



PART 4

JUDGES INDIVIDUAL RULES AND PRACTICES

JUSTICE SALIANN SCARPULLA

PART 39 – PRACTICES AND PROCEDURES

**Supreme Court of the State of New York
Commercial Division
60 Centre Street, Courtroom 208
New York, NY 10007**

**Part Clerk / Courtroom Phone: 646-386-3275
Chambers Phone: 646-386-3690
Fax: 212-401-9154**

Principal Law Clerks: Ms. Ariella Zarfati, Esq. and Ms. Danielle Mazzini-Daly, Esq.
Commercial Division Law Clerk: Ms. Rikki Dascal, Esq.
Assistant Law Clerk: Mr. Michael Busiashvili, Esq.
Part Clerk: Ms. Sharon Hill

Oral Arguments on Motions: Tuesdays, Wednesdays, and Thursdays (as scheduled by the Court)

Pre-Trial Conferences: As scheduled by the Court

Preliminary, Compliance, and Status Conferences: Wednesdays at 2:15p.m.

GENERAL

1. All parties or their counsel must familiarize themselves with these Practice Rules and the Rules of the Commercial Division, 22 NYCRR 202.70.¹
2. Counsel and litigants (represented or self-represented) are advised that Judge Scarpulla, her Law Clerks, and Part Clerk may not engage in any *ex parte* communications.
3. To create opportunities for attorneys knowledgeable with the subject matter of the action, and who historically have been underrepresented in the Commercial Division, courtroom participation of such attorneys is strongly encouraged. This could be achieved, for example, by having a less senior attorney, who prepared the brief on the motion, argue the motion before Justice Scarpulla.
4. The Part Clerk is unable to accept deliveries between 1:00p.m. and 2:00p.m. or after 4:30p.m.

¹ The Commercial Division Rules are available at: <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70>.

5. Counsel must notify the Court, as soon as practicable, by conference call or letter, of the settlement or resolution of active cases or pending motions, so as to avoid the unnecessary use of Court resources on matters that are resolved or will imminently be resolved.
6. Part 39 is a pure e-filing part. Justice Scarpulla does not accept working copies of motions/documents.

ELECTRONIC FILING & COURTROOM TECHNOLOGY

1. All cases in Part 39 are required to be electronically filed through the New York State Courts E-Filing (NYSCEF) system. Attorneys are expected to familiarize themselves with NYSCEF procedures at <http://iapps.courts.state.ny.us/nyscef/Login>. For more information on e-filing rules, parties may also visit: <http://www.nycourts.gov/courts/ljd/supctmanh/e-filing.shtml>.
2. All e-filed documents must be text-searchable. All electronically-submitted memorandum of law must contain bookmarks, pursuant to Commercial Division Rule 6. The submission of documents containing hyperlinks is strongly encouraged.
3. “eTrack” is a case tracking service that enables parties to track active Civil Supreme Court cases and to receive notice of scheduled appearances. Parties and/or their counsel must be registered for the eTrack service for all Part 39 cases. To register or log-in, please visit: <http://iapps.courts.state.ny.us/webcivil/etrackLogin>.
4. Please do not send courtesy copies of any documents that were e-filed, with the following exceptions:
 - a. Documents requiring Justice Scarpulla’s signature, including proposed orders and stipulations, must be e-filed and sent to Justice Scarpulla by either mail or facsimile (e.g., proposed/settled orders, stipulations, or transcripts to be so-ordered); and
 - b. Proposed orders to show cause.
5. Also, because Part 39 is entirely paperless, Judge Scarpulla does not permit the use of any paper demonstratives during oral arguments or at trial. Litigants are required to use the courtroom’s up-to-date technology, and the ICT Courtroom instructions – which litigants are encouraged to familiarize themselves with – are attached as Exhibit A to these Practice Rules.

COMMUNICATIONS TO PART 39

1. Justice Scarpulla does not accept any letters, documents, or papers by e-filing, mail, or facsimile unless expressly permitted by these Practice Rules, Commercial Division Rules 2 and 18, or by prior approval of the Court.

(last revised 12/3/18)

2. Justice Scarpulla's Law Clerks only accept phone calls between 3:00p.m. and 5:00p.m. with all parties on the line.

ADJOURNMENTS

1. All adjournments (motions, conferences, trials) require prior court approval. *Ex parte* applications for adjournments will not be considered.
2. Requests to adjourn a conference, in the first instance, shall be directed to the Part Clerk at 646-386-3275. Conferences will only be adjourned by stipulation. The parties must first consult with the Part Clerk before selecting a new date for the conference. Applications to adjourn a conference shall be made at least 24 hours in advance of the scheduled conference.
3. Parties may adjourn a conference no more than two times, and for no more than a total of three (3) months.
4. Requests to adjourn a motion that is scheduled for oral argument, in the first instance, shall be directed to the Part Clerk at 646-386-3275. Motions will only be adjourned by stipulation. If adjourning by stipulation, parties must first consult with the Part Clerk before selecting a new date for oral argument. Please make applications to adjourn a motion at least 48 hours in advance of the oral argument.
5. To adjourn a motion that is in the Submissions Part (Room 130):
 - a. If the parties wish to adjourn the motion for less than sixty (60) days, the parties may adjourn by stipulation without an order from the Court. The stipulation must be electronically filed and filed in the Submissions Part on the return date of the motion.
 - b. If the parties wish to adjourn the motion for more than sixty (60) days from the original return date, then the parties must submit a stipulation of adjournment to the Court for approval.
 - i. Parties must deliver the proposed stipulation to the Court by electronic filing.
 - ii. If approved, the So-Ordered version of the stipulation will be electronically filed, so that the parties may retrieve the signed order from the electronic filing system and present it to the Submissions Part on the return date.
6. To adjourn a hearing or trial, the parties must contact the Part Clerk at 646-386-3275 on a conference call with all parties on the line. Applications for adjournments shall be made at least 48 hours in advance of the scheduled hearing or trial.

(last revised 12/3/18)

7. All Court approved stipulations to adjourn must be electronically filed by the parties.

CONFERENCES AND DISCOVERY DISPUTES

1. Only attorneys thoroughly familiar with the case may appear for a conference. The attorneys should bring signed copies of all prior decisions, orders and stipulations (both substantive and discovery-related) to the conference.
2. Counsel and litigants must follow the directions below when appearing for a preliminary, compliance, or status conference.
 - a. Counsel for all parties must consult prior to a preliminary or compliance conference about: (i) the resolution of the case; (ii) discovery and any other issues to be discussed at the conference; and (iii) the use of alternative dispute resolution to resolve all or some of the issues of the litigation. (Commercial Division Rule 8).
 - b. Counsel must use the kiosk located near the courtroom entrance. Please enter the case index number and select the appropriate conference form (preliminary conference order, or compliance conference order/stipulation form). The kiosk will then print the selected form, and any disputes will be resolved at the conference.
 - i. On the conference form, please write legibly. Indicate the names, addresses, and telephone numbers of all counsel appearing at the conference. Number the pages (e.g., 1 of 3, 2 of 3). At the top of page 1 of the Compliance Conference Order, please indicate whether this is the 1st, 2nd, or 3rd compliance conference. Use specific cut-off dates (e.g., “on or before December 31, 2018”). Do not use open-ended dates (e.g., “within 45 days,” etc.)
 - c. After filling out the appropriate form, counsel must check-in with the Park Clerk. At check-in, please hand in your conference form to the Part Clerk. The Part Clerk will then call your case when the Court is ready for your conference.

MOTION PRACTICE

1. Substantive motions with opposition will be scheduled for oral argument for a Tuesday, Wednesday, or Thursday after the final appearance in the Submission Part (Room 130). All papers must be e-filed at least (3) business days prior to the oral argument date.
2. Summary judgment motions must be filed within sixty (60) days of filing the note of issue. Each party must comply with Commercial Division Rule 19-a by submitting a separate statement of material facts.

3. Orders to Show Cause with requests for temporary restraining orders, including requests for a temporary stay of an action, will generally not be heard *ex parte*. See 22 NYCRR 202.7(f); 22 NYCRR 202.70, Rule 20.
4. Except for discovery motions, no prior permission is required before making a motion. Judge Scarpulla does not accept Commercial Division Rule 24 letters, unless expressly requested. Discovery-related motions are strongly discouraged. Prior to making a discovery motion, parties must call Chambers between 3pm and 5pm at (646) 386-3690 to arrange a mutually convenient time and date for a conference call. All discovery-related motions will be heard on Wednesdays at 2:15 p.m.
5. Requests for *pro hac vice* admission should include: a joint stipulation consenting to the admission, if possible; and an affidavit by the attorney seeking admission, accompanied by a certificate of good standing for all jurisdictions admitted.
6. Similarly, requests for Commissions should be made by stipulation, if possible.
7. Word limits specified in Commercial Division Rule 17 will be strictly enforce, unless permission to expand the word limits is granted in advance of the filing of the papers.
8. All memoranda of law must include a Table of Contents and Table of Authorities.
9. Each exhibit must be e-filed under its own document number and include a short label identifying the nature of the exhibit (e.g., Complaint, Contract dated 1/1/18, etc.).

ALTERNATIVE DISPUTE RESOLUTION

1. If, at any point, the parties decide that they would benefit from the Commercial Division ADR program, they should write a joint letter to the Court asking to be referred to ADR. In that letter, they should state whether they prefer discovery to be stayed or continue during the mediation process.
2. The Court may also order parties to the Commercial Division ADR program without the parties' request or consent.
3. For more information regarding the ADR program, please visit:
http://www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml.

CONFIDENTIALITY ORDER / SEALING DOCUMENTS

1. In the interest of reducing unnecessary litigation costs, any order regarding the confidential exchange of information must adhere to the Proposed Stipulation and Order for the Production and Exchange of Confidential Information (“the Model Form”), which is attached as Exhibit B to these Practice Rules.
2. Justice Scarpulla is mindful that minor additions/deletions/edits to the Model Form will only drive up litigation costs. Therefore, if the parties believe there is good cause to depart from the Model Form, they must submit the following:
 - a. The proposed stipulation and order;
 - b. A red-lined version of the proposed stipulation and order, indicating any departures from the Model Form; and
 - c. A party affirmation establishing good cause for any proposed departures from the Model Form.

Amended Model Forms which are not accompanied by the red-lined version and affidavit will not be approved.

3. Applications to seal documents shall include the nature of the document, reason for sealing request and “good cause” therefor (22 NYCRR 216.1). The Court will consider the application to seal documents only by order to show cause or notice of motion, not by stipulation.
4. To e-file documents under seal, please follow the procedures set forth by the County Clerk, <https://www.nycourts.gov/courts/1jd/supctmanh/Efil-protocol.pdf>.

TRIALS / EVIDENTIARY HEARINGS

1. All trial documents, whether used for evidentiary hearings or during trial, must be provided electronically via flash drive prior to the hearings or start of trial. The flash drive should include the following:
 - a. Marked pleadings.
 - b. All prior decisions in the case.
 - c. Any notices to admit, with responses.
 - d. Copies of transcripts of depositions intended for use at trial.

- e. In the case of a jury trial, proposed jury verdict sheet.
 - f. A list of all request PJI sections from the most current volume to be included in the final charge to the jury. You may list the section by number only if it does not call for any characterization of the evidence or the contentions of the parties. Otherwise, if the section does call for a characterization or description of the evidence or the contentions of the parties, you must supply such description of evidence or contention in writing. If you are requesting other language, not based on the PJI, you must provide the proposed language in writing, along with the appropriate citations. Please provide copies of any cases upon which you rely for charge language.
 - g. A short (one or two lines) summary of the party's claims to be used by the Court as part of the preliminary instructions given to the jury during opening statements.
 - h. A list of proposed witnesses. If a witness needs an interpreter, please indicate the language and any dialect.
2. Please stipulation to all facts and documents not in dispute prior to trial. Have agreed-upon documents, photographs and other exhibits pre-marked into evidence by the court reporter while the jury is not present.
 3. It is the duty of counsel, not court personnel, to make sure all subpoenaed documents have arrived in the subpoenaed records room at 60 Centre Street. Court personnel may only retrieve records from 60 Centre when not needed in the Courtroom.
 4. Pre-trial memoranda of law, pre-trial orders and motions *in limine* are to be submitted at least seven (7) calendar days prior to the date of trial, unless otherwise advised by the Court.

EXHIBIT A

ICT Courtroom

Presenting Evidence Using the Smartboard-USB



Supreme Court, Civil Branch, New York County

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NY Supreme Civil ICT Courtroom

Presenting with USB or CD-ROM

How to Open using USB

1. Insert the Memory stick into the USB port located on the back-left side of the Monitor.
2. From the **Launcher** Menu single tap the **USB** option (Figure 1).
3. Double tap to open the desired file (Figure 2).

How to open using CD-ROM Drive

1. Insert the disk in CD/DVD ROM Drive located on the back -left side of the Monitor.
2. From the **Launcher** Menu tap on **CD Drive** to open Windows Explorer (Figure 1).
3. Double tap to open the desired file (Figure 2).

Figure 1-Launcher in Quick Launch Menu

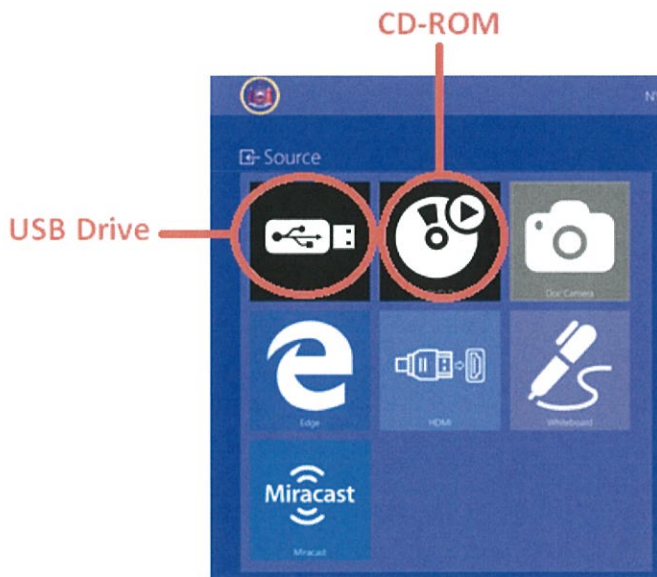
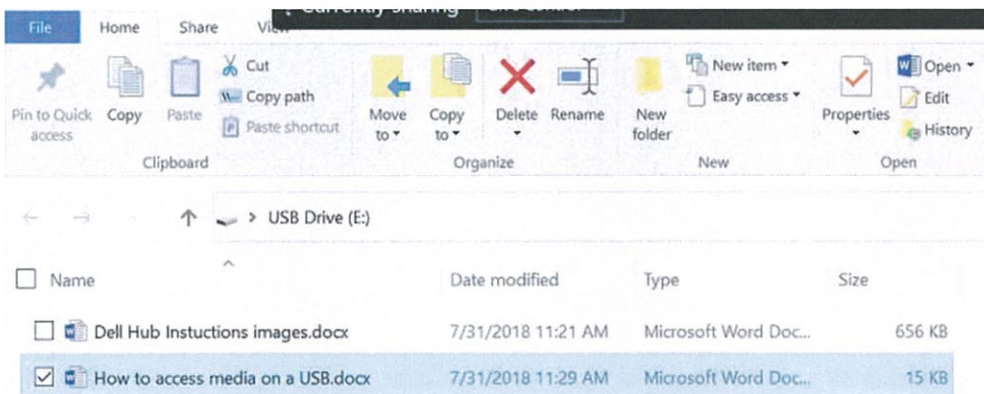


Figure 2- Files in Windows Explorer



Annotate the Document in Microsoft Edge

The PDF file will open in the Microsoft Edge browser where evidence can be presented using the PDF and Annotation tools.

To open the tools, tap on **Add Note**.



This will open the Toolbars:



How to use the PDF Toolbar

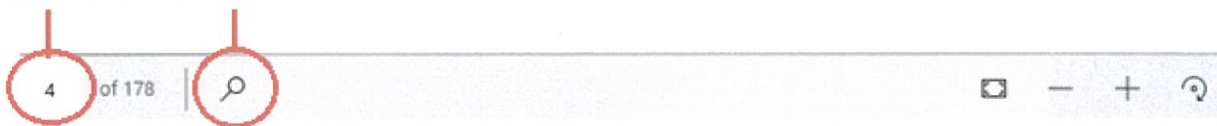
Locate Section in Document

You can locate a specific section of the document in one of two ways:

1. Tap the **Page Number** to enable the On-Screen keyboard and enter the desired page number.
2. Click on the **Search** tool and use the on-Screen keyboard or the wireless keyboard on the lectern to search by a word or phrase.

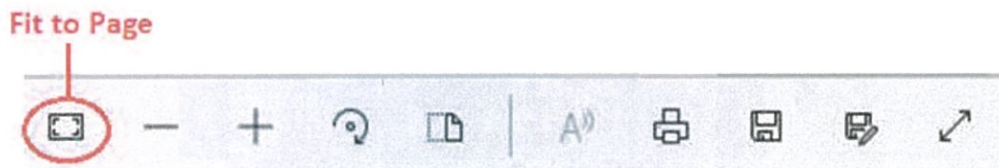
Page

Number Search



Fit to Page

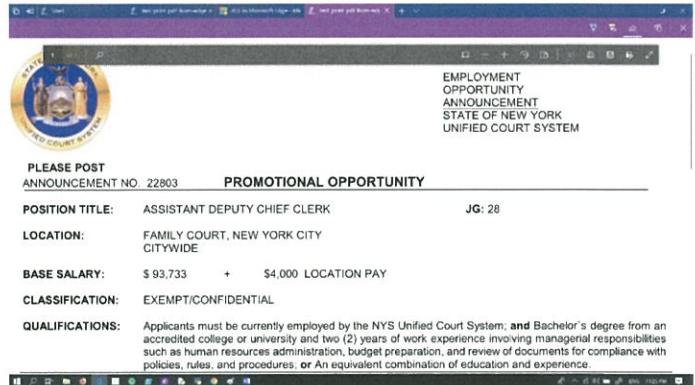
Use this tool to display the document in full length(A) or to expand the document to the edge of the Web Page (B).



(A)

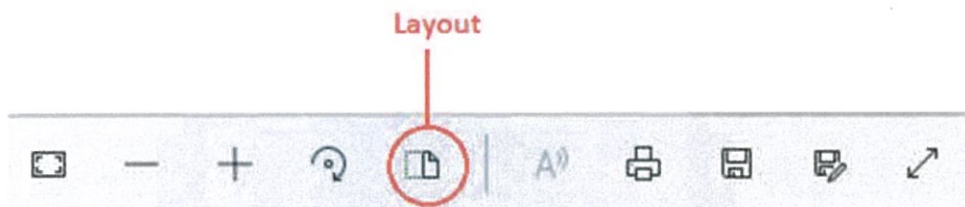


(B)

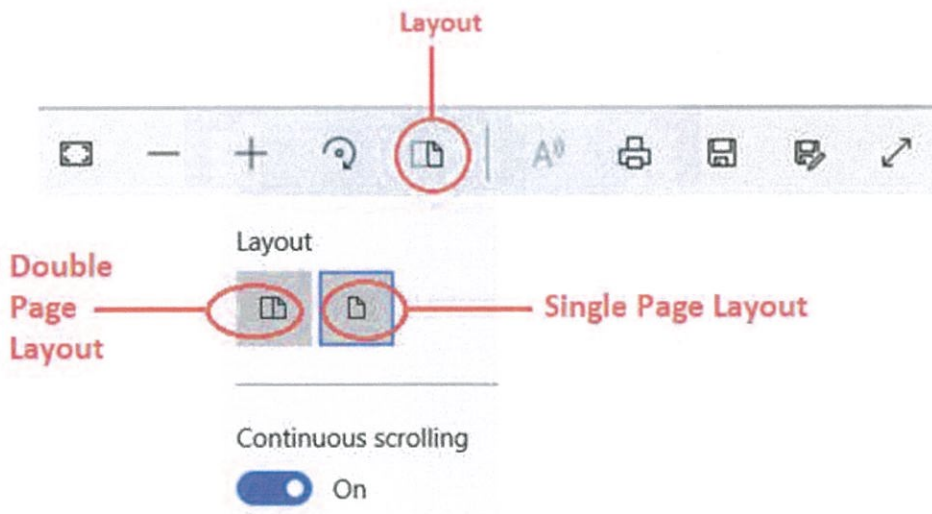


Layout

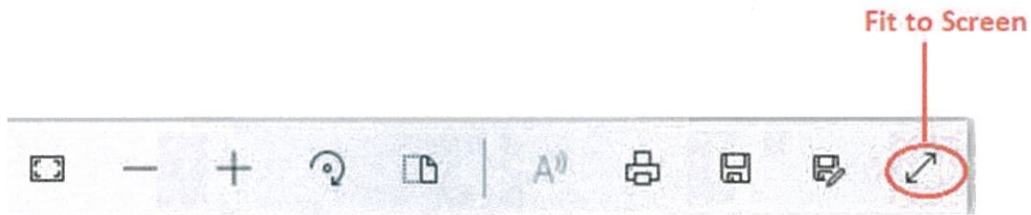
Use the Layout tool to change whether a multi-page document displays as two-pages or a single page.



1. Select **Double Page Layout**, to display 2 pages at a time. By default, the pages will scroll left to right.
2. Select **Single Page Layout**, to display a single page. To change the scrolling default, turn **On Continuous Scrolling** for pages to scroll up and down.



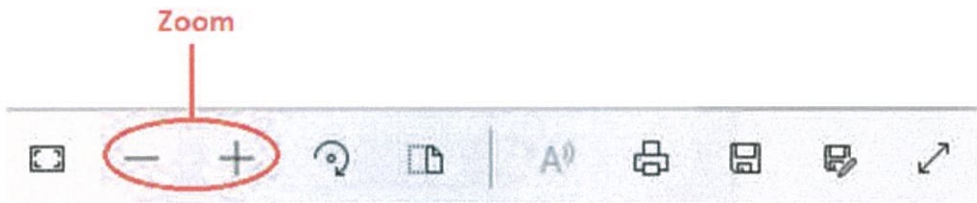
A third option is to Tap the **Fit to Screen** tool which will enlarge the document to the full size of the Monitor. **To exit full screen**, Press the **Fit to Screen** option a second time.



Zoom

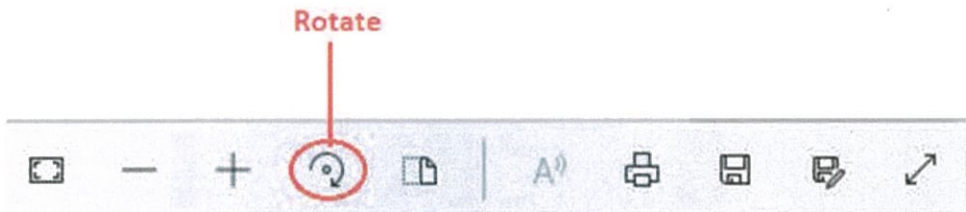
There are 2 ways to resize a document:

- Pinch two fingers to zoom in and out to decrease or enlarge the size of the document.
- Use the **-** and **+** Zoom tools.



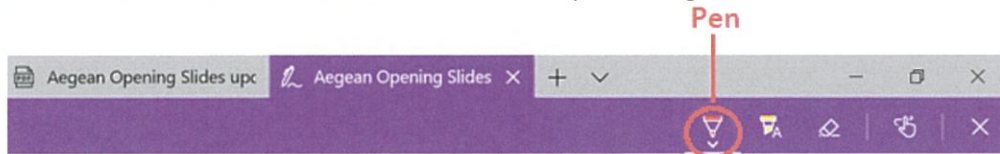
Rotate

This tool enables you to rotate a document clockwise or counter clockwise.

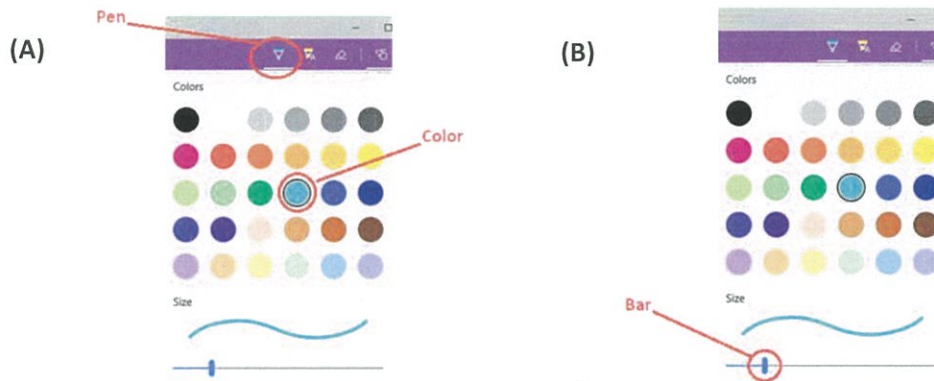


How to use the Annotation Toolbar

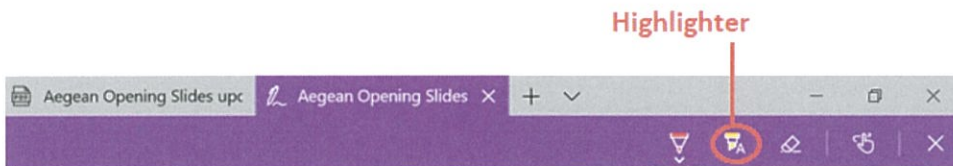
1. Select the **Pen** to annotate the document when presenting.



- To change the Pen Color, click on the **Pen** to open the color palette. Tap to select the desired **Color**.



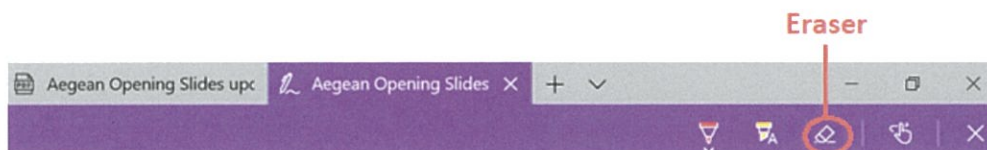
- Within the Color palette, you can change the thickness of the Pen line. To do this, drag the **Bar** to increase or decrease the line thickness.
- To Highlight text, select the **Highlighter** tool then tap on the first word and drag to the end of the paragraph or sentence to highlight.



- To change the Highlighter Color, tap on the **Highlighter** and select the **Color**.



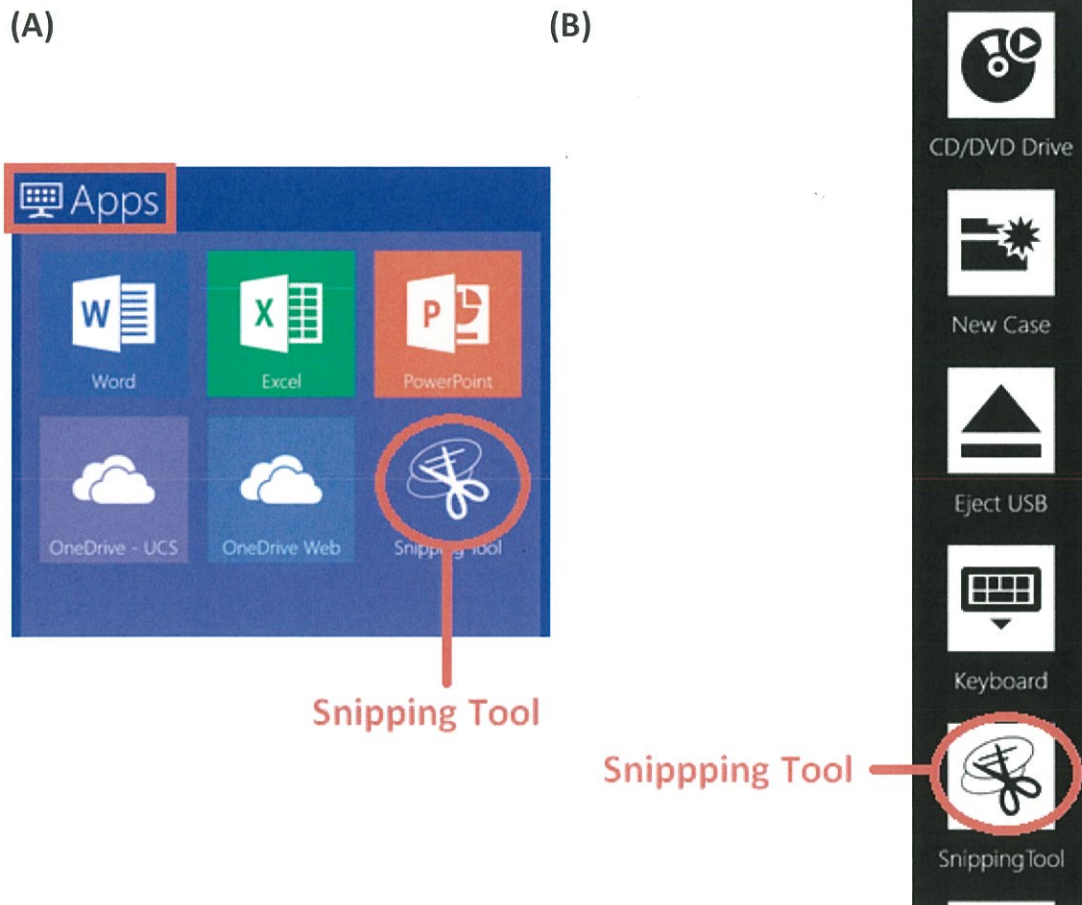
- To Erase annotation, select the **Eraser** and tap on the written or annotated section to erase.



Using the Snipping Tool

Use the Snipping tool to cut a section of a document that you want to present.

1. Tap the **Snipping Tool** from the **Apps** section of **Quick Launch Menu (A)** or the **Doc View (B)** Menu.



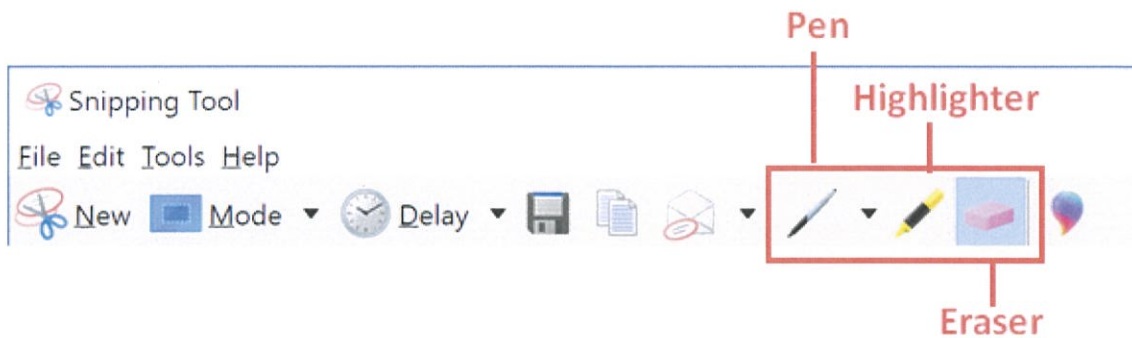
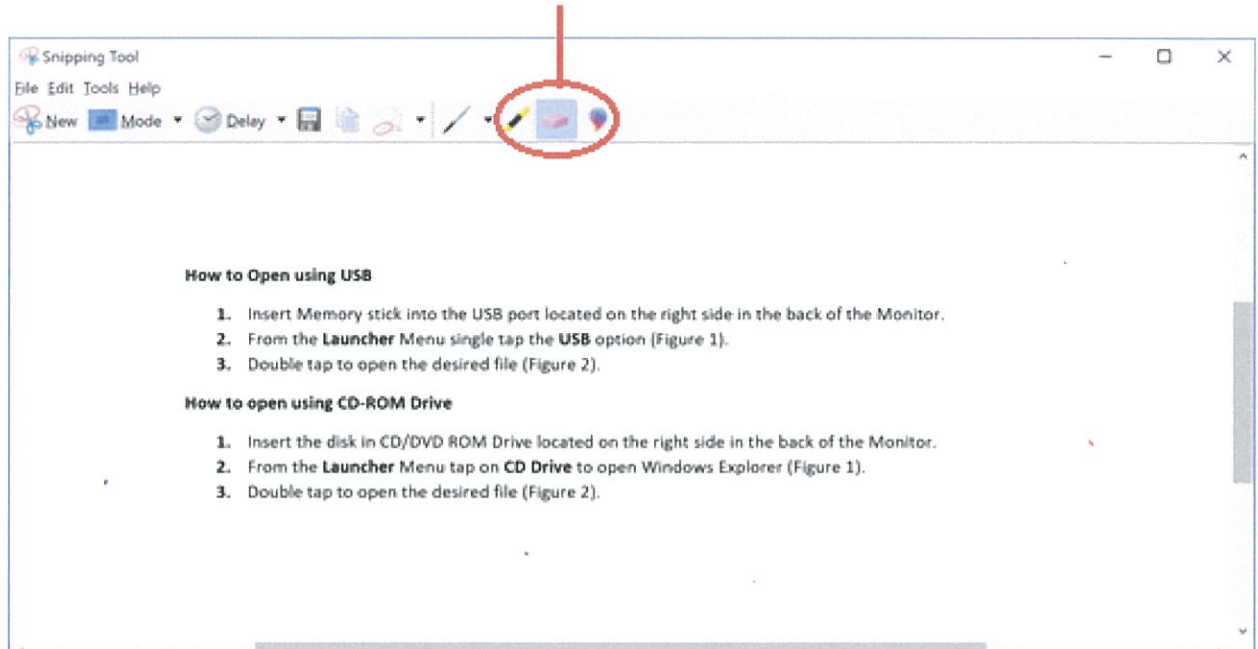
2. Tap **New** then the entire screen will turn grey.



3. Drag the Pen around the text or image to draw a dotted square selecting the area you want to copy or snapshot.

4. The Snipping Tool app will open the snipped portion in a separate window with additional **Annotation Tools** that can be used.

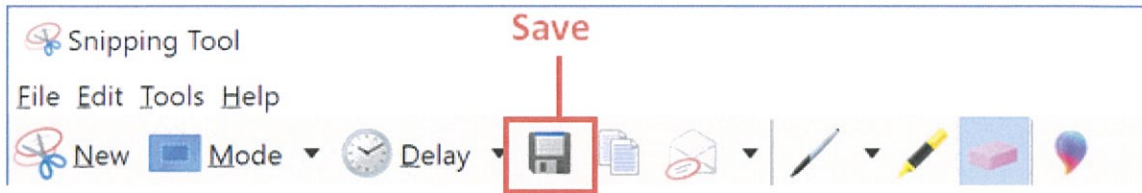
Annotation Tools



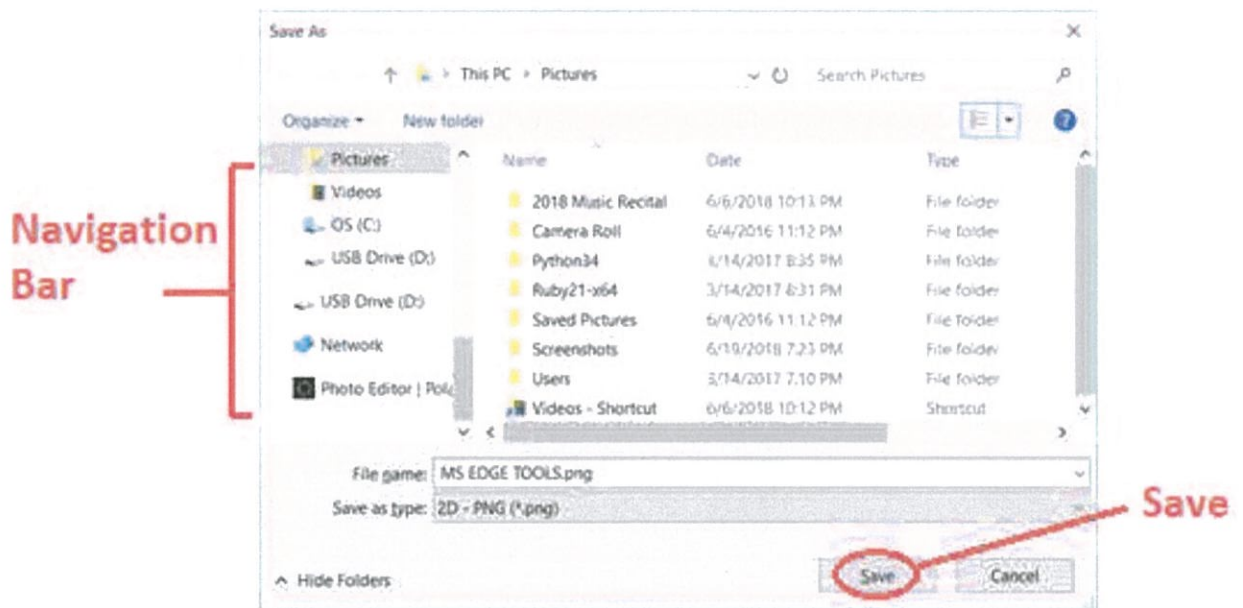
Save the Snipped Evidence

To save the Snipped evidence, tap on the **Save** tool (A), this will open Windows Explorer, where you can choose the location to **Save** (B) from the navigation bar.

(A)



(B)



Eject USB Drive

Once you have completed your presentation, please tap **Eject** to safely remove the USB device and **remove your USB drive from the back of the Smartboard**. This step is important and will prevent files from being corrupted on your USB mass storage device.



ICT Courtroom

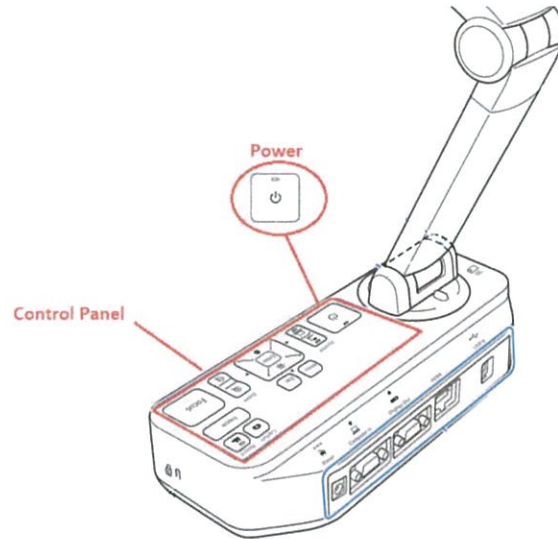
Presenting Evidence Using the Document Camera



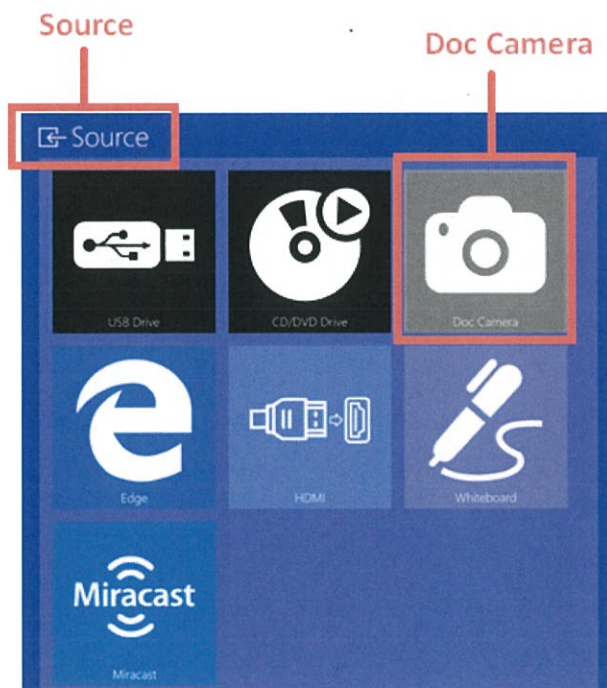
Supreme Court, Civil Branch, New York County

Presenting Evidence with the Document Camera

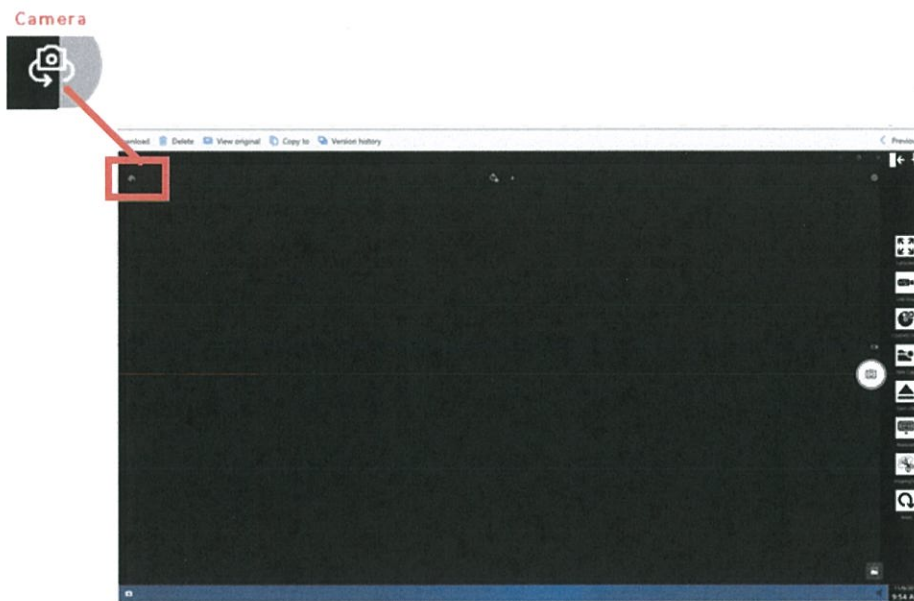
1. Turn on the Epson Document Camera by pressing the **Power** button on the **Control Panel**.



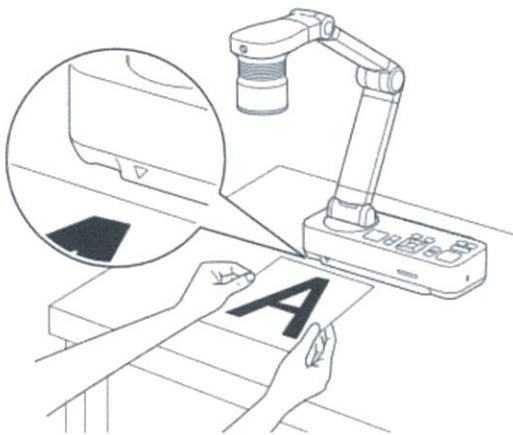
2. From the **Source** menu tap the **Doc Camera** App.



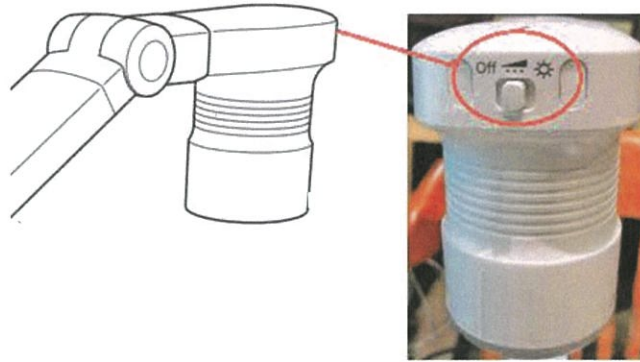
3. The screen will then display the Document Camera Feed. **To switch to the Document Camera** tap the **Camera** icon.



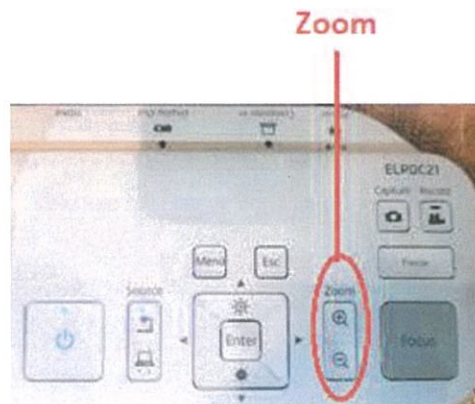
4. At the Document Camera, align the center of the document to the **Arrow Mark** located in the front lower left corner of the Document Camera.



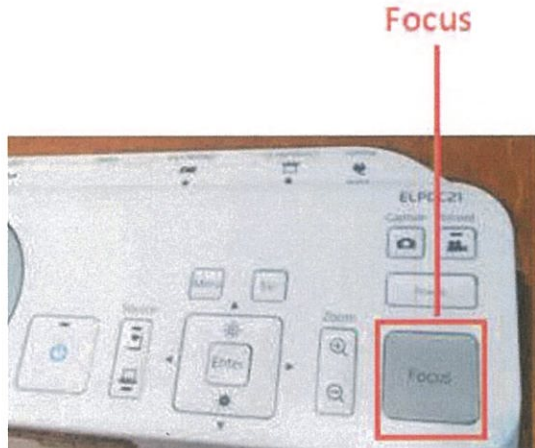
If needed, slide the **Lamp Switch** to illuminate the document. This changes the LED lamp status in three steps: bright, dim, and off.



5. To zoom in or out on part of the image, press the **Zoom** ⊕ or ⊖ button on the document camera or remote control.



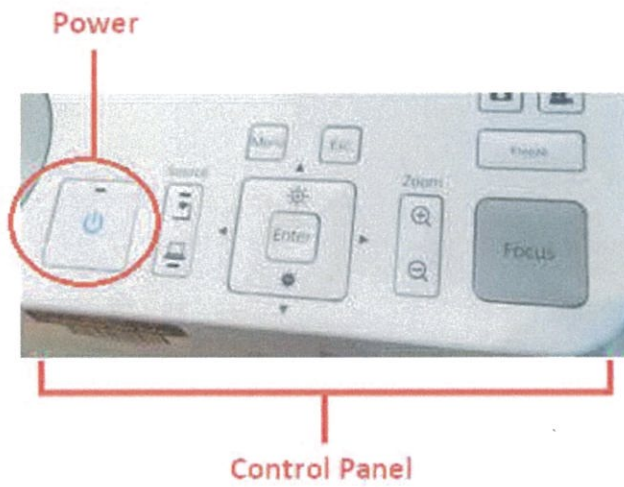
6. Press the, Focus button on the document camera or the Auto Focus button on the remote control. Your document is automatically focused.



7. To adjust the brightness of the image while projecting from the Camera press  to increase brightness and  to decrease it.



8. To turn off the Document Camera press the **Power** button located in the control Panel.



The screen will then display the following message, press the **Power** button a second time to confirm Yes you want to turn off the camera.

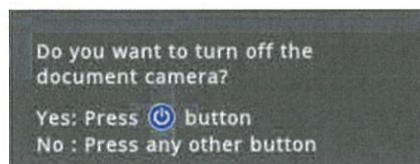


EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

_____,

Plaintiff,

-against-

_____,

Defendant.

-----X

:
: Index No. _____
:
: **STIPULATION AND ORDER**
: **FOR THE PRODUCTION AND**
: **EXCHANGE OF**
: **CONFIDENTIAL**
: **INFORMATION**
:
:
:
:

This matter having come before the Court by stipulation of plaintiff _____ and defendant _____ (individually “Party” and collectively “Parties”)¹ for the entry of a protective order pursuant to CPLR 3103(a), limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced in the course of discovery in this matter to the extent set forth below; and the Parties, by, between and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. This Stipulation is being entered into to facilitate the production, exchange and discovery of documents and information that merits confidential treatment (hereinafter the “Documents” or “Testimony”).

¹ Party and Parties are signatories to this Stipulation and Order for the Production and Exchange of Confidential Information, and party and parties are any individuals or entities obligated to produce documents or give testimony in connection with this action.

2. Any party may designate Documents produced, or Testimony given, in connection with this action as “confidential,” either by notation on each page of the Document so designated, statement on the record of the deposition, or written advice to the respective counsel for all affected parties, or by other appropriate means.
3. As used herein:
 - a. “Confidential Information” shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information, or other information the disclosure of which would, in the good faith judgment of the party designating the material as confidential, be detrimental to the conduct of that party’s business or the business of any of that party’s customers or clients.
 - b. “Producing Party” shall mean the party producing Confidential Information in connection with depositions, document production or otherwise, or the party asserting the confidentiality privilege, as the case may be.
 - c. “Receiving Party” shall mean the party receiving Confidential Information in connection with depositions, document production or otherwise.
4. The Receiving Party may, at any time, notify the Producing Party in writing that the Receiving Party does not concur in the designation of a document or other material as Confidential Information. If the Producing Party does not agree to declassify such document or material within seven (7) days of the written notification, the Receiving Party may move before the Court for an order declassifying those documents or materials. If no such motion is filed, such documents or materials shall continue to be

treated as Confidential Information. If the motion is filed, the documents or other materials shall be deemed Confidential Information unless and until the Court rules otherwise. On such a motion, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information.

5. Except with the prior written consent of the Producing Party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:
 - a. personnel of plaintiff or defendant actually engaged in assisting in the preparation of this action for trial or other proceeding herein and who have been advised of their obligations hereunder;
 - b. counsel for the Parties to this action and their associated attorneys, paralegals and other professional and non-professional personnel (including support staff and outside copying services) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;
 - c. expert witnesses or consultants retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;
 - d. the Court and court personnel;

- e. an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such officer;
 - f. trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 9 and 10, respectively, hereof; and
 - g. any other person agreed to by the Producing Party.
6. Confidential Information shall be utilized by the Receiving Party and its counsel only for purposes of this litigation and for no other purposes.
 7. Before any disclosure of Confidential Information is made to an expert witness or consultant pursuant to paragraph 5(c) hereof, counsel for the Receiving Party shall provide the expert's written agreement, in the form of Exhibit 1 attached hereto, to comply with and be bound by its terms. Counsel for the Receiving Party obtaining the certificate shall supply a copy to counsel for the other Parties at the time designated for expert disclosure, except that any certificate signed by an expert or consultant who is not expected to be called as a witness at trial is not required to be supplied.
 8. All depositions shall presumptively be treated as Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of the deposition is received by counsel for each of the parties. At or before the end of such fifteen-day period, the deposition shall be classified appropriately.
 9. Should the need arise for any party to disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such party may do so only after taking such steps as the Court, upon motion of the Producing Party, shall deem necessary to preserve the confidentiality of such Confidential Information.

10. This Stipulation shall not preclude counsel for any Party from using during any deposition in this action any Documents or Testimony which has been designated as Confidential Information under the terms hereof. Any deposition witness who is given access to Confidential Information shall, prior thereto, be provided with a copy of this Stipulation and shall execute a written agreement, in the form of Exhibit 1 attached hereto, to comply with and be bound by its terms. Counsel for the Party obtaining the certificate shall supply a copy to counsel for the other parties to the action. In the event that, upon being presented with a copy of the Stipulation, a witness refuses to execute the agreement to be bound by this Stipulation, the Court shall, upon application, enter an order directing the witness's compliance with the Stipulation.
11. A Party may designate as Confidential Information subject to this Stipulation any document, information, or deposition testimony produced or given by any non-party to this case, or any portion thereof. In the case of Documents produced by a non-party, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony, designation shall be made by notifying all counsel in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party asserting the confidentiality privilege. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.

12. (a) A Receiving Party who seeks to file a motion with the Court using Documents or Testimony which have previously been designated as comprising or containing Confidential Information, and/or any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information, shall, twenty-one (21) days prior to filing any motion, provide the parties with written notice of its intent to file such material with the Court, so that the Producing Party may file by Order to Show Cause a motion to seal such Confidential Information. A party seeking to file a motion with the Court using any Documents or Testimony that it has designated as confidential must also move to seal such Confidential Information. The motion to seal the Confidential Information must be filed fourteen (14) days prior to filing the motion, and the Confidential Information shall not be filed until the Court renders a decision on the motion to seal.

(b) If the motion to seal is granted, the filing party shall ensure that all documents that are the subject of the order to seal are filed in accordance with the procedures that govern the filing of sealed documents on the NYSCEF system.

(c) All pleadings, briefs or memoranda which reproduces, paraphrases or discloses any documents which have previously been designated by a party as comprising or containing Confidential Information, shall identify such documents by the production number ascribed to them at the time of production.

13. Any person receiving Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof.

14. Any document or information that may contain Confidential Information that has been inadvertently produced without identification as to its “confidential” nature as provided

in paragraphs 2 and/or 11 of this Stipulation, may be so designated by the party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving Party identifying the document or information as “confidential” within a reasonable time following the discovery that the document or information has been produced without such designation.

15. In connection with the review of electronically stored information and hard copy documents for production (the “Documents Reviewed”) the Parties agree as follows:
 - a. to implement and adhere to reasonable procedures to ensure Documents Reviewed that are protected from disclosure pursuant to CPLR 3101(c), 3101(d)(2) and 4503 (“Protected Information”) are identified and withheld from production.
 - b. if Protected Information is inadvertently produced, the Producing Party shall take reasonable steps to correct the error, including a request to the Receiving Party for its return.
 - c. upon request by the Producing Party for the return of Protected Information inadvertently produced the Receiving Party shall promptly return the Protected Information and destroy all copies thereof. Furthermore, the Receiving Party shall not challenge either the adequacy of the Producing Party’s document review procedure or its efforts to rectify the error, and the Receiving Party shall not assert that its return of the inadvertently produced Protected Information has caused it to suffer prejudice.
16. Extracts and summaries of Confidential Information shall also be treated as confidential in accordance with the provisions of this Stipulation.

17. The production or disclosure of Confidential Information shall in no way constitute a waiver of each Producing Party's right to object to the production or disclosure of other information in this action or in any other action.
18. This Stipulation shall continue to be binding after the conclusion of this litigation except (a) that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (b) that a Receiving Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of any part of the Stipulation. The provisions of this Stipulation shall, absent prior written consent of both parties, continue to be binding after the conclusion of this action.
19. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.
20. Within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all Confidential Information produced or designated and all reproductions thereof, shall be returned to the Producing Party or shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, such Party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts and deposition and trial

exhibits. This Stipulation shall not be interpreted in a manner that would violate any rules of professional conduct. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for this case, to represent any individual, corporation, or other entity adverse to any party or their affiliate(s) in connection with any other matters.

21. This Stipulation may be changed by further order of this Court, and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

[FIRM]
By: _____

New York, NY _____
Tel.: _____

Attorneys for Plaintiff

Dated: _____

SO ORDERED _____

J.S.C.

[FIRM]
By: _____

New York, NY _____
Tel.: _____

Attorneys for Defendant

EXHIBIT "1"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

Plaintiff,

-against-

Defendant.

:
: Index No. _____
:

:
: **AGREEMENT TO RESPECT**
: **CONFIDENTIAL MATERIAL**
:

-----X

I, _____, state that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.
4. I had received a copy of the Stipulation for the Production and Exchange of Confidential Information ("Stipulation") entered in the above-entitled action on _____.
5. I have carefully read and understand the provisions of the Stipulation.
6. I will comply with all of the provisions of the Stipulation.
7. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation, and will use only for purposes of this action, any Confidential Information that is disclosed to me.
8. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel for whom I received the Confidential Information.

9. I hereby submit to the jurisdiction of this court for the purpose of enforcement of the Stipulation in this action.

Dated: _____

Judge Pamela K. Chen
Individual Practices and
Rules

225 Cadman Plaza East
Brooklyn New York 11201
Courtroom: 4F
Chambers: N 631
Telephone: (718) 613-2510
Fax: (718) 613-2516

Contact: Fida Abdallah (Case Manager)
Telephone: (718) 613-2515

Unless otherwise ordered by the court in a specific case, matters before the court shall be conducted in accordance with the following practices:

1. *Case Filings*

A. *Electronic Case Filing (ECF)*

Pursuant to Administrative Order 2004-08, **all case documents must be filed electronically via ECF** for all civil cases other than *pro se* cases and for all criminal cases. The Eastern District's User Guide for electronic case filing is available at <http://www.nyed.uscourts.gov/pub/docs/local/ecf-usermanual.pdf>. This manual also contains contact information for questions regarding ECF. Parties are advised not to contact chambers with questions regarding ECF registration, filing, or other technical issues.

As discussed in Section 1(F), all written submissions and supporting materials to the Court, to the extent practicable, must be text-searchable.

B. *Filing Under Seal*

Written submissions to be filed under seal should also be filed on ECF. Instructions for e-filing sealed documents are available on the Eastern District's website at <http://www.nyed.uscourts.gov/pub/docs/local/EfilingSealedCV.pdf> (civil) and <http://www.nyed.uscourts.gov/pub/docs/local/EfilingSealedCR.pdf> (criminal). Unless prior approval to file under seal has already been granted, each submission shall be accompanied by an explanation of why sealing is necessary.

C. *Court's Review of ECF Submissions*

As a general matter, materials filed via ECF are reviewed by chambers the first business day after submission. If your submission requires immediate attention, please notify chambers by telephone after you file via ECF.

D. *Courtesy Copies*

Parties shall deliver to chambers one (1) courtesy copy of all written submissions filed on ECF that are 20 pages in length or more, inclusive of any exhibits or attachments. Parties are encouraged to use double-sided printing for their courtesy copies. The courtesy copy should be a reproduction of the document as filed on ECF, with the ECF numbering appearing at the top of the page.

E. *Word-Processing Files of Proposed Orders, Requests to Charge, etc.*

Proposed orders, jury instructions, and other such writings a party wishes the Court to adopt should be submitted to chambers in word-processing format as well as filed on ECF in PDF format. However, parties need not submit word-processing files of stipulations of dismissal or settlement unless specifically requested to do so. Microsoft Word is the preferred word-processing format, although Corel WordPerfect format is acceptable. Counsel may provide the copies on a CD, or may contact chambers to obtain an email address to which the files may be sent.

F. *Text-Searchable Submissions*

All written submissions and supporting materials, to the extent practicable, must be text-searchable.

G. *Requests for Adjournments or Enlargement of Time*

All requests for adjournments or enlargement of time must be in writing and state:

- i. The original date;
- ii. The number of previous requests for adjournment or enlargement;
- iii. Whether these previous requests were granted or denied; and
- iv. Whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent.

If the requested adjournment or enlargement of time affects any other scheduled dates, proposed revised dates must be provided. Requests for adjournments of court appearances and extensions of filing deadlines, absent an emergency, shall be made at least **two working days** prior to the scheduled appearance or filing deadline. **Any adjournment of a court appearance being requested within 24 hours of the appearance shall be accompanied by a telephone call to chambers advising the Court of the request.**

2. *Communications with Chambers*

A. *Written Communications with Chambers*

All communications with chambers shall be in writing and filed on ECF, with copies simultaneously delivered to all parties who do not receive automatic notification through ECF. Copies of correspondence between counsel shall not be sent to the

Court.

B. *Telephone Calls*

Telephone calls to chambers are permitted. Please review this document before calling chambers with questions. For docketing, scheduling, or calendar matters, call Fida Abdallah at (718) 613-2515.

C. *Faxes*

Faxes to chambers are permitted only if copies are simultaneously faxed or delivered to all counsel. No document longer than ten pages may be faxed without prior permission. Documents faxed must be electronically filed.

3. *Motions*

A. *Pre-Motion Conference Requests in Civil Cases*

For discovery motions, follow Local Civil Rules 37.3 and 6.4. In all cases in which the moving party is represented by counsel (except habeas corpus/prisoner petitions and Social Security and bankruptcy appeals), a pre-motion conference with the court must be requested before making: (i) any motion pursuant to Fed. R. Civ. P. 12 or 56; (ii) any motion for a change of venue; (iii) any motion to compel arbitration; and (iv) any motion to remand a removed case to State court.

To request a pre-motion conference, the moving party shall file and serve a letter motion not to exceed three (3) pages in length setting forth the basis for the anticipated motion. Letter motions should be filed using the **motion** event via ECF. Except for *pro se* litigants, all parties so served shall serve and file a letter response, not to exceed three (3) pages within seven (7) days from service of the notification letter. Letter responses should be filed using the letter, and **not** the motion, event. Service of the letter motion within the time requirements of Fed. R. Civ. P. 12 or 56 shall constitute timely service of a motion made pursuant to those provisions.

In many cases, it will be apparent from the letter motion that a conference will not be a useful expenditure of the parties' time, and a motion schedule will be set without a pre-motion conference. In other cases, the usefulness of a pre-motion conference will be clear based on the request. **However, if a party advises the Court in its pre-motion argument request that an attorney with five years or less of experience as a licensed attorney will be representing the party at the conference, the Court will schedule a pre-motion conference.**

Note that these provisions do *not* apply to motions other than those specifically enumerated. For example, letter motions requesting pre-motion conferences are not required for motions pursuant to Fed. R. Civ. P. 50, 59 and 60, and counsel should be aware that the Court of Appeals will not accept an argument that compliance with district court motion rules should excuse noncompliance with Fed. R. App. P. 4. *See, e.g., Bowles v. Russell*, 551 U.S. 205, 206-08 (2007) (holding no jurisdiction exists over appeal filed within time permitted by district court but outside time provided

by Fed. R. App. P. 4(a)(6)).

B. *Memoranda of Law*

Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, not including exhibits, appendices or attachments, and reply memoranda are limited to ten pages, not including exhibits, appendices or attachments.

C. *Briefing Schedule*

The parties are to set up their own briefing schedule and submit it to the court for approval. If the parties cannot agree on a schedule, the moving party will submit a proposed schedule to the court for approval, indicating the opposing party's non-consent or objection. Approval may be given at the pre-motion conference or by ECF order. No changes to the schedule may be made without court approval.

D. *Filing of Motion Papers*

As a courtesy to the Court, the parties are encouraged *not* to file their motion papers until the motion has been fully briefed, unless doing so might cause a party to miss a statutory deadline. See *Weitzner v. Cynosure, Inc.*, 802 F.3d 307, 314 n. 8 (2d Cir. 2015); see, e.g., *Bowles v. Russell*, 551 U.S. 205, 206-08 (2007) (holding no jurisdiction exists over appeal filed within time permitted by district court but outside time provided by Fed. R. App. P. 4(a)(6)). If the parties follow this practice, the notice of motion and all supporting papers are to be served on the other parties along with a cover letter setting forth whom the movant represents and the papers being served. Only a copy of the cover letter should be filed electronically, as a letter, not as a motion. On the day the motion is fully briefed, *each* party shall electronically file its *own* moving papers, except where the non-moving party is *pro se*, in which case the moving party shall file *both* parties' papers. **However, this practice does not apply to motions for reconsideration and Social Security and bankruptcy appeals, the submissions for which should be filed on the dates they are due under Local Civil Rules 6.3 and 6.1 or the briefing schedule set by the Court, respectively.**

With respect to all motions, whether or not filed and served simultaneously, on the day that the motion is fully briefed, unless a *pro se* non-moving party is involved, the parties shall each furnish chambers with one (1) courtesy copy of their own motion papers. In cases involving a *pro se* non-moving party, the moving party shall provide chambers with courtesy copies of *both sides'* moving papers. The courtesy copy should be a reproduction of the document as filed on ECF, with the ECF numbering appearing at the top of the page.

E. *Oral Argument on Motions*

Parties may request oral argument, but must do so by separate letter or motion. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date and time. **However, if a party advises the Court in its oral**

argument request that an attorney with five years or less of experience as a licensed attorney will be presenting the party's argument, the Court will schedule an oral argument.

F. *Summary Judgment on Motions Against Pro Se Litigants*

In any case where a summary judgment motion is filed against a *pro se* litigant, the moving party is directed to comply with the notice required by Local Civil Rule 56.2.

G. *Motions Implicating Fed. R. App. P. 4(a)(4)(A) or Similar Time-Limiting Rules*

If any party concludes in good faith that delaying the filing of a motion, in order to comply with any aspect of these individual practices, will deprive the party of a substantive right, the party may file the motion within the time required by the Federal Rules of Civil and/or Appellate Procedure, together with an explanation of the basis for the conclusion.

4. *Pretrial Procedures*

A. *Joint Pretrial Orders in Civil Cases*

Unless otherwise ordered by the court, within 60 days from the date for the completion of discovery in a civil case, the parties shall submit to the court a proposed pretrial order, which shall include the following:

- i. *Caption*: The full caption of the action.
- ii. *Parties and Counsel*: The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. *Jurisdiction*: A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes and legal doctrines relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. *Claims and Defenses*: A brief summary by each party of the elements of the claims and defenses that party has asserted which remain to be tried, without reciting evidentiary matters but including citations to all statutes relied on.
- v. *Jury or Bench Trial*: A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vi. *Consent to Trial by a Magistrate Judge*: A statement as to whether or not all parties have consented to trial of the case by a magistrate judge. The statement shall not identify which parties have or have not consented.
- vii. *Witnesses*: A list of names and addresses by each party as to the fact and

expert witnesses whose testimony is to be offered in its case in chief, together with a brief narrative statement of the expected testimony of each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown.

- viii. Deposition Testimony: A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
- ix. Stipulations: A statement of stipulated facts, if any.
- x. Exhibits: A schedule listing exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule should not include exhibits that a party intends to use *solely* for impeachment and/or rebuttal purposes. Copies of statements proposed to be read to the jury as “learned treatises” under Fed. R. Evid. 803(18) shall be listed as exhibits. Plaintiff’s exhibits shall be identified by numbers, Defendant’s exhibits shall be identified by letters.

The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. Parties are expected to resolve before trial all issues of authenticity, chain of custody, and related grounds. Meritless objections based on these grounds may result in the imposition of sanctions. Only exhibits listed will be received in evidence except for good cause.

- xi. Motions in Limine: A list of motions *in limine* each party intends to file (pursuant to the deadline set forth in Par. 4.B. below), with a brief description of the nature of each such motion.

The Pretrial Order will use a uniform font type and size throughout. The Pretrial Order shall be prepared under the supervision of the assigned magistrate judge in accordance with the schedule set by the magistrate judge. The parties are directed to cooperate with each other in the preparation of the joint Pretrial Order. The Pretrial Order controls the subsequent course of the action unless the order is modified by consent of the parties and the court, or by order of the court to prevent manifest injustice.

B. *Filings Prior to Trial in Civil Cases*

Unless otherwise ordered by the court, each party shall file **fourteen (14) days** before the commencement of trial motions addressing any evidentiary or other issues which should be resolved *in limine*.

Unless otherwise ordered by the court, requests to charge, proposed verdict sheets and proposed *voir dire* questions in jury cases should be submitted no later than the **Wednesday before trial**. Requests to charge should be limited to the elements of the claims, the damages sought, and defenses. General instructions will be prepared by the court. The parties should endeavor to agree upon the requests to charge, to

the extent possible, and must submit a single, joint document setting forth all agreed-upon requests to charge and, where no agreement is reached, each party's proposed charge and/or one party's proposed charge with an explanation of the other party's objection to that charge. Word-processing files of proposed charges should be submitted to chambers pursuant to Section 1.E of this document.

C. *Filings Prior to Trial in Criminal Cases*

Unless otherwise ordered by the court, requests to charge and proposed *voir dire* questions in jury cases should be submitted on the **Thursday before trial**. General instructions will be prepared by the court. Word-processing files of proposed charges should be submitted to chambers pursuant to Section 1.E of this document.

5. *Rules to Encourage the Participation of Younger Lawyers In Court*

As reflected above (*see* Sections 3(A) and 3(E)), the Court *strongly* encourages the parties to permit less experienced attorneys to play an important role at all stages of a case, *e.g.*, making presentations and argument, and examining witnesses, at conferences, hearings, oral arguments, and at trial.

6. *Sentencing Motions*

A. *Applications*

Applications regarding sentencing shall be made in writing by defense counsel at least **five (5) business days** prior to the date of sentencing.

B. *Response*

The Government's response shall be made in writing at least **two (2) business days** before the date of sentencing.

NEW YORK COUNTY SUPREME COURT, CIVIL BRANCH



Main Courthouse:
60 Centre Street
New York, New York 10007

Satellite Courthouses:
80, 100 and 111 Centre Street
71 Thomas Street
New York, New York 10013

RULES OF THE JUSTICES

**[EMINENT DOMAIN RULES ADDED MAY 19, 2010, EFFECTIVE MAY 24, 2010;
BACKGROUND INFORMATION UPDATED: FEBRUARY 5, 2019]**

The following constitute the rules of the Justices of the Supreme Court, Civil Branch, New York County (hereinafter "the Rules" or "the Local Rules") with the exception of the Justices of the Commercial Division. A separate set of uniform rules governs cases assigned to the Commercial Division.

STRUCTURE OF THESE RULES: The rules of the court are set forth immediately hereafter. These rules are applicable in the Parts of the court (excluding the Commercial Division) unless otherwise indicated in the Basic Information section that follows after the main body of the rules. The Basic Information section lists the Justices of the court in alphabetical order and a summary of the operational details of their Parts (e.g., motion days). Variations exist among the Parts in regard to such details. An attorney who wishes to know the requirements followed in a particular Part should consult the main body of the Rules together with the portion of the Basic Information section that pertains to that Part.

CASE INFORMATION: Information on the status of cases and activity therein and copies of decisions and other case documents are available in the Supreme Court Records On-Line Library ("*Scroll*"), which is accessible at no charge through the website of this court (at www.nycourts.gov/supctmanh).

RULES

In addition to the Rules that follow, procedures have been developed to simplify and expedite the submission of papers to the court in electronically-filed cases. Counsel are advised to consult the court's Protocol on Courthouse Procedures for Electronically Filed Cases (posted on the "E-Filing" page of this court's website at www.nycourts.gov/supctmanh). Parts II and IV of these Rules are inapplicable to condemnation and tax certiorari cases. Emergency medical hearings and proceedings under the Mental Hygiene Law have their own special rules. Part V is applicable to matrimonial cases only.

I

RULES REGARDING THE PUBLIC ACCESS ON-LINE PROJECT

The parties must fill out and sign a conference request form which is available from the Part Clerk. Once the request is submitted, the court will contact the parties to schedule the date and time of the conference. The conference will usually be held on a Wednesday afternoon.

Counsel must keep in mind the following rules:

1. attorneys who appear for the conference must be knowledgeable about the case and must bring any relevant documents;
2. only attorneys with authority to settle the case may appear;
3. if an insurance company is involved, an adjuster or someone from the company authorized to enter into a settlement must appear;
4. attorneys may, but are not required to, bring their clients to the conference;
5. if a settlement is reached, the parties, through their attorneys, will be expected to sign a stipulation of settlement at the conference; and
6. requests to adjourn the pre-note settlement conference must be in writing, signed by all parties, and sent to the court by 5 p.m. the day before the conference.

V. TRIALS:

A. Requirements:

Upon the first appearance before this court, the parties must furnish the court with the following:

1. a list of proposed witnesses including the need for any interpreters with the required language and dialect;
2. all marked pleadings and bills of particulars;
3. all prior decisions in the case;
4. any notices to admit; and
5. copies of those portions of EBTs intended for use at trial for any purpose.

B. Jury Trials:

Just prior to opening statements, the parties must furnish the court and opposing counsel with the following:

1. *Proposed jury instructions*, with the following provisos:
 - a. if the proposed instructions are taken verbatim from the Pattern Jury Instructions, PJI numbers will suffice; and
 - b. if a PJI instruction is not verbatim or requires a characterization or description of the evidence or the parties' contentions, the exact requested language must be submitted together with the authority for it.
2. *Proposed jury verdict sheet*, with the following provisos:

The proposed instructions and verdict sheet must be emailed as an attachment in WordPerfect or Word format to cpaszko@nycourts.gov and to opposing counsel *simultaneously*. Do not assume that the email has been received until a confirmation email is sent to you. If no confirmation is received within 24 hours of the email's transmission, please call the court attorney for further instructions.
3. Parties are strongly urged to have the court stenographer pre-mark all exhibits for identification and/or in evidence if without objection. Any *in limine* issues are best raised before trial commences or at the beginning of the day on which a party expects to offer the exhibit.

VI. OTHER:

A. Change of Counsel:

If counsel is changed on consent, a copy of the form shall be filed in the General Clerk's Office (Room 119). Filing with the County Clerk will not suffice. Absent submission of a consent form, the attorney of record will remain on the case unless and until a motion for leave to withdraw is granted. If such an order is issued, outgoing counsel must serve a copy of the decision granting leave to withdraw on the General Clerk's Office and on all other counsel. A notice of appearance shall be filed by substitute counsel with the General Clerk's Office and the Part Clerk.

HON. DEBRA A. JAMES Part 59, IAS General Assignment Part, Room 331, 60 Centre Street, Phone: 646-386-3351, Email: 59nyef@nycourts.gov
IAS Part 59 Clerk Makera Monroe

Oral Argument of Motions: Tuesdays, 10:00 AM, 11:00 AM, 2:30 PM
Preliminary Conferences: Tuesdays, 9:30 AM
Compliance Conferences: Tuesdays, 11:00 AM
Status Conferences: Tuesdays, 10:00 AM and 2:30 PM
Pre-Trial Conferences: Tuesdays, 12 noon

Appearances by Counsel: Counsel and unrepresented party, if any, appearing for a conference, oral argument on a motion, or other matter, shall note her/his appearance on the calendar, which is posted outside the courtroom. For oral argument of motions brought by Notice or Show Cause Order (OSC), upon arrival of all parties, counsel and any unrepresented party shall present to Part Clerk Makera Monroe two sets of business cards, with the party for which the appearance is made indicated on the face of such card. The Part Clerk will call each matter in the order in which all parties have so marked their appearances as present. Prior to such call of a discovery conference, counsel must also complete and submit the appropriate form (**or if disputed, counter proposed orders**) to the Part Clerk. At each discovery conference, counsel shall be prepared to produce copies of all prior discovery stipulations and orders.

Preliminary Conferences:

Counsel, and any unrepresented party, shall be provided with a blank discovery stipulation and order to set a timetable for discovery within parameters established upon the determination by the Court of whether the action should be designated as "expedited", "standard" or "complex. If all parties sign and return the stipulation to Part 59 prior to the scheduled conference, such form shall be "so-ordered" by the Court and, unless the Court orders otherwise, appearances will not be required at the preliminary conference. Once the preliminary conference stipulation has been "so-ordered", no extensions of deadlines are permitted, except by further stipulation of all parties so-ordered by the court in advance of the applicable deadline(s) set forth in such order.

NYSCEF and Working Copies:

In accordance with the Procedure for Electronically Filed (NYSCEF) Cases Protocol Section D.5(a), in all Part 59 NYSCEF cases, unless otherwise directed, counsel shall submit working copies of e-filed documents that are intended for judicial review. (Working copies are not required for preliminary conference requests or notes of issue.) In accordance with the Procedure for Electronically Filed (NYSCEF) Cases Protocol Section D.5(a), generally, documents intended for judicial review must be filed by uploading to the NYSCEF system first and the working copies thereof delivered to the General Clerk's Office thereafter. Working copies that are submitted without the related Confirmation Notice will not be accepted. Working copies are intended only for the use of the Justice and will be discarded after resolution of the matter.

Motions:

After full submission of all papers to the General Clerk's Office, contested motions shall be scheduled by the Part Clerk for oral argument. Attorneys are responsible for monitoring all scheduled appearances for their cases, and by enrolling in the WebCivil Supreme e-tracking service (nycourts.gov/e-courts), will receive email updates and appearance reminders for each of their Civil Supreme Court cases.

Orders to Show Cause:

Orders to Show Cause (OSC) are signed and made returnable in the Part, unless directed otherwise. Working copies of responsive papers on OSCs shall be presented to the Judge on the return date. For any adjournment of the return date of a Show Cause Order, by conference call with all parties, counsel shall notify the Judge, via Part Clerk Makera Monroe (646-386-3351) two business days before the scheduled return date. Upon approval by the court of any such adjournment, including extensions of any service dates, the stipulation of OSC adjournment shall be emailed or delivered to the court by 4 PM on the business day preceding the originally scheduled return date.

Adjournments:

If the parties consent to an adjournment of a discovery conference or oral argument of a motion brought by Notice, the Part Clerk, Ms. Makera Monroe (646-386-3351) must be notified two business days before the scheduled return date. Upon approval by the court, the stipulation of adjournment shall be emailed or delivered to the court by 4 PM on the business day preceding the return date. Adjournments of hearings and trials shall be granted in accordance with 22 NYCRR (Uniform Rule) 125.1.

Disputes Concerning Discovery Conference Orders:

Motions to compel compliance with discovery conference orders or discovery demands are generally disfavored by the court. If counsel are unable to resolve a discovery dispute through good faith efforts (see Uniform Rule § 202.7 [a]), within any applicable discovery deadline, i.e., in advance/anticipation of any party's failure to meet such deadline, the aggrieved party shall contact the court by concise e-mail message specifically describing the discovery sought/ordered to 59nyef@nycourts.gov with cc: to all counsel or self-represented litigant, and make best efforts to arrange a conference call (646-3351) with the court. Counsel may request rulings on deposition disputes by conference call, or if the court is unavailable, by presenting a transcript of pertinent excerpts of such deposition to the court at the next scheduled discovery conference.

Trials:

At the pre-trial conference, the court will distribute to each party a Pre-Trial Information Sheet and Stipulation and Order that require, inter alia, a statement of undisputed facts, prospective motions in limine, list of exhibits with exhibit designations, and estimate of trial days, which each party, severally or jointly, must complete and submit to the court within one week before the date set for trial.

Miscellaneous There will be **no ex parte communications** with the court, except in accordance with OSCs seeking relief in accordance with Uniform Rule § 202.7(f).

HON. ROBERT D. KALISH Part 29, IAS General Assignment Part, Room 104, 71 Thomas Street Phone: 646-386-4039, Fax: 212-618-5242; Associate Law Clerk: Justin Mahony, Esq., Assistant Law Clerk: Joshua Demopoulos, Esq. Courtroom Part Clerk: Lohoma Shipman

Conferences and Oral Argument are usually on Tuesdays at 9:15 a.m. and 2:15 p.m. in the Trial & Motion Courtroom.

I. Preliminary and Compliance Conferences

- A. All preliminary conferences and compliance conferences commence at 9:15 a.m. Parties will appear on time and be prepared to conference with the Court.
- B. Parties shall sign in with the court officer. Cases will be heard in the order of appearance of all parties to an action.
- C. Parties must appear for all conferences with copies of all prior orders, including preliminary and compliance conference orders issued in the underlying action.
- D. Parties attending the conference are expected to be familiar with the underlying case and have the authority to discuss and resolve all discovery issues.
 1. Any attorney appearing on behalf of a party at a preliminary or compliance conference must be fully prepared to discuss the details of the underlying action and have a working knowledge of any material issues. This includes "per diem" attorneys and junior associates.
 2. Attorneys must be able to provide information about any pending appeals, prior motion practice, outstanding motions and motions that they intend to file within the immediate future.
- E. Parties shall prepare the relevant preliminary conference and compliance conference forms prior to conferencing with Justice Kalish or his court attorney. Preprinted forms are available in the courtroom.
 1. Parties will submit their completed preliminary conference and compliance conference forms to the court officer to be reviewed by the Court.
 2. Scheduled EBTs may **NOT** be adjourned without prior Court approval.
- F. Do not leave the courtroom until either Justice Kalish or his court attorney have reviewed your completed orders and Justice Kalish has signed the order or stipulation.
- G. Unless otherwise scheduled by the Court, a party that fails to appear before the Court for a morning preliminary or compliance conference by 11:00 a.m., or, in the case of afternoon compliance conferences, by 3:30 p.m., may have a default judgment (22 NYCRR 202.27) entered against them or have their case dismissed based upon their failure to appear for the conference.
- H. Any requests for adjournments of preliminary conferences or compliance conferences must be made at least two business days prior to the scheduled conference date.
 1. Said request can be made by calling the part clerk directly followed by e-filing and then faxing a written stipulation by the parties to the part clerk for approval by the Court.
 2. The Court will not consider any requests for an adjournment made fewer than two business days prior to the appearance date absent an emergency and a written stipulation by all parties consenting to the adjournment.
 3. All requests for adjournments must be approved in advance. Without prior approval, a stipulation will not be accepted regardless of the parties' consent and any failure to appear may result in a default.
- I. Failure to complete so-ordered discovery may result in penalties.

II. Motion Practice - Oral Argument on Tuesdays at 2:15 p.m. Notification is done via E-TRACK (see III [D] below).

- A. For all motions pending in the Submissions Part (60 Centre Street Room 130), the Parties will follow that Part's rules regarding adjournments, scheduling, and withdrawals.
- B. With the exception of non-e-filed cases that were originally submitted before other Justices, Part 29 is an e-filing part and requires that working copies be filed at the Motion Submissions Part. Do not send courtesy copies to chambers unless directed to do so. Any questions regarding the e-filing system should be addressed to the E-Filing Office at 646-386-3033 or at newyorkef@nycourts.gov.
 - a. All e-filed papers shall be entered into the e-filing system in PDF format, and it is encouraged that searchable text be included.
 - b. All exhibits to e-filed papers shall be e-filed separately as exhibits and appropriately identified. (Parties will not e-file exhibits as part of other e-filed papers themselves.)
 - c. If a party fails to e-file their papers in accordance with the above stated rules, the Court may require that the party re-e-file their papers at the party's expense.

**INDIVIDUAL PRACTICES OF
MAGISTRATE JUDGE STEWART D. AARON**

Chambers

Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 1970
New York, NY 10007
Telephone: 212-805-0274
Email: Aaron_NYSDChambers@nysd.uscourts.gov

Courtroom

Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 11C
New York, NY 10007

Unless otherwise ordered by Judge Aaron, civil matters before him shall be conducted in accordance with the following practices.¹ These practices are applicable to cases before Judge Aaron if the matter is within the scope of the District Judge’s order of reference or if the parties consent to have the case before Judge Aaron for all purposes pursuant to 28 U.S.C. § 636(c). Should the parties wish to have Judge Aaron hear their case for all purposes, the necessary form is available at: www.nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge.

I. Communications With Chambers

- A. Letters.** In general, communications with the Court should be by letter, via electronic case filing (“ECF”), without email or other copy to Chambers. Letters may not exceed 3 pages in length, exclusive of attachments, which should be kept to a minimum. Any letter containing sensitive or confidential information that a party does not wish to appear on the docket should be sent to the Court by email to Aaron_NYSDChambers@nysd.uscourts.gov as a .pdf attachment with a copy simultaneously emailed to all counsel. Any such email should state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the email; such communications shall be included only in the body of the letter.
- B. Telephone Calls.** For docketing, scheduling and calendar matters, counsel may call Chambers at 212-805-0274 between 9:00 a.m. and 5:00 p.m. Otherwise, telephone calls are permitted only for urgent matters requiring immediate attention.
- C. Pro Se Parties.** By Standing Order, a pro se party must mail all communications with the Court to the Pro Se Intake Unit located at 500 Pearl Street, Room 200,

¹ Requests for reasonable accommodations on account of disability with respect to these rules may be sent by email to Aaron_NYSDChambers@nysd.uscourts.gov.

New York, NY 10007. A pro se party may not call Chambers or send any document or filing directly to Chambers. Submissions requiring immediate attention should be hand-delivered to the Pro Se Intake unit. Any non-incarcerated pro se party who wishes to participate in ECF must file a Motion for Permission for Electronic Case Filing, available in the Pro Se Intake Unit or at: www.nysd.uscourts.gov/file/forms/motion-for-permission-for-electronic-case-filing-for-pro-se-cases. Any non-incarcerated pro se party who wishes to receive documents by email instead of by regular mail may consent to electronic service by filing a Pro Se (Non-Prisoner) Consent & Registration Form to Receive Documents Electronically, available in the Pro Se Intake Unit or at: www.nysd.uscourts.gov/file/forms/consent-to-electronic-service-for-pro-se-cases.

- D. Requests for Adjournments or Extensions of Time.** Requests to adjourn a court conference or court proceeding (including a telephonic court conference) or to extend a deadline must be made by Letter-Motion, after consultation with all affected parties, and must state: (1) the original date of the conference, proceeding or deadline; (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; (4) the reason for the present request; (5) whether all affected parties consent; and (6) if not, the reasons given for refusing. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

All requests for extension of a deadline must be made in advance of the deadline to be extended. Absent unforeseeable emergencies, all requests for adjournment of a court conference or other court proceeding (including a telephonic court conference) must be made at least 72 hours in advance of the proceeding to be adjourned, and must include at least two proposed dates, on which all counsel are available, for the adjourned proceeding.

- E. Hand Deliveries.** Where permitted by these Rules, hand-deliveries should be left with the Court Security Officers at the Worth Street entrance of 500 Pearl Street and may not be brought directly to Chambers. If the hand-delivery is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved immediately by Chambers staff.

II. Discovery Disputes

- A. Requirement To Meet And Confer.** No discovery dispute shall be heard unless the moving party (including a non-party seeking relief) has first conferred in good faith with the adverse party or parties by telephone or in person in an effort to resolve the dispute. An exchange of letters or emails alone does not satisfy this requirement. Counsel must respond promptly and in good faith to any request

from another party to confer in accordance with this paragraph.

B. Letter-Motion For Discovery Conference. If the parties have met and conferred but cannot resolve their dispute, the moving party must request a discovery conference with the Court, by Letter-Motion, as required by Local Civil Rule 37.2. Letter-Motions may not exceed 3 pages in length, exclusive of attachments, which should be kept to a minimum, and must clearly set forth the issues in dispute and the relief sought. As part of the Letter-Motion, the moving party must certify that the required in-person or telephonic conference took place between counsel for the relevant parties and, in particular, must state: (1) the date and time of such conference; (2) the approximate duration of the conference; (3) the names of the attorneys who participated in the conference; (4) the adversary's position as to each issue being raised (as stated by the adversary during the in-person or telephone conference); and (5) that the moving party informed the adversary during the conference that the moving party believed the parties to be at an impasse and that the moving party would be requesting a conference with the Court. None of these requirements may be satisfied by submitting copies of correspondence between counsel.

- 1. Briefing Schedule.** Unless the Court has ordered otherwise or the parties have agreed to a different briefing schedule, any opposition to a Letter-Motion shall be filed within three business days of the moving letter, and any reply shall be filed within one business day of the opposition. Letters in opposition and replies may not exceed three pages in length exclusive of attachments, which should be kept to a minimum. If the parties have agreed to a different briefing schedule, they must so inform the Court, either in the moving letter or as soon as agreement is reached. If the Letter-Motion requests emergent or expedited relief, opposing counsel are advised to file any opposition as promptly as possible.
- 2. Courtesy Copies.** Courtesy copies of Letter-Motions are not required unless the attached exhibits exceed ten pages, in which case one courtesy copy, marked as such, should be submitted to Chambers promptly after filing. Courtesy copies should bear the ECF header generated at the time of electronic filing and include protruding tabs for any exhibits. Bulky materials should be neatly bound, or placed in 3-ring binders, with appropriate dividers.
- 3. Redactions and Filing Under Seal.** A party wishing to file a Letter-Motion (or opposition or reply) that contains material claimed by either party to require confidential treatment may file a redacted copy of the document on ECF, removing or concealing such information. At the time of filing, the party also shall: (1) serve a complete and unredacted copy of the document on all other parties; and (2) email a complete and unredacted

copy of the document to the Court.

Within three business days of the date the redacted document is filed, the party filing the redacted document must file a letter on ECF seeking permission to file the document, or a portion thereof, under seal. However, the parties are cautioned that the designation of documents as “confidential” for discovery purposes does not, without more, justify a sealing order. Thus, the letter must explain the need to withhold the material at issue from the public record notwithstanding the strong presumption of public access to “judicial documents” under the First Amendment and the common law. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-21 (2d Cir. 2006). If a sealing request is based on another party’s designation of documents or information as “confidential,” the parties shall confer and jointly submit the request for sealing.

If the Court approves the request for filing under seal, the parties must file the unredacted copies under seal with the Clerk of Court. If the Court does not approve the request, Chambers will file the complete and unredacted document on ECF or provide further instructions to the filing party.

- C. Discovery Conferences/Oral Argument On Letter-Motions.** It is the Court’s practice to hold a conference with the parties to address any discovery disputes raised by Letter-Motion. The Court will decide the discovery dispute after the conference, based on the parties’ letters and matters discussed during the conference, unless a party shows – by separate application – good cause why more formal briefing is required.

Junior members of legal teams representing clients are invited to argue Letter-Motions they have helped prepare. Firms are encouraged to provide this opportunity to junior attorneys for training purposes. The Court is amenable to permitting a number of lawyers to argue for one party if this creates an opportunity for a junior lawyer to participate. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

III. Motions Other Than Discovery Motions

For motions other than discovery motions, a pre- motion conference is not required. A pre-motion conference may be requested by Letter-Motion where counsel believes that an informal conference with the Court may obviate the need for the motion or reduce the issues in dispute.

- A. Briefing Schedule.** Unless the Court has ordered otherwise or the parties have agreed to a different briefing schedule, opposition and reply papers with respect

to formal motions will be due in accordance with Local Civil Rule 6.1. The parties are strongly encouraged to agree on a reasonable briefing schedule before the moving papers are filed. If the parties have agreed to such a schedule, they must so inform the Court, either in the moving party's notice of motion or by letter as soon as agreement is reached. Should the parties thereafter agree to modify their briefing schedule, they must promptly inform the Court of the new schedule by letter.

- B. Memoranda of Law.** The typeface, margins and spacing of motion papers must conform to Local Civil Rule 11.1. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities.
- C. Courtesy Copies.** One courtesy copy of all formal motion papers, marked as such, shall be submitted to Chambers promptly after filing. Courtesy copies should bear the ECF header generated at the time of electronic filing and include protruding tabs for any exhibits. Bulky materials should be neatly bound, or placed in 3-ring binders, with appropriate dividers.
- D. Oral Argument on Motions.** Parties may request oral argument by letter. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date and time.

As with Letter-Motions, junior members of legal teams representing clients are invited to argue motions they have helped prepare. Firms are encouraged to provide this opportunity to junior attorneys for training purposes. The Court is amenable to permitting a number of lawyers to argue for one party if this creates an opportunity for a junior lawyer to participate. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

- E. Redactions and Filing Under Seal.** Filing under seal requires permission of the Court. Unless otherwise ordered, any party wishing to file a document or portion thereof under seal must do the following on or before the date on which the relevant brief, declaration or other document is due: (1) serve a complete and unredacted copy of the document on all other parties; (2) send a complete and unredacted copy of the document to the Court by email; (3) file a redacted copy of the document via ECF, from which the material claimed to require confidential treatment has been removed or concealed; and (4) file a letter on ECF seeking permission to file the document under seal and explaining the need to withhold the material at issue from the public record notwithstanding the strong presumption of public access to "judicial documents" under the First Amendment and the common law. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-

21 (2d Cir. 2006). If a sealing request is based on another party's designation of documents or information as "confidential," the parties shall confer and jointly submit the request for sealing. However, the parties are cautioned that the designation of documents as "confidential" for discovery purposes does not, without more, justify a sealing order.

If the Court approves the request for filing under seal, the parties must file the unredacted copies under seal with the Clerk of Court. If the Court does not approve the request, Chambers will file the complete and unredacted document on ECF or provide further instructions to the filing party.

IV. Pretrial Procedures

- A. Applicability.** The procedures set out below apply only to cases in which the parties have consented pursuant to 28 U.S.C. § 636(c) to have all proceedings before Judge Aaron, including trial.
- B. Joint Pretrial Order.** Unless otherwise ordered by the Court, the parties shall submit to the Court for its approval a Joint Pretrial Order within 30 days after the date for the completion of discovery, or, if a summary judgment motion has been filed, within 30 days after the decision on the motion. The proposed Joint Pretrial Order shall be signed by all parties and include the following:
1. The full caption of the action.
 2. The names, addresses, telephone numbers (both office and cellular) and email addresses of each principal member of the trial team.
 3. A brief statement by plaintiff (or, in a removed case, by defendant) as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction, including citations to all statutes relied on and relevant facts, such as citizenship and jurisdictional amount.
 4. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, including citations to all statutes relied on, but without recital of evidentiary matter.
 5. With respect to each claim remaining to be tried, a brief statement listing each element or category of damages sought with respect to such claim and a calculation of the amount of damages sought with respect to such element or category.
 6. A statement by each party as to whether the case is to be tried with or

without a jury, and the anticipated number of trial days needed.

7. Any stipulations or agreed to statements of fact or law.
 8. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Absent extraordinary circumstances, a party may not call as a witness in its case in chief any person not listed in the Joint Pretrial Order.
 9. A designation by each party of deposition testimony to be offered in that party's case in chief, referencing page and line numbers, with any cross-designations and objections by any other party. If there is no objection or cross-designation, the Court will deem the opposing party to have waived any such objection or cross-designation. Absent extraordinary circumstances, a party may not offer in its case in chief deposition testimony that is not listed in the Joint Pretrial Order.
 10. A list by each party of exhibits to be offered in its case in chief. Each exhibit shall be pre-marked (plaintiff to use numbers, defendant to use letters). For each exhibit as to which there is an objection, the party objecting must briefly specify, next to the listing for that exhibit, the nature of the party's objection (*e.g.*, "authenticity," "hearsay," "Rule 403"). Any objection not listed shall be deemed waived. Absent extraordinary circumstances, a party may not offer in its case in chief any exhibit not listed in the Joint Pretrial Order.
 11. A proposed schedule by which the parties will exchange demonstrative exhibits that the parties intend to use at trial, notify each other of any objections thereto, consult with each other regarding those objections and notify the Court of any remaining disputes.
 12. All other matters that the Court may have ordered or that the parties believe are important to the efficient conduct of the trial.
- C. Filings Prior to Trial.** Unless otherwise ordered by the Court, each party shall file 15 days before the date of commencement of trial if such a date has been fixed (or 30 days after the filing of the final pretrial order if no trial date has been fixed):
1. In jury cases, requests to charge and proposed voir dire questions, and where applicable, a proposed special verdict form.
 2. In nonjury cases, proposed findings of fact and statements of law. If the parties believe it would be useful, they also may file in nonjury cases pretrial memoranda, limited to 25 pages.
 3. In all cases, motions addressing any evidentiary or other issues which

should be resolved *in limine*.

- D. Marking Exhibits for Trial.** At the commencement of trial, each party must provide each other party, and the Court, with a tabbed binder or binders containing courtesy copies of its trial exhibits and deposition designations.

INDIVIDUAL RULES AND PRACTICES OF JUDGE RICHARD J. SULLIVAN

Chambers Contact Information:

United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2104
New York, New York 10007
(212) 805-0264
SullivanNYSDCChambers@nysd.uscourts.gov
Courtroom 905

Unless otherwise ordered, matters before Judge Sullivan shall be conducted in accordance with the following practices:

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters on behalf of parties represented by counsel must be both docketed on ECF and e-mailed as a PDF attachment to the following address: sullivannysdchambers@nysd.uscourts.gov. Copies of correspondence between counsel shall not be sent to the Court or docketed on ECF. *Pro se* litigants may send letters by regular mail, but must send all letters to the *Pro Se* Intake Unit, not to chambers. Other than orders to show cause, documents should not be delivered directly to chambers without prior permission, including by Assistant United States Attorneys and Federal Defenders.

Counsel shall include the case caption and docket number in the subject line of every e-mail sent to chambers. Counsel shall not provide a hard copy of correspondence e-mailed to chambers.

B. Telephone Calls. Telephone calls to chambers are permitted only in situations requiring immediate attention. In such situations only, call (212) 805-0264.

C. Requests for Extensions. Requests for adjournments, extensions of time, extensions of page lengths in memoranda, etc., shall be made by letter, and not by stipulation sent through the Orders and Judgments Clerk. Absent an emergency, such requests must be received in chambers at least two business days prior to the scheduled appearance or deadline. All requests for adjournments or extensions of time must state (1) the original date set for the appearance or deadline, (2) the reason(s) for the request, (3) the number of previous requests for adjournment or extension, (4) whether these previous requests were granted or denied, and (5) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.

D. Proposed Stipulations and Orders. Proposed stipulations and orders are to be submitted in both PDF and Word version through the Orders and Judgments Clerk at orders_and_judgments@nysd.uscourts.gov. Courtesy copies need not be sent to chambers.

E. Related Cases. After a case has been accepted as related to an earlier-filed case, all future court papers and correspondence must contain the docket number of the new case, as well as the docket number of the case to which it is related (*e.g.*, 10-cv-1234 [rel. 09-cv-4321]).

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions or disputes, follow Rule 2.G. below. For motions other than discovery motions, a pre-motion conference with the Court is required before making any motion, except motions previously authorized by the Court, motions brought by order to show cause, motions by incarcerated *pro se* litigants, motions for admission *pro hac vice*, motions for reargument or reconsideration, motions for appointment of lead plaintiffs and counsel in class actions, motions for remand, motions for a preliminary injunction, motions brought pursuant to Local Rule 6.3, and motions described in Rule 6(b) of the Federal Rules of Civil Procedure and Rule 4(a)(4)(A) of the Federal Rules of Appellate Procedure.

To arrange a pre-motion conference, the moving party shall submit a letter in accordance with Rule 1.A, not to exceed three pages in length, setting forth the basis for the anticipated motion. The letter shall include citations to relevant authority and should provide a brief overview of the anticipated motion. All parties served with the letter must submit a letter response, not to exceed three pages, within three business days from submission of the notification letter. Response letters shall directly address the arguments and authorities set forth in the moving party's letter. No party shall submit a reply letter. As a general matter, affidavits and exhibits are not permitted in connection with pre-motion letters without prior written request and permission. However, when submitting a pre-motion letter regarding a request to amend a pleading, the moving party shall attach: (1) the proposed amended pleading, and (2) a blackline comparison of the operative pleading and proposed amended pleading.

A party's submission of a pre-motion letter seeking leave to file a pre-answer motion to dismiss will stay that party's obligation to answer or move against the complaint through the date of the pre-motion conference.

B. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. All memoranda of law shall (1) be produced in a font size of twelve point or higher, (2) be double-spaced, and (3) have one-inch margins on all sides. Footnotes shall (1) be produced in a font size

Judge Sullivan
Individual Rules and Practices
Page 3

of twelve point or higher, and (2) be single-spaced with a twelve point space between footnotes appearing on the same page. Sur-reply memoranda will not be accepted without prior permission of the Court.

C. Unpublished Cases. Westlaw citations shall be provided, if available, to cases not available in an official reporter. Parties must provide copies of cases that are not available on Westlaw.

D. Courtesy Copies. Regarding all motion papers, including exhibits submitted in connection with a motion, a party shall submit a hard courtesy copy and, via e-mail, an electronic courtesy copy thereof to chambers at the time the papers are served. As for pleadings and correspondence (*e.g.*, letter motions), a party need only e-mail a courtesy copy to chambers. Courtesy copies should be marked as such and shall be submitted to chambers for both ECF and non-ECF designated cases.

E. Filing of Motion Papers. Motion papers not filed and served via ECF shall be filed promptly after service.

F. Oral Argument on Motions. Oral argument will be held at the Court's discretion. The notice of motion shall state that oral argument will be "on a date and at a time designated by the Court." The Court will contact the parties to set the specific date and time for oral argument, if any. Where junior lawyers are familiar with the matter under consideration, but are not experienced in arguing before a court, they should be encouraged to actively participate. The Court is amenable to permitting more than one lawyer to argue for a party, especially where it creates an opportunity for a junior lawyer to argue,

G. Discovery Disputes. Unless otherwise directed, and before making any discovery motion, counsel should describe their discovery disputes in a single letter, jointly composed, not to exceed five pages. Separate and successive letters will not be read. Before filing the joint letter, the parties shall confer in an effort to resolve the dispute without court action, and the joint letter shall describe the time, place and duration of such discussions, naming the counsel involved. The joint letter shall also describe concisely the issues in dispute and the respective positions of each party, citing the applicable authority that the respective parties claim for support. As a general matter, affidavits and exhibits are **not** permitted in connection with discovery dispute letters without prior written request and permission. However, when the dispute concerns the refusal to respond to a specific written request, the parties shall attach that request. If an opposing party refuses to participate in writing a joint letter or does not provide its portion of a joint letter within 72 hours of a party's request, a party may submit a letter without the opposing party's contribution and shall attach a copy of the correspondence seeking the opposing party's contribution.

H. Affidavits and Exhibits. Parties are limited to a total of five affidavits each in support of or in opposition to a motion. Affidavits may not exceed ten double-spaced pages. Parties are limited to a total of fifteen exhibits, including exhibits attached to an affidavit, in support of or in opposition to any motion. Each exhibit – other than the complaint – is limited to fifteen pages. If possible, the exhibits should be excerpted to include only the relevant material. As noted above, no affidavits or exhibits are permitted in connection with pre-motion letters or discovery dispute letters without prior written request and permission.

3. Sealing

No document may be filed with the Clerk under seal without an order of this Court addressing the specific documents to be sealed. Any application to seal shall be accompanied by an affidavit or affidavits and a memorandum of law, demonstrating that the standards for sealing have been met and specifically addressing *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006), in a civil case or *United States v. Amodeo*, 71 F.3d 1044 (2d Cir. 1995), in a criminal case, and any other controlling authority. The application shall also include a proposed redacted version of the document(s) in question for public docketing. Nothing herein is intended to alter or modify the applicability of Federal Rule of Civil Procedure 5.2. The redactions expressly authorized by Rule 5.2 may be made without application to the Court.

4. Pretrial Procedures in Civil Cases

A. Courtesy Copies. A courtesy copy of each submission described in this pretrial section should be provided to chambers on the date that the submission is filed or served.

B. Joint Proposed Pretrial Orders. Prior to trial, the Court will issue an order directing the parties to jointly submit to the Court for its approval a Proposed Pretrial Order that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

- i. The full caption of the action;
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel;
- iii. A brief statement by Plaintiff as to the basis of subject-matter jurisdiction and a brief statement by Defendants as to the presence or absence of subject-matter jurisdiction, each of which shall include citations to all authority relied on and relevant facts as to citizenship and jurisdictional amount;
- iv. A brief summary by each party of the claims and defenses that the party has asserted that remain to be tried – without recital of evidentiary matters but with

citations to all statutes on which the party has relied – and of the claims and defenses that the party has previously asserted that are not to be tried;

- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed;
- vi. A statement as to whether all parties have consented to a trial of the case by a magistrate judge (without identifying which party or parties have or have not so consented);
- vii. Any stipulations of fact or law that have been agreed upon by the parties;
- viii. A statement by each party as to the witnesses whose testimony is to be offered in the party's case-in-chief, indicating whether such witnesses will testify in person or by deposition;
- ix. A designation by each party of deposition testimony to be offered in the party's case-in-chief, with any cross-designations and objections by any other party;
- x. A list by each party of exhibits to be offered in the party's case-in-chief, with an indication as to whether any party objects to any such exhibits and a brief statement of the nature of the objection (*e.g.*, "relevance," "authenticity," "hearsay"); and
- xi. A statement of whether the parties consent to less than a unanimous verdict.

C. Filings Prior to Trial.

Unless otherwise ordered by the Court, in jury cases, the parties shall jointly file the following submissions with the Proposed Pretrial Order:

- i. Proposed *voir dire* questions – a copy of which shall be e-mailed to chambers in a Word version – which shall include the text of any requested question and should consist of a single document and note any areas of disagreement between the parties;
- ii. A proposed verdict form – a copy of which shall be e-mailed to chambers in a Word version – and which should consist of a single document and note any areas of disagreement between the parties;
- iii. Proposed jury instructions – a copy of which shall be e-mailed to chambers in a Word version – and which shall include the text of any requested instruction and a

citation, if relevant, to the authority from which such instruction derives, and should consist of a single document and note any areas of disagreement between the parties;

- iv. Motions addressing any evidentiary or other issues that should be resolved *in limine*; and
- v. If a party believes that it would be useful, a pretrial memorandum, not to exceed 10 pages.

Unless otherwise ordered by the Court, in non-jury cases, the parties shall jointly file the following submissions with the Proposed Pretrial Order:

- i. Proposed findings of fact and conclusions of law – a copy of which shall be e-mailed to chambers in a Word version – which should be detailed and note any areas of disagreement between the parties and, for each proposed factual finding, shall include citations to the record;
- ii. Motions addressing any evidentiary or other issues that should be resolved *in limine*; and
- iii. If a party believes that it would be useful, a pretrial memorandum, not to exceed 10 pages.

D. Additional Submissions in Non-Jury Cases. In addition, in non-jury cases, at the time that the Proposed Pretrial Order is filed, each party shall serve the following submissions, two courtesy copies of which the party shall also submit to chambers:

- i. Affidavits – the originals of which shall be marked as exhibits at trial – constituting the direct testimony of each trial witness, except for testimony of an adverse party, a person whose attendance must be compelled by subpoena, or a person for whom a party has requested and from whom the Court has agreed to hear direct testimony during the trial;
- ii. All deposition excerpts that will be offered as substantive evidence and, for each, a one-page synopsis of those excerpts (with citations); and
- iii. All documentary evidence, which shall be compiled in tabbed binders containing all documentary exhibits organized by exhibit number. If the number of exhibits is so voluminous as to make compliance with this rule impractical, the parties shall contact the Court for guidance.

E. Filings in Opposition. Parties shall file the following documents within one week of the filing of the pretrial order:

- i. Oppositions to any motions *in limine*.
- ii. Oppositions to any legal argument in a pretrial memorandum.

F. Courtesy Copies of Documentary Evidence.

In jury cases, three days prior to trial, each party shall submit to chambers two sets of tabbed binders containing all documentary exhibits organized by exhibit number. If the number of exhibits is so voluminous as to make compliance with this rule impractical, the parties shall contact the Court for guidance.

In non-jury cases, three days prior to trial, the parties shall submit to chambers any additional documentary evidence not previously included in the binders submitted pursuant to Rule 4.C.1.iii. Any such additional documentary evidence shall be organized by exhibit number (continuing from the numbers in the previously submitted binders), and objections to an exhibit shall be clearly noted. In addition, with respect to the documentary evidence previously submitted pursuant to Rule 4.C.1.iii, the parties shall provide chambers with an index of the exhibit numbers that the Court has deemed admissible; to the extent that the Court has not ruled on an exhibit(s) to which a party objects, the index shall clearly note any such exhibit(s) as well. The index shall not list exhibits that the Court previously deemed inadmissible.

5. Conferences

A. Principal Trial Counsel. The attorney who will serve as principal trial counsel **must** appear at all conferences with the Court. Any attorney appearing before the Court must file a notice of appearance with the Clerk of the Court.

B. Initial Case Management Conference. The Court will generally schedule a Fed. R. Civ. P. 16(c) conference within three months of the filing of the Complaint. The Notice of Initial Pretrial Conference will be sent to plaintiff's counsel, who will be responsible for distributing copies to all parties.

C. Exhibits. If a party intends to introduce exhibits at a hearing, that party shall before the hearing begins submit two tabbed binders containing all documentary exhibits organized by exhibit number. If the number of exhibits is so voluminous as to make compliance with this rule impractical, the parties shall contact the Court for guidance.

6. Default Judgments. A party who wishes to obtain a default judgment must proceed by way of an order to show cause and should use the procedure set forth at:

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http://www.nysd.uscourts.gov/cases/show.php?db=judge_info&id=918. A motion for default judgment will not be considered fully submitted until the moving party has obtained a signed Certificate of Default from the Clerk of the Court.

7. Bankruptcy Appeals. Briefs must be submitted in accordance with Bankr. Rule 8018. Counsel may extend these dates by joint request submitted to the Court no later than two business days before the brief is due.

8. Criminal Cases. Upon assignment of a criminal case to Judge Sullivan, the parties shall immediately call chambers to arrange for a conference, at which the defendant will be present, in order to set a discovery and motion schedule. The Assistant United States Attorney shall e-mail a courtesy copy of the indictment and the criminal complaint, if one exists, to chambers as soon as practicable. With respect to guilty pleas and sentencing, parties should refer to the Advice of Rights Form and the Court's Individual Rules of Practice for Sentencing Proceedings, respectively, which are available on the Court's website at the following links:

- http://www.nysd.uscourts.gov/cases/show.php?db=judge_info&id=1214
- http://www.nysd.uscourts.gov/cases/show.php?db=judge_info&id=1215
- http://www.nysd.uscourts.gov/cases/show.php?db=judge_info&id=481



PART 5

JUDGE BIOGRAPHIES

STEWART D. AARON

United State Magistrate Judge
Southern District of New York

Chambers address:

United States Courthouse
500 Pearl Street, Room 1970
New York, New York 10007

Phone: (212) 805-0274

Judge Aaron was sworn in as a United States Magistrate Judge on December 1, 2017. He received a B.S. from Cornell University in 1980 and a J.D. from Syracuse University College of Law in 1983.

From 1983 to 1984, Judge Aaron was an associate at the New York City-based law firm of Bond and Camhi, which merged into Dorsey & Whitney. After spending six years as an associate in the New York office of Dorsey & Whitney, he was elevated to partner in 1990 and served in that role until January 2005. In January 2005, Judge Aaron joined the law firm Arnold & Porter as a partner in its New York office. During his tenure at Arnold & Porter, he served as the Administrative Partner, and then later as the Managing Partner, of the New York office.

Judge Aaron has been an active member of the New York County Lawyers Association (NYCLA) since the mid-1980s. He served as NYCLA's 58th President from 2011 to 2013, and from 2001 to 2004 chaired NYCLA's Committee on the Federal Courts, which honored him with the David Y. Hinshaw Award in 2016. Judge Aaron also received the NYCLA Young Lawyers Section's Star of the Bar Award in 2017. He continues to serve on the NYCLA Board of Directors and its Executive Committee.

Judge Aaron is a member of the New York City Bar Association, where he served as Chair of its Litigation Committee from 2007 to 2010; the New York State Bar Association, where he serves on its House of Delegates; and the Federal Bar Council. He currently serves as President of the New York American Inn of Court.

Courtroom Deputy: Katherine Lopez

Law Clerks: Maggie Maurone, Gizele Rubeiz

PAMELA K. CHEN

Pamela K. Chen is a federal district judge in the Eastern District of New York in Brooklyn. She was nominated to the federal bench in January 2013 by President Barack Obama, and sworn in on March 19, 2013. Since her appointment to the bench, Judge Chen has presided over a wide array of civil and criminal cases, including a civil lawsuit alleging religious profiling of Muslims by the New York City Police Department and the RICO prosecution of FIFA soccer officials and media company executives for engaging in a global bribery and kickback conspiracy. Before joining the bench, Judge Chen was an Assistant U.S. Attorney in the U.S. Attorney's Office for the Eastern District of New York, except for a brief period in 2008, when she served as a Deputy Commissioner in the New York State Division of Human Rights. During her tenure in the U.S. Attorney's Office, Judge Chen investigated and prosecuted cases involving terrorism, gang violence, drug trafficking, hate crimes, official misconduct, and human trafficking. Between 1991 and 1998, Judge Chen was a trial attorney in the Civil Rights Division of the U.S. Department of Justice. Judge Chen began her legal career at Arnold & Porter in Washington, D.C. She received her undergraduate degree from the University of Michigan and her law degree from the Georgetown University Law Center.

JUDITH GISCHE

JUDICIAL EXPERIENCE

Designated Associate Justice of the Appellate Division of the Supreme Court, First Department, October 2012.

Elected Justice of the New York State Supreme Court, November, 2008. Sat in Civil Term of the Supreme Court.

Appointed Acting Justice of the New York State Supreme Court, May, 1997. Sat in Civil Term of the Supreme Court in New York and Bronx Counties.

Elected Judge of the Civil Court of the City of New York, November, 1993. Sat in the Civil and Small Claims Parts of the Civil Court.

Appointed Housing Court Judge of the Civil Court of the City of New York, May 1990. Sat in Kings County.

EDUCATION

Queens College, City University of New York, 1974-1975

B.A., State University of New York at Buffalo, 1977
Magna Cum laude, Phi Beta Kappa

J.D., State University of New York at Buffalo, 1980

OTHER LEGAL EXPERIENCE

11/80 to 1/82, Judicial Clerk at Appellate Division of the Supreme Court, Third Department

1/82 to 5/90, Associate Attorney with Richenthal, Abrams and Moss

2004 to present, Adjunct Professor, New York Law School

DEBRA A. JAMES

Elected to the New York State Supreme Court in 2013, Justice James has presided over thousands of civil actions in every type of case or controversy brought in New York's trial court of plenary jurisdiction. She has issued hundreds of opinions, many of which have been published. Judge James began her judicial career in New York City's Civil Court and was designated an Acting Supreme Court Justice in 2002. In January 2019, Judge James was installed as President of the Association of Justices of the Supreme Court of the State of New York. In addition, she serves as a member the Cornell Law Dean's Advisory Council and the Women in Prison Committee of the National Association of Women Judges. She also currently co-chairs the Diversity on the Judiciary Subcommittee of the Enhance Diversity in the Profession Committee and is member ex officio of the Executive Committee of the New York City Bar Association. Justice James previously served as general counsel of the Roosevelt Island Operating Corporation; associate counsel of the New York State Mortgage Loan Enforcement and Administration Corporation/New York State Urban Development Corporation; and an assistant corporation counsel of the New York City Law Department, where she represented municipal corporations in New York state and federal trial and appellate courts. She received her law degree from Cornell Law School and graduated cum laude in American Government & Politics from Cornell University.

BARBARA R. KAPNICK

Born in New York City, Justice Barbara R. Kapnick received her bachelor's degree cum laude from Barnard College and her juris doctor from Boston University School of Law.

Between 1980 and 1991, Justice Kapnick worked as a Law Clerk to both the Hon. Ethel B. Danzig and the Hon. Michael J. Dontzin in the Civil and Supreme Courts of New York County.

Justice Kapnick was elected to the Civil Court in 1991, appointed an Acting Supreme Court Justice in April 1994, and was elected to the Supreme Court, New York County in 2001. She was assigned to the Commercial Division in 2008, where she handled many high profile cases, and was appointed to the Appellate Division, First Department by Governor Andrew M. Cuomo in January 2014. She was a member of the Advisory Committee on Judicial Ethics from June 2008 - June 2018, and now serves on its Ethics Faculty. She also served as Chairperson of the Board of Trustees of the New York County Public Access Law Library from 2008 to 2014. In December 2015, she was appointed to the Franklin H. Williams Judicial Commission, promoting racial and ethnic fairness in the courts, and in October 2017 she was appointed to the Commercial Division Advisory Council by the Chief Judge of the State of New York. She is a member of the Commercial and Federal Litigation Section of the New York State Bar Association, and serves as Secretary of the Judicial Section. She is also a long-time member of the New York City Bar Association, where she has served on numerous committees.

Justice Kapnick is a Master of the New York American Inn of Court and past president of the Jewish Lawyers Guild, where she remains active as a member of the Board of Directors. She is also a longstanding member of the New York Women's Bar Association, where she served as Co-Chair of the Litigation Committee.

Justice Kapnick sits on the Board of the New York State Association of Women Judges, and is also active in the Supreme Court Justices Associations in New York, having served as President of the Citywide Association from 2013-2014, and currently as a member of the Executive Committee of the Statewide Association.

A frequent lecturer for many Bar Associations, Justice Kapnick has also received numerous awards, including the Benjamin N. Cardozo Award from the Jewish Lawyers Guild, the Harlan Fiske Stone Memorial Award from the New York City Trial Lawyers Association, the Women's History Month Flor de Maga Award from the Puerto Rican Bar Association and the Distinguished Jurist Award from the Defense Association of New York.

SALIANN SCARPULLA

Justice Saliann Scarpulla is a graduate of Boston University and Brooklyn Law School, *cum laude*.

After law school, Justice Scarpulla became Principal Court Attorney to the Hon. Alvin F. Klein. After her clerkship concluded in 1987, Justice Scarpulla joined Proskauer Rose Goetz & Mendelsohn as a litigation associate.

In 1993, Justice Scarpulla moved to the Federal Deposit Insurance Corporation, representing the FIDC as receiver for failed banks as Senior Counsel in the New York Legal Services Office. In 1997, Justice Scarpulla became Senior Vice President and Bank Counsel to Hudson United Bank, where she was responsible for all litigation involving the bank and oversaw the banks' compliance with state and federal banking regulations.

Justice Scarpulla returned to the New York State court system in 1999, as Principal Court Attorney to the Hon. Eileen Bransten. She was elected to the Civil Court in 2001 and was appointed an Acting Justice of the Supreme Court in 2009.

Justice Scarpulla was elected to the Supreme Court in 2012 and was assigned to an IAS part with an emphasis on complex asbestos litigation. In February 2014, Justice Scarpulla was assigned to the Supreme Court, New York County Commercial Division.

In 2017 Justice Scarpulla was honored as one of Three Wise Women by the National Association of Italian American Women and was awarded the Louis J. Capozzoli Gavel Award by the New York County Lawyers Association. She is a contributing author to the Commercial Litigation in New York State Courts treatise and has authored several articles on commercial litigation published in the New York Law Journal. Justice Scarpulla is a frequent lecturer for the Association of the Bar of the City of New York, the New York County Lawyers Association, the Practising Law Institute, and the New York State Judicial Institute.

Justice Scarpulla is active in several New York City and statewide bar associations. She is also a Board member and Vice President of Judges and Lawyers Breast Cancer Alert (JALBCA).

RICHARD J. SULLIVAN

Richard J. Sullivan was sworn in as a United States Circuit Court Judge for the Second Circuit in October 2018. Before that, Judge Sullivan served for eleven years as a United States District Judge for the Southern District of New York. Prior to becoming a judge, he served as the General Counsel and Managing Director of Marsh Inc., the world's leading risk management and insurance brokerage firm. From 1994 to 2005, he served as an Assistant United States Attorney in the Southern District of New York, where he was Chief of the International Narcotics Trafficking Unit and Director of the New York/New Jersey Organized Crime Drug Enforcement Task Force. In 2003, he was awarded the Henry L. Stimson Medal from the Association of the Bar of the City of New York. In 1998, he was named the Federal Law Enforcement Associations Prosecutor of the Year. Prior to joining the U.S. Attorneys Office, he was a litigation associate at Wachtell, Lipton, Rosen & Katz in New York and a law clerk to the Honorable David M. Ebel of the United States Court of Appeals for the 10th Circuit. He is a graduate of Yale Law School, the College of William & Mary, and Chaminade High School on Long Island. From 1986 to 1987, he served as a New York City Urban Fellow under New York City Police Commissioner Benjamin Ward. Judge Sullivan is on the executive board of the New York American Inn of Court and the Center for Law and Religion at St. John's University School of Law. He is an adjunct professor at Columbia Law School, where he teaches courses on sentencing and jurisprudence, and he previously served as an adjunct professor at Fordham Law School, where he taught courses on white collar crime and trial advocacy and was named Adjunct Professor of the Year.