

HON. GERALD LEBOVITS

Part 7: IAS General Assignment and Trial Part
60 Centre Street, Room 345 New York, New York 10007
646-386-3746 (courtroom); 646-386-3074 (chambers)

Principal Court Attorney: Mark H. Shawhan; Assistant Law Clerk: Katie G. Horner
Part Clerk: Leticia Gordillo
Part Clerk email: SFC-Part7-Clerk@nycourts.gov

PART RULES

(Last updated April 27, 2023)

I. General

1. The General Rules of the Justices (Local Rules) apply unless these Rules state otherwise.
2. Oral Argument on Motions: As scheduled by the court (most frequently on Tuesdays, Wednesdays, and Thursdays). Oral arguments are typically held virtually on Microsoft Teams.
3. Conferences: As scheduled by the court. (For more details on the process of scheduling discovery conferences, see Section V.A, below.)

II. Communications with Chambers and the Part Clerk

1. For all motions pending in the Motion Submissions Part (60 Centre Street, Rm. 130), follow that Part's rules about adjournments, scheduling, and withdrawals.
2. After motions are fully submitted in the Submissions Part, they are forwarded to Part 7. The court will then decide whether oral argument is warranted. (See Section IV.A, below.) Do not contact chambers or the Part Clerk to request oral argument.
3. Questions about scheduling matters or requests for adjournments should be directed first to the Part Clerk (whether by telephone or email), rather than to chambers.
4. **Neither the Part Clerk nor chambers receives NYSCEF notifications when the parties file anything.** If you have uploaded a document that requires the attention of the court or the Part Clerk, notify the Part Clerk by email.
5. No ex parte communications. Emails to chambers must copy all parties who have appeared in the action. Calls to chambers on any matter beyond brief administrative/logistical questions should be made only with all parties on the line.
6. Counsel may, if necessary, contact chambers by email (copying all parties) to seek guidance on an issue or to request a conference. But litigation by email is disfavored.
7. Do not copy the court on letters or emails exchanged between counsel.
8. If a motion has been withdrawn or the case has been settled or otherwise discontinued, e-file a stipulation executed by all affected parties and notify the Part Clerk promptly by email.
9. Do not call the Part Clerk or chambers for a status update or to ask whether a decision has been issued. All decisions and orders are available online (via NYSCEF or SCROLL).

III. Appearances before the Court

1. Attorneys appearing before Justice Lebovits must be thoroughly familiar with the case.

2. Counsel presenting argument on a motion should make their case cogently, calmly, and courteously. Remarks should be directed to the court, not to opposing counsel.

IV. Motion Instructions

A. General

1. Part 7 is an e-filing part. Working (hard) copies in e-filed cases are neither required nor permitted. Any questions about the e-filing system should be addressed to the E-Filing Office at 646-386-3610 or at nyscef@nycourts.gov.
2. Please call or email the Part Clerk if you have uploaded a document that requires the court's attention, such as a stipulation you are requesting to be so-ordered.
3. To withdraw a motion after the motion leaves the Submissions Part, inform the Part Clerk immediately and e-file a stipulation executed by all affected parties. If the motion is in the Submissions Part, follow that Part's rules to withdraw.
4. Oral argument on motions is at the court's discretion. Motions relating to discovery and motions submitted without opposition are almost never scheduled for oral argument.
5. The motion return date is a submission date only. **No appearance is required on a motion return date unless specifically requested by the court.**
6. If any discrepancy arises between the relief sought in the notice of motion and the relief sought in the supporting papers, the notice of motion controls.
7. The first page of every motion paper (notice of motion, opposition, reply, exhibits, etc.) must reflect the applicable motion sequence number.
8. Counsel should not submit all papers on a motion in a single .pdf file under a single document number. Each e-filed document must have its own, respective document number (e.g., Doc # 15, Notice of Motion; Doc #16, Memorandum of Law; Doc #17, Attorney Affirmation; Doc #18, Affidavit of Facts; Doc #19, Exhibit A, Bill of Particulars; and Doc #20, Exhibit B, Photographs). If the motion is supported by a memorandum of law, the memorandum should precede the attorney affirmation and attached exhibits.
9. Each exhibit must be numbered. References to exhibits must identify the exhibit's NYSCEF docket number and the exact page being cited within the exhibit. All e-filed exhibits must be described in the exhibit's docket entry (e.g., Exhibit A, Bill of Particulars; Exhibit B, Photographs) to allow the court to ascertain what document is filed in the exhibit.
10. Once motions are fully submitted, parties may not file further submissions without leave of court (to be requested by email to chambers with copies to all parties). Post-submission filings are strongly discouraged.

B. Orders to Show Cause

1. Proposed OSCs should be e-filed in all cases in which e-filing is permitted. Any questions about e-filing of OSCs should be directed to the Ex Parte Office at 646-386-3125.
2. After proposed OSCs have been filed, they are reviewed for form by the Ex Parte Office before they are provided to the Part. Absent exigent circumstances, the court will not sign or otherwise act on an OSC prior to receiving it from the Ex Parte Office following that office's review for form.

3. Any party seeking interim relief within an OSC must provide advance notice to the adversary or explain why advance notice was not provided, as required by 22 NYCRR 202.7 (f).
4. Typically, upon receiving an OSC with a request for interim relief, the court will seek expedited letter briefing from the parties on why interim relief should be granted or should be denied. If it appears from that letter briefing that a telephonic or teams conference with the court is warranted on the request for interim relief, chambers will contact the parties by email to schedule a conference, and, following the conference, will resolve the request for interim relief accordingly.
5. Notwithstanding OSCs' typical language about requiring the nonmoving party to show cause at a particular time and place why the requested relief should not be granted, **no appearance—personal or virtual—is required or permitted on the submission date of an OSC unless an appearance is specifically requested by the court.**
6. Adjournment of OSCs is discouraged.

C. Motions to Renew/Reargue

Motions to renew or reargue must contain a copy of the court's original decision and, in non-e-filed cases, the papers submitted on the original motion. In e-filed cases, renewal/reargument motions need not attach the papers submitted on the original motion. No oral argument on these motions will be entertained.

D. Disclosure Motions

Disclosure motions are discouraged. If a disclosure dispute arises, a party may, instead of filing a motion, request an expedited conference by calling or emailing the Part Clerk or chambers. Conferences requested on an expedited basis will be granted only at the court's discretion. Expedited conferences, when held, will be conducted by telephone.

E. Summary-Judgment Motions

Summary-judgment motions must be made no later than 60 days after filing the note of issue unless the court has set a different deadline by order or has granted a request to extend the original 60-day deadline. Counsel's affirmation in support must include the note of issue filing date. If the court has set a motion deadline longer than 60 days after the note of issue, or granted an extension of a 60-day deadline, counsel's affirmation in support must include the governing motion deadline and state when the court set a longer deadline or granted an extension.

Disclosure must continue while a CPLR 3212 or CPLR 3213 motion is pending, unless the court specifically directs otherwise.

F. Note of Issue

If the parties agree before a scheduled status conference that disclosure is complete, the plaintiff should file the note of issue and notify the Part Clerk by telephone or email. The Part Clerk will then remove the conference from the calendar.

V. Conferences

A. General

1. This Part's practice is to ask parties, to the extent possible, to agree upon the terms of the conference order in advance of the scheduled conference date so that no conference need be held. The court will conduct conferences only in the event of a disagreement or other discovery-related issue that the parties need the court's assistance in resolving. Discovery conferences, when they occur, will be conducted by telephone.
2. Approximately 7-10 days in advance of the scheduled conference date, the Part Clerk will send the parties a blank conference-order form and instructions. The order form and instructions will be emailed to those counsel who have filed appearances on NYSCEF. **Counsel are reminded to keep current their NYSCEF appearances and email addresses.**
3. Upon receiving the order form/instructions, the parties should confer with each other; to the extent possible, agree on the terms of a proposed conference order; and email the joint proposed order back to the Part Clerk for the court's review no later than three days prior to the scheduled conference date.
4. If the parties believe that an adjournment of the conference is needed, the parties may request an adjournment by email to the Part Clerk. Adjournment-related emails to the Part Clerk should specify the basis for the adjournment (*e.g.*, no conference instructions were received; a party is having difficulty contacting opposing counsel; the parties need more time to confer on the terms of the order; a discovery motion is pending; etc).
5. If the parties believe that a conference with the court is required, they should notify the court by email to the Part Clerk. That email should identify and briefly describe the nature of the disagreement or other issue that the parties believe warrants a conference. Upon reviewing that email, the court will decide whether a telephonic conference is required or whether the disagreement can be resolved by email alone. If the court concludes that a telephonic conference is needed, the court will consult with counsel about a suitable day and time to hold that conference.
6. No appearance (virtual or otherwise) is required unless and until the Part Clerk or chambers notifies the parties that they are to appear for a conference at a specific date and time. If the conference date appearing on eCourts is approaching and the parties believe they have not received a conference-order form/instructions, they should email the Part Clerk to request guidance—*after* double-checking that no email was received by the attorney(s) with appearances entered on NYSCEF in the case.

B. Conference Orders

1. Conference orders may be filled out electronically, or completed by hand and then scanned. If hand-writing the order, please write legibly. Indicate the names and firms/offices of all counsel involved in preparing the conference order.
2. In a Preliminary Conference form, all items must be completed or marked "n/a" if not applicable.
3. Use firm cut-off dates, such as "on or before December 31, 2023." Do not use "within 45 days." Counsel will be held to the dates to which they commit.

4. The order as submitted to the court should include a proposed date for the next conference and, if necessary, a proposed extension of the note-of-issue deadline.
5. This Part requires compliance with court-ordered deadlines set forth in the preliminary/compliance/status conference order(s). Failure to adhere to deadlines or to comply with orders may result in penalties.

VI. Trials

Part 7 ordinarily does not play a role in setting an action's trial date beyond adjudicating motions for a trial preference. Trial dates are instead set by Part 40. Questions about when a matter will be sent out for trial should be directed to SFC-Part40-Clerk@nycourts.gov, rather than to the Part 7 Part Clerk or chambers.

A. General Trial Procedure

1. Upon the first appearance before this court, the parties must furnish a list of proposed witnesses, including the need for any interpreters, with the required language and dialect; an estimate of required trial days; all marked pleadings and bills of particulars; all decisions in the case, including any appellate decisions; any notices to admit; copies of those portions of EBTs intended for use at trial for any purpose; a trial memorandum not to exceed five pages briefly setting forth the party's position and the relevant factual and legal issues to be tried, citing relevant case law; and two business cards for each attorney.
2. Before the start of trial, the parties must furnish all in-limine or other motions and applications. All motions in limine must be presented in writing to the court as soon as practicable or as specifically scheduled at any pretrial conference, with a copy to all parties. Any motion or application must include citations to relevant authority.
3. Parties are strongly encouraged to have the court stenographer premark all exhibits for identification or evidence if without objection.
4. It is the duty of counsel, not court personnel, to ensure all subpoenaed documents have arrived in the subpoenaed records room at 60 Centre Street.
5. Trial dates scheduled by the court are firm and may be adjourned only upon application based upon an emergency. Trials are held every day except Wednesday. No adjournments will be granted if a witness is unavailable to testify unless the court concludes, in rare instances, that good cause exists.

B. Jury Trials

1. Proposed jury charges and verdict sheets must be submitted simultaneously in Word to Mr. Shawhan at mhshawha@nycourts.gov and to opposing counsel. Parties are strongly encouraged to submit proposed jury charges and verdict sheets well in advance of the end of trial.
2. If the proposed jury instructions are taken verbatim from the Pattern Jury Instructions, PJI section numbers suffice. If a PJI instruction is not verbatim or requires characterizing or describing the evidence or the parties' contentions, or if the language is not based on the PJI, the exact requested language, together with the authority for it, must be submitted. **To avoid**

confusion or miscommunication among the court and counsel, the parties should work from the most recent PJI edition available when proposing jury instructions.