

# COURT NOTICES

## AMENDMENT OF RULE Uniform Rules of the Court of Claims

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, sections 206.1, 206.3, 206.4, 206.5, 206.5-a, 206.5-aa, 206.5-b, 206.6, 206.9, 206.10, 206.11, 206.12, 206.12-a, 206.14, 206.15, 206.21, 206.23, and 206.24 of the Uniform Rules of the Court of Claims, to read as follows:

Section 206.1 Application of Part; waiver; special rules; definitions.

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(d) Definitions.

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(2) “Clerk.” References to the clerk in the Court of Claims Act and in these rules are to the Chief Clerk of the Court in Albany, whose mailing address is:

New York State Court of Claims  
P.O. Box 7344, Capitol Station  
Albany, [NY] *New York* 12224

and whose filing office is located at:

Robert Abrams Building for Law and Justice, 7th Floor  
Governor Nelson A. Rockefeller Empire State Plaza  
Albany, [NY] *New York* 12223

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Section 206.3 Individual assignment system; structure.

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(c) Exceptions.

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(3) The Chief Administrator may authorize the establishment of special categories of actions, including but not limited to public construction contract actions, prisoner pro se actions, medical malpractice actions, [appropriate] *appropriation* actions and actions requiring protracted consideration, for assignment to judges specially assigned to hear such actions. Where more than one judge is specially assigned to hear a particular category of action or proceeding, the assignment of such actions or proceedings to the judges so assigned shall be at random.

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Section 206.4 Court districts; structure.

(a) [T] *As set forth below*, the court shall be divided into eight districts [comprised of the counties listed below]. The clerk shall prepare calendars [composed] *comprised* of claims arising within the counties [constituting said] *of each* district.

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Section 206.5 Papers filed with the court; numbering claims.

(a) A claim shall be filed by delivering it to the office of the clerk either in person or by facsimile transmission or electronic means pursuant to sections 206.5 a and 206.5 aa of this Part, respectively, or upon the receipt thereof at the clerk’s office by mail. Except where filing is made by facsimile transmission or electronic means, at the time of filing the original claim, the claimant shall file in the clerk’s office two copies thereof. Proof of service on the defendant shall be filed in paper form or by facsimile transmission or electronic means with the clerk within 10 days of such service. Upon the filing, other than by electronic means, of a claim that is subject to [the FBEM (Filing by

E]electronic [Means) pilot program] *filing pursuant to 206.5 aa*, the clerk shall provide the claimant with a copy of a Notice Regarding Availability of Electronic Filing in a form approved by the Chief Administrator of the Courts. Regardless of the manner in which a claim is filed, where such claim is subject to [the FBEM pilot program] *electronic filing* and the claimant desires that the action *proceed by electronic filing*, the claimant [be subject to FBEM, he or she] shall serve the defendant with a Notice of Identifying the Claim as Subject to Electronic Filing in a manner authorized by section 202.5b(g)(1) of this Part. Such Notice Identifying the Claim as Subject to Electronic Filing shall read substantially as follows:

NOTICE IDENTIFYING THE CLAIM AS SUBJECT TO ELECTRONIC FILING

STATE OF NEW YORK COURT OF CLAIMS

CLAIM NO. \_\_\_\_

\_\_\_\_\_  
Claimant,

-against-

THE STATE OF NEW YORK

Defendant.

\_\_\_\_\_  
Please take notice that, pursuant to [chapter 110 of the Laws of 2002, and] section 206.5 aa of the Uniform Rules for the Court of Claims (22 NYCRR § 206.5 aa), all papers to be filed or served in this claim shall be filed or served electronically by the parties as provided under section 206.5 aa unless, in accordance with such section:

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Section 206.5 a Filing by facsimile transmission.

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(1) Except where papers required or permitted to be filed with the court must be filed by electronic means, such papers may be delivered to the clerk of the court by facsimile transmission at a facsimile telephone number provided for such purpose by the clerk. The cover sheet utilized for such facsimile transmission shall be in a form prescribed by the Chief [Administrative] *Administrator* of the Courts and shall indicate the nature of the paper being filed; any previously assigned claim number; the name and address of the filing party or the party’s attorney; the telephone number of the party or attorney; the facsimile telephone number that may receive a return facsimile transmission; and the number of total pages, including the cover sheet, being filed. All such papers shall comply with the requirements of CPLR 2101(a) and shall be signed and verified as required by law. The clerk shall not be required to accept such filing if it is more than 50 pages in length (including exhibits, but excluding the cover sheet). Documents may be filed by facsimile transmission at any time of the day or night; only documents received before 12 midnight on any day will be considered to have been received as of that day.

(2) Upon receipt of papers filed by facsimile transmission, the clerk shall stamp such papers with the date the papers were received, and no later than the following business day, shall transmit a copy of the first page of each paper received, containing the date of receipt, to the filing party or attorney either by facsimile transmission or by posting by first class mail. If any page of the papers received by the clerk

is missing or illegible, the confirmation of receipt transmitted by the clerk shall so state, and *the* party or attorney forthwith shall transmit a new or corrected page to the clerk for appropriate inclusion in the transmitted papers[ and n]. Notice shall be given by the clerk to [said]*the* party or attorney that the new or corrected page was received.

#### Section 206.5a Filing by Electronic Means.

(a) [There is hereby established a pilot program in which, on or after January 1, 2003, a] *All* designated claims in the Court of Claims shall be subject to [filing by ]electronic [means (FBEM)]*filing* in accordance with the provisions of section 202.5b of this Title.

(b) For purpose of this section:

(1) [t]The term “action” as used in section 202.5 b of this Title, shall also include a claim in the Court of Claims;

(2) [t]The term “designated claim” shall mean a claim falling within one or more categories of claims designated pursuant to subdivision (c) of this section; provided, however the terms designated claim may not include a claim commenced by a Federal, State or local inmate under sentence for conviction of a crime; and

(3) [r]References to the County Clerk, the Chief Clerk of the Supreme Court or the clerk of a court in section 202.5 b of this Title shall be deemed to mean the clerk of the Court of Claims.

(c) From time to time, the Presiding Judge of the Court of Claims, at the request of the Attorney General or his or her designee, may designate one or more categories of claims in the Court of Claims, as identified by subject matter, geographic region or otherwise, as claims to be subject to [FBEM]*electronic filing*. The clerk of the Court shall promptly advise the Attorney General of all such designations. Upon designation of a category of claims by the Presiding Judge pursuant to this subdivision, the Attorney General shall be deemed, for all purposes under section 202.5 b, to have agreed to service of all papers upon him or her by electronic means for those claims in which the claimant consents to proceed pursuant to such section.

(d) Notwithstanding the foregoing, the provisions of section 202.5 b(b)(1) of this Title shall not apply to claims in the Court of Claims.

#### Section 206.5 b Filing fee; waiver or reduction.

(a) Pursuant to section 11 a of the Court of Claims Act, the claim shall be accompanied by either a filing fee of \$50 or a motion, affidavit or certification pursuant to [section]CPLR 1101 [of the Civil Practice Law and Rules (CPLR)].

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#### Section 206.6 Contents of a claim or a notice of intention to file a claim; action for declaratory judgment.

(a) In addition to the requirements prescribed by section 11 of the Court of Claims Act, the claim or notice of intention to file a claim, shall state the post office address of each claimant therein, and the name, post office address and telephone number of the attorney for each claimant.

(b) To the extent required by Court of Claims Act [§ ]Section 11(b), there shall be included in each claim, or attached thereto, a schedule showing in detail each item of damage claimed and the amount of such item. Where claimant is proceeding upon more than one cause of action, each additional cause of action shall be separately stated and numbered.

(c) In all actions where a notice of intention to file a claim has been served, the claim shall state the date of service [on]upon the Attorney General.

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#### Section 206.9 Motion procedure.

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(b) Unless [brought on] *initiated* by [a]order to show cause[ order], the original and two copies of all motion papers with proof of service annexed shall be filed in the clerk's office at least eight days before the return date[ thereof]. The moving party shall also serve a copy of all affidavits and briefs upon all other parties at the time of service of the notice of motion. The answering party shall serve copies of all affidavits and briefs as required by CPLR 2214(b) and file such copies in accordance with these rules.

(c) Unless oral argument has been requested by a party and permitted by the court, or directed by the court, motions shall be deemed

submitted as of the return date. A party requesting oral argument shall set forth such [a] request in [its]*either the* notice of motion or on the first page of the answering papers[, as the case may be]. A party requesting oral argument on a motion [brought on]*initiated* by [an] order to show cause shall do so as soon as practicable before the [time the] motion is *scheduled* to be heard.

(d) Ex Parte Applications. Whenever any party shall make an ex parte application to the court for an order, it shall be the duty of the party making the application to present to the assigned judge the proposed original order and to serve [on his or her adversary]*the adverse party with* a true conformed copy[ thereof]. The signed original order together with proof of service shall be filed in the clerk's office.

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#### Section 206.10 Conferences

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(d) [I]Unless the court orders otherwise, in lieu of a preliminary conference, [as outlined in this section, and unless the court orders otherwise, ]the parties may execute a stipulation, to be so ordered by the court, agreeing to a timetable for the completion of disclosure within 18 months of the assignment of the claim to the judge.

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#### Section 206.11 [Videotape r]Recording of civil depositions.

(a) When Permitted. Depositions authorized under the provisions of the [Civil Practice Law and Rules or]CPLR or other law may be taken, as permitted by [section]CPLR 3113(b), [of the Civil Practice Law and Rules,] by means of simultaneous audio and visual (*audiovisual*) electronic recording, provided such recording is made in conformity with this section.

(b) Other [Audiovisual]Rules Applicable. Except as otherwise provided in this section, or where the nature of [videotaped]*audiovisual* recording makes compliance impossible or unnecessary, all rules generally applicable to examinations before trial shall apply to [videotaped]*audiovisual* recording of depositions.

(c) Notice of Taking Depositions. Every notice or subpoena for the taking of [a videotaped]*an audiovisual* deposition shall state that it is to be [videotaped] *recorded by audiovisual means* and the name and address of the [videotape] operator and of the operator's employer, if any. The operator may be an employee of the attorney taking the deposition or of the Department of Law. Where an application for an order to take [a videotaped]*an audiovisual* deposition is made, the application and order shall contain the same information.

(d) Conduct of the Examination.

(1) The deposition shall begin by one of the attorneys or the operator stating on camera:

- (i) the operator's name and address;
- (ii) the name and address of the operator's employer;
- (iii) the date, the time and place of the deposition; and
- (iv) the party on whose behalf the deposition is being taken.

The officer before whom the deposition is taken shall be *identified as a person authorized by statute to swear the witness* and shall [identify himself or herself and] swear the witness on camera.[ If the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced by the operator.]

(2) Every [videotaped]*audiovisual* deposition shall be [timed by means of]*recorded with* a time date generator which shall permanently [record]display the hours, minutes, and seconds. Each time the [videotape]*recording* is stopped and resumed, such times shall be [orally] announced on the [tapetape]*recording*. *Additionally, the operator shall announce the beginning and the end of each audiovisual recording.*

(3) More than one camera may be used, either in sequence or simultaneously.

(4) At the conclusion of the deposition, a statement shall be made on camera that the recording is completed. As soon as practicable thereafter, the [videotape]*recording* shall be shown to the witness for examination, unless such showing and examination are waived by the witness and the parties.

(5) Technical data, such as recording speeds and other informa-

tion needed to replay or copy the [tapetape]recording, shall be included on copies of the [videotaped]recorded deposition.

(e) Copies and Transcription. The parties may make audio copies of the deposition and thereafter may purchase additional audio [and]and/or [audio visual] audiovisual copies. A party may arrange to have a stenographic transcription made of the deposition at [his or her] the party's own expense.

(f) Certification. The officer before whom the [videotape] deposition is taken shall cause to be attached to the original [videotape]audiovisual recording a certification that the witness was fully sworn or affirmed by the officer and that the [videotape] recording is a true record of the testimony given by the witness. If the witness has not waived the right to a showing and examination of the [videotape] deposition, the witness shall also sign the certification in accordance with the provisions of [section]CPLR 3116[ of the Civil Practice Law and Rules].

(g) Filing and Objections.

(1) If no objections have been made by any of the parties during the course of the deposition, the [videotape deposition]audiovisual recording and one copy may be filed by the proponent with the clerk and shall be filed upon the request of any party.

(2) If objections have been made by any of the parties during the course of the deposition, the [videotape deposition]audiovisual recording, with the certification, shall be submitted to the court upon the request of any of the parties within 10 days after its recording, or within such other period as the parties may stipulate, or as soon thereafter as the objections may be heard by the court, for the purpose of obtaining rulings on the objections. An audio copy [of the sound track] may be submitted in lieu of the [videotape]audiovisual recording for this purpose, as the court may prefer. [The court may view such portions of the videotape recording as it deems pertinent to the objections made, or may listen to an audiotape recording. ]The court[, in its discretion,] may also require submission of a stenographic transcript of the portion of the deposition to which objection is made[, and may read such transcript in lieu of reviewing the videotape or audio copy].

(3)(i) The court shall rule on the objections prior to the date set for trial and shall return the recording to the proponent of the [videotape]audiovisual recording with notice to the parties of its rulings and of its instructions as to editing. The editing shall reflect the rulings of the court and shall remove all references to the objections. The proponent, after causing the [videotape]audiovisual recording to be edited in accordance with the court's instructions, may cause both the original [videotape] recording and the [deleted] edited version of the recording, and a copy of each, clearly identified, to be filed with the clerk, and shall do so at the request of any party. Before such filing, the proponent shall permit the other party to view the edited [videotape]recording.

(ii) The court may, in respect to objectionable material, instead of ordering its deletion, permit such material to be clearly marked so that the audio recording may be suppressed by the operator during the objectionable portion when the [videotape]audiovisual recording is presented at the trial. In such case the proponent may cause both the original [videotape recording] and a marked version of that recording, and a copy of each, clearly identified, to be filed with the clerk of the court, and shall do so at the request of any party.

(h) Custody of [Tape]the audiovisual recording. When the [tape]audiovisual recording is filed with the clerk of the court, the clerk shall give an appropriate receipt [for the tape ]and shall provide secure and adequate facilities for the storage of [videotape]the recordings.

(i) Use at trial. The use of [videotape]audiovisual recordings of depositions at the trial shall be governed by the provisions of the [Civil Practice Law and Rules]CPLR and all other relevant statutes, court rules and decisional law relating to depositions and relating to the admissibility of evidence. The proponent of the [videotaped]audiovisual deposition shall have the responsibility of providing whatever equipment and personnel may be necessary for presenting such [videotape]recorded deposition.

(j) Applicability to [A]audio [Taping] recording of [D]depositions. Except where clearly inapplicable because of the lack of a [videovideo]visual portion, these rules are equally applicable to the taking of depositions by audio recording alone. However, in the case of the taking of a deposition upon notice by audio recording alone, any party, at

least five days before the date noticed for taking the deposition, may apply to the court for an order establishing additional or alternate procedures for the taking of such audio deposition, and upon the making of the application, the deposition may be taken only in accordance with the court order.

(k) Cost. The cost of [videotaping or audio] recording a deposition shall be borne by the party [who]that served the notice for the [videotaped or audio] recording of the deposition.

(l) Transcription for [A]appeal. On appeal, [visual]audiovisual and audio depositions shall be transcribed in the same manner as other testimony and transcripts filed in the appellate court. The [visual]audiovisual and audio depositions shall remain part of the original record in the case and shall be transmitted therewith. In lieu of the transcribed deposition and, on leave of the appellate court, a party may request a [viewing]review of portions of the [visual]audiovisual or audio deposition by the appellate court but, in such case, a transcript of pertinent portions of the deposition shall be filed as required by the court.

Section 206.12 Note of issue and certificate of readiness.

(a) General. No action shall be deemed ready for trial [unless]until there is [first]a filed [a] note of issue accompanied by a certificate of readiness, with proof of service on all parties entitled to notice, in the form prescribed by this section. Filing of a note of issue and certificate of readiness shall not be required for prisoner pro se claims[,]; for an application for court approval of the settlement of the claim of an infant, incompetent or conservatee[, or for]; or an application for court approval of a settlement pursuant to section 20 a of the Court of Claims Act. The note of issue shall include the claim number, the name of the judge to whom the action is assigned, and the name, office address and telephone number of each attorney or individual who has appeared. Within 10 days after service, the original note of issue and certificate of readiness, with proof of service, shall be filed with the clerk.

(b) Forms. The note of issue and certificate of readiness shall read substantially as follows:

#### NOTE OF ISSUE

[For use of clerk

Calendar No. \_\_\_\_\_]

Claim No. \_\_\_\_\_

New York State Court of Claims, \_\_\_\_\_  
District \_\_\_\_\_

Notice for trial

Filed by attorney for \_\_\_\_\_

Date claim filed \_\_\_\_\_

Date claim served \_\_\_\_\_

Date issue joined \_\_\_\_\_

Nature of action

Tort: Highway or motor vehicle negligence \_\_\_\_\_

Medical malpractice \_\_\_\_\_

Other tort (specify) \_\_\_\_\_

Appropriation claim \_\_\_\_\_

Small claim pursuant to article 6 EDPL \_\_\_\_\_

Public construction contract claim \_\_\_\_\_

Other contract \_\_\_\_\_

Other type of action (specify) \_\_\_\_\_

Amount demanded \$\_\_\_\_\_

Other relief \_\_\_\_\_

\* \* \*

(e) Restoration of Note of Issue. [M]A motions to restore a note[s] of issue struck pursuant to this section shall be supported by a proper and sufficient certificate of readiness and by an affidavit by a person having first hand knowledge showing that there is merit to the action, satisfactorily showing the reasons for the acts or omissions which led to the note of issue being struck from the calendar, stating meritorious reasons for its restoration and showing that the action is presently ready for trial.

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Section 206.12a Medical, Dental and Podiatric Malpractice Actions; Settlement Conference



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Section 206.14 Exchange of medical reports in personal injury and wrongful death actions.

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(b) At least 30 days before the date of such examination, or on such other date as the court may direct, claimant shall deliver to defendant the following, which may be used by the examining medical provider or providers:

(1) copies of the medical reports of those medical providers who have previously treated or examined the claimant. These shall include a recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those X ray and technicians' reports which will be offered at the trial, including a description of the injuries sustained, a diagnosis and a prognosis. Medical reports may consist of [completed] medical provider, workers' compensation, or insurance forms that provide the information required by this paragraph;

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Section 206.15 Default; restoration; dismissal.

Whenever a note of issue has been filed and the claimant is not ready for trial or fails to appear for a scheduled trial date, or if the assigned judge has directed that the claim be ready for trial by a particular date and the defendant is ready to proceed with the trial but the claimant is not so ready, the assigned judge, upon motion by the defendant or upon [his or her] *the judge's* own motion, may dismiss the claim unless sufficient reason is shown why such claim should not be tried at that time. An order dismissing a claim pursuant to this section or any section of this Part, or pursuant to the Court of Claims Act or the CPLR shall not be vacated except upon stipulation of all parties so ordered by the court or by motion on notice to all other parties, supported by *an* affidavit showing sufficient reason why the order should be vacated and the claim restored. Such application shall be made to the judge who granted the order of dismissal unless he or she is no longer a member of the court, in which event application shall be made to the Presiding Judge.

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Section 206.21 Appropriation claims; special rules.

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(c) *Appraisal of Fixtures*

All appraisals of fixtures submitted on behalf of the claimants and the [D]defendant for which claim is made shall be filed and distributed as provided by these rules with respect to appraisal reports and shall set forth the appraisal value of each item in the same numerical order as in the inventory annexed to the claim.

(1) Where the [D]defendant puts in issue the existence of any item in the inventory, the appraisal submitted on its behalf shall so state.

(2) Where the [D]defendant puts in issue the description of any item in the inventory, the appraisal submitted on behalf of the [D]defendant shall state its appraiser's description of such item and [his or her] *the* estimate of value.

(3) Where the [D]defendant puts in issue the compensability of any item in the inventory, the appraisal report submitted by the [D]defendant shall so state and shall state the ground therefor, as well as its appraiser's estimate of the value of such item for consideration in the event that the court should determine that it is compensable.

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(h) *Extension of Time.*

(1) A party requiring more time than that prescribed in subdivision (b) of this section may apply for an extension of up to six months by letter to the assigned judge [and received notnot] *with a copy to all parties. The letter application shall be received in chambers no later than six months from the date of the filing and service of the claim[. The letter application] and shall show good cause for the extension[, and a copy thereof shall be forwarded by the applicant to each other party].* The assigned judge [in his or herher] *may exercise* discretion [may, by letter,] *and* grant an extension, *by letter*, for [such] *a* period[,] not to exceed six months, and upon such terms and conditions as may be just. Such extension also shall extend the time of other parties.

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Section 206.23 Public construction contract claims; special rules.

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(b) (1) Within 30 days after the service and filing of its verified answer, the defendant may serve and file an itemized demand for a bill of particulars.

(2) Unless claimant moves to modify or vacate such demand, [said] claimant must serve a proper bill of particulars within 60 days of the receipt of the defendant's demand, and file the original with proof of service in the office of the clerk, or may be precluded under CPLR 3042 for failure to furnish a proper bill, unless the time to serve said bill shall be extended as hereinafter provided.

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Section 206.24 Claims on submitted facts.

Whenever a claim is submitted to the court on an agreed statement of facts, the claimant, within five days thereafter, shall file *a copy* in the clerk's office [a copy of said statement], which shall be signed at the end [thereof] by [both] *all* parties, together with a memorandum stating when and where the claim was submitted and to which judge or judges. Each party, within the same time, shall file in the clerk's office a list of all papers submitted by that party to the court, which list shall sufficiently describe the papers so as to permit their identification.

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