

PART IV RULES
SUPREME COURT – NEW YORK COUNTY
DEDICATED TRIAL DIVISION
HON. JUSTICE FRANK P. NERVO

Chambers

80 Centre Street, Room 329
New York, NY 10013
(646) 386-5707

Courtroom

Part IV
80 Centre Street, Room 327
(646) 386-3580
SFC-Part4-Clerk@nycourts.gov

Effective: July 26, 2022

I. General Rules - Decorum

No eating, drinking, or gum chewing in the courtroom, with the exception of water in a sealed container.

No reading newspapers or other material in the courtroom.

Those appearing before the Court are reminded of proper courtroom decorum and shall address all parties and court personnel respectfully. Do not at any time address the Court, staff, or jurors by first name, or with undue familiarity.

The use of electronic equipment in the courtroom is *prohibited*. Only counsel seated at the counsel table, with permission of the Court, may use electronic equipment. All use by others, in the absence of explicit permission by the Court, is prohibited.

Failure to abide by the Court's rules may result in expulsion from the Courtroom, sanctions, or other consequences, as provided by law and in the Court's sole discretion.

II. Court Personnel

Principal Court Attorney -- Mr. Collins
Senior Court Clerk -- Ms. Crawford
Senior Court Officer -- Officer Vobis

III. Communications with Chambers

- A. *Ex Parte* Communication.** *Ex parte* communications are strictly prohibited.
- B. Letters.** Except as provided below, communication with Chambers must be by letter, which shall not exceed two-pages in length, and shall be filed via NYSCEF with courtesy copy mailed or hand-delivered to Chambers. Copies of correspondence between counsel shall not be sent to the Court, except as an exhibit to a letter. Only complying letters will be considered.
- C. Telephone Calls.** For scheduling, calendar, and general inquiries contact the Part Clerk at (646) 386-3580 or SFC-Part4-Clerk@nycourts.gov. For urgent matters, contact Chambers at (646) 386-5707. Chambers does not hold telephone conferences, do not contact Chambers seeking a telephone conference or for discovery relief, including relief related to depositions. All requests for conference shall comply with section VI.B. of these rules, below. Motions for discovery relief shall comply with section IV.D. of these rules, below.
- D. Emails.** The Part Clerk may be emailed at SFC-Part4-Clerk@nycourts.gov. Do not email chambers, unless directed otherwise.
- E. Hand Deliveries.** For hand-delivered regular mail, same shall be left as directed by the Court Officers in the Lobby of 80 Centre Street. For hand-delivered urgent material, including material requiring immediate attention, shall be left with the Part Clerk, Ms. Crawford, in the Courtroom.
- F. Faxes.** Communication by fax is discouraged. Prior to sending a fax, contact the Part Clerk at (646) 386-3580 or SFC-Part4-Clerk@nycourts.gov.
- G. Requests for Adjournments.**
- i. Motions, Returnable in Room 130.** Adjournment requests shall comply with that Office's rules and procedures, as provided by "Motions & Special Proceedings By Notice of Motion/Petition" available on the Court's website. Inquiries regarding motions returnable in Room 130 must be directed to the Motion Support Office at (646) 386-3030.
 - ii. Motions, Returnable in Part IV.** Requests for adjournments of motions returnable in Part IV must be made in writing and filed via NYSCEF with courtesy copy mailed to chambers. This includes adjournment stipulations. The letter request for adjournment must provide: (1) the original return date, (2) any prior adjournments, (3) any future Court appearances scheduled in the matter and (4) the reason(s) underlying the adjournment request. Absent an emergency, requests to adjourn motions returnable in Part IV shall be made at least 5 days prior to the return date.
 - iii. Conferences.** Adjournments of conferences shall comply with section VI. C. of these rules, below.

- iv. **Extension of Note of Issue.** The note of issue will be extended only by motion. For further directives regarding the note of issue, see section VII of these rules below.
- v. **Extension of Deadlines & Relief from Order.** Parties seeking relief from a prior order of the Court or extension of Court-imposed deadlines, including conference orders, shall file a motion for same.
- vi. **Dates unaffected.** Parties are reminded adjournments do not affect any date in any order, absent direction otherwise by the Court.

H. Requests to So-Order. Parties' request to so-order any document shall be filed to NYSCEF with courtesy copy mailed to Chambers and must include a letter outlining the underlying reasons for the request; such letter shall comply with section III. B. of these rules and shall indicate whether such request is on consent of other parties.

I. Copies of Orders. Orders or decisions shall be obtained from the County Clerk's office, or NYSCEF if the matter is e-filed. Chambers and the Courtroom will not provide copies.

IV. Motions

A. Letter Motions. Letter motions are prohibited and will not be considered.

B. Oral Argument. The Court takes motions on submission, unless stated otherwise. Parties may request oral argument by letter, in accordance with section III. B. of these rules. Should oral argument be granted, the Court will notify the parties; the Court will not notify the parties if the request for oral argument has been denied. Failure to appear at oral argument may result in sanctions, in the Court's discretion. The Court may schedule argument *sua sponte*, in its discretion.

C. Pre-motion Conferences & Pre-motion Permission. The Court does not hold pre-motion conferences, nor does it require pre-permission to file motions.

D. Discovery Relief. Applications to resolve discovery disputes shall be made by motion, except in cases of genuine urgency, where statute requires, or where a stay has been sought, in which case the application may be brought by order to show cause in accordance with 22 NYCRR § 202.8-d. Counsel are reminded of their obligations to comply with 22 NYCRR § 202.20-f prior to filing a motion seeking discovery relief. Counsel and parties are reminded that strict adherence to discovery obligations and deadlines is required, pursuant to 22 NYCRR § 202.20-e. Applications to extend discovery deadlines shall be made as soon as practicable and returnable prior to the discovery deadline. Applications made after a discovery deadline may be denied for untimeliness, absent extraordinary circumstances and upon good cause shown, in the Court's discretion. The Court will not entertain telephone conferences for discovery disputes, including those related to depositions.

- E. Adjournments.** Requests to adjourn a motion shall comply with sections III. G. i. and ii. of these rules.
- F. Withdrawal.** Parties seeking to withdraw a motion returnable in Part IV on consent must file the signed stipulation to NYSCEF and immediately notify the Part Clerk at (646) 386-3580 or SFC-Part4-Clerk@nycourts.gov. *Failure to timely notify the Part Clerk of a motion's withdrawal may result in sanctions.* Do not notify Chambers or the Part Clerk of the withdrawal of motions returnable in Room 130.
- G. Status & Anticipated Decision Date.** The Court will not provide the anticipated decision date of a motion, parties and counsel are prohibited from so inquiring. Where a decision has not been rendered within 60-days of the return date, or date the motion was transferred to Part IV, counsel may contact the Part Clerk to inquire whether the motion has been marked submitted.

V. Appearances by Counsel

- A. Authority and Familiarity.** Counsel appearing before the Court must be familiar with the matter, fully prepared to discuss the issue(s), and authorized to resolve the issue(s) upon which their appearance is predicated. This includes appearances at Court conferences.
- B. Conferences.** Counsel are reminded of their duty, pursuant to 22 NYCRR § 202.23, to confer and consult with counsel for all parties prior to Court conferences, including outstanding discovery. In addition, counsel appearing in this Part shall provide a proposed conference order addressing outstanding issues, including discovery, where they have agreed to the resolution of same, pursuant to section VI. B. of these rules.

VI. Conferences

- A. Virtual Appearances.** Conferences are held virtually via Microsoft Teams and scheduled for a time certain. Counsel must appear promptly for conferences, the failure to timely appear may result in dismissal, an order entered on default, or other sanction, as appropriate and in the Court's discretion. *Counsel are reminded a virtual appearance is, in fact, a proceeding before the court and counsel are expected to be dressed professionally.*
- B. Requests for Conferences.** All requests for conferences shall: (1) be filed via NYSCEF with courtesy copy via mail to chambers; (2) contain a proposed order to the extent the parties have reached agreement on any issue; and (3) contain a single joint letter to Judge outlining the reason(s) underlying the request and the parties' positions on any issues where agreement cannot be reached. Preliminary conference forms are available at: https://ww2.nycourts.gov/courts/1jd/supctmanh/preliminary_conf_forms.shtml. Noncomplying requests for conferences will not be considered.

C. Adjournments of Conferences.

- i. Preliminary Conference.** The parties may adjourn a preliminary conference *once* for no more than 21-days. Parties seeking to adjourn a preliminary conference on consent must file a stipulation of adjournment to NYSCEF with courtesy copy mailed to Chambers; the stipulation must provide counsel's availability for several weeks following the requested adjourned date. Adjournments must be filed at least 5-days prior to the conference date, unless directed otherwise. Further preliminary conference adjournments will be granted only with advance approval of the Court, and must be sought by a letter in compliance with section III. B. of these rules.
- ii. Compliance and Status Conference.** All adjournments of compliance or status conferences will be granted only with prior permission of the Court and must be sought by a letter, in compliance with section III. B. of these rules, at least 5-days prior to the conference date.
- iii. Dates unaffected.** Parties are reminded adjournments do not affect any date in any order, absent direction otherwise by the Court.

VII. Note of Issue (NOI)

The deadline to file the note of issue will be set at the first conference practicable.

- A. Extension of Deadline.** Applications to extend the note of issue deadline shall be made by motion, returnable before the deadline date. In no event shall such motion be made after the note of issue deadline, absent extraordinary circumstances and for good cause shown. Absent extraordinary circumstances, the Court will not extend the note of issue deadline at subsequent Court conferences. The parties are *prohibited* from extending the note of issue deadline by stipulation, absent Court permission.
- B. Post-note Discovery.** There shall be no further discovery after the note of issue date, and the Court will not enforce post-note of issue discovery. Failure to timely file a note of issue may result in the dismissal of the action.
- C. Vacatur.** A party may seek to vacate a prematurely filed note of issue by motion within 20 days from the service of a copy of the note of issue, pursuant to 22 NYCRR § 202.21(e).

VIII. Jury Selection

- A. Supervised Jury Selection.** Where the Court supervises jury selection, the "Stuck Method" will be used, absent order otherwise, and shall be modified as necessary to ensure assemblage of a fair and impartial jury (see McKinney New York Rules of Court § 220.1; Appendix E – Procedures for Questioning, Challenging and Selecting Jurors).
- B. Unsupervised Jury Selection.** Where the Court does not supervise jury selection, it may nevertheless direct selection occur under procedures necessary to ensure assemblage of a fair and impartial jury.

- C. Non-Designation of Alternate Jurors.** Where more than six jurors are selected, they shall not be designated as regular or alternate jurors. Upon the conclusion of the Court's charge to the jury, if more than six jurors remain, the Clerk of the Part shall randomly draw the names of six jurors to serve as regular jurors.
- D. Dismissal of Alternate Jurors.** Alternate jurors, if any, shall not be dismissed upon regular jurors retiring for deliberations. Alternate jurors shall remain sequestered in a separate jury room until: being called upon to serve as a regular juror, the matter's resolution by verdict or settlement, or as otherwise dismissed by the Court.
- E. Common Issues and Objections.** The below issues and objections commonly arise during jury selection. The below list is not exhaustive, but merely outlines the most common objections and this Court's usual position with respect to same. Counsel are advised of the Court's general positions listed below, and such positions are subject to modification in the Court's discretion in appropriate circumstances.
- i.** There shall be no mention of facts, other than necessary to determine a potential juror's ability to be fair and impartial.
 - ii.** There shall be no mention of the law, other than confirming from a potential jury that they will follow the law as provided by the Court, irrespective of whether they agree with such law.
 - iii.** There shall be no mention of damages or dollar amounts sought other than in general terms, such as: a juror's acceptance of the concept of money damages for personal injuries; a juror's confirmation they will award appropriate damages where warranted and based upon the evidence; a juror's confirmation that, in the appropriate case and where warranted based upon the evidence, appropriate damages may be millions of dollars; a juror's confirmation that, in the appropriate case and where warranted based upon the evidence, appropriate damages may be less than sought by plaintiff, including zero dollars.
 - iv.** Discussion of injuries may be addressed in general terms to determine a potential juror's familiarity with such injury/surgery/procedure and the effect of same. There shall be no detailed discussion of injuries/surgeries/procedures.
 - v.** Where a trial has been bifurcated, and the same jury is anticipated to determine liability and, if reached, damages, counsel may address the issue of injuries and damages during jury selection.
- F. Timeliness of objections.** All concerns or anticipated objections shall be brought to the Court's attention as early as possible; delays may constitute waiver, as determined by the Court.

IX. Trial Procedures

- A. Pre-trial Conference.** Counsel shall contact the Part Clerk to schedule a pre-trial conference upon the matter being assigned to Part IV for trial. The Court will schedule a pre-trial conference via Microsoft Teams. Prior to appearing at the pre-trial conference, counsel shall provide the following, in a single email, to the Part Clerk at SFC-Part4-Clerk@nycourts.gov:
- i.** Marked pleadings
 - ii.** Copies of exchanged medical narratives
 - iii.** Copies of all CPLR § 3101(d) exchanges
 - iv.** List and schedule of witnesses (including the expected length of testimony as required by 22 NYCRR § 202.37)
 - v.** Proposed jury instructions and request to charge
 - vi.** Proposed verdict sheet
- B. Settlement.** Counsel shall advise the Court of settlement negotiations, including whether pre-trial settlement conferences will be productive, at their first appearance in Part IV.
- C. Proposed Verdict Sheet.** The Court will *NOT* submit general verdict questions to the jury under any circumstance and parties are prohibited from submitting proposed verdict sheets with same (*Landau v. Balbona Restaurant Corp.*, 168 AD3d 424 [1st Dept 2019]; *Davis v. Caldwell*, 54 NY2d 176 [1981]).
- D. Motions in limine.** Motions in limine shall be made at the pre-trial conference, unless directed otherwise by the Court. Motions arising during trial shall be made as soon as reasonably practicable.
- E. Exhibits.** Counsel shall pre-mark all evidence to which there is no objection in advance of trial (22 NYCRR § 202.34).
- F. Bifurcation.** The Court will determine whether the trial will be bifurcated prior to opening statements. Counsel are reminded that bifurcation is encouraged by § 202.42 of the Uniform Rules (*see also Faber v. New York City Housing Authority*, 227 AD2d 248 [1st Dept 1996]).
- G. Objections.** “Speaking objections” are prohibited in jury trials.
- H. Trial Material.** The Court does not store trial material. Any document or material left in the courtroom will be discarded at the close of the proceeding.