

Rule 40. Request for Trial

(a) Request. At any time after issue is joined in an action, unless the court otherwise directs, any party who desires to try an action shall: (1) confer with the opposing party or parties to attempt to reach agreement as to the time and place of trial, and (2) serve upon the opposing party or parties, and file with the court, a request for trial which shall be substantially in the form set forth in Form 6 in the Appendix of Forms. The request shall be served and filed at least 30 days prior to the requested date of trial, or upon a showing of good cause, at a reasonable time prior to the requested date of trial. A party who opposes the request shall serve and file its opposition within 10 days after service of the request, unless a shorter period is directed by the court. In all instances where a trial is requested to be held at a location other than or in addition to the courthouse at One Federal Plaza, New York, New York, all other parties shall serve and file a response within 10 days after the service of the request, unless a shorter period is directed by the court.

(b) Designation. The court shall designate the date and place for trial, as prescribed in Rule 77(c)(1) or (2), and shall give reasonable notice thereof to the parties.

(c) Premarking Exhibits. All exhibits and documents which are intended to be introduced in evidence are to be marked for identification and exhibited to opposing counsel prior to trial or court proceeding.

PRACTICE COMMENT: To implement the authority conferred upon the chief judge by 28 U.S.C. §§ 253(b) and 256(a), and for the convenience of parties, there is set out in the instructions for Form 6, in the Appendix of Forms, the procedures to be followed in connection with trials or oral arguments of dispositive motions at places other than New York City.

PRACTICE COMMENT: A schedule, agreed to by the parties, suitable for attachment to a decision of the court, shall be filed at the time an action is submitted to the court for final determination upon a dispositive motion or upon the conclusion of a trial. The schedule should indicate (1) when one action is involved, the ports of entry, protest and entry numbers, (2) when consolidated actions are involved, the ports of entry, court numbers, protest and entry numbers, and (3) when joined actions are involved, the ports of entry, court numbers, plaintiffs, protest and entry numbers. Cases should be arranged according to port of entry, in numerical order.

PRACTICE COMMENT: A party may seek expedited consideration under Rule 3(g). For possible applicability of other scheduling rules, see practice comment to Rule 3(g).

(As amended Oct. 3, 1990, eff. Jan. 1, 1991 Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004.)