



**INDIVIDUAL PART RULES
HONORABLE ADAM W. SILVERMAN**

Acting Justice of the Supreme Court
Third Judicial District

Law Clerk

David Fronk, Esq.

Secretary

Caryn A. O'Hara

Chambers Email

silvermanchambers@nycourts.gov

Chambers Telephone

(518) 704-2929

Chambers Physical Address

Rensselaer County Courthouse
80 Second Street
Troy, NY 12180

Those appearing in New York State Supreme Court must be familiar with, and obey, the Uniform Civil Rules for the Supreme Court ("Uniform Rules") [*see* 22 NYCRR Part 202, accessible at <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#01>].

These "Individual Rules" or "Local Rules" highlight, and in limited circumstances build upon, the Uniform Rules.

I. COMMUNICATION WITH THE COURT

All telecommunication with Chambers must be by means of joint telephone calls, as described in Rule II.b., *infra*. Correspondence with the Court (whether by letter, email, or otherwise), filing correspondence between parties on New York State Courts E-Filing system (NYSCEF), and copying the Court on correspondence with others, is strictly forbidden, except as specifically authorized by these rules or expressly requested by the Court. Even if the Court emails an order, opinion, or other communication to the parties, the parties may not respond by email unless directed by the Court.

- a. **Requests for adjournment of conferences shall be made at least two business days in advance of the scheduled conference. Such request shall be sent by email on counsel's letterhead to the Court with a block, including a space for a date, to be So Order. The request must note if opposing counsel has consented to the request and, if not, why the adjournment is required. Counsel must also provide three alternative dates that both parties are available. The Court holds Rensselaer County conferences on Tuesdays and Greene County conferences on Thursdays.**

b. E-Mail Communication

- i. Where specifically authorized by these rules or expressly requested by the Court, e-mail communication shall be sent to silvermanchambers@nycourts.gov as .pdf attachments with copies simultaneously delivered to all counsel. Proposed orders must be submitted as Microsoft Word documents.
- ii. Emails shall state clearly in the subject line the full caption of the case, including the party names and index number and the beginning of the email communication must clearly state the contents and purpose of the email.
- iii. Copies of correspondence between counsel shall not be sent to the Court.

c. Telephonic Communication

- i. No *ex parte* communication with Chambers is permitted, even on consent of opposing counsel, except for when counsel for a party has not yet entered a notice of appearance.
- ii. Counsel for all affected parties must be on the line whenever a telephone call to Chambers is placed; however, all similarly situated parties may, if they wish, designate a “lead” counsel in advance to represent them on any such call. The Judge and/or his clerk is normally available to receive telephone calls between 9:30 a.m. - 1:00 p.m. and 2:00 p.m. - 5:00 p.m. If calling within these hours, counsel need not schedule a telephone call to Chambers in advance.
- iii. Please first provide the index number of the case when a Chambers staff member answers the telephone. Any message left on the Chambers voicemail or with Chambers staff must include the index number of the case and the names and telephone numbers of all participating counsel.
- iv. If counsel for any party seeks to convene a call to Chambers, counsel for all other affected parties are expected to make themselves available for such a call within 24 hours of the request. If, after successive attempts, counsel for any affected party is unavailable for the call, the initiating party may then send Chambers and all affected counsel an email or a letter, not to exceed two double-spaced pages, describing the efforts made to convene a conference call and briefly describing the basis for the requested call. In such a case, per Rule II, *supra*, no reply or other correspondence is permitted, but a conference with the Court will be promptly arranged.

- v. Notwithstanding these rules applicable to parties represented by counsel, if one of the parties is an incarcerated person proceeding *pro se*, the initiating party may send all affected counsel, the *pro se* party, and Chambers a letter describing the basis for the requested call.

II. APPEARANCES

- a. Within ten (10) days of written notification of this Court's assignment to a case, or written notification of a Preliminary Conference, whichever shall first occur, each attorney shall file a record of appearance with chambers.
 - i. The record of appearance shall include the attorney's name, firm affiliation, e-mail address, mailing address, telephone number, and the party represented.
 - ii. The record of appearance shall also contain a written acknowledgment that counsel is familiar with these Part Rules.
- b. Pursuant to Section 130-2.1 of the Rules of the Chief Administrator of the Courts (22 NYCRR 130-2.1), the Court may impose financial sanctions and award costs and reasonable attorney's fees against any attorney who, without good cause, fails to appear at a time and place scheduled for an appearance in any action or proceeding.
- c. Pursuant to Section 202.27 of the Uniform Civil Rules for the Supreme Court (22 NYCRR 202.27), upon the default of any party in appearing at a scheduled call of a calendar or at any conference, the Court may grant judgment by default against the non-appearing party.
- d. Only an attorney thoroughly familiar with the action or proceeding and authorized to act on behalf of a party shall appear at scheduled appearances and conferences before the Court (*see* 22 NYCRR 202.1 [f]).

III. PRELIMINARY CONFERENCES

Preliminary Conferences are scheduled pursuant to 22 NYCRR 202.12 (a) and, for matrimonial cases, pursuant to 22 NYCRR 202.16 (f).

- a. A party may request a preliminary conference any time after issue has been joined. In any event, the Court will schedule a preliminary conference within forty-five (45) days after an RJI has been filed on a matter.
- b. A form stipulation and order shall be provided to the parties which shall establish a timetable for discovery within parameters set forth by the Court

after determination as to whether a matter should be designated a “standard” or a “complex” case.

- c. If all parties sign the stipulation and return it to chambers no later than three business days prior to the scheduled conference, and each party provides the Court with a summary of the case (including the facts and legal contentions), such form will likely be “so ordered” by the Court and, unless a matrimonial action or the Court orders otherwise, the conference will be cancelled by notice from the Court.

IV. MOTIONS

Oral argument may be requested by a written communication to the Court setting forth the reason(s) why oral argument is necessary. If the Court, in its discretion, allows such argument, all parties or their counsel will be so notified by the Court.

- a. Orders to Show Cause - Motions shall be brought on by order to show cause only when there is genuine urgency, a stay is required or a statute mandates so proceeding. Absent advance permission of the court, reply papers shall not be submitted on orders to show cause (*see* 22 NYCRR 202.8-d).
- b. Discovery
 - i. Counsel must consult with one another in a good faith effort to resolve all disclosure disputes (*see* Uniform Rule 202.7 [22 NYCRR 202.7]).
 - ii. Prior to making a discovery-related motion, counsel shall pursue a conference call with the Court pursuant to Rule I.b., *Supra*. This procedure does not preclude the moving party from making such motion, but provides the Court with an opportunity to resolve the dispute giving rise to the motion without the need for a formal written application.
 - iii. If a conference with the Court cannot resolve an issue and motion papers are necessary, counsel for the moving party, following the scheduling of the motion, shall file a short Notice of Motion setting forth a one-sentence description of the motion, the schedule for service and filing of the various parties’ papers, and the date and time of oral argument as may be set by the Court.
- c. Motion Format
 - i. Motion papers shall consist of moving papers, answering papers, and the moving party’s reply papers.

- ii. Any legal memoranda must include a table of authorities, arranged alphabetically, with case citations including accurate pin or jump citations (*see* 22 NYCRR 202.5 [a] [2]).
- iii. Unless otherwise specified by the Court, any memorandum of law submitted with the moving papers or the answering papers on any motion is limited to 25 double-spaced pages, and any reply memorandum is limited to 10 double-spaced pages. Both the text and footnotes in such memoranda of law must be in 12 point type on 8½ by 11 inch paper (or the electronic equivalent), with Times New Roman type preferred. Each electronically-submitted memorandum of law, affidavit and affirmation, exceeding 4500 words, shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document (*see* 22 NYCRR 202.8-a, 202.8-b).
- iv. If the Court permits letter briefing in lieu of formal memoranda, the rule on font size for text and footnotes still applies.
- v. All documents filed on NYSCEF must be word-searchable to the extent reasonably practicable (*see* "Formatting Specifications And Guidelines For Electronically Filed Documents" accessible at <https://nycourts.gov/COURTS/AD1/E-Filing/TechnicalRequirementsEfiling.pdf>).
- vi. Sur-replies will not be considered unless the Court otherwise directs. If new issues are raised in the reply or if there has been a change in the law while the motion is pending, counsel are to advise chambers in writing of the request to submit additional affidavits or memoranda (*see* 22 NYCRR 202.8-c).
- vii. Other papers, including letters which are sent after the submission of the motion, will not be considered.

d. Summary Judgment

- i. All motions for summary judgment must be made within sixty (60) days of the filing of the Note of Issue unless otherwise ordered by the Court (the 'motion period') or the motion will not be entertained. The motion should be made returnable no later than thirty (30) days from the date of filing.
- ii. Counsel may seek an extension of the motion period through the submission of a letter to the Court with a copy to opposing counsel setting forth good cause why additional time is needed. The Court will then determine whether an extension of the motion period is warranted.

iii. Statements of Material Facts (*see* 22 NYCRR 202.8-g)

1. Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.
2. In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.
3. Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.
4. Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

e. Adjournments

- i. On Consent - The Court is to be advised by letter that a motion is adjourned on consent. A copy of the letter is to be sent to all parties and transmitted to the Court *via* email on non-NYSCEF cases and *via* NYSCEF on cases subject to electronic filing.
 1. No more than two (2) adjournments for an aggregate period of sixty (60) days will be granted without prior permission of the Court. In no event may the parties consent to an adjournment where the return date will be less than 90 days before trial.
- ii. Opposed - Absent agreement by the parties, a request by any party for an adjournment shall be submitted in writing *via* email in non-NYSCEF cases and *via* NYSCEF in cases subject to electronic filing.
 1. Such request shall be made upon notice to the other party and the Court on or before the return date.

2. The Court will notify the requesting party whether the adjournment has been granted *via* email in non-NYSCEF cases and *via* Court Notice on NYSCEF in cases subject to electronic filing.

V. ELECTRONIC FILING (E-Filing)

All parties should familiarize themselves with the statewide E-Filing Rules (Uniform Rule §§ 202.5-b and 202.5-bb – available at www.nycourts.gov/efile). General questions about e-filing should be addressed to the E-Filing Resource Center at 646-386-3033 or efile@nycourts.gov.

All Supreme Court actions or proceedings subject to either voluntary or mandatory E-Filing are to be filed through the NYSCEF.

All submissions to the Court, including proposed orders, proposed judgments, and letters, must be electronically filed. Proposed orders should be simultaneously emailed as a Word documents to silvermanchambers@nycourts.gov.

a. Working Copies¹

- i. Working copies for all motion papers and letters to the Court other than motion adjournment requests are required (*see* Uniform Rule § 202.5-b [d] [4] [22 NYCRR 202.5-b]).
- ii. Working copies shall be delivered to Chambers no later than 5:00 p.m. on the third business day following the electronic filing of the document on the NYSCEF site.
- iii. All working copies submitted must include a copy of the NYSCEF Confirmation Notice firmly fastened as the front cover page of the submission (*see* 22 NYCRR 202.5-b [d] [5]). Working copies without the Confirmation Notice will not be accepted.

b. Hard Copy Submissions

- i. Hard copy submissions in e-filed cases will only be accepted if they bear the Notice of Hard Copy Submission–E-Filed Case required by Uniform Rule § 202.5-b (d) (1) (*see* 22 NYCRR 202.5-b [d] [1]). The form is available at www.nycourts.gov/efile.

¹ In light of the ongoing COVID-19 pandemic, until further notice, counsel are relieved of the requirement to file working copies with the Court.

VI. TRIALS

a. Trial Notebooks

- i. *No later than five (5) business days prior to the scheduled trial date*, counsel shall each provide to the other (one copy) and submit to the Court (two copies) a trial notebook which shall consist of:
 1. Marked pleadings in accordance with CPLR 4012.
 2. A statement of relevant facts listing separately those that are, and are not, in dispute.
 3. Pre-trial memorandum addressing any known or anticipated disputed legal issues that must be determined by the Court.
 4. A list of all potential witnesses for each party.
 5. A list of all exhibits to be offered into evidence at trial by each party with a brief description of each exhibit. Medical records do not need to be annexed to the trial notebook.
 6. Preliminary requests to charge.
 - a. The charges will be drawn from the Pattern Jury Instructions (PJI).
 - b. A complete list of requested charges is to be submitted simultaneously with service on all adversaries.
 - c. Unless counsel seeks a deviation from the pattern charge, or additions to the pattern charge, only the PJI numbers need be submitted.
 - d. When deviations or additions are requested, the full text of such deviations or additions must be submitted in writing, together with any supporting authority.
 - e. An electronic version of PJI variations must be submitted either on CD-ROM, flash drive, or via e-mail in either Microsoft Word format. E-mails are to be directed to silvermanchambers@nycourts.gov.
 - f. A charge conference will be held between the Court and the parties in order to finalize any of the proposed jury charges. Said conference will be held at an appropriate time during the course of the trial.

7. Verdict Sheet

- a. In jury trials, a proposed joint verdict sheet is to be typed in final form for presentation to the jury.
 - b. An electronic version of the verdict sheet(s) must be submitted either on CD-ROM, flash drive, or via e-mail in either Microsoft Word format. E-mails are to be directed to silvermanchambers@nycourts.gov.
 - c. If agreement cannot be reached on a joint submission, then each side shall present a proposed verdict sheet, along with a written explanation as to why agreement on the verdict sheet was not reached.
- ii. The Court may, in its discretion and for good cause shown, relieve counsel from all or part of the trial notebook requirements upon a showing that the issues to be tried are sufficiently narrow that the trial notebook is not necessary or that the interest of justice otherwise justifies such relief. Such a request will be entertained only at the pre-trial conference.
 - iii. The failure to submit a trial notebook within the time deadlines previously noted may result in the Court's disregard of the non-compliant party's requests to charge and verdict sheet, monetary sanctions, or dismissal/default judgment.

b. Evidentiary Objections

- i. Not later than three (3) business days prior to the scheduled trial date each counsel shall provide to the other and submit to the Court a statement setting forth the factual basis and authority for any objection to the introduction into evidence of the exhibits identified in the list provided by opposing counsel.
- ii. The failure to submit such a statement of objections on a timely basis may be deemed to be consent to the admission of all or one of the exhibits included in the trial notebook submitted by the opposing party.

c. Witnesses

- i. A witness not identified in the witness list provided to opposing counsel either in discovery or in the trial notebook, other than an impeachment or

rebuttal witness, may not be permitted to testify unless an adequate explanation is provided for the failure to identify such witness prior to trial.

- ii. Parties, fact witnesses and expert witnesses should be advised of the scheduled dates at the time the dates are set.
- iii. Absent unanticipated, exigent circumstances, last minute claims of unavailability will not be accommodated where the trial dates have been previously set.
- iv. All witnesses should be on one-hour phone call notice so that their waiting time in court is minimized.
- v. Professional witnesses, such as doctors, nurses and social workers, and witnesses who are public employees, such as teachers, counselors and police officers, will be permitted to testify out of order to accommodate their employment schedules.
- vi. School teachers should be scheduled after 3:00 p.m. so that it is not necessary for their employers to provide substitutes.

d. Exchange of Expert Reports

Not later than sixty (60) days prior to the scheduled trial date, counsel shall each provide to opposing counsel a copy of any report by an expert whom counsel expects to call at trial.

e. Exhibits

- i. Any exhibit not identified in the exhibit list provided to opposing counsel, other than an exhibit offered for the purpose of impeachment or rebuttal, may not be admitted into evidence unless an adequate explanation is provided for the failure to identify such exhibit prior to trial.
- ii. Exhibits marked into evidence at trial will not be returned until the final conclusion of the matter.
- iii. Exhibits marked for identification will be retained by the offering attorney during trial, unless taken into evidence.

f. Settlement

- i. The Court is available for a settlement conference at any time prior to the scheduled trial date.

- ii. If the matter is not settled prior to the scheduled trial date, the trial will commence as scheduled. *Settlement negotiations may not be entertained by the Court on the scheduled trial date prior to commencement of the trial.*
- iii. If the matter is settled outside the presence of the Court, counsel shall advise Chambers immediately.
- iv. Proceedings requiring the presence of the jury will not be delayed by settlement discussions once the jury panel has been drawn by the jury commissioner.

g. Motions in Limine

- i. All motions *in limine* must be filed and served upon all counsel not later than ten (10) business days prior to the scheduled date of the trial or hearing, except as to issues that cannot be reasonably anticipated prior to trial.
- ii. Unless otherwise directed by the Court, motions *in limine* and opposition papers to such motions shall not exceed ten (10) pages in length.
- iii. Failure to submit the motions *in limine* within the requisite time frame will result in the motion not being considered.

h. Identification of Trial Counsel

Whenever a matter is to be tried by an attorney other than the attorney-of-record, trial counsel shall be identified in a writing, filed with the Court on notice to all parties, no later than fifteen (15) days from the date of the Pre-trial Conference (*see* Uniform Rule 202.31 [22 NYCRR 202.31]). The court may waive this rule only in instances where the attorney of record is unexpectedly engaged in an unrelated trial and the late retention of trial counsel permits the trial before the Court to proceed without adjournment.

i. Pre-Voir Dire Conference

Immediately prior to jury selection, the Court may conduct a conference (*see* Uniform Rule 202.33 (b) [22 NYCRR 202.33 (b)]) in order to set time limits on jury selection, to hear and determine arguments concerning the number of peremptory challenges, to discuss trial stipulations, to hear and determine last minute arguments on motions in limine, to discuss scheduling, and to address any other appropriate trial-related issue.

j. Jury Selection

- i. Juries shall be selected by the parties outside the presence of the Court in accordance with “White’s Method” found in Appendix “E” of the Uniform Rules for the New York Trial Courts.
- ii. The Court will impose time limits for jury selection as authorized by Uniform Rule 202.33 (d) (22 NYCRR 202.33 [d]). Such time limits will vary based upon the nature and complexity of the particular matter.
- iii. The Court will be available to resolve disputes that arise during jury selection, including but not limited to disputes involving challenges for cause as contemplated by CPLR 4108.
- iv. Peremptory challenges will ordinarily be pooled between multiple plaintiffs on the one hand and between multiple defendants on the other, and generally, each side shall be entitled to three (3) peremptory challenges for regular jurors per panel and one (1) peremptory challenge for each alternate juror per panel. However, pursuant to CPLR 4109, the number of peremptory challenges maybe adjusted by the Court in certain matters in the discretion of the Court and in the interests of justice. The jury selection process will not be delayed by settlement negotiations once the jury panel is seated.

k. Post-Trial Briefs (Non-Jury)

Unless the directed otherwise, the parties may obtain and provide to the Court, at the party’s expense, on or before the date set by the Court at the conclusion of the trial, a copy of the trial transcript and each party shall submit a post-trial brief with respect to the issues raised during the trial, setting forth specific references to the relevant portions of the transcript and the documents in evidence and citing the applicable law.

Along with the submission of the post-trial briefs, counsel shall also present the Court with proposed findings of fact and conclusions of law (*see* CPLR 4213 [a]).

VII. SETTLED AND DISCONTINUED CASES

- a. Counsel must immediately notify the Court by email, and where appropriate, by e-filing of the settlement or withdrawal of any action or proceeding upon such settlement or withdrawal (*see* 22 NYCRR 202.28).
- b. A copy of the signed Stipulation of Discontinuance which has (or will be) submitted to the County Clerk shall be submitted to the Court so that the matter may be marked disposed.