings are taking place, we may also utilize a virtual format for hearings and conferences. In the virtual format we are not abandoning the rules applicable to in-person hearings and/or trials and conferences. So, a few reminders:

If you have any questions with respect to the case or procedures to be followed during the conference or hearing, you should email the Park Clerk at SFC-Part33-Clerk@nycourts.gov.

Witnesses: Witnesses should be on standby; they will remain in the Microsoft Teams lobby until they are called.

Introducing Evidence: The party seeking to introduce evidence at the hearing shall follow the rules of evidence. The originals will have to be filed electronically. However, the Judge will accept copies for hearings via email.

Procedure for Introduction of Documents:

1. Serve the other parties with the documents prior to the hearing;
2. Email the documents to the Part Clerk (SFC-Part33-Clerk@nycourts.gov) prior to the hearing so that he can print them out;
3. On the date of the hearing, present the evidence as you would if you were in court.

If you are not familiar with Teams, please practice logging on with sound and video prior to the hearing date. **Do not** wait until minutes before the hearing.

When joining the hearing via Microsoft Teams, please enter the following as your name: (1) your first and last names; and (2) your relationship to the case, (i.e. “Jane Doe, Attorney to Plaintiff or Defendant”; “John Smith”).

Please wait in the lobby until the Judge or Clerk lets you in.

Please join the virtual hearing at least fifteen (15) minutes before the scheduled time and be prepared to start promptly at the scheduled time. If you are an attorney, please inform your client to be punctual. Assist your client with any technological issues.

The link to join the hearing will only be emailed to the parties. Parties must email the link to their witnesses shortly before they call them. Witness shall not join the hearing until the party is ready to call them to the stand and with permission from the Judge. Witnesses must join the link by entering their first and last names, and wait in the lobby until the Judge lets them in.

Please review the Microsoft Teams Q&A document that the Part Clerk emailed to you.

Please do not speak out of turn. If you wish to speak, please use the “raise your hand” function available on Microsoft teams.

These rules apply to both in-person and virtual hearings. Please review them prior to any scheduled hearing, trial, or appearance before the Court.

The Court reserves the right to modify these rules in the interest of justice or for good cause shown.

October 3, 2023

Trial Assignment Conference

Any Scheduling Conflicts

- Plaintiff: _____

- Defendant: _____

Need for an interpreter

- Plaintiff: _____
- Defendant: _____

Other special needs

- Plaintiff: _____

- Defendant: _____

Necessary court ordered subpoenas

- Plaintiff: _____

- Defendant: _____

Evidentiary issues to be addressed before jury selection

- Plaintiff: _____

- Defendant: _____

List of witnesses/experts

- Plaintiff: (Liability) _____
(Damages) _____

- Defendant: (Liability) _____
(Damages) _____
