

RULE 91. STIPULATIONS FOR TRIAL

(a) Stipulations Required:

- (1) *General:* The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged that are relevant to the pending case, regardless of whether those matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence that fairly should not be in dispute. If the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation will be considered to be part of the stipulation.
- (2) *Stipulations To Be Comprehensive:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not grounds for omitting the matter from the stipulation. Such procedures should be regarded as aids to stipulation, and matter obtained through them that is within the scope of subparagraph (1) must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation. A failure to include in the stipulation a matter admitted under Rule 90(f) does not affect the Court's ability to consider the admitted matter.

- (b) **Form:** Stipulations required under this Rule must be in writing, signed by the parties thereto or by their counsel, and must observe the requirements of Rule 23 as to form and style of papers, except that a stipulation filed in paper in open Court must be filed with the Court in duplicate and only one set of exhibits is required. Documents or other papers that are the subject of stipulation in any respect and that the parties intend to place before the Court must be annexed to or filed with the stipulation. The stipulation must be clear and concise. Separate items must be stated in separate paragraphs and must be appropriately lettered or numbered. Exhibits attached to a stipulation must be numbered serially; i.e., 1, 2, 3, etc. The exhibit number must be followed by “P” if offered by the petitioner, e.g., 1-P; “R” if offered by the respondent, e.g., 2-R; or “J” if joint, e.g., 3-J.
- (c) **Filing:** Executed stipulations prepared pursuant to this Rule, and related exhibits, must be filed by the parties at or before commencement of the trial of the case, unless the Court orders otherwise. A stipulation that has been filed need not be offered formally to be considered in evidence.
- (d) **Objections:** Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to a stipulated matter made at the commencement of the trial or for good cause shown made during the trial.
- (e) **Binding Effect:** A stipulation will be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or as agreed by those parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except that it may do so if justice requires. A stipulation and the admissions therein are binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding.
- (f) **Noncompliance by a Party:**
 - (1) *Motion To Compel Stipulation:* If, after the date the notice setting the case for trial is served, a party has refused or failed to confer with an opposing party with respect to entering into a stipulation in accordance with this Rule, or a party has refused or failed to stipulate to any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than 45 days before

the date set for call of the case from a trial calendar, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion must:

- (A) identify with particularity and by separately numbered paragraphs each matter that is claimed for stipulation;
 - (B) set forth in express language the specific stipulation that the moving party proposes with respect to each matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation;
 - (C) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; and
 - (D) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation.
- (2) *Procedure:* On the filing of a motion, an order to show cause as moved will be issued forthwith, unless the Court orders otherwise. The order to show cause will be served by the Clerk, with a copy thereof sent to the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed must file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed admitted for purposes of the pending case. The response must list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. If a matter is disputed only in part, the response must show the part admitted and the part disputed. If the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response must set forth the variance or qualification and the admission that the responding party is willing to make. If the response claims that there is a dispute as to any matter in part or in whole, or if the response presents a variance or qualification with respect to any matter in the motion, the response must show

the sources, reasons, and basis on which the responding party relies for that purpose. The Court may set the order to show cause for a hearing or conference at any time.

- (3) *Failure of Response:* If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be issued accordingly.
- (4) *Matters Considered:* Opposing claims of evidence will not be weighed under this Rule unless the evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists or whether in the interest of justice a matter ought not be deemed stipulated.