

INDIVIDUAL PRACTICE RULES
HON. DENISE M. DOMINGUEZ, ACTING SUPREME COURT JUSTICE
PART 35- IAS PART
Supreme Court, State of New York
New York County
80 Centre Street, Courtroom 289
New York, New York 10013
Courtroom Telephone 646-386-4299
Chambers Telephone 646-386-4261 (only for urgent matters)
Part Email sfc-part35-clerk@nycourts.gov

I. GENERAL/COMMUNICATION WITH THE COURT

- A. Parties with matters in Part 35 are expected to familiarize themselves with the Part Rules.
- B. **Telephone Calls:** Telephone calls should be made only to the Part Clerk during the business hours of 9:30 a.m. to 12:50 p.m. and 2:15 p.m. to 4:30 p.m. and limited to matters otherwise not explained below. Telephone calls to Chambers are only permitted **in emergency situations** and after being unable to reach the Part Clerk.
- C. **Emails:** Unless otherwise instructed, all emails sent to the Court or to the Part Clerk **must include an attached letter**, carbon copy (cc) all parties in the action, and the subject line must include the purpose of the email, the index number, and case name. Emails should also include a signature block that identifies the sender and the party the sender represents. Emails sent to the Court not following these instructions, including *ex-parte* emails, or email threads such as replies between the parties, **are not permitted, and will not receive a response.**

II. CONFERENCES

- A. **Preliminary, Compliance, and Status Conferences:** Prior to any preliminary and compliance conference, the parties shall consult in good faith about early resolution of the action, discovery matters, and the potential use of alternative dispute resolution, pursuant to 22 NYCRR §202.11. Upon receiving notification that a preliminary conference, compliance conference, or status conference, is scheduled for a specific date, parties are required to submit a proposed order on consent in lieu of a court appearance.

1. Preliminary Conferences

Within 10 days of filing a Request for a Preliminary Conference pursuant to 22 NYCRR §202.12, the filing party shall also email a copy of the Request to the Part 35 Clerk, at sfc-part35-clerk@nycourts.gov, and cc all parties in the action.

- i) The submitted proposed order, that upon approval from the Court will be So Ordered, shall contain a certification that the parties have met and conferred as to the items set forth in 22 NYCRR §202.11 and §202.12(c).
- ii) If an appearance for a Preliminary Conference is necessary or requested, the parties may be directed to appear in person or remotely per 22 NYCRR §202.10. At the appearance, the parties must be prepared to discuss the merits of the case, early settlement, a timetable for completing discovery within 12 months, potential motion practice and provide the dates and times the parties conferred in good faith.

2. Stipulations

Parties who only file a Request for Judicial Intervention and do not request a Preliminary Conference, will receive an email from the Court with an attached stipulation that will include a discovery schedule with compliance and status conference dates and a note of issue date as per 22 NYCRR §202.12[b].

- B. Submission of Stipulations/Proposed Orders to be So Ordered:** Stipulations and/or proposed orders must be submitted to the Court as an attachment to an email and sent to sfc-part35-clerk@nycourts.gov by 5 p.m. on the date the conference is scheduled. All parties must be cc'd on the email submission to the Court. Stipulations and/or proposed orders should not be e-filed via NYSCEF. Parties may call or email (no letter attachment required) the Part Clerk with questions about stipulations/proposed order forms. Stipulations/proposed orders that are not signed by all parties will not be accepted. Failure to timely submit a stipulation or proposed order may result in the action being dismissed, or the party's pleading may be stricken.
- C. Adjournment Requests:** Parties requesting an adjournment and/or additional time to submit a stipulation/proposed order must make the request by letter to the Court. Parties wishing to e-file the request must also submit it by email. The Court must receive it at least two (2) business days prior to the scheduled conference date but no later than the date the stipulation or proposed order is due.
- D. Request for a Court Conference:** Parties who, after conferring in good faith **and** after requesting additional time to submit a proposed order, are unable to agree upon a stipulation/proposed order, may then request a conference with the Court. The request must be made by letter. Parties e-filing the letter must also submit it by email to the Part 35 Clerk. The letter must include: the discovery dispute; the dates of prior conferences and orders; the good faith efforts made in advance to resolve the dispute, including the specific dates and time the parties met virtually, in-person, or spoke over the telephone; the date the proposed order was due; and the additional time requested to resolve the dispute.
- E. Failure to Appear:** The failure to appear for a scheduled in person or virtual conference may result in the case being dismissed, or the party's pleading stricken.

- F. Settlement Conferences:** At the discretion of the Court, parties may be required to appear for an early settlement conference. Also, at any time, pre-note of issue, parties may request a settlement conference with the Court by email (a letter attachment is preferred but not required). The attorneys appearing at the conference must have settlement authority and be fully familiar with the action.

III. MOTION PRACTICE

- A. Filing Motions:** Part 35 is a mandatory e-filing part. Absent a *pro se* litigant or a showing of undue hardship, all motions must be electronically filed with the General's Clerk Office.
- B. Request for Adjournments:** Absent good cause, parties requesting to adjourn a motion must do so by letter, at least seven (7) business days before the return date. Requests to adjourn on consent must be e-filed and submitted by email.
- C. Summary Judgment Motions:** Motions for summary judgment must be filed no later than one hundred and twenty (120) days after the note of issue is filed.
- 1. Statement of Material Facts:** All parties moving for summary judgment **must** include a separate statement of material facts (22 NYCRR §202.8-g). Each sentence must be a short and concise statement of an alleged undisputed material fact **and** it must be followed by a complete citation to the evidence submitted in support. The citation must be specific and include (if applicable) page numbers, paragraph numbers, line numbers, and time stamped on recordings. Citations making references only to exhibits without naming the evidence are insufficient.
 - 2. Opposing Statement of Material Facts:** Opposing papers must include a separate statement responding to each numbered paragraph in the moving party's statement of material facts.
 - 3. Discovery During a Summary Judgment Motion:** Absent good cause, while a motion for summary judgment is pending, discovery between the parties is to continue. A party wishing to show good cause must request a conference with the Court by letter. The letter is to be submitted by email and include when the summary judgment motion was filed, the sequence number of the motion, and briefly state the reasons why discovery should be stayed.
- D. Discovery Motions:** The Court encourages parties to resolve discovery disputes without motion practice. Parties filing discovery motions must include a separate affirmation of good faith (22 NYCRR §202.7). The affirmation must include the time and dates the parties met and conferred in person, virtually, or had telephone conversations to resolve the motion issue. Email attempts or communications between the parties are insufficient to satisfy an affirmation of good faith. Discovery motions filed without a showing of good faiths efforts made or attempted to resolve the matter will be denied.

- E. Oral Arguments:** At the discretion of the Court, oral arguments will be scheduled. Parties may also indicate in the motion papers a request for oral arguments.

IV. NOTE OF ISSUE

An extension of time to file the note of issue may be requested by Plaintiff via letter, to be So Ordered by the Court. The letter shall be emailed to the Part and shall explain why additional time is needed, indicate whether any prior extensions were granted and advise as to whether the request is on consent of all parties. If necessary, the parties may be directed to file a motion. The failure to file the note of issue by a given date or to timely request an extension and/or move for additional time, may result in the action being disposed.

V. JUDICIAL SUBPOENAS

Parties seeking a judicial subpoena must include the documents for review **and** an attorney affirmation giving the reasons why a judicial subpoena is necessary. The affirmation must affirm more than the matter is scheduled for trial. The documents must be emailed as attachments to sfc-part35-clerk@nycourts.gov with only the parties in the action copied.

VI. ORDERS TO SHOW CAUSE AND SPECIAL PROCEEDINGS

- A. Order to Show Cause:** Pursuant to 22 NYCRR §202.8-d, a motion or special proceeding shall only be initiated by Order to Show Cause, where required by statute, a stay is required or where emergency interim relief is sought. Any proposed Order to Show Cause shall include a provision for the service of responsive papers, with a space reserved for the date and method of service, which will be filled in by the Court. Reply papers are not permitted except by express permission of the Court. Any reply papers submitted without the Court's express permission will not be considered.
1. If a party seeks a temporary restraint in an Order to Show Cause, they **must** comply with 22 NYCRR §202.7-f, providing proof that all parties were notified about the application and the time, date and manner that the application will be presented, or provide a reasonable explanation why such advance notice cannot be provided.
 2. All Orders to Show Cause must first be processed by the Ex Parte Motion Office. A movant should first contact the Ex Parte Motion Office to ensure that the Order to Show Cause has been processed and submitted to Chambers before inquiring with the Part Clerk about the status of the Order to Show Cause.
- B. Special Proceedings:** Oral arguments for any special proceeding, including any Article 78 or Article 75 proceedings, will be scheduled at the discretion of the Court. Parties may indicate in the motion papers a request for oral arguments.

VII. TRIALS

- A. Pre-Trial Conference:** Once a trial ready case is assigned to the Court, a pre-trial conference will be scheduled. Parties must be prepared to discuss the case fully, including their position on liability and damages, all prior decisions, any and all settlement attempts, anticipated pre-trial rulings, the number of witnesses and their purpose, whether language interpreters or special accommodations will be needed and if applicable, be prepared to submit proposed jury instructions and verdict sheets.
- B. Pre-Trial Submission:** Prior to the Pre-Trial Conference, the parties will be directed to provide the following to the Court via email correspondence to sfc-part35@nycourts.gov and sfc-part35-clerk@nycourts.gov:
- 1. Pre-Trial Memorandum:** Each party is to provide a concise (1–2 pages) pre-trial memorandum explaining each party’s position, i.e., what the Plaintiff intends to establish at trial and the Defendants’ defense(s). It should also include a brief synopsis of the facts, the legal issue to be decided, and the damages sought.
 - 2. Prior Decisions:** Copies of all prior dispositive decisions on the case, including but not limited to any appellate decisions and any preclusion decisions.
 - 3. Copies of all marked pleadings and bills of particulars**
 - 4. Witness list:** The parties are to prepare and submit a witness list that includes the name of the witnesses and a brief description of what they are expected to testify about.
 - 5. Evidence:** The parties are to prepare and submit a list of the evidence they intend to introduce at trial, including any reports, videos/photographs, contracts/leases/other agreements, medical records, etc. Next to each item of evidence, the parties are to identify how the evidence will be introduced (for example through a witness or stipulation) and why the evidence is material and necessary for the trial.
 - 6. Good Faith Settlement Attempts:** The parties are to provide a list of all the dates the parties have attempted settlement conferences in Part 40, substantive out of court discussions between the parties, and any mediation and/or arbitration sessions.