

Hon. John J. Kelley  
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## PART 56 RULES

### I. Motions

- a. The motion calendar will be called promptly at 9:30 A.M. Litigants not present for the calendar call are subject to default. Counsel and/or self-represented litigants shall be prepared to argue their cases.

### II. Trial Conference

- a. The Court will conference immediately before trial of every case.
- b. The attorneys who appear at the conference must be knowledgeable of the case and must have authority to enter binding stipulations.
- c. At this conference, counsel shall alert the Court of:
  - i. Any scheduling conflicts;
  - ii. The need for an interpreter; and
  - iii. Any other special needs, (note that the Court does not have audio/visual or computer equipment available);
  - iv. Necessary Court-Ordered subpoenas; and
  - v. Any evidentiary issues that ought to be addressed before trial.
- d. 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 trial.
- e. Witnesses. Counsel shall provide to the court a list of potential witnesses in order in which they intend to call them at trial, including expert witnesses. Request for a missing witness charge should be made at this time.

### III. Trial

- a. Unless otherwise directed by the Court, all attorneys must be present in court by 9:15 A.M. The morning session will run from 9:30 A.M. to approximately 12:55 P.M. Lunch will be from 1 P.M. to 2 P.M. Counsel must return to the courtroom by 2:05 P.M. The afternoon session will run from 2:15 P.M. to approximately 4:30 P.M. Because of the unique nature of the building at 71 Thomas St., no one is permitted to remain on the floor during the lunch hour. The party who is presenting his or her case must have witnesses available to testify for the morning and afternoon sessions of each day. The Court also may direct other parties to produce their witnesses out-of-turn.
- b. Marked Pleadings. Prior to the opening statements, counsel shall furnish to the Court marked pleadings and bills of particulars, pursuant to CPLR Section 4012.
- c. Exhibits. *Before opening statements*, counsel shall 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.
- d. Use of Demonstrative Exhibits in Opening: The use of exhibits that have been pre-marked into evidence may be used during any party's opening statement without advanced notice to the other side. Otherwise, at the earliest possible time, but in no case less than one day before trial, counsel shall provide their adversaries with copies of any other demonstrative exhibits that are planned to be used in opening statements. This includes still images of electronic presentations.
- e. Subpoenaed Records. It is the responsibility of the attorneys to ensure that subpoenaed records have arrived in the Subpoenaed Records Room.
- f. Counsel are encouraged to stipulate to undisputed facts and to the admissibility of clearly admissible documents and records.
- g. Depositions. A copy of depositions intended to be used at trial should be furnished to the Court immediately before the witness takes the stand. The deposition transcript should be marked as to all objections that counsel intends to make to deposition questions or answers.
- h. The Court may require representatives of insurance carriers, or other persons having an interest in any settlement, to appear in Court or to be available by telephone, as the Court deems appropriate. Failure of such person to appear pursuant to an Order, whether in writing or on the record, may be required to

show cause why they should not be held in contempt, and also may be subject to sanctions, as set forth in Part 130 and CPLR Section 3126.

- i. Proposed Jury Charges and Verdict Sheets.
  - i. The parties shall submit proposed verdict sheets and requests to charge (subject to amendment), citing the PJI sections, preferably before the commencement of trial, but not later than the start of the second day.
  - ii. All proposed jury charges and proposed verdict sheets shall be emailed to the Court (lagoldbe@nycourts.gov) in editable MS Word (.doc) format. Amendments thereto shall be permitted at the final charge conference.
  - iii. 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, counsel must submit the full text with all changes red-lined in Word format. 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. Counsel should review these modifications with the court attorney.
  - iv. Unless a marshaling of the evidence is waived, at the final charge conference, counsel should be prepared to provide the Court with the proposed facts that counsel believes are supported by the record.
- j. Trial Objections and Arguments: Speaking objections, except to the extent permitted below, are not permitted in the presence of the jury. To make a trial objection, counsel should stand and saying the word "objection," and, *only if it is possible without suggesting a response to the witness*, counsel also may briefly state the grounds for the objection. If further argument is required, counsel should ask permission to approach the bench. Exceptions to trial rulings are not necessary, nor are they permitted. Upon request, Counsel always will be given the opportunity to make a full record outside of the jury's presence. To preserve the record, counsel must make timely objections, including during opening and closing arguments.
- k. Certifying Experts: The Court does not certify witnesses as experts. Upon laying the foundation for admissibility, the witness may offer opinion testimony, subject to objections.

- l. All witnesses should be instructed that they may make no mention of insurance during their testimony, whether on direct or cross-examination.
  - m. Adverse Witnesses: If an adverse witness is called on a party's case-in-chief, such as the plaintiff calling a defense witness, then the defendant (in the example) shall elect to examine that witness either on cross-examination or recalling the witness on its case-in-chief, not both. In either case, leading question of the attorney's client, employee, or former employee shall not be permitted unless they are deemed hostile.
  - n. Cross Examination: Prior to taking the stand, witnesses should be advised that cross-examination questions calling for a yes or no answer should be answered accordingly, and the witness also may respond that he/she cannot answer the question with a yes or no.
  - o. Courtroom Acoustics. Counsel and the parties should be aware that the jury room is not soundproof. Any matters to be addressed outside of the jury's presence should be raised at the bench or in chambers.
  - p. Courtroom Comments and Demeanor: All remarks should be directed to the Court, not to opposing counsel.
  - q. For non-jury trials, the parties shall submit proposed findings of facts and conclusions of law within 10 calendar days of the close of the record, unless otherwise directed by the Court.
  - r. Counsel must retrieve their trial exhibits within seven days of the trial's conclusion. Any exhibit left with the court for more than fourteen days is subject to destruction without any further notice.
- IV. The Court reserves the right to vary these rules in the interest of justice or for good cause shown.