

**HON. GERALD LEBOVITS**

Part 7: IAS General Assignment and Trial Part  
60 Centre Street — Room 345  
New York, New York 10007

Court Attorney: Mark H. Shawhan, Esq.  
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**During remote operations, call or email Mr. Shawhan**

Courtroom Phone: 646-386-3746 (Warren J. Rubio, Part Clerk)  
**(Do not call during remote operations.)**

**PART RULES**

(Effective March 5, 2020; **different rules apply during remote operations**)

**I. General**

1. All the General Rules of the Justices (Local Rules) apply unless these Rules state otherwise.
2. Oral Argument on Motions: Wednesdays from 11:00 A.M. to 1:00 P.M. and 2:15 P.M. to 4:30 P.M.
3. Conferences: Wednesdays from 10:00 A.M. to 1:00 P.M.; some conferences held on Wednesday beginning at 2:15 P.M. if necessary to accommodate parties' scheduling needs.

**II. Communications with Chambers and the Part Clerk**

1. For all motions pending in the 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 Justice Lebovits's Part. If oral argument is requested, the request must be indicated on the notice of motion. Do not contact chambers or the Part Clerk to request oral argument.
3. Do not call or email chambers about scheduling matters or requests for adjournments. Contact only the Part Clerk.
4. Neither the Part Clerk nor chambers receives NYSCEF notifications from filings made by the parties. If you have uploaded a document that requires the attention of the court or the Part Clerk, notify the Part Clerk by telephone.
5. Requests for adjournment should be made in advance. To make your request for an adjournment, call the Part Clerk (not chambers), by conference call with all counsel on the line, at least two days before the scheduled appearance. All adjournment requests must provide a reason for the request. If approved, you will receive a new date and further instructions, such as submitting a stipulation.
6. Except for emergencies, adjournments for Wednesday motions will not be given if the application is made less than 48 hours before the scheduled appearances. Otherwise, you may be defaulted for non-appearance.
7. No ex parte communications. Do not call or email chambers unless specifically instructed to do so.

8. Do not copy the court on letters exchanged between counsel.
9. Do not write letters or emails to the court unless you seek to withdraw a motion in whole or in part; wish to advise the court that a case has settled; or were granted leave to do so at oral argument.
10. 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 telephone.
11. 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 scanned and available on the internet (NYSCEF or SCROLL).

### **III. Appearances before the Court**

1. Attorneys appearing before Justice Lebovits must be thoroughly familiar with the case.
2. Courtroom comments and demeanor: Present your arguments 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. Any questions about the e-filing system should be addressed to the E-Filing Office at 646-386-3610 or at [newyorkef@nycourts.gov](mailto:newyorkef@nycourts.gov). Please call the Part Clerk if you have uploaded a document that requires the court's attention, such as a stipulation that you are requesting to be so-ordered.
2. Oral argument on motions are at the court's discretion. Motions with opposition will be scheduled for oral argument for an available Wednesday.
3. Motions submitted without opposition are almost never scheduled for oral argument.
4. 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.
5. Motion Sequence Number: The first page of every motion paper (notice of motion, opposition, reply, exhibits, etc.) must reflect the respective motion sequence number in the upper-right corner.
6. Counsel should not submit a single .pdf file under a single document number for papers submitted on a motion. 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; Doc #19, Exhibit A; and Doc #20, Exhibit B). For the convenience of chambers, if the motion is supported by a memorandum of law, the memorandum should precede the attorney affirmation and attached exhibits.
7. Exhibits: Each exhibit must be numbered. References to exhibits must identify the exact page being cited within the exhibit. In electronically filed cases, references to exhibits must also give the exhibit's NYSCEF docket number. All exhibits electronically submitted must be described in the heading of the attached exhibit (*e.g.*, Exhibit A, Bill of Particulars; Exhibit B, Photographs) to allow the court to ascertain what document is filed in the exhibit.
8. Once motions are fully submitted, the court will not allow any further submissions. Letters to the court after oral argument or full submission about a pending, fully submitted motion will be rejected.

9. 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.

#### **B. Orders to Show Cause**

1. Any questions about how to e-file proposed OSCs should be directed to the Ex Parte Office at 646-386-3125.
2. Any party seeking immediate injunctive relief within an OSC must appear with the affected adversary or prove that the adversary was notified but declined to appear when the application is presented for signature.
3. OSCs are returnable in the Part. Responsive papers to OSCs must be delivered to the courtroom at least twelve days before the return date unless the court indicates otherwise.
4. Absent an emergency, OSCs may not be adjourned.

#### **C. Motions to Renew/Reargue**

All motions to renew or reargue must contain the papers submitted on the original motion and a copy of the court's original decision. No oral argument on these motions will be entertained.

#### **D. Disclosure Motions**

Disclosure motions are strongly discouraged. If a disclosure dispute arises, a party may, instead of filing a motion, request an expedited conference by calling the Part Clerk. Conferences requested on an expedited basis will be granted only at the court's discretion.

#### **E. Summary-Judgment Motions**

Summary-judgment motions must be made no later than 60 days after filing the note of issue. Counsel's affirmation in support must include the note of issue filing date. Disclosure must continue while a CPLR 3212 motion is pending, unless the court specifically directs otherwise.

#### **F. Note of Issue**

If the parties agree prior to a scheduled status conference that disclosure is complete, the plaintiff should file the note of issue and notify the Part Clerk by telephone, whereupon the Part Clerk will remove the conference from the calendar.

## **V. Conferences**

### **A. General**

1. Counsel attending the conference are expected to be familiar with the case, to be prepared to discuss all disclosure issues, and to have authority to discuss and stipulate to resolve disclosure issues.
2. At each compliance conference, counsel must bring a list of all disclosure already ordered but not yet completed as well as new disclosure requested that could not have been addressed earlier. Failure to address all outstanding disclosure existing at the time of the compliance conference may be deemed a waiver of the right to obtain that disclosure.
3. Bring prior conference orders and stipulations to conferences.
4. Counsel are assumed to have consulted clients, examining doctors, etc., regarding their availability for EBTs, IMEs, etc.
5. Upon a party's second failure to appear for a conference, the case may be dismissed or the party's pleading stricken. A motion to vacate a default must fulfill the requirements of CPLR 5015.

### **B. Conference Orders**

1. Please write legibly. The conference order forms are two-sided, so counsel should fill out the form using a ballpoint or fine-point pen. Names, addresses, and telephone numbers of all counsel appearing at the conference must be indicated.
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, 2015." Do not use "within 45 days," etc. Counsel will be held to the dates to which they commit.
4. Do not leave the courtroom until the Court Attorney has reviewed your completed order form. Counsel are free to photograph a stipulation or order on their cell phone. All orders also will be scanned and available on NYSCEF and/or SCROLL. You need not wait in the courtroom for a signed copy of the order.
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**

### **A. General**

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 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 instructions: If the proposed 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 in Word to Mr. Shawhan at mhshawha@nycourts.gov and to opposing counsel simultaneously.
2. Proposed jury charges and verdict sheets must be submitted simultaneously in Word to Mr. Shawhan at mhshawha@nycourts.gov and to opposing counsel.