

## **Biography**

Justice Andrew Borrok obtained his B.A. from Columbia College, Columbia University, his J.D. from the Georgetown University Law Center, and his M.B.A. from Columbia Business School.

Justice Borrok was appointed to the Commercial Division, New York County as of January 1, 2019. He was elected to the New York State Supreme Court in 2017 and has served as a Justice of the Supreme Court in both Kings County and in New York County. He was elected to the New York City Civil Court in 2014, designated to the Criminal Court by Judge A. Gail Prudenti, and returned to the Civil Court in 2017. As a NYC Civil Court Judge, he presided over bench and jury trials in both the Criminal and Civil Courts. In the Criminal Court, Justice Borrok presided over the DWI part where he substantially reduced the backlog of cases. In the Civil Court, he presided over “No-Fault”, Commercial Landlord/Tenant, Small Claims, and cases transferred from the Supreme Court.

Prior to joining the bench, Justice Borrok was an attorney, investor, philanthropist and community volunteer. He was managing member of Borrok Properties, LLC from 2010 to 2014. He worked as General Counsel and a General Partner of 425 Park Avenue Company from 2002 until 2009 and 2003 to 2007, respectively. Justice Borrok was also a managing member of 14 Penn Plaza, LLC from 2003-2007. From 2004 to 2005, Justice Borrok was Of Counsel at Arent Fox LLP. From 2002 to 2004, he worked as an associate at Squire, Sanders & Dempsey, LLP. From 2001 to 2002, Justice Borrok worked as an associate at Bear, Stearns & Co., Investment Banking Division. From 1996 to 1998, Justice Borrok was an associate at Proskauer Rose LLP.

Justice Borrok also has been actively involved in the community and has served on the Boards of the Mt. Sinai Hospital, Columbia College, Business Executives for National Security (BENS), the 34th Street Partnership, Citymeals-on-Wheels and Community Board 2 in Brooklyn. In 2013, Justice Borrok received a Commendation from NYPD Commissioner Ray Kelly, a Commendation from General Montgomery C. Meigs, 31st Commander of the U.S. Army Europe (1998-2002) (ret.), on behalf of BENS, and a Dean's Leadership Award from Columbia College Dean James Valentini. In 2010, he was admitted to Mt. Sinai's Noble Deeds Society. In 1992, Justice Borrok received Columbia University's James Christopher Caraley Memorial Prize.

**JUSTICE ANDREW BORROK**

**PART 53 – PRACTICES AND PROCEDURES**

**Supreme Court of the State of New York  
Commercial Division**

**60 Centre Street, Courtroom 238  
New York, NY 10007**

**Part Clerk / Courtroom Phone: 646-386-3304**

**Chambers Phone: 646-386-4203**

**Email: SFC-Part53@nycourts.gov**

Part Clerk:	Therese Spillane
Principal Law Clerk:	Anna Mikhaleva, Esq.
Assistant Law Clerk:	Laura Tsang, Esq.
Commercial Division Law Clerk:	Michael Lieberman, Esq.

**Oral Argument on Motions:** Mornings, Monday through Thursday, as scheduled by the Court

**Conferences:** Monday through Friday at 11:30, as scheduled by the Court.

**GENERAL**

1. All parties or their counsel must familiarize themselves with the Part 53 Rules and the Rules of the Commercial Division, 22 NYCRR 202.70.<sup>1</sup>
2. Counsel and litigants (represented or self-represented) are advised that Justice Borrok, his Law Clerks, and Part Clerk will not engage in any *ex parte* communications.
3. The Court strongly encourages substantive participation in court proceedings by women, lawyers of diverse backgrounds and less experienced attorneys, who have historically not been afforded opportunities to participate in the Commercial Division.

---

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

4. The Part Clerk is unable to accept deliveries or answer phone calls between 1:00 and 2:15 P.M. or after 4:30 P.M.
5. Counsel must notify the Court, as soon as practicable, by conference call or letter, of any settlement or resolution of active cases or pending motions to avoid the unnecessary use of Court resources on matters that are resolved or will imminently be resolved.
6. Part 53 is a paperless part. Except for proposed Orders to Show Cause, working copies of motions and related documents are not accepted. However, counsel may bring working copies to appearances.
7. The use of demonstrative evidence, including charts, graphs, and large contract language, video depositions, and electronic media devices require prior approval from the Court. Requests for the use of demonstrative evidence shall be made one week before the scheduled appearance date.

### **ELECTRONIC FILING**

1. All cases in Part 53 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/1jd/supctmanh/e-filing.shtml>.
2. All e-filed documents must be text-searchable. All electronically submitted memoranda 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 53 cases. To register or log-in, please visit: <http://iapps.courts.state.ny.us/webcivil/etrackLogin>.
4. Please do not send copies of any documents that were e-filed, with the following exceptions:
  - a. Documents requiring Justice Borrok’s signature, including proposed orders and stipulations, must be e-filed and sent to Justice Borrok by e-mail (*e.g.*, proposed/settled orders, stipulations, or transcripts to be so-ordered); and
  - b. Proposed Orders to Show Cause, which must be brought in hard copy for processing in the Commercial Division Support Office and then brought up to Part 53.

## **COMMUNICATIONS TO PART 53**

1. Justice Borrok does not accept any letters, documents, or papers by e-filing, mail, or facsimile unless expressly permitted by these Practice Rules, Commercial Division Rule 2, or by prior approval of the Court. To the extent that the parties seek a phone conference, they may make such request by email to Part 53, briefly stating the reason for such conference, which the court may grant if appropriate.
2. Please do not telephone Chambers unless authorized in advance or as permitted by the Part Rules. All inquiries concerning scheduling, appearances, adjournments, and case status shall be directed to the Part Clerk in the first instance. Please have the index number available when you call.
3. In an effort to minimize the time and expense of litigation, Part 53 encourages the use of email where appropriate to make a joint submission in lieu of an appearance for an in-court status conference following a preliminary conference where all discovery deadlines are being met and only either (i) for submission of a deposition schedule or (ii) to request an adjournment of an appearance to correspond with oral argument on motion.

## **ADJOURNMENTS**

1. All adjournments (motions, conferences, trials) require prior Court approval. Ex parte applications for adjournments will not be considered.
2. Requests to adjourn an appearance (conference or oral argument) must be directed to the Part Clerk in the first instance. Conferences and motions will only be adjourned by stipulation. The parties must first consult with the Part Clerk before selecting a new date for the appearance. Applications for adjournment must be made at least 48 hours in advance of the scheduled appearance.
3. To adjourn a motion that is in the Submissions Part (Room 130):
  - a. If the parties wish to adjourn a motion the first time the motion is on the Calendar in the Submissions Part, for less than 30 days, the parties may do so 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. The stipulation must clearly indicate the relevant motion sequence number.
  - b. If the parties wish to adjourn a motion, other than the first time the motion is on the calendar in the Submissions Part or for more than 30 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.
4. To adjourn a hearing or trial, the parties must contact the Part Clerk on a conference call with all parties on the line. Applications for adjournments shall be made at least one week in advance of the scheduled hearing or trial.

### **CONFERENCES AND DISCOVERY DISPUTES**

1. Only attorneys who are thoroughly familiar with the case may appear for a conference. 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 may fill out the appropriate form (preliminary conference order, or compliance conference/stipulation form) prior to arriving in the courtroom for the conference. Any disputes will be resolved at the conference.
    - i. 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 stipulation). The kiosk will then print the selected form.
    - ii. 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.). After filling out the appropriate form, counsel must check-in with the Part 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.

3. Counsel must meet and confer to resolve any discovery disputes, as discussed below.

### **MOTION PRACTICE**

1. All substantive motions with opposition will be scheduled for oral argument. All papers must be e-filed at least five (5) business days prior to the oral argument date.
2. Summary judgment motions must be filed within 60 days of the filing of the note of issue. Rule 19-A statements will not be accepted on summary judgment motions unless it is a Joint Statement of Undisputed Facts; if there are no facts to which the parties agree, the parties should not submit a Rule 19-A statement.
3. Orders to Show Cause with requests for temporary restraining orders, including requests for a temporary stay of the 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 prior to making a motion. Justice Borrok does not accept Commercial Division Rule 24 letters unless expressly requested. Discovery-related motions are strongly discouraged. Prior to making any such motion, the parties must meet and confer in good faith to try to resolve their dispute. In the event the dispute is not resolved by the meet and confer, the parties may email Part 53 a request to make a discovery motion and/or for a phone or in-person conference to resolve the dispute. Any permitted discovery motion shall be brought by Order to Show Cause.
5. *Pro hac vice* motions shall be made by Order to Show Cause and must include a proposed order and an affidavit in support from a member of the Bar of the State of New York and an affidavit of the applicant and a recent certificate of good standing from the applicant. The affidavit of the applicant must advise the Court as to how many times the applicant has been admitted in New York *pro hac vice*, whether that admission *pro hac vice* has been vacated, and whether the applicant has ever been or is presently subject to a disciplinary proceeding (see exhibit A, annexed to these Part Rules, for the form of the proposed order for *pro hac vice* applications). If there is no opposition to the motion, the movant should include a stipulation indicating as much.
6. Requests for commissions shall be made by Order to Show Cause.
7. Word limits specified in Commercial Division Rule 17 shall be strictly enforced, 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 must include a short label identifying the nature of the exhibit (*e.g.*, Exhibit A, Affidavit of John Doe; Exhibit B, Employment Agreement between A & B, dated XX/XX/XXXX).

## **ALTERNATIVE DISPUTE RESOLUTION**

1. The parties are encouraged to identify as early as possible any case where ADR would be appropriate. In addition, and 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 continued 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](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 Borrok 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 that 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, the reason for the sealing request and state the “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/LegacyPDFS/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 to the court **no less than 10 business days prior to the hearing or start of trial**, and a copy of the flash drive should be served on all other parties. 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. All trial exhibits indexed (if the number of exhibits is too voluminous, the exhibits may be placed on a separate flash drive).
  - f. In the case of a jury trial:
    - (i) a proposed jury verdict sheet.
    - (ii) a list of all requested 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.
    - (iii) a short (one to 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.
  - g. A list of proposed witnesses. If a witness needs an interpreter, please indicate the language and any dialect.
  - h. In the case of a bench trial: for non-jury trials, all direct testimony of a party's own witness shall be submitted in affidavit form. Upon being called at trial, a witness shall swear to the contents of his/her affidavit, the Court



shall hear opposing counsel's objections (if any) to the direct testimony followed by cross examination and re-direct, if any, of the witness in court. Parties shall exchange direct testimony affidavits at least ten (10) business days prior to the commencement of trial. Direct testimony affidavits must also be e-filed at least seven (7) business days before trial commences.

- (i) Exceptions: In a bench trial, a witness's direct testimony need not be submitted in affidavit form if the witness is not within the control of the party who/which intends to call the witness. The direct testimony by affidavit rule will not apply to jury trials; in a jury trial, a witness's direct testimony will be elicited in open court.

2. Please stipulate to all facts and documents not in dispute prior to trial. Have agreed-upon documents, photographs and other exhibits pre-marked into evidence while the jury is not present.
3. It is the duty of counsel, not court personnel, to make sure that 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 7 business days prior to the date of trial, unless otherwise advised by the Court.
5. Notwithstanding the fact that Part 53 is a paperless part, all proposed exhibits should be provided to the Court in hard copy in advance of trial.
6. All requests to set up electronic media and audiovisual equipment in the Courtroom shall be directed to the Part Clerk in advance of trial.

**EXHIBIT A: FORM OF PROPOSED ORDER FOR *PRO HAC VICE* APPLICATIONS**

\_\_\_\_\_, Esq., having applied to this Court for admission *pro hac vice* to represent [ plaintiff/defendant] \_\_\_\_\_ in this action, and applicant having submitted an affidavit of \_\_\_\_\_, Esq., a member of the Bar of the State of New York and attorney of record herein for \_\_\_\_\_, an affidavit of the applicant dated \_\_\_\_\_, and a Certificate in Good Standing from the jurisdiction in which the applicant was admitted to the practice of law, and the Court having reviewed the foregoing submissions and due deliberation having been had, it is now therefore

ORDERED that the motion is granted and \_\_\_\_\_, Esq. is permitted to appear and to participate in this action on behalf of \_\_\_\_\_; and it is further

ORDERED that he/she shall at all times be associated herein with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the party in question and all pleadings, briefs and other papers filed with the Court shall be signed and filed by the attorney of record, who shall be held responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted *pro hac vice* shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the Rules of the Courts governing the conduct of attorneys and the Disciplinary Rules of the Code of Professional Responsibility; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the Courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that counsel shall notify the Court immediately of any matter or event in this or any other jurisdiction which affects his/her standing as a member of the Bar.

Dated: \_\_\_\_\_

ENTER:

\_\_\_\_\_

J.S.C.

**EXHIBIT B: FORM OF PROPOSED STIPULATION AND ORDER FOR THE  
PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION**

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”)<sup>1</sup> 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

\_\_\_\_\_  
<sup>1</sup>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.

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”).

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: \_\_\_\_\_

\_\_\_\_\_

Ph.: \_\_\_\_\_

Attorneys for Plaintiff

[FIRM]

By: \_\_\_\_\_

\_\_\_\_\_

Ph.: \_\_\_\_\_

Attorneys for Defendant

Dated: \_\_\_\_\_

SO ORDERED:

\_\_\_\_\_  
J.S.C.

EXHIBIT "1"

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

----- X

\_\_\_\_\_,  
Plaintiff,  
-against-

Index No. \_\_\_\_\_

**AGREEMENT TO RESPECT  
CONFIDENTIAL  
MATERIAL**

\_\_\_\_\_,  
Defendant.

----- 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: \_\_\_\_\_

\_\_\_\_\_

## **Biography**

Justice Joel M. Cohen was appointed to the Court of Claims by Governor Andrew Cuomo in 2018 and the same year was designated an Acting Supreme Court Justice in New York County by Chief Administrative Judge Lawrence K. Marks.

From 1987 until 2018, Justice Cohen was a commercial litigator at Davis Polk & Wardwell LLP (22 of those years as a partner of the firm). In 1986-1987, he was a law clerk for the Honorable Thomas A. Clark of the United States Court of Appeals for the Eleventh Circuit.

Justice Cohen is a member of the bars of the State of New York and the District of Columbia. He received his B.A. in Economics from Binghamton University in 1983 and his J.D. from Georgetown University Law Center in 1986. He is a member of the Georgetown Law Alumni Board and the Harpur Law Alumni Council and served on the editorial board of the American Bar Association's ANTITRUST LAW DEVELOPMENTS (4th Edition 1997).

In connection with pro bono representations in private practice, Justice Cohen was a recipient of the Thurgood Marshall Award from the Association of the Bar of the City of New York for the successful representation of a death row inmate and a Pro Bono Achievement Award from Sanctuary for Families for the successful representation of a domestic abuse survivor seeking alimony and child support benefits.

**HON. JOEL M. COHEN**

**PART 3 – PRACTICES AND PROCEDURES (revised October 25, 2019)**

**Supreme Court of the State of New York  
Commercial Division  
60 Centre Street, Courtroom 222  
New York, NY 10007**

**Part Clerk/Courtroom Phone: 646-386-3287  
Chambers Phone: 646-386-4927**

Principal Court Attorney:	Lauren A. Jones, Esq. (ljjones@nycourts.gov)
Commercial Division Law Clerk:	Kartik Naram, Esq. (knaram@nycourts.gov)
Court Attorney:	James Paulson, Esq. (jrpaulso@nycourts.gov)
Courtroom Part Clerk:	Michael O'Connor
Chambers email address:	sfc-part3@nycourts.gov

Courtroom hours are from 9:30 a.m. to 4:30 p.m.

Lunch recess is from 1 p.m. to 2:15 p.m. The courtroom is closed during that time.

Preliminary, Compliance, and Status Conferences generally are held on Tuesdays beginning at 9:30 a.m. Pre-trial Conferences and oral argument on motions will be held as scheduled by the Court.

**I. GENERAL**

- A. The Rules of the Commercial Division, 22 NYCRR 202.70, are incorporated herein by reference, subject to minor modifications described below.
- B. The Court strongly encourages *substantive* participation in court proceedings by women and diverse lawyers, who historically have been underrepresented in the commercial bar. The Court urges litigants to be mindful of in-court advocacy opportunities for such lawyers who have not previously had substantial court experience in commercial cases, as well as less experienced lawyers generally (*i.e.* lawyers practicing for five years or less). **A representation that oral argument on a motion will be handled or shared by such a lawyer will weigh in favor of holding a hearing when otherwise the motion would be decided on the papers.**
- C. Neither Judge Cohen nor his law clerks will speak to any attorney or litigant regarding any matter without all parties to the action present or on the phone. If it appears that opposing counsel is refusing to participate for tactical reasons, the Court will take appropriate steps to permit the party seeking relief to be heard.

- D. Judge Cohen's law clerks only accept phone calls between 3:00 p.m. and 5:00 p.m. Communications at other times should be directed to Michael O'Connor (Part Clerk) or by email to Chambers at [sfc-part3@nycourts.gov](mailto:sfc-part3@nycourts.gov).
- E. Voicemail and email to Chambers or the Part are not substitutes for seeking relief through filings on NYSCEF. Parties and counsel should not assume that such communications have been heard or read unless they have received a response.

## II. **SUBMISSION OF DOCUMENTS**

- A. Part 3 is an e-filing Part. Judge Cohen does not accept working/courtesy copies of documents.
- B. Hard copies of proposed orders to show cause *seeking expedited relief*, including supporting materials, must be hand delivered to the Part promptly after e-filing. The proposed order to show cause in such cases should also be e-mailed to Chambers at [sfc-part3@nycourts.gov](mailto:sfc-part3@nycourts.gov) as a Word document.

## III. **CONFERENCES**

- A. Preliminary Conferences. Parties are to use this Part's standard form Preliminary Conference Order. Copies are available on the Commercial Division website (<http://www.nycourts.gov/courts/comdiv/ny/PDFs/PC-Order-Part-3.pdf>), from the Part Clerk, or in the Courtroom. Parties are to meet and confer and fill out the Preliminary Conference Order in advance of the Conference and must be prepared to address the topics listed in Commercial Division Rule 8.
- B. Compliance Conferences. At least seven days prior to the compliance conference, counsel shall submit a joint letter not exceeding three single-spaced pages setting forth the status of discovery, describing any significant disputes to be addressed at the conference, whether there are any outstanding motions and/or appeals, and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement.
- C. Status Conferences. At least seven days prior to the status conference, counsel shall submit a joint letter not exceeding three single-spaced pages setting forth a summary of the case, the current schedule for completion of discovery and filing Note of Issue, any proposed revisions to the schedule and reasons therefor, whether there are any outstanding motions and/or appeals, and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement.
- D. Transcripts. **Following all Conferences conducted on the record, the parties**

**are to obtain a copy of the transcript and upload it to NYSCEF.**

#### **IV. CONFIDENTIALITY ORDERS**

- A. Model Confidentiality Order. Any proposed order regarding the confidential exchange of information shall be based on the model Stipulation and Order for the Production and Exchange of Confidential Information, available at:  
<http://www.courts.state.ny.us/courts/comdiv/PDFs/Confidentiality-Stipulation-and-Order.pdf>
- B. Deviations from Model Order. If the parties propose to deviate from the Model Order, other than simply to fill in details about the case, they shall file: (1) a copy of the parties' proposed confidentiality order; (2) a redline of the document showing proposed deviations from the Model Order; and (3) a letter to the Court explaining the reasons for such deviations.

#### **V. MOTION PRACTICE**

- A. Pre-Motion Letters. Except for discovery motions (Section VI below), no prior permission or letters pursuant to Commercial Division Rule 24 are required before making a motion. If the parties believe the dispute may be resolved quickly without the need for formal motion practice, they can request a pre-motion conference.
- B. Memoranda of Law. All motion papers (in support, opposition, and reply), whether by notice of motion or order to show case, must include a Memorandum of Law, subject to the word limits set forth in Commercial Division Rule 17. Affidavits or Affirmations of counsel containing legal argument should not be submitted.
- C. Motions for Summary Judgment. Commercial Division Rule 19-a statements are required.
- D. Motion Sequence Number. All papers must have the Motion Sequence Number to which they are related placed on the front page.
- E. Oral Argument. Requests for oral argument may be included in the Notice of Motion or in the Opposition papers. If the Court concludes that oral argument is not necessary, a written Decision will be issued on the submitted papers. *See also* Section I (B) above.

- F. Exhibits. Exhibits to motions shall be uploaded to NYSCEF individually, with each Exhibit clearly labeled with its respective identifying information.

## VI. DISCOVERY

- A. The Court expects parties and counsel to proceed cooperatively and professionally during discovery, with an emphasis on efficiency, practicality, and proportionality. Parties and counsel should assume that the Court is able to distinguish between those who solve problems and those who create them unnecessarily.
- B. Discovery motions are discouraged. If a dispute cannot be resolved after good faith efforts to meet and confer, the parties should proceed in accordance with Commercial Division Rule 14.

## VII. TRIAL RULES

- A. Pre-Trial Submissions. The submissions required under Commercial Division Rules 26, 27, 28, 29, 31(a), 31(b), and 32, plus marked pleadings and a *Joint Statement of Stipulated Facts and Procedural History*, shall be made at least **fourteen days prior to the Pre-Trial Conference.**
- B. Additional Pre-Trial Submissions in Jury Trials. In addition to the above, for jury trials the following materials shall be submitted at least **fourteen days prior to the Pre-Trial Conference:**
- i. A short summary (one or two sentences) of each party's claims to be used by the Court as part of the preliminary instructions to the jury before opening statements; and
  - ii. Proposed jury instructions, including the text of PJI instructions, should be submitted by email to Chambers (sfc-part3@nycourts.gov) in Word format.  
The submissions should note the instructions to which the parties have stipulated. Any proposed deviations from PJI instructions should be highlighted and explained, with citations to legal authority where appropriate.
- C. Exhibits.
- i. On or before the first day of trial, counsel shall provide the Court with a flash drive containing copies of their proposed exhibits, as well as any binders of documents that will be shown to witnesses.



- ii. After trial, counsel shall e-file a list of the exhibits that were admitted into evidence. Counsel shall provide the Court with a flash drive containing copies of the admitted exhibits, identified by exhibit number.
  - iii. Flash drives should be marked with the short caption and index number of the case. Exhibits must be pre-marked in accordance with Commercial Division Rule 28.
2. Transcripts. For multi-day trials, the Court requires that the parties order a daily copy of the transcript during trial. Counsel are to e-file the transcripts after trial.
3. Post-Trial Briefs. Two weeks after receiving the transcript in a non-jury trial, the parties are to submit post-trial briefs of up to 7,000 words (excluding caption, table of contents, table of authorities, and signature blocks). One week thereafter, the parties may file reply briefs of up to 4,200 words (subject to the same exclusions). The initial post-trial briefs should be organized as follows:
  - i. Preliminary Statement (optional)
  - ii. Proposed Findings of Fact
  - iii. Proposed Conclusions of Law, separately for each cause of action (claim, counterclaim, cross-claim, and third-party claim)
  - iv. Conclusion – including specific relief sought for each cause of action
  - v. Proposed Judgment.

In addition to filing on NYSCEF, copies of the post-trial briefs **in Word format** should be emailed to Chambers at [sfc-part3@nycourts.gov](mailto:sfc-part3@nycourts.gov).



## Daniel J. Fetterman

PARTNER | NEW YORK

T: +1 (212) 506-1934  
dfetterman@kasowitz.com

### RELATED PRACTICES

#### Litigation

- Commercial Litigation
- Securities Litigation
- White Collar Defense and Investigations

### EDUCATION

- Washington & Lee University School of Law J.D., *magna cum laude*, Order of the Coif, 1987  
Lead Articles Editor, *Washington & Lee Law Review*
- Washington & Lee University B.A., *cum laude*, 1983

### ADMISSIONS

- New York

Daniel J. Fetterman, Chair of the firm's White Collar Defense and Investigations Group and a former federal prosecutor, is recognized as one of the country's leading trial and white collar lawyers. He represents corporations and individuals in significant securities, white collar, commercial, accounting and trade secret litigation. *Chambers USA* describes him as a "go-to litigator for high-profile individuals and institutions" and a "fantastic courtroom lawyer" who is "very strategic" and "held in high esteem." Dan also is praised in *Chambers USA* as "a genuinely gifted trial lawyer" who is "well known for his expert defense of individuals and corporations" and for his "extensive expertise in complex litigation and white collar criminal defense." *The National Law Journal* honored Dan as a White Collar Trailblazer, a ranking honoring 50 of the country's elite white collar lawyers for their "deep passion and perseverance ...having achieved remarkable successes." Dan is also recognized in *Super Lawyers*, *Best Lawyers in America* and *The Legal 500*, and he is a fellow in the Litigation Counsel of America's trial lawyer honorary society.

Dan has won numerous jury trials and successfully argued appeals in federal and state courts. He was lead trial counsel for MF Global Holdings in a highly-publicized \$3 billion lawsuit against PwC, which settled during the third week of trial. He also tried a 17-month jury trial, the longest in Alabama history, which resulted in more than \$100 million in jury verdicts. *The Washington Post* described the case as a "huge victory" in a "landmark" lawsuit. Dan represents clients in their most significant matters, including MF Global Holdings in multiple enforcement investigations following MF Global's bankruptcy, Hilton Worldwide in civil litigation and a high-profile grand jury investigation relating to its alleged theft of trade secrets, the New York Jets in litigation over its attempt to build a stadium in Manhattan, and a consortium of private equity firms in connection with funding their \$8.5 billion acquisition of Home Depot Supply. Dan has conducted numerous internal investigations on behalf of corporations, boards, and special committees concerning, among other things, alleged securities fraud, insider trading, sanctions, money laundering and FCPA violations, theft of trade secrets, accounting malfeasance and obstruction of justice.

Before joining Kasowitz, Dan was an Assistant United States Attorney for the Southern District of New York where he received the Justice Department

Director's Award for Superior Performance as an Assistant United States Attorney. Dan also co-edits and co-authors a highly-acclaimed white collar treatise, *Defending Corporations and Individuals in Government Investigations*. The treatise, which has been used in law school courses at Harvard and Yale, has been praised as a "must-have resource and reference for any lawyer involved in white collar matters," and an "extraordinary contribution to the white collar bar." Dan is frequently quoted as a legal authority and has been quoted in publications including *The Wall Street Journal*, *International Financing Review*, the *FCPA Report* and *Compliance Week*.

Dan also frequently speaks at industry conferences, including serving as co-chair and speaker at the "Defending Corporations and Individuals in Government Investigations" conference. He was a panelist on the Challenges in Cross-Border White Collar Criminal Investigations panel in Tokyo in 2019 and on the White Collar Investigation and Enforcement: A U.S./Canada Comparison on Recent Trends panel in Montreal in 2018 at the respective New York State Bar Association International Section conferences. He also has presented "Great and Not So Great Moments in Litigation," at the American Law Institute's 2017 Accountants' Liability conference, as well as "The Emerging Law of Cybersecurity and Data Breach Liability" in Palo Alto, CA.

Dan has served as adjunct professor of law at Washington & Lee University School of Law and currently serves on its Alumni Law Council. He also is a Life Fellow of the American Bar Foundation. Dan clerked for the Honorable Ellsworth A. Van Graafeiland, United States Court of Appeals for the Second Circuit.

## **WORK HIGHLIGHTS**

### **TRIALS & COMPLEX LITIGATION**

- Lead trial counsel for MF Global Holdings, a former global financial derivatives broker, in a \$3 billion lawsuit against its outside auditor, PwC, which settled during trial. Also, representing MF Global Holdings in investigations by the U.S. Attorney's office, the Securities and Exchange Commission and the U.S. Commodities Future Trading Commission and the Plan Administrator for MF Global Holdings in various actions arising out of MF Global Holding's bankruptcy.
- Former executives in a breach of contract action in federal court in New York against Nikko Asset Management and its CEO alleging a scheme to deprive the former employees of their rights under share appreciation rights plans. The CEO resigned shortly after Kasowitz filed papers describing the CEO's conduct.
- Hilton Worldwide in trade secret litigation pending in the Southern District of New York brought by Hilton's competitor, Starwood Hotels & Resorts, alleging trade secret misappropriation, and a related grand jury investigation by the United States Attorney's Office

(S.D.N.Y.).

- A Fairfield Greenwich Group founder in connection with the highly-publicized multi-district litigation pending in the Southern District of New York and related state court actions arising out of the Madoff ponzi scheme. Fairfield Greenwich Group entities were the largest so-called “feeder funds” into Madoff.
- Successful representation of a consortium of three well-known private equity firms (Bain Capital, The Carlyle Group and Clayton, Dubilier and Rice) in a multi-billion dollar dispute with major banks over acquisition financing for their \$8.5 billion acquisition of Home Depot Supply - a deal that ultimately funded and was closed.
- Co-lead trial counsel for Southern Union Company in a three-week jury trial over charges concerning Southern Union’s allegedly illegal storage of elemental mercury at its Pawtucket, Rhode Island, facility. While the company faced maximum penalties of \$67 million, it only was sentenced to a \$500,000 fine after the jury acquitted Southern Union of two out of three counts.
- Lead trial counsel in successful jury trial on behalf of an investment bank in the Southern District of New York which resulted in a \$1.5 million verdict.
- Successful representation of hundreds of Vioxx plaintiffs. Dan also participated in mock jury trials of bellweather trials for other law firms to prepare several winning trial teams (including the Lanier Law Firm’s Ernst trial team which won \$250 million). He taught a CLE with Mark Lanier and others on how to successfully try a Vioxx case to approximately 250 Vioxx lawyers from around the country.
- Pro Bono representation of The Consumer Watchdog, a national, non-partisan, non-profit organization representing the interests of consumers, in its amicus curiae brief opposing federal court approval of the proposed class settlement of Authors Guild et al v. Google Inc., a putative class action charging Google with copyright infringement for scanning books and displaying them online.

#### **WHITE COLLAR CRIMINAL DEFENSE & INTERNAL INVESTIGATIONS**

- Corporate and individual defendants in a criminal securities fraud and SEC enforcement action in the Southern District of New York arising out of an alleged \$100 million scheme to defraud investors relating to the resale of tickets for Hamilton and other Broadway shows and concerts.
- Successful representation of a major financial insurer in an insider trading investigation by the Securities and Exchange Commission.
- Successful representation of a senior bank executive in connection with a government investigation concerning bond pricing and trading practices.
- Successful representation of an international manufacturing company

executive in a FCPA investigation by the United States Department of Justice and the Securities and Exchange Commission.

- Successful representation of a senior Merrill Lynch executive in an investigation before the Securities and Exchange Commission relating to the financial crisis and in CDO litigation in the Southern District of New York.
- Successful defense of executives in the U.S. Foodservice/Royal Ahold investigation relating to the \$800 million accounting fraud scandal. One of Dan's clients was never charged and the other received six months of home confinement.
- The special committees of publicly traded companies, including video-game maker Take-Two Interactive Software and semiconductor manufacturer Emcore Corporation, in connection with internal investigations into potential stock option backdating.
- Successful defense of an executive who was the subject of the criminal investigation by the United States Attorney's Office for the Northern District of Illinois into alleged corruption by Governor Blagojevich and his administration.
- Successful representation of mutual fund managers and operations personnel from Alliance Capital in investigations by the Securities and Exchange Commission and the New York Attorney General's Office into the alleged market timing and late trading in those funds.
- Successful defense of a Port Captain in the grand jury investigation by the United States Attorney's Office for the Eastern District of New York into the crash of the Staten Island Ferry, Andrew J. Barberi, on October 15, 2003. Dan's client was the only one of the five publicly identified subjects at the Staten Island Ferry Service who was not indicted.
- Post-charge representation of the former CEO of Invesco in the highly publicized enforcement actions concerning market timing in mutual funds by the Securities and Exchange Commission and the New York Attorney General's Office.

## **Biography**

Hon. Marcy S. Friedman has been named to succeed Hon. Bernard J. Fried as a Justice of the Commercial Division, Supreme Court, Civil Branch, New York County. Justice Friedman will take over Justice Fried's inventory (Part 60), effective July 16, 2012.

Justice Friedman is a graduate of Smith College, magna cum laude, and of the University of Pennsylvania Law School, cum laude. She was an associate with Willkie, Farr & Gallagher LLP, a staff attorney with the Legal Aid Society Civil Division, and a managing attorney at MFY Legal Services.

Justice Friedman was appointed a Judge of the Housing Part of the Civil Court of the City of New York in 1991. She was elected to the Civil Court in 1994. In 2000, she was named a Supreme Court Justice by designation and assigned to New York County Supreme Court, Civil Branch. She was re-elected in 2004.

Since 2000, Justice Friedman has presided over an Individual Assignment Part in New York County where she has handled torts, commercial cases pending outside the Commercial Division, and a wide variety of other cases, including employment discrimination, insurance, and real estate. As a long-term member of the New York County's Center for Complex Litigation, Justice Friedman has also handled mass torts, including pharmaceutical and asbestos cases.

Justice Friedman is a former member of the New York County Lawyers Association (NYCLA) Board of Directors. Long committed to improving access to justice, she is a member of the NYCLA Justice Center under whose auspices she chaired a Task Force on Housing Court. Currently, she is working with NYCLA and other groups to organize a conference that will bring together a distinguished group of prosecutors, defense lawyers, judges, and scholars to address the racial impacts of criminal prosecutions from arraignments through sentencing. She has also lectured at the New York City Bar Association and at judicial seminars on various issues, including legal ethics and torts.

**Justice Marcy S. Friedman**

**Part 60 - Practices and Procedures**

**New York State Supreme Court  
Commercial Division Courtroom  
248**

**60 Centre Street New  
York, NY 10007**

**Courtroom Phone: (646) 386-3310**

**Chambers Phone: (646) 386-3760**

**1. Commercial Division Rules (22 NYCRR 202.70)**

These Practices & Procedures supplement the Commercial Division Rules.

**2. Electronic Filing**

All cases in Part 60, except cases involving pro se litigants, must be electronically filed through the New York State Courts E-Filing (NYSCEF) system. Attorneys are expected to familiarize themselves with NYSCEF procedures which are available at <https://iapps.courts.state.ny.us/fbem/mainframe.html>.

**3. Scheduling Conferences**

Conferences will be held on Tuesday and Thursday afternoons, and as otherwise scheduled by the Court.

Parties wishing to schedule an in-court or telephone conference should do so by conference call, with all appearing parties, to the Clerk of Part 60.

See also Communicating with the Court/Telephone Calls, section 10 below.

**4. Adjournments (including adjournments of conferences, oral arguments, and trials)**

Parties must obtain Court permission to adjourn any Court appearance. Absent an emergency, such permission must be obtained no later than two (2) business days in advance of a scheduled conference and no later than three (3) business days in advance of an oral argument. Adjournments of trial dates are governed by Commercial Division Rule 25.

All requests for first time adjournments of conferences should be made to the Clerk of Part 60.

A preliminary conference may be adjourned once on consent for no more than thirty (30) days to a Tuesday or Thursday afternoon. A stipulation agreeing to the adjournment must be e-filed, and a working copy of the stipulation must be filed with the Clerk of Part 60, in advance of the date that is being adjourned.

Requests for subsequent adjournments of conferences and for adjournments of oral arguments and trial dates should be made by conference call, with all appearing parties, to Chambers.

## **5. Motions Generally**

Motions will be heard on Tuesday and Thursday mornings, and as otherwise scheduled by the Court.

Page limits specified in Commercial Division Rule 17 will be strictly enforced, unless permission to expand the page limits is granted in advance of the filing of the papers. Such permission will not be granted absent a showing of good cause.

Binding requirements for motions are discussed under Hard Copies, section 6 below.

Oral argument must be requested on the face of the Notice of Motion or, if not so requested, on the face of the answering papers. Letter requests for oral argument should not be made.

If a motion is resolved or otherwise disposed of in advance of the oral argument date, the parties should immediately notify the Court by stipulation, if possible, or by letter on notice to all appearing parties.

## **6. Hard Copies (including binding)**

All motions that are returnable in the Commercial Division Motion Support Office, Part 130 (Room 119A) must be e-filed in a word-searchable format. One working copy of each paper must be filed with the Clerk of Part 130. Motions will not be marked submitted in Part 130 until working copies are filed. An additional copy of such papers should be filed with the Clerk of Part 60.

All Orders to Show Cause that are returnable in Part 60 must be e-filed. Two working copies must be filed with the Clerk of the Part at least one week before the return date, unless the Order to Show Cause otherwise provides. Opposition papers and reply papers, if any, must be e-filed and two working copies must be filed with the Clerk of Part 60 as provided in the Order to Show Cause.



All other submissions to Part 60, including proposed orders and judgments, transcripts, stipulations, letters, and affidavits of service must be e-filed, and one working copy must be filed with the Clerk of Part 60.

All working copies that are submitted to the Court must be marked to reflect that they have previously been e-filed.

The motion sequence number and docket number of each e-filed motion paper must be indicated on the face of the working copy of such paper.

Binding of Motions: Affidavits and affirmations that contain any substantive argument and do not merely annex exhibits must be bound separately from the exhibits. Memoranda of law must be bound separately from other papers. Exhibits should be bound in volumes not to exceed approximately 1 to 1.5 inches in thickness, if practicable. Velo binding on the left side is preferred. Two-sided copies of depositions or other papers must be bound on the left.

## **7. Summary Judgment Motions**

Note re: Commercial Division Rule 19-a: In lieu of filing Rule 19-a statements with summary judgment motions, the parties shall confer prior to moving for summary judgment and submit with the motion(s) one joint statement of material facts that the parties agree are not in dispute.

Summary judgment motions shall be served 60 days after the filing of the Note of Issue unless the Court otherwise directs.

## **8. Transcripts**

Where the Court directs a party or parties to order a transcript of an oral argument of a motion, the motion will not be marked submitted until the transcript is e-filed and two hard copies are filed with the Clerk of Part 60. If the Court also directs the parties to file an errata sheet with the transcript, the motion will not be marked submitted until the transcript and errata sheet are e-filed and two hard copies of each are filed with said Clerk.

Where the Court decides a motion on the record, the movant or prevailing party shall promptly e-file the transcript and file two hard copies with the Clerk of Part 60. The transcript will be so ordered only after the hard copies are filed.

## **9. Discovery (including procedures for discovery conferences)**

The following requirements shall apply in addition to those set forth in Commercial Division Rules 7-15.

Preliminary Conferences: The parties shall make a good faith effort to appear at the preliminary conference with a proposed preliminary conference order. Copies of a proposed form for a preliminary conference order are available in Part 60 and at

<http://www.nycourts.gov/courts/comdiv/PDFs/PreliminaryConferenceOrderPart60.pdf>.

Compliance Conferences: The parties shall bring to any compliance conference copies of all prior discovery orders, discovery stipulations, and so ordered letters.

The parties shall confer in advance of the compliance conference, and shall make a good faith effort to appear at the conference with a proposed compliance conference order.

Note re: Commercial Division Rule 11: The number of interrogatories, including subparts, shall be limited to 25, unless another limit is specified in the preliminary conference order. See Statement of the Administrative Judge Regarding Implementation of Certain Rules of the Commercial Division (June 8, 2007) available at [http://www.nycourts.gov/courts/comdiv/PDFs/Rules\\_6-8-07.pdf](http://www.nycourts.gov/courts/comdiv/PDFs/Rules_6-8-07.pdf). This limitation also applies to consolidated actions.

Note re: Commercial Division Rule 11(d): Discovery shall not be stayed pending determination of a dispositive motion or mediation, unless otherwise ordered by the Court on application of a party.

Discovery Deadlines - Note re: Commercial Division Rules 13 & 14: Strict compliance with Rule 13 is expected. Applications for extension of discovery deadlines shall be made prior to the expiration of such deadlines. Such applications shall be made by conference call, with all appearing parties, to Chambers.

See Scheduling Conferences, Adjournments, and Communicating with the Court, sections 3,4, and 10 of these Practices for scheduling and adjournments of conferences and limitations on letters to the Court regarding discovery disputes.

## **10. Communicating with the Court**

Letters: Letters are generally discouraged and shall not be filed without prior authorization of the Court. Parties should not expect the Court to act on unauthorized letters. Without limiting the foregoing, the parties are authorized to submit the following letters:

- (1) A joint letter outlining discovery issues to be resolved at a discovery conference previously scheduled by the Court. Such a letter must be submitted at least two (2) business days in advance of the conference.
- (2) Letters authorized by Commercial Division Rule 2 (notifying the Court of settlement or disposition of an action) and letters notifying the Court, in advance of an oral argument date, of the disposition or other resolution of a motion. However, where possible, a stipulation reflecting the disposition should be submitted in lieu of a letter.

- (3) Letters requesting ADR. See Mediation, section 11 below.
- (4) Letters authorized by Commercial Division Rule 18, citing a relevant post-submission court decision. Such letters will not be considered by the Court if they argue the substance of the cited authority and should be limited to the citation only. The Court will notify the parties if it requires any further briefing on the cited authority.
- (5) A joint pre-motion notice letter, pursuant to Commercial Division Rule 24, outlining the issue in dispute.
- (6) Letters may be submitted when otherwise authorized in advance by the Court. Requests for authorization may be made by conference call, with all appearing parties, to Chambers.

Letters may not exceed three (3) pages in length. Letters that exceed such length will not be considered by the Court. Any authorized letter must reference all related cases pending before Part 60. Any authorized letter also must be e-filed and a working copy, showing that it has been e-filed, must be filed with the Clerk of Part 60.

Telephone Calls: The parties are requested to make telephone calls to Chambers only after 4 p.m on Monday, Wednesday, and Friday, or as otherwise scheduled by the Court. The Court will not engage in ex parte communications with any litigant. All communications with Chambers must be made by conference call with all appearing parties, except that a litigant wishing to schedule a conference call with Chambers may telephone the Part Clerk to obtain a time for a conference call.

## **11. Mediation**

If, at any point, the parties decide that they could benefit from Commercial Division ADR or other mediation, they may write a joint letter to the Court asking to be referred to ADR or other mediation. In the letter, they should state whether they prefer that discovery continue or be stayed during the mediation process.

## **12. Confidentiality Agreements**

Any order regarding the confidential exchange of information should be based on the model Stipulation and Order for the Production and Exchange of Confidential Information annexed as Appendix B to the Commercial Division Rules.

Any request for a Confidentiality Order shall be accompanied by a statement of counsel

that the proposed order strictly follows the text of Appendix B. If the parties seek to deviate from Appendix B, they should submit a redlined version of their proposed order indicating their changes.

**13. Pro Hac Vice Admissions**

Requests for pro hac vice admissions should be made by stipulation, if possible.

Whether made by motion or stipulation, the request should be accompanied by a proposed order, an affidavit in support from a member of the New York State Bar, an affidavit by the applicant, and a certificate of good standing.

**14. Commissions**

Requests for commissions should be made by stipulation, if possible, or by motion.

**15. Trials**

Exhibits and Deposition Transcripts: Where practicable, deposition transcripts and exhibits provided to the Court pursuant to Commercial Division Rules 29 and 31, respectively, shall be provided electronically in a word-searchable format and two working copies shall also be filed with the Clerk of Part 60.

Note re: Commercial Division Rule 27 (Motions in Limine): Motions in limine shall not be briefed in advance of the pre-trial conference. At the pre-trial conference, the Court will schedule the return date for motions in limine, if any.

## **Associate Justice 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 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 serves as Assistant Presiding Member of the Judicial Section of the New York State Bar Association and is also a member of the Commercial and Federal Litigation Section. She is 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 an officer 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.

**June 2019.**

## **Biography**

Justice Andrea Masley was elected as a Justice to the New York State Supreme Court in 2016 and assigned to the Commercial Division in 2017. She was elected to a ten-year term in the New York City Civil Court in 2007 and assigned to Family Court from 2008 to 2010.

For ten years prior to her election to the New York City Civil Court, Judge Masley was the Principal Court Attorney for Justice Charles Edward Ramos, in the Commercial Division of the New York State Supreme Court, New York County, and for Judge Louise Gans, Acting New York State Supreme Court Judge, New York County.

Judge Masley received her J.D. from Fordham University School of Law in 1991 where, in the Spring of 2005, she taught Remedies. Upon graduation, Judge Masley was a litigation associate at the firm of Dechert Price & Rhoads until 1995. Before joining the staff of the New York State Supreme Court in 1998, Judge Masley was Diversity Counsel at the City Bar Association.

Judge Masley is a member of the New York State Bar's Commercial and Federal Litigation Section, and since 1991, a member of the City Bar Association, where she currently serves on the Executive Committee. During her 2005-2008 tenure as Chair of the City Bar's Committee on State Courts of Superior Jurisdiction, which addresses issues arising in New York State Supreme Court, Appellate Terms, Appellate Divisions, Court of Claims, and Court of Appeals, the Committee drafted the form confidentiality agreement for the Commercial Division. She sat on the City Bar's Electronic Discovery Committees from 2005 to 2007, which drafted reports entitled "Manual for State Trial Courts Regarding Electronic Discovery" and "Cost-Allocation Explosion of Electronic Discovery in All Areas of Litigation Necessitates Changes in CPLR." The New York State Bar's Commercial and Federal Litigation Section awarded Judge Masley the Chair's Service Award as Chair of its PJI Committee and for her contribution to commercial practice in 2013 and 2015.

She is the author of a chapter on contract litigation in the five-volume series Practical Solutions for New York Lawyers, published by Lexis/Nexis in 2003.

Prior to her legal career, Judge Masley obtained an M.B.A. in finance and a B.A. in Economics from Rutgers University. She was the Trade Practice Specialist at the Better Business Bureau and an accountant at Bunge Corporation, a grain trading firm.

# COMMERCIAL DIVISION PART 48 RULES & PROCEDURES

*Last updated: 11/19/2019*

Justice Andrea Masley

Supreme Court of the State of New York County of  
New York, Commercial Division Part 48  
60 Centre Street, Courtroom 242, New York, NY 10007  
<https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>

---

Part 48 Telephone: [\(646\) 386-3265](tel:(646)386-3265)  
Part 48 Facsimile: [\(212\) 618-0571](tel:(212)618-0571)  
Part 48 Email: [sfc-part48@nycourts.gov](mailto:sfc-part48@nycourts.gov)

---

Part Clerk:	Lauren Guerrero	(646) 386-3265	<a href="mailto:lguerrer@nycourts.gov">lguerrer@nycourts.gov</a>
Law Clerk:	Victoria G. Corbo, Esq.	(646) 386-4381	<a href="mailto:vcorbo@nycourts.gov">vcorbo@nycourts.gov</a>
Law Clerk:	Tyler D. Evans, Esq.	(646) 386-4381	<a href="mailto:tdevans@nycourts.gov">tdevans@nycourts.gov</a>
Law Clerk:	Kevin J. Quaratino, Esq.	(646) 386-4381	<a href="mailto:kquarati@nycourts.gov">kquarati@nycourts.gov</a>

---

## Introduction

All matters before Part 48 are governed by the Rules of the Commercial Division, 22 NYCRR 202.70, except as supplemented, modified, and/or superseded by the Part 48 Rules & Procedures (Part Rules).<sup>1</sup> The Part Rules generally address matters that differ from the Commercial Division Rules.

### Contacting Part 48, Adjournments, and General Matters

1. Mandatory E-Filing: All submissions to Part 48 shall be filed electronically in the New York State Courts Electronic Filing system (NYSCEF); please contact the NYSCEF Resource Center.<sup>2</sup>

---

<sup>1</sup> The Commercial Division Rules are available online at <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70> (updated there when those Rules are modified). An OCR-searchable, .PDF copy of the Commercial Division Rules (current through the last update of these Part Rules), and copies of all forms/materials referenced in these Part Rules, are available on the New York County Commercial Division website at [https://www.nycourts.gov/courts/comdiv/ny/newyork\\_judges\\_links.shtml#masley](https://www.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley).

<sup>2</sup> For assistance with e-filing, the NYSCEF Resource Center is open weekdays from 8:00 a.m. to 5:00 p.m. and can be reached by telephone at (646) 386-3033, fax at (212) 401-9146, email at [efile@nycourts.gov](mailto:efile@nycourts.gov), and in person at 25 Beaver Street, 8<sup>th</sup> Floor.

For emergencies after hours, please contact the Technical Help Desk: (800) 622-2522.

## 2. Communications, Deliveries, and Scheduling:

(A) Contacting Part 48: Except as otherwise directed in the Part Rules or by the court, all communication with Part 48 shall be sent by email, copying all counsel, to both Part 48 ( [sfc-part48@nycourts.gov](mailto:sfc-part48@nycourts.gov)) and the Part Clerk ( [lguerrer@nycourts.gov](mailto:lguerrer@nycourts.gov)).

(B) Documents submitted to be so-ordered: All documents submitted with a request to be so- ordered shall be filed to NYSCEF and sent by email, copying all counsel, to [sfc-part48@nycourts.gov](mailto:sfc-part48@nycourts.gov).

Where the Part Rules direct correspondence pursuant to Part Rule 2 (B), copy all counsel and email [sfc-part48@nycourts.gov](mailto:sfc-part48@nycourts.gov). Under Part Rule 2 (B), copying the Part Clerk is not necessary.

(C) No ex parte contact: Always copy/include all counsel (no matter what method of communication) unless expressly directed by the court in writing.

(D) Paper copies<sup>3</sup>: Part 48 accepts paper copies for motions, orders to show cause, and other applications. When paper copies are required under these Part Rules, deliver a single set of papers to the Part Clerk in Room 242 during open courtroom hours <sup>4</sup> or by overnight mail addressed as follows:

Commercial Division Support Office  
Part 48 (Justice Masley), Attn: Lauren Guerrero  
60 Centre Street, Room 119A, New York, NY 10007

(E) Motion/conference days: Motion and conference proceedings are conducted from Monday to Friday, as scheduled, during normal courthouse hours; there are no set “motion days.”

## 3. General Adjournments:

(A) Appearances in Part 48: Submit requests to adjourn<sup>5</sup> on consent by e-filing and sending the parties’ stipulation pursuant to Part Rule 2 (A); absent consent, send a brief statement (500 words or less) by email pursuant to Part Rule 2 (A). Please confirm with the Part Clerk all adjournment requests and dates.

(B) Appearances in the Submission Part: Requests to adjourn appearances in the Submission Part shall be directed to the Submission Part, Room 130, pursuant to 22 NYCRR 202.8 (e) (1),<sup>6</sup> unless the original return date has been adjourned three or more times and/or for more than 60 days; if the latter, the requesting party shall e-file and send to Part 48 pursuant to Part Rule 2 (A) or 2 (B) a

---

<sup>3</sup> See Part Rule 6 (A) for procedures for the submission of paper copies.

<sup>4</sup> See e.g. Part Rules 5, 8, and 31 for the procedures regarding submissions for motions on notice (Part Rule 5), orders to show cause (Part Rule 8), and pre-trial materials (Part Rule 31), and additional Part Rules applicable in other contexts.

<sup>5</sup> See Part Rule 28 for the procedures to request trial-related adjournments.

<sup>6</sup> See [https://www.nycourts.gov/courts/1jd/supctmanh/motions\\_on\\_notice.shtml](https://www.nycourts.gov/courts/1jd/supctmanh/motions_on_notice.shtml) for all Submission Part matters, including the procedures for adjournments with or without consent.



proposed order (if the request is unilateral) or the parties' stipulation (if on consent) with a brief (500 - word) statement for the request.

4. Letters: Part 48 does not accept Commercial Division Rule 24 letters; however, the following letters are pre-authorized and shall be e-filed and sent pursuant to Part Rule 2 (B):

(A) Joint pre-conference statement: the parties may jointly submit a letter identifying discovery or other issue(s) ahead a scheduled conference; at least three business days prior to the conference, e-file and email to [sfc-part48@nycourts.gov](mailto:sfc-part48@nycourts.gov) the joint letter (1,500 words or less, excluding signature blocks and heading). No exhibits or attachments may be included. <sup>7</sup>

(B) Commercial Division Rule 2 and Rule 3 letters , and letters or stipulations informing the court that the parties have agreed to engage in private ADR. Such letters/stipulations shall be e-filed and sent to [sfc-part48@nycourts.gov](mailto:sfc-part48@nycourts.gov) pursuant to Part Rule 2 (B).

(C) Commercial Division Rule 18 letters are permitted as modified: the letter may only identify, with full/complete citations, any relevant post-submission decisions. No substantive arguments are allowed in Rule 18 letters; however, the parties may request an opportunity to file post-submission briefs. E-file and send Rule 18 letters to [sfc-part48@nycourts.gov](mailto:sfc-part48@nycourts.gov) pursuant to Part Rule 2 (B).

### Motions and Applications<sup>8</sup>

5. Submission Part (Motions on Notice) : All motions on notice shall be e-filed to NYSCEF and identify the return date for the motion in the Submission Part, Room 130; however, paper copies of motion papers shall be delivered to only the Part Clerk pursuant to Part Rule 2 (D) (do not deliver motion papers to the Submission Part/Room 130 at any time <sup>9</sup>).

On or before the return date, each party shall deliver a single, complete, unredacted set of its own motion papers/submissions to the court pursuant to Part Rule 2 (D).<sup>10</sup>

6. Formatting: All motion submissions shall be filed to NYSCEF under the applicable index number(s) and motion sequence number(s). Further, every motion or other application, whether brought by order to show cause or notice of motion, shall include a memorandum of law, paper copies of which shall be bound separately from all other papers, including affidavits and exhibits.

(A) Paper copies: Parties shall list the motion sequence number(s) on the cover of each paper submission. Paper copies may use only single-sided documents, shall use exhibit tabs with clear

<sup>7</sup> See Part Rule 14 for information regarding discovery conferences and pre-conference letters.

<sup>8</sup> For motions and other filings in pending New York County actions, specifically, please contact the General Clerk's Office, Room 119, (646) 386-3030.

<sup>9</sup> Generally, a party need only appear in the Submission Part, Room 130, to request an adjournment without consent. <sup>10</sup> See Part Rule 13 (C) requiring submission of paper copies with proposed redactions for motions to redact specific information.

labels, and, when necessary, split affidavits and accompanying exhibits with tabs into multiple, 2” thick, consecutively-paginated volumes/binders which are clearly labeled on each cover and spine.

Prior to the return date, the parties shall meet and confer to reduce/eliminate the submission of duplicated paper copies; i.e., if a document is included with movant’s papers as well as the opposition papers, the opposing party may use a placeholder identifying with specificity (i) the substituted document and (ii) where the full document is located in the adversary’s papers/docket.<sup>11</sup>

(B) E-filed documents: Parties shall clearly label/describe with specificity all documents in NYSCEF; e.g., describing a document as “Exhibit #\_” or “Exhibit #\_ to [Person’s] Affidavit” is unhelpful. Every document shall have a description that identifies exactly what it is: if “Exhibit 1” is a deposition, for example, label/describe the document “Tr of [Entity/Person’s] 6/21/18 Dep”; if it is an allonge to a loan document, label it “[1/2/92 Allonge to 8/9/90 Loan].”

(C) Limited use of placeholders in NYSCEF: A party may only use a placeholder filing which identifies with specificity which previously-filed document for which it stands and the NYSCEF Document Number of that original document so long as the original document was filed to NYSCEF in the same action with the same index number and under the same motion sequence number.

(D) Word limits: All memoranda are limited pursuant to the Commercial Division Rules; however, memoranda and affidavits shall be formatted with a standard 12 -point font, double-spaced, with one-inch margins on all sides; footnotes shall be single-spaced with 12-point font.

Requests to extend word-count limits shall include a brief statement (500 words or less) of the request and shall be sent to [sfc-part48@nycourts.gov](mailto:sfc-part48@nycourts.gov) pursuant to Part Rule 2 (B) at least five business days prior to the filing deadline for the applicable document.

(E) All referenced authorities shall have accurate and complete citations to accessible reporters. Official New York Reports citations shall be used when available; if unavailable, provide citations to widely-accessible reporters, such as Westlaw and Lexis Nexis (please supply both citations to both digital reporters where applicable). If authorities cited are not widely-available or are only summarized in a news publication (i.e., the NY Law Journal), include copies of the full decisions with the motion papers in NYSCEF and in separately-bound paper copies for the court.

(F) NYSCEF citations: All citations to the record in all motion papers require NYSCEF Document Numbers with pin-point citations and, where possible, hyperlinks to the actual NYSCEF Document.

(G) Deposition transcripts: All depositions shall be submitted in mini-script format. Excerpts of depositions, rather than full transcripts, may be submitted in connection with motions/applications. A

---

<sup>11</sup> Placeholders eliminating duplicates may be used only within a single sequence number; placeholders may not incorporate or reference documents submitted under a different sequence number than that under which the placeholder is being filed or documents simply located in the NYSCEF docket, generally.

party that submits excerpted deposition testimony must send, pursuant to Part Rule 2 (B), an unredacted, full-length mini-script copy of the certified transcript(s) in OCR-searchable .PDF format, including all indexes. The full-length copy shall include digital bookmarks identifying, with clear labels and NYSCEF Document Numbers, each of the pages filed as excerpts with the motion or application.

(H) Exhibits to all motions should be identified with numbers, not letters, regardless of which party or nonparty files the document; for example, use “Exhibit 27” as opposed to “Exhibit AA. ” In all memoranda of law, however, exhibits shall be cited using the applicable NYSCEF Docket Numbers.

## 7. Pro Hac Vice Applications:

(A) Motions: Motions for admission pro hac vice shall be made by order to show cause, or on consent by ex parte application,<sup>12</sup> and be accompanied by a recent certificate of applicant’s good standing and the applicant’s affirmation identifying how many times, if any, the applicant has been admitted pro hac vice in New York, whether any such admission was vacated, and whether the applicant is or ever was subject to a disciplinary proceeding in any jurisdiction.

(B) Limitations on counsel admitted pro hac vice: Only the Sponsoring New York State Attorney may e-file documents to NYSCEF; counsel admitted pro hac vice are prohibited from e-filing unless/until they file proof of completion of a New York State/NYSCEF E -Filing CLE course.

Additionally, New York Counsel shall be present at every appearance in Part 48, regardless whether out-of-state counsel will appear.

(C) The Part 48 Proposed Pro Hac Vice Order form shall be included with every application for admission pro hac vice.<sup>13</sup>

(D) No appearance is required on the return date for unopposed pro hac vice applications.

8. Orders to Show Cause: Parties shall file a proposed order to show cause to NYSCEF and the movant shall collect the file(s), once processed, from the Commercial Division Office<sup>14</sup> and deliver those files with all moving papers to the Part Clerk in Room 242. All cross motions to orders to show cause shall be made by new proposed order to show cause bearing a separate motion sequence number. A motion brought by order to show cause is not submitted to the court for the purposes of deadlines (e.g., a discovery motion or motion in limine) unless and until it is presented to the court in appropriate form (in hard copy as prepared by the Commercial Division Office).

(A) Notice: When movant notifies any adversaries of the proposed order to show cause, movant shall also notify Part 48 pursuant to Part Rule 2 (A).

---

<sup>12</sup> Please contact the Ex Parte Office, Room 315, at (646) 386-3125 for assistance.

<sup>13</sup> The Part 48 Pro Hac Vice Proposed Order Form is available at <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

<sup>14</sup> Commercial Division Support Office, Room 119A, (646) 386-3020.

(B) Filing and delivery: If signed, all further papers relating to the motion shall be filed to NYSCEF as directed by the order unless the court directs otherwise in writing. The parties shall deliver a single, complete, and unredacted set of their own motion papers pursuant to Part Rule 2 (D) as directed by the signed order or as otherwise instructed by the court in writing. The parties shall deliver papers copies of all submissions to the court pursuant to Part Rule 2 (D) on the same date those papers are served upon the party's adversary. Unless the court orders otherwise, all paper copies, including all reply submissions, shall be delivered to the Part Clerk no later than Noon on the business day preceding the scheduled argument.

(C) Service: The method of service of an order to show cause, regardless what method of service of the order to show cause is provided for in the motion, is not a substitute for service of pleadings consistent with the CPLR and does not obviate a party's obligations to properly serve, under the CPLR and other applicable law, an adversary for the purposes of jurisdiction.

#### 9. Dispositive Motions:

(A) Pre-joinder dispositive motions: Discovery is stayed automatically only when a party has filed a dispositive motion seeking to dismiss the entire pleading (not on a motion seeking partial dismissal) prior to joining issue (e.g., a pre-answer motion to dismiss all causes of action); however, any party may seek to stay or compel discovery prior to resolution of a motion by requesting a discovery conference pursuant to Part Rule 2 (B).<sup>15</sup>

(B) Summary judgment motions shall be made no more than 30 days after the Note of Issue has been filed or, if the Note of Issue was not timely filed, no more than 30 days after the Note of Issue deadline expired. There are no extensions of the prescribed 30-day period absent explicit court order. Additionally, the court does not accept cross motions for summary judgment. All summary judgment motions shall be separately filed within the 30-day period and bear their own motion sequence numbers. The time to file a summary judgment motion cannot be extended by the filing of a cross motion.

Pursuant to Part Rule 6, all exhibits submitted with a summary judgment motion, as with all motions, shall be given descriptive labels on NYSCEF and cited in legal memoranda using the applicable NYSCEF Document Numbers.

(C) Optional Commercial Division Rule 19-A Statements are helpful for all summary judgment motions if every fact in the Statement is supported by pin-point citation(s) to the corresponding NYSCEF Document Numbers for the party's submissions in support or opposition to the applicable motion sequence.

---

<sup>15</sup> See Part Rule 14 for the procedures concerning discovery disputes and expedited discovery conferences.

Rule 19-A Statements may not be cited as authority in a party's memorandum of law or other motion papers: citations in all legal memoranda and motion papers (i.e., affidavits, attorney's affirmations) must use pin-cites to the appropriate NYSCEF Document Numbers.

(D) Joint statements: The court encourages the use of stipulated Joint Statements of Undisputed Fact(s) to reduce duplicated and/or unnecessary submissions and to narrow the scope of the issues/facts in dispute. Accordingly, the parties are required to meet and confer, prior to filing any motion for summary judgment (other than those pursuant to CPLR 3213), to attempt in good faith to reach and memorialize in a Joint Statement their agreed-upon facts. A Joint Statement of Undisputed Fact(s) may be cited in the parties' legal memoranda.

10. Oral Argument: See the Rules of the Commercial Division, Preamble § 3.

Expanded opportunities for speaking roles: The court is aware that in this century very few cases go to trial and, as a result, there are fewer speaking opportunities in court, particularly for less experienced lawyers (i.e., lawyers practicing for less than seven years). The court is also cognizant of the virtual absence historically of lawyers from diverse backgrounds and women appearing in such roles in commercial cases. The court strongly encourages litigants to be mindful of opportunities for less experienced lawyers, lawyers from diverse backgrounds, and lawyers who are women to conduct proceedings before the court, particularly where such members of the legal team drafted or significantly contributed to the underlying matter (i.e., the motion papers for oral argument; witness preparation for a hearing).

11. Discovery Motions: Part 48 comports with the Commercial Division Rules pertaining to discovery disputes/conferences; however, Rule 24 letters are not permitted. To the extent the Part Rules further depart from the Commercial Division Rules for discovery disputes and conferences, the modified procedures are addressed in Part Rule 14 below.

12. Amending any Pleading: For all pleadings, motions/stipulations to amend or seeking leave to amend, and/or any submission to amend as of right, shall be accompanied by a copy of the original pleading, a clean copy of the proposed amended pleading, and a red-line copy identifying all modifications/additions. If submitted by stipulation, the party seeking to amend shall include a cover letter stating the basis for the changes.

#### Procedures for Sealing and/or Redacting

13. Motions to Seal and/or Redact Documents/Information: Documents or information may not be sealed or redacted by stipulation. Parties seeking to seal and/or redact shall move, by order to show cause, for the appropriate relief and the following procedures are implemented to streamline the process.<sup>16</sup>

---

<sup>16</sup> For general information, please see "PROTOCOL ON COURTHOUSE AND COUNTY CLERK PROCEDURES FOR ELECTRONICALLY FILED CASES" in New York County: ([Revised January 23, 2019; Explaining how customary courthouse and County Clerk procedures are applied in e-filed cases](#)). For assistance with procedural e-filing issues, please contact the County Clerk's Office E-File Department, Room 141B, (646) 386-3737, [cc-nyef@nycourts.gov](mailto:cc-nyef@nycourts.gov), or the General Clerk's Office, Room 119,

Sealing entire documents or categories of documents is typically a drastic remedy; the courts are obligated to fashion narrowly-tailored orders to seal or redact certain highly-sensitive information to maintain the transparency of the court's affairs and to balance the public's interests with those of the parties. The court strongly encourages parties to consider, either as an alternative request in a motion to seal whole documents or in the original instance, motions to redact specific, protectable information from the applicable documents.

(A) Motions to seal and/or redact shall be made by order to show cause and shall include a spreadsheet as follows: Movant's memorandum of law shall set forth the basis of the purported good cause to seal or redact each document or piece of information and movant's papers shall include a spreadsheet/chart that clearly and specifically identifies: (1) each document, by bates stamp or similar; (2) the categorization of each document (see below); (3) the good faith basis to seal or redact the particular document/information; and (4) citation(s) to applicable law or authority supporting movant's good cause to seal/redact the document/information.

Movant's proposed categories shall be identified with specificity in the spreadsheet and legal memoranda to facilitate issuance of a workable and efficient order; for instance, vague categories such as "confidential business information" or "proprietary trade information" are not generally adequate; examples of specifically-identified categories include "third-party borrower personal identifying information," "pricing terms for international customers," "investment methodologies," "capital contribution information of private entities," and "strategies for structuring, collateralizing, and marketing structured products." A carefully-tailored list of categories incorporated into movant's spreadsheet that articulate precise categories of information—as opposed to merely vague statements—allows the court to expeditiously resolve these motions and makes the process laboriously and financially economical for the parties as generic categories may not establish the requisite good cause to seal or redact and necessitate successive/further motion practice.

(B) Proposed sealed or redacted documents filed in connection with any motion shall be submitted to NYSCEF as follows:

(i) Every document sought to be sealed or redacted shall be filed on NYSCEF under temporary seal in completely unredacted form (Confidential Chamber's Copy), with all proposed redactions highlighted yellow, along with the mandatory spreadsheet outlined in Part Rule 13 (A);

(ii) Every motion which seeks to redact information shall include a public copy of the document, filed on NYSCEF, containing movant's proposed redactions;

(iii) Motions to seal an entire document which seek, alternatively, to redact specific information in that document shall also include, under temporary seal on NYSCEF, an entirely unredacted copy of the document with all proposed redactions highlighted.

---

(646) 386-3030. Further, no motion is necessary to redact "Confidential Personal Information," including social security numbers and investment account numbers, as set forth in 22 NYCRR 214.12.

(C) A single set of all moving papers required under Part Rule 13 (A) -(B) shall be delivered to Part 48 pursuant to Part Rule 2 (D) on or before the return date: unredacted paper copies shall state “Confidential Chamber’s Copy” and “UNREDACTED” on each cover page confidential submission, and all confidential copies will be enclosed in envelopes or boxes stating “Confidential” on all sides. Delivery shall be pursuant to Part Rule 8.

Paper copies of motions which seek to redact information shall be delivered to the court in wholly-unredacted form with all proposed redactions highlighted.

(D) Good cause found: Upon a finding of good cause, the court will issue a written order directing the party or parties to seal or redact documents or specific information in the documents filed in connection with the motion and to apply those written findings of good cause to any documents containing the same specific categories of highly-sensitive information for which good cause has been found, if or when other documents are later filed in connection with other motions or applications and reducing or eliminating the need for further motions to seal and/or redact.

#### Discovery, Conferences, and General Appearances 14.

##### Discovery Disputes and Expedited Discovery Conferences :

(A) Commercial Division Rule 14 applies as modified: To request an advanced/expedited discovery conference after the parties have met and conferred under Commercial Division Rule 14, a party shall send the request by email, pursuant to Part Rule 2 (B), including only:

-- *Subject Line:* “Discovery Conference Request: [Index number, case name]”;

-- *Email Body:* A statement, not more than 500 words, identifying the unresolved dispute(s) and, if the party believes it would be helpful, requesting authorization to submit individual pre-conference letters (*see* Part Rule 14 [D] below);

(B) Responses to conference requests: A non-requesting party may respond, within 24 hours of the requesting email, by replying all and indicating, in 500 words or less, whether the party (1) objects to scheduling the advanced discovery conference and/or (2) requests authorization for individual pre- conference letters.

(C) Court review: The court will review and inform all parties, at its earliest convenience, whether and when an expedited discovery conference is scheduled, whether individual letters are authorized, and/or what, if any, additional information the parties shall provide to the court before or at the conference (to be held in-person or telephonically at the court’s discretion).

(D) Individual pre-conference letters: If authorized or directed, individual pre-conference letters, 1,000 words or less, shall be filed to NYSCEF and emailed pursuant to Part Rule 2 (B) at least three business days before the conference.



15. Settlement Conferences: The parties may, on consent, request a settlement conference at any time by email pursuant to Part Rule 2 (B). The parties will be informed whether the request is granted, whether any additional information is sought, and whether clients shall be present for a scheduled conference.

16. Pro Se Litigants, Language Interpreters, and Accessibility Accommodations : The court greatly appreciates at least 72-hours' notice that a pro se litigant will appear before Part 48.

If any individual appearing in Part 48 requires a language interpreter or accessibility accommodations, the party or counsel shall notify Part 48, by email pursuant to Part Rule 2 (A), at least five business days before the appearance and indicate precisely for which language (including, where applicable, regional distinctions) an interpreter is needed and/or what accessibility accommodation(s) are sought.<sup>17</sup>

17. Confidentiality Stipulation and Proposed Order: The form Confidentiality Stipulation and [Proposed] Order accepted in Part 48 is available online<sup>18</sup> and/or by email pursuant to Part Rule 2 (B).

The parties shall file to NYSCEF and send, pursuant to Part Rule 2 (B), the following: (i) the executed stipulation and proposed order; (ii) a red-line copy demonstrating any/all additions, subtractions, or modifications made to the Part 48 Form; and (iii) a cover letter briefly explaining all substantive changes.

However, If the parties have not changed the Part 48 Confidentiality Stipulation and [Proposed] Order form except to include only case-specific administrative/identifying information (i.e., the case caption, index number[s], party names, and signature blocks), the parties may execute and file the Confirmation of No Substantive Alterations To The Part 48 Form (attached as Exhibit 2 to the Part 48 Confidentiality Stipulation) in lieu of the above-required red-line copy and cover letter.

18. Exchange of Electronically Stored Information (ESI) : Prior to the preliminary conference, the parties shall discuss with their clients then meet and confer with counsel as to the matters memorialized in the Commercial Division Rules ESI Guidelines.<sup>19</sup> The parties shall attempt, in good faith, to reach an agreement regarding the scope of ESI to be sought, the location, format, and custodians of such information, the burden of bearing costs for collecting/reviewing such information, and the amount of time anticipated to obtain, review, and produce such information. If no agreement can be reached prior to the preliminary conference, a party may email pursuant to Part Rule 2 (B) a

---

<sup>17</sup> See Part Rule 36 for procedures to request language interpreter/accessibility accommodations for hearings, trials, and other proceedings at which witnesses may testify.

<sup>18</sup> Confidentiality Stipulation and [Proposed] Order Form:

<https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

<sup>19</sup> Resources addressing ESI in the context of litigation include, for example, the Sedona Conference "Jumpstart Outline," available at [https://thesedonaconference.org/publication/Jumpstart\\_Outline](https://thesedonaconference.org/publication/Jumpstart_Outline).



request for an ESI conference. A sample Stipulation for the Exchange of Electronically -Stored Information is available online<sup>20</sup> or by email pursuant to Part Rule 2 (B).

The sample ESI exchange form does not address matters relating to searching or reviewing ESI for responsiveness to discovery demands or privilege. The parties may agree, relative to the discovery requests and responses exchanged, as to the manner in which they will search and review ESI for responsiveness (e.g., what search terms to employ, which ESI custodians to search, and whether to use technology-assisted analytics/software, third-party vendors, or other services). The protocols for disputes pertaining to the search, review, and/or production of ESI are set forth in Part Rule 14.

19. **Preliminary Conferences:** The Commercial Division Rules apply except as modified by these Part Rules. The parties are encouraged to use the Part 48 PC Order form, available online<sup>21</sup> and/or by email pursuant to Part Rule 2 (B).

20. **Discovery Responses, Obligations, and Privilege Logs:** Privilege logs and Commercial Division Rule 11-b Certifications<sup>22</sup> are required for each production of documents/materials. Each response to a document request shall comply with and include the sworn statements contemplated by Commercial Division Rule 11-e. The discovery obligations contained in Part Rule 20 are mandatory and may not be waived or modified absent explicit order of the court.

At least 30 days prior to the close of fact discovery, or as otherwise ordered by the court, all responding parties shall verify satisfaction of any CPLR 3101 (h) continuing discovery obligations and comply with Commercial Division Rule 11-e (d) by exchanging affidavits of knowledgeable persons, certified by the Responsible Attorney,<sup>23</sup> as to each discovery request.<sup>24</sup>

21. **Note of Issue:** Note of Issue deadlines will not be extended, adjourned, or otherwise stayed absent extraordinary circumstances. If the Note of Issue is not timely filed, the court may reduce the parties' time to file dispositive motions by the number of days that pass following expiration of the deadline.

### **Proposed Orders/Judgments and Inquests**

22. **Proposed Orders and Judgments:** All proposed/counter-proposed orders and/or judgments shall be settled on notice pursuant to 22 NYCRR 202.48. All proposed orders/judgments shall be filed to

---

<sup>20</sup> Sample ESI Exchange Form:

<http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml><http://www.nycourts.gov/courts/comdiv/ny/>

<sup>21</sup> The Part 48 PC Order Form:

<http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml><http://www.nycourts.gov/courts/comdiv/ny/>

<sup>22</sup> Commercial Division Rule 11-b (b) (1); *see* 22 NYCRR 130-1.1a; 22 NYCRR 1200.41-a.

<sup>23</sup> *See* Commercial Division Rule 11-b (d).

<sup>24</sup> Commercial Division Rule 11-e (d) requires that “the responding party shall state, for each individual request: (i) whether the production of documents in its possession, custody or control and that are responsive to the individual request, as propounded or modified, is complete; or (ii) that there are no documents in its possession, custody or control that are responsive to the individual request as propounded or modified.”

NYSCEF and sent directly to Part 48 by email pursuant to Part Rule 2 (B). Opposing parties are invited to submit, under 22 NYCRR 202.48, a counter-proposal in the same manner.

23. Inquests: Inquests are conducted pursuant to the CPLR, Uniform Rules, and other applicable authority.

Where an inquest on damages is requested or directed, the requesting or directed party shall e-file and deliver to Part 48, pursuant to Part Rule 2 (B) and (D), the following: (a) an affidavit from a person with knowledge of the facts setting forth the computation of damages; (b) an attorney's affirmation briefly reciting the facts and basis of liability and damages; (c) any necessary exhibits and expert affidavits; (d) a list of proposed witnesses in the event there is a hearing; and (e) proof of service of all filed papers upon opposing parties.<sup>25</sup> Where an inquest concerns attorneys' fees, an affirmation of services and resumes for all attorneys/other staff are expected.

#### Transcripts and Other Rules

24. Transcripts: All transcripts, including trial transcripts and transcripts of other non-motion proceedings, shall be e-filed and delivered, pursuant to Part Rule 2 (D), to the Part Clerk in certified form (signed by court reporter) not more than 30 days after conclusion of the applicable proceeding. Parties can obtain the court reporter's name and contact information by email request sent pursuant to Part Rule 2 (A).

(A) Transcripts of argument on motion(s): Movants are responsible for the costs, e-filing, and delivery of certified transcripts to the court (*see* Part Rule 2 [D]); paper copies shall include a cover letter identifying the case name, index number(s), motion sequence number(s), and proceeding date(s) and be delivered pursuant to Part Rule 2 (D). Motions will not be marked fully submitted until the certified transcript has been properly submitted.

(B) Errata sheet/application for corrections: An errata sheet stipulation shall be e-filed and emailed pursuant to Part Rule 2 (B) within 20 days of filing of the certified transcript. Absent consent to changes, the requesting party shall notice the record for settlement pursuant to CPLR 5525 (c) within 20 days from the date the certified transcript was filed on NYSCEF.

25. Commissions: Requests for commissions shall be made by stipulation, if the parties agree, and application via the Ex Parte Office or Commercial Division Office or else by order to show cause.

---

<sup>25</sup> See Part Rules 29 and 31-37 for the procedures that apply to exhibits, exhibit charts, witness lists, and other hearing materials.

26. Gender-Neutral Language and the Standards of Civility: Fair speech shall be employed,<sup>26</sup> and counsel shall adhere to the Standards of Civility,<sup>27</sup> in all appearances before, submissions to, and correspondence with Part 48.

Trial Dates, Trial Adjournments, and Other Trial Matters<sup>28</sup>

27. Trial Rules: Commercial Division Rules 25, 26, 28, 29, 30, 31, 32, and 33 apply except as supplemented or modified by the Part Rules.

28. Trial Dates: Trial dates are assigned by only order of this court or other written communication from this court.

(A) Adjournments: Trial dates are firm and will not be adjourned absent a showing of extraordinary circumstances and formally requested pursuant to Part Rule 2 (A) and (C) not less than 60 days prior to the scheduled date of commencement. Requests to adjourn trial dates shall state, in 500 words or less, the basis of the request. Trial dates are not adjourned absent court order or written authorization confirming the court has granted the request.

(B) Continuances: There will be no continuances granted if a witness is unavailable to testify at the pre-determined time absent a demonstration of extraordinary circumstances. See Commercial Division Rule 25.

29. Pre-Trial Conference and Time Limits:

(A) Trial limits: Unless the court directs otherwise, the parties shall agree to time estimates and hard limits anticipated for all aspects of trial<sup>29</sup> and submit their agreed-upon estimates and limits to the court pursuant to Part Rule 2 (B) at least 10 days before the pre-trial conference. If the parties cannot reach an agreement, all Commercial Division Rule 26 estimates are compulsory and shall be exchanged and submitted to the court pursuant to Part Rule 2 (B) at least 10 days prior to the pre-trial conference. Unless previously directed by the court, or stipulated by the parties and so-ordered, time limits for witnesses, opening and closing statements, and the total duration of the trial will be resolved at the pre-trial conference.

(B) Commercial Division Rule 30 (c): At least 10 days prior to the pre-trial conference, counsel for the parties shall consult in good faith and file to NYSCEF a stipulation reflecting the aspects of their respective experts' anticipated testimony, if any, that are not disputed.

---

<sup>26</sup> See "Fair Speech: Gender Neutral Language in the Courts," New York State Judicial Committee on Women in the Courts, available at <http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/fair-broch2.pdf>.

<sup>27</sup> See 22 NYCRR 1200 Appendix A, available at <http://ww2.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

<sup>28</sup> The below trial procedures also apply to all exhibits, exhibit charts, witness lists, and other submissions in non-trial proceedings/hearings at which witnesses may testify or exhibits are intended to be introduced.

<sup>29</sup> The parties shall agree to a "realistic estimate of the length of the trial," "the total number of hours . . . necessary for its direct examination, cross-examination, redirect examination, and argument during the trial" (see Commercial Division Rule 26).

30. **Motions in Limine**: Motions in limine shall be filed by order to show cause as directed by the court in a written order. Absent a court order setting explicit deadlines to file those motions, motions in limine shall be filed no more than 30 days after assignment of trial date(s) or 30 days after the court's entry on NYSCEF of all final orders resolving all post-NOI summary judgment motions. Motions in limine shall not, under any circumstance, be filed fewer than 60 days before commencement of trial unless directed by the court. Motions in limine not timely filed are deemed waived (*see* Part Rule 8).

Court orders entered during any pre-trial phase which seal or redact any documents or information will not apply to any documents or information introduced at trial absent further order of the court following a timely motion to seal or redact information made in limine. Unless otherwise ordered, the courtroom is open to the public and will not be closed for any portion of the trial.

31. **Exchange and Filing of Trial Materials**: The parties shall meet and confer on all matters relating to the exchange and filing of trial materials, as set forth in the Commercial Division Rules, not less than 30 days before commencement of trial, to minimize/eliminate duplication of exhibits intended to be offered at trial.

(A) **Exchanging trial materials**, including but not limited to exhibit books, exhibit charts,<sup>30</sup> witness lists, marked pleadings, joint statements of undisputed fact, direct testimony affidavits, and pre-trial memoranda of law, shall be completed at least 20 days before commencement of trial.

(i) Exhibit books shall contain only single-sided pages and be bound in consecutively-paginated, clearly-labeled volumes not exceeding two inches in thickness.

(ii) Any deposition transcripts intended to be introduced at trial shall be in OCR-searchable mini-script format with index(es) and shall otherwise comport with Commercial Division Rule 29.

(B) **Filing and delivering trial materials to Part 48**: Not less than 7 days prior to commencement of trial, all trial materials (except for exhibits intended to be used at trial, proposed jury instructions, proposed verdict sheets, and the materials required in connection with instructions/verdict sheets<sup>31</sup>) shall be filed to NYSCEF and delivered in one full set of paper copies pursuant to Part Rule 2 (D). All court copies of trial-related documents shall be delivered in clearly-labeled and numbered packages indicating the case name(s) and index number(s), each of which shall identify, on the outside of the box or packages, the number of the package (i.e., [Party's Trial Materials], Box 1 of 5) and an index of the contents/documents contained in that package (i.e., [Party's] Trial Exhibits Books 1 – 10, containing P001 – P042).

All digital trial materials on NYSCEF or otherwise sent to the court shall be OCR searchable unless extraordinarily impracticable. Descriptive names for each trial document, including exhibits,

---

<sup>30</sup> The Part 48 Exhibit Chart is available online at <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml> and by email pursuant to Part Rule 2 (B).

<sup>31</sup> Delivery to Part 48 of pre-trial materials excepted from e-filing are set forth in Part Rule 31 (C).

shall be used: identify exhibits by pre-marked number and explain what each exhibit is; i.e., “P001 - P’s Dep Tr, 01.01.2001.”

(C) Delivery of materials not filed to NYSCEF: Exhibits intended to be used at trial, proposed jury instructions, proposed verdict sheets, and related materials shall be delivered to the Part Clerk in a single set of paper copies pursuant to Part Rule 2 (D) and digitally sent to the court pursuant to Part Rule 2 (B) at least 7 days before trial. Every digital document or trial material shall be in an individual, OCR-searchable file with specific, descriptive filenames.

(D) Direct testimony affidavits: Commercial Division Rule 32-a is mandatory in non-jury trials.

(E) Proposed jury charges and proposed verdict sheets: The parties must exchange proposed charges and verdict sheets no fewer than 20 days prior to commencement of a jury trial and counter proposals must be exchanged and no less than 10 days prior to commencement of the trial. Where a proposed jury instruction is verbatim from the most current edition of the Pattern Jury Instructions, PJI citations are sufficient; if a proposed instruction modifies any PJI instruction, the submitting party must include a cover letter providing appropriate authority for the proposed modifications and a red-line version demonstrating all changes to the PJI language. All documents above shall be delivered digitally and in paper copies pursuant to Part Rule 2 (B) and (D) not less than 7 days before trial.

32. Trial Exhibits and Exhibits Charts: Counsel shall comport with Commercial Division Rule 28 and all exhibits, in exhibit books complete with the Part 48 Exhibit Chart, shall be exchanged and sent pursuant to Part Rule 2 (B) at least 20 days prior to commencement of trial. Exhibits shall be pre-marked using only numbers: e.g., Plaintiff’s Exhibit 1 = P001; Defendants’ Exhibit 99 = D099; where there are numerous parties, identify party names with abbreviations, i.e., ABC001, XYZ199. Exhibit Charts shall identify whether admissibility of each exhibit intended to be used is disputed, as determined by the parties at their required Commercial Division Rule 28 meet and confer.

The parties shall be prepared with additional copies of all trial materials to provide to witnesses during examination at trial.

33. Filing Entered Exhibits After Trial: Only exhibits introduced at trial and entered into evidence by the court are deemed admitted for any purpose; exhibits not used and/or not entered into evidence at trial will not be considered by the fact finder. Only exhibits admitted into evidence shall be filed to NYSCEF after trial pursuant to Part Rule 39 (C).

34. Pre-Trial Memoranda and Joint Statements of Undisputed Fact: At least 30 days prior to trial, the parties must meet and confer to attempt to reach an agreement as to facts that are not in dispute. Not less than 20 days prior to commencement of trial, the parties shall exchange and e-file all pre-trial memoranda, formatted in accordance with the Commercial Division Rules and Part Rule 6, and any Joint Statement of Undisputed Fact(s); paper copies and digital copies shall also be sent to the court Pursuant to Part Rule 2 (B) and (D).

35. Witness Lists: Parties must exchange and e-file a list of witnesses intended to be called in a chart/spreadsheet identifying whether each witness is a fact and/or expert witness and whether expert status, if any, is disputed. For expert witnesses, a brief explanation of the anticipated testimony shall be included (see also CPLR 3101 [d]). The parties, after meeting and conferring as required by the

Part Rules and Commercial Division Rules, shall submit a proposed schedule for the examination of witnesses at the pre-trial conference; in no instance will the proposed schedule be filed and delivered to the court pursuant to Part Rule 2 (B) and (D) fewer than five business days prior to trial.

36. Language Interpreters and Accessibility/Accommodations: As set forth in Part Rule 16; however, where a translator is needed for language interpretation or accessibility/other accommodations may be necessary, the requesting party shall notify the Part Clerk pursuant to Part Rule 2 (A) at least 7 days prior to the commencement of trial. The notice shall include all pertinent information, including: the witness's name, date(s) of anticipated testimony, language and dialect used; and/or all other accommodations requested.

37. Demonstrative Evidence, Electronic Media, and Trial Tools: Part 48 strongly encourages the use of new media and technology, such as real-time transcription, to expedite and streamline trials; however, the parties shall provide their own courtroom technology. Requests for permission to use demonstrative evidence or other trial tools shall be made pursuant to Part Rule 2 (B) at least 15 days prior to commencement of trial. The court is willing to consider all trial -facilitating media or devices if the deadline above has been satisfied. Parties are responsible for providing equipment and staff to operate the equipment, if necessary.

38. Court Reporters: Prior to commencement of trial, the parties shall provide the Court Reporter(s) with contact information, witness lists, pre-marked exhibit lists and exhibit charts, and a glossary of names, unusual words, and/or acronyms that may be used during the trial. Court Reporters require notice of at least 15 days where real-time transcription of trial proceedings will be implemented. The parties may contact the Court Reporters' Office at Room 420, (646) 386-3050, and the court as set forth in Part Rules 2 (B) and 37.

### Post-Trial Matters

39. Post-Trial Submissions and Filings: Within 30 days of the conclusion of trial, or as directed by the court, the parties shall exchange and file to NYSCEF all post-trial memoranda (limited as set forth in the Commercial Division Rules and formatted in accordance with the Part Rules), Mandatory Statements of Proposed Factual Findings, copies of all Exhibits Admitted at Trial, and a Joint Chart of Admitted Exhibits. All filings shall be OCR-searchable and the court's paper copies shall be submitted, pursuant to Part Rule 2 (D), in consecutively-paginated, clearly labeled, two-inch thick volumes containing only single-sided pages.

(A) Post-trial memoranda shall include proposed conclusions of law supported by citations to only evidence admitted at trial. Do not cite to Statements of Proposed Factual Findings as support for any fact or conclusion in legal memoranda. Reply Memoranda shall be served and filed not more than 45 days after the conclusion of trial (or as directed by the court) and are limited as set forth in the

Commercial Division Rules and the Part Rules. Word limit extension requests shall be emailed pursuant to Part Rule 6 not more than seven days after the conclusion of trial.

(B) Mandatory statements of proposed factual findings: There is no word limit for proposed factual findings; however, every proposed factual finding shall be supported by citation(s) to evidence (exhibits and/or testimony) admitted and used at trial, with pin-point citations to the applicable NYSCEF Document Numbers for each exhibit or trial transcript.

(C) Admitted/entered exhibits: Following trial, all exhibits entered into evidence must be jointly prepared by the parties and filed to NYSCEF with a Joint Exhibit Chart (in the form accepted by Part 48) identifying each exhibit by its pre-marked number, the date on which it was admitted into evidence, and whether it was admitted into evidence over objection or otherwise. Admitted/entered exhibits shall be filed to NYSCEF within 30 days of the conclusion of trial. For inquiries as to non -traditional exhibits (i.e., large-format prints, models, etc.), email the court pursuant to Part Rule 2(B).

40. Trial Transcripts: Shall be filed and delivered pursuant to Part Rule 24 within 30 days of the conclusion of trial.

41. Removing Trial Materials: All physical trial exhibits/copies used during trial shall be removed from Part 48 within 48 hours of the trial's conclusion or else they will be destroyed or discarded.

42. Index of Online Materials: For the convenience of all parties, copies of the below-listed Rules, proposed order forms, templates, samples, and other materials are available online with these Part Rules.<sup>32</sup> Copies of the online materials may be available in an alternative format (i.e., .DOC/.DOCX, .XLS, or .PDF files) upon request made pursuant to Part Rule 2 (B).

- The Rules of the Commercial Division (22 NYCRR 202.70) (current through 10/16/19 update);
- The Part 48 PC Order Form;
- The Part 48 Pro Hac Vice Proposed Order Form;
- The Part 48 Confidentiality Stipulation and Proposed Order Form;
- The Part 48 Exhibit Chart;
- The Standards of Civility (22 NYCRR 1200 Appendix A); and
- A Sample Stipulation for the Exchange of ESI

---

<sup>32</sup> Please visit [https://www.nycourts.gov/courts/comdiv/ny/newyork\\_judges\\_links.shtml#masley](https://www.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley).

## **Biography**

Justice Barry R. Ostrager received his undergraduate degree from the City College of the City University of New York in 1968 and his J.D. degree from New York University School of Law in 1973.

Justice Ostrager was appointed to the New York Court of Claims by Governor Andrew Cuomo in June 2015 and served as an Acting New York Supreme Court Justice assigned to the Commercial Division. In June 2017, Governor Cuomo appointed Justice Ostrager to the New York State Supreme Court, and he remains assigned to the Commercial Division. Prior to his appointment, except for a federal judicial clerkship, Justice Ostrager spent his entire pre-judicial career at Simpson Thacher & Bartlett, LLP, becoming a partner in 1980 and serving as Chair of the firm's Litigation Department from 1999-2011. As a front-line trial and appellate litigator, Justice Ostrager tried many multi-billion-dollar cases to verdict and argued scores of appeals, including two successful arguments before the United States Supreme Court.

Justice Ostrager is the co-author of the Handbook on Insurance Coverage Disputes, 17th Edition (Wolters Kluwer 2015); co-author of Modern Reinsurance Law and Practice, 3d Edition (Thomson Reuters 2014), and a contributing author to Business and Commercial Litigation in Federal Courts (Thomson Reuters).

Justice Ostrager is a member of The City Bar, New York County Lawyers' Association, New York State Bar Association, American Bar Association, American Law Institute, Federal Bar Council and the International Academy of Trial Lawyers.



**PRACTICE RULES FOR PART 61**  
**JUSTICE BARRY R. OSTRAGER**

**Courtroom hours are from 9:30 a.m. to 4:30 p.m. in Room 232 at 60 Centre Street. Lunch recess is from 1:00 p.m. to 2:15 p.m., with the courtroom closed at that time.**

1. The Uniform Civil Rules for the Supreme Court and the Rules of the Commercial Division govern all cases before Justice Ostrager, unless modified by the Individual Rules of Justice Ostrager set forth herein.

<http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>

2. Appearances are staggered by time to facilitate an orderly calendar. All counsel are expected to appear in a timely fashion for any scheduled appearance and to promptly check in with the Part Clerk. Punctuality is strictly enforced. No party will be excused from any scheduled appearance date or time without first seeking and receiving leave from the Court. Counsel shall appear ready to discuss all matters, including settlement, at any scheduled appearance.

3. Part 61 is a working copy Part. Working copies of all motion papers, including any opposition and reply papers, shall be prepared with exhibit tabs and the e-filing confirmation sheet indicating the NYSCEF filing number and the motion sequence number. All such papers shall be delivered directly to Room 130, the Motion Submission Part, on the date the motion is calendared in Room 130. No additional courtesy copies are required. No motion papers may be delivered to the courtroom unless expressly requested by the Court in writing or if presented in connection with an Order to Show Cause pursuant to the separate procedure set forth below.

4. All other documents submitted to the Court for review and/or signature, such as stipulations and proposed orders, shall be accompanied by a brief cover letter that states on the first page the caption of the case, the Index Number, and the next scheduled appearance date. Working copies of all such papers shall be delivered to Room 232 with proof of e-filing.

5. The Part Clerk is unable to accept deliveries between 12:45 p.m. - 2:15 p.m. or after 4:15 p.m. No deliveries to Chambers will be accepted.

**Communications with the Court**

6. Neither Justice Ostrager nor anyone in Chambers will speak to any attorney or self-represented litigant regarding any matter without all parties to the action on the line. No calls to Chambers shall be placed, nor emails sent, unless authorized in advance by the judge or a member of the staff or as permitted by the Rules.

7. All inquiries regarding the scheduling of discovery conferences must be directed to the Part 61 Clerk, Alex Giuffre, at (646) 386-3169 between 9:30 a.m. and 12:45

p.m. and between 2:15 p.m. and 4:15 p.m. All inquiries regarding the scheduling of oral argument on a motion must be directed to Patricia DellaPeruta in Chambers at (646) 386-4150 with all parties on the line. Please have the Index Number of the case and appearance date readily available when you call. Any adjournment granted shall be confirmed in writing by the applicant with copies sent to all parties and the Court.

8. Any request for the adjournment of a settlement conference, a pre-trial conference or a trial, or for an extension of time to comply with a court order or rule, shall be made by letter to Justice Ostrager delivered to the courtroom with all relevant information and proof of e-filing.

9. Any party seeking any such adjournment or extension must receive Court permission at least 48 hours before the scheduled date, absent exceptional circumstances. To the extent the adjournment or extension must be So Ordered by the Court, the party seeking the adjournment or extension shall submit a proposed order.

### **Discovery Disputes and Conferences**

10. Justice Ostrager expects full compliance with all discovery orders, absent good cause shown. No motion of any type shall stay discovery, unless the Court has expressly granted a stay. Should a party have good cause to seek an extension or modification of any discovery deadline, counsel shall submit a written request well in advance of the deadline at issue, even if the proposed modification is on consent. Should any party fail to comply with a discovery deadline, or fail to follow the procedures set forth in these Rules, the Court in its discretion will consider imposing sanctions, such as conditional orders of preclusion or dismissal, an award of attorney's fees, or other appropriate relief.

11. Discovery motions are prohibited unless express permission has been given in advance on the record or in writing by Justice Ostrager or one of the Law Clerks. Counsel are expected to resolve discovery disputes through the meet and confer process. If rulings are required that cannot await the next scheduled discovery conference, counsel may seek to advance the appearance date by letter not exceeding one page describing the nature of the dispute. The letter shall be e-filed and delivered to the Part Clerk, and counsel shall thereafter telephone the Part Clerk with all counsel on the line to arrange an appearance date. Counsel shall bring to the conference all documentation and case law necessary to resolve the dispute and will be given the opportunity to present their arguments to Justice Ostrager on the record. Counsel shall thereafter order a copy of the transcript from the Court Reporter to be So Ordered by the Court and e-filed by the Part Clerk.

12. If a satisfactory resolution of the discovery dispute is not achieved through the court conference, the Court in its discretion may grant leave for the parties to file the appropriate motion. Failure to abide by this rule requiring prior permission for a discovery motion will result in a motion being denied in the discretion of the Court.

### **Motion Practice**

13. No pre-motion conference is required, except for discovery motions noted above.

14. All motion papers are required to have the appropriate Motion Sequence Number to which they are related placed on the front page below the Index Number, with the e-filing confirmation sheet and any redaction sheet attached to the back of the document, over the litigation back. The filing procedures are set forth at the beginning of these Rules.

15. Statements of Material Facts are required when moving for or opposing a motion for summary judgment. Any dispositive motion must be made within 60 days of the filing of the Note of Issue, unless the Court orders otherwise. Only one motion for summary judgment may be made, whether made before or after the filing of the Note of Issue, unless the Court orders otherwise.

16. Affirmations submitted in support of or in response to dispositive motions must be separate from any memoranda of law. Affirmations should not include arguments of law.

17. Upon the receipt of a fully submitted motion, oral argument will be scheduled by the Court via an official Court Notice transmitted through the e-filing system. All counsel are expected to keep their contact information updated through the E-filing Clerk's Office.

18. Following oral argument, the movant shall order the transcript and arrange with the Court Reporter to have a copy sent to the Court, delivered to the Part 61 Clerk. Justice Ostrager will So Order the transcript and the Part Clerk will e-file it.

#### **Motions by Notice of Motion**

19. As indicated above, working copies of all e-filed papers and exhibits for motions returnable in Room 130, the Motion Submissions Courtroom, must be delivered to Room 130 on the return date of the motion, and not to the Part Clerk in the Courtroom, unless the Court directs otherwise in a Court Notice.

20. Any application to adjourn a motion pending in Room 130 shall be directed to Room 130. No more than three adjournments for an aggregate of 60 days from the original return date shall be permitted absent a Stipulation So Ordered by Justice Ostrager.

#### **Motions by Order to Show Cause**

21. An Order to Show Cause shall be initiated by filing working copies of the appropriate papers with the Commercial Division Clerk in Room 119, with proof of e-filing. Counsel are responsible for retrieving the Order to Show Cause from the Clerk's Office after it has been processed and delivering the official court file with a complete set of working copies to the Part Clerk in the courtroom 232.

22. Working copies of e-filed opposition and any permitted reply papers and exhibits related to an Order to Show Cause must be delivered to the Part 61 Courtroom, Room 232, between the hours of 9:30 a.m. – 12:30 p.m. and 2:15 p.m. - 4:15 p.m., by the date and time specified in the Order to Show Cause for service of the papers. No cross-motion will be accepted absent the prior permission of the Court sought by conference call or as specified in the OSC.

23. Absent compelling circumstances, all parties must be present when any temporary restraining order is sought. If the OSC seeks a preliminary injunction, counsel shall be prepared for an evidentiary hearing on the return date of the motion.

### **Trial Rules**

24. Assigned trial dates are considered firm. No adjournment of the trial date will be granted absent exceptional circumstances. Any request for an adjournment must be made in writing to the Court well before the scheduled trial date, with the reason briefly stated.

25. All materials used during the trial must be removed within 48 hours of the conclusion of trial. All materials not timely removed will be discarded.

26. The parties are expected to meet and confer regarding the timely submission of pre-trial materials well in advance of the deadlines specified below. In addition to the documents listed below that must be e-filed and submitted in advance of the trial, counsel shall prepare for the Court a notebook of all trial exhibits and complete deposition transcripts. The contents of the notebook need not be e-filed. The notebook shall be presented to the Court on the date of trial. No documents will be accepted by email unless so requested.

27. At the conclusion of the trial, counsel are expected to e-file any exhibits admitted into evidence, along with deposition transcripts used and any other document required to complete the record for purposes of any appeal.

### **Documents to be E-filed and Submitted 14 Days Prior to Jury and Non-Jury Trials**

28. After meeting and conferring, each party shall e-file and submit to the Courtroom the following papers at least fourteen (14) days prior to the start date of the trial:

- Marked pleadings
- Pre-trial memoranda
- Proposed facts to be proven at trial
- A list of witnesses each party expects to call at trial. The list must state whether each witness is a fact witness or an expert witness and the expected length of the direct examination. If a witness is listed as an expert, briefly state the subject of the expert's testimony. Compliance with CPLR §3101(d) is expected.

- A list of exhibits each party expects to use at trial. The list must state for each exhibit whether the admissibility of the particular exhibit is agreed upon or disputed. Exhibits agreed upon by the parties will be immediately admitted into evidence when offered at trial and will be marked by the Court Reporter at that time.
- Designations of deposition testimony to be read, specifying the name of the deponent, the date of the deposition, and the pages and lines of testimony proposed to be read.

### **Documents to be E-filed and Submitted 10 Days Prior to Jury Trials**

29. After meeting and conferring, each party shall e-file and submit to the Courtroom the following at least ten (10) days prior to the start date of the trial:
- All motions *in limine* shall be made by Order to Show Cause. The papers must be e-filed and filed in hard copy with the Commercial Division Clerk in Room 119 so that the Order to Show Cause is processed by the Clerk and presented by counsel to Justice Ostrager in Room 232 for signature at least ten (10) calendar days before the scheduled trial date. The Court in its discretion will set the schedule for opposition papers and the return date of the Order to Show Cause.
  - Proposed jury charges and a proposed verdict sheet. If a standard PJI charge is requested without modification, only the PJI number need be listed. If any modification of a PJI charge is requested, the entire charge shall be typed with the proposed modification clearly indicated. All submissions must be submitted in hard copy and on a CD or flash drive in Word format ten (10) calendar days before trial.
  - Jury selection is conducted by counsel in the Central Jury Room. Justice Ostrager does not supervise jury selection but may set time limits for jury selection.
  - The Court, in its discretion and consistent with the Commercial Division Rules, may also set time limits for opening statements, summations, and witness examinations and may limit the number of trial days and/or order that direct testimony be submitted by affidavit.

### **Confidentiality Orders and Sealing**

30. Should counsel wish to enter into a Confidentiality Order, the Order shall conform to the standard form order attached as an Appendix to the Commercial Division rules. Any modification sought shall be clearly indicated in a red-lined copy and shall be limited to exceptional circumstances. Any request to have Justice Ostrager So Order the Confidentiality Order shall be e-filed and submitted in hard copy to the Part Clerk with a cover letter confirming that the Order conforms to the standard form.

31. Sealing, including redactions beyond those permitted by the Redaction Rules (i.e., date of birth, Social Security number and account numbers), is discouraged. Any request for additional redactions or sealing shall be made by Order to Show Cause and must establish “good cause” pursuant to the Uniform Rules for Trial Courts, 22 NYCRR 216.1.

32. If the Court permits additional redactions or sealing of a document in whole or in part, counsel shall e-file both the redacted copy publicly and the unredacted copy of the document under seal. Additional instructions are available from the E-filing Clerk’s Office. Working copies of both the redacted and unredacted papers shall be delivered to the Court, with a designation clearly indicating on the cover page whether the papers are redacted or unredacted.

33. Once a matter proceeds to trial, all sealing orders shall automatically be vacated unless the Court expressly orders otherwise.

Revised January 2, 2018

## **Jay G. Safer Bio**

Jay G. Safer is a partner at the law firm of Wollmuth Maher & Deutsch LLP in New York City. Jay handles complex litigation in the United States and abroad. Jay represents clients in matters concerning contracts, antitrust, securities, RICO, qui tam, FCPA, international litigation and arbitration, including application of the New York Convention and enforcement of foreign judgments and arbitration awards, banking, financial institutions, corporate governance, technology, privacy, insurance, construction, real estate, labor and employment, product liability, health care, professional ethics, financial, constitutional, and regulatory issues, mediation, class actions, defamation, and media. Jay also counsels clients on commercial matters including, protection and preventative measures and pre-litigation analysis.

He has represented clients in international litigation, including domestic and foreign clients in courts outside the United States and foreign clients in the U.S. courts. He has represented clients from the United States and around the world in international arbitrations. Jay has served on panels, bench-bar forums, and is a member of committees with judges and attorneys discussing and speaking on a wide range of civil litigation issues, litigation skills and U.S. and international arbitration and international litigation practice. He has presented numerous programs and seminars on U.S. and international arbitration and litigation to foreign judges, lawyers, and law students visiting the United States and at seminars abroad. He frequently presents webinars and CLE programs to national audiences.

He is an Adjunct Professor at Law at Columbia Law and Fordham Law Schools, teaching foreign lawyers and LLM candidates American litigation practice and the management of U.S. Litigation, and the role of arbitration and mediation in U.S. proceedings. Jay was appointed to the advisory group to the New York State Federal Judicial Council consisting of federal and state judges appointed by the Chief Judge of the State of New York and the United States Court of Appeals for the Second Circuit. Jay was appointed by the Chief Judge of the State of New York to the Commercial Division Advisory Council that advises the Chief Judge and the Judiciary on matters involving the Commercial Division of the State of New York. He was also appointed by the New York State Chief Administrative Judge to serve on the Advisory Committee on the New York State Civil Practice Law and Rules.

Jay is involved in leadership positions in numerous bar associations, including as past and present chair and member of many bar association sections, executive committees, and committees. Jay has made appearances on television and authored numerous articles and publications.

## **Biography**

Justice Jennifer Schechter was assigned to the Commercial Division in April 2018. She was appointed as an Acting Supreme Court Justice in 2015 and presided over a General Assignment Part that included commercial, tort, landlord/tenant and CPLR article 78 proceedings. She was elected to the Civil Court of the City of New York in 2009 and was assigned to New York County's Civil Court (2013-2014) and Criminal Court (2010-2012). Before that, she served as Principal Law Clerk to Justice Eileen Bransten of Supreme Court, New York County (2002-2009) and as Principal Law Clerk to Chief Judge Judith S. Kaye of the New York State Court of Appeals (1998-2001). She began her legal career as a litigation associate at Skadden, Arps, Slate, Meagher & Flom.

Justice Schechter is a past president and board member of the Judges and Lawyers Breast Cancer Alert. She was an Adjunct Professor at Seton Hall University School of Law where she taught New York Practice, Business Law Survey, Torts and Appellate Advocacy. She has also served as a faculty member and panelist for continuing legal education programs at the New York City Bar Association and the Practising Law Institute.

Justice Schechter graduated magna cum laude from Seton Hall University School of Law in 1996 and earned her undergraduate degree with High Honors from Rutgers College in 1993.



# PRACTICES FOR PART 54

HON. JENNIFER G. SCHECTER, J.S.C.

## CONTACT INFORMATION

Courtroom: 60 Centre Street, Room 228  
(646) 386-3362

Part Clerk: Donna De Land [ddeland@nycourts.gov](mailto:ddeland@nycourts.gov)

Chambers: General Number: (646) 386-4048

Law Clerks: Michael J. Rand, Esq. [mrand@nycourts.gov](mailto:mrand@nycourts.gov) (212) 256-7848  
Elizabeth S. Kimmel, Esq. [ekimmel@nycourts.gov](mailto:ekimmel@nycourts.gov) (646) 386-4744

## GENERAL RULES

1. Parties must familiarize themselves with the Commercial Division Rules, including what constitutes a commercial case. A copy of the rules is available at: <http://www.nycourts.gov/rules/trialcourts/202.shtml#70>

Information about New York County's Commercial Division can be found at: <http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>

2. If a party believes that a case assigned to Part 54 does not belong in the Commercial Division or should be assigned to another Justice (e.g., as a related case), the parties may call chambers by following the procedures set forth below. Such requests should be made promptly after the filing of the RJI. No letters requesting transfer may be submitted.
3. A law clerk will be assigned to supervise your case. When calling the court for a scheduled telephone conference, please use the individual telephone number for the assigned law clerk. If a law clerk has not yet been assigned to your case, or if you cannot reach the assigned law clerk, please call chambers at (646) 386-4048.

If the rules provide that you should email a law clerk, and one has not yet been assigned, please email Michael Rand at [mrand@nycourts.gov](mailto:mrand@nycourts.gov).

4. **No law clerk will communicate with an attorney or litigant *ex parte*, nor will they assist parties in the practice of law, such as by advising how to interpret a rule, law or decision. All communications with the court must be copied to all appearing parties and all parties must be on the line for telephonic communications.**

5. Unopposed applications accompanied by an executed, e-filed stipulation consenting to the relief sought (such as consolidation, admission *pro hac vice* or an open commission) should be emailed to the assigned law clerk along with the e-filing confirmation receipt.

### **Resolutions**

6. Counsel must notify the court as soon as practicable by telephone call or email to the assigned law clerk if an action or a pending motion has been resolved.

### **Contact Information**

7. **Attorneys and *pro se* litigants must always keep their contact information, including email addresses, current in the e-filing system so that the court is able to reach you.** In cases that are NOT e-filed, *pro se* litigants must provide contact information to the Part Clerk. If your email address is not kept current, you may miss important communications. All attorneys who appear in Part 54 must provide the Part Clerk with a business card that has the attorney's current contact information.

### **Admission *pro hac vice***

8. A request for *pro hac vice* admission, whether made by motion or stipulation, shall be accompanied by a proposed order and an affidavit in support from a member of the Bar of the State of New York, an affidavit of the applicant and a recent certificate of good standing from the applicant. The proposed order shall conform to the order that appears after these rules.

### **ELECTRONIC FILING**

9. All cases must be electronically filed (e-filed) through the New York State Courts e-Filing (NYSCEF) system except cases involving *pro se* litigants. *Pro se* litigants that are licensed to practice law in New York, however, must e-file. Unrepresented litigants are highly encouraged to e-file and can find instructions at:

<https://iappscontent.courts.state.ny.us/NYSCEF/live/unrepresented/UnrepresentedHomePage.html>

For NYSCEF instructions, please contact the e-filing Resource Support Center at (646) 386-3033 or see <https://iapps.courts.state.ny.us/nyscef/HomePage>.

With the exception of *pro-se*-litigant submissions, all submissions must be e-filed.

10. All e-filed documents must be OCR Text Searchable PDFs.
11. Each exhibit to an e-filed pleading, affidavit or affirmation must be e-filed as a separate document. e-filed exhibits must be described in reasonable detail in the “Description” field, in addition to a number or letter in the “Document” field.
12. In those limited cases that **ARE NOT e-FILED**, TWO copies of motion papers must be properly submitted (in Room 130 if the motion is on notice and to the courtroom if the motion was made by order to show cause [OSC]): one for the court file and an extra copy for the court’s use.

### **Hard Copies**

13. Except as otherwise provided, parties should only provide the court with hard copies of all motion and cross-motion papers (including all affidavits, affirmations and exhibits). NO other hard copies should be submitted.
14. For motions returnable in Room 130, one hard copy of all papers must be submitted directly to Room 130 and NOT to the courtroom or chambers.
15. One hard copy of all papers related to motions brought by OSC must be hand-delivered to the Part Clerk no later than seven days before the return date unless a different date is specified for hard copies in the OSC.

### **Stipulations, Orders and Authorized Letters**

16. Proposed stipulations and orders along with their e-filing confirmation receipt must be emailed to the law clerk assigned to your case.
17. Authorized letters along with the e-filing confirmation receipt must be emailed to the law clerk that is assigned to your case only after a clerk has authorized the letter.

## **COMMUNICATIONS WITH THE COURT**

### **Scheduling**

18. General questions about appearances may be addressed to the Part Clerk at (646) 386-3362. The Part Clerk is not authorized to grant adjournments.
19. To adjourn a scheduled appearance, the court’s permission must be obtained no later than two business days in advance, except in the event of an emergency. Opposed requests for adjournment of scheduled appearances must be addressed to one of the court’s law clerks by contacting chambers in accordance with the procedure for commencing unscheduled telephone conferences discussed below. All parties who

have appeared must be on the line. If all parties consent to the adjournment request, you may instead email the assigned law clerk (copied to opposing counsel) to propose one or more new appearance date(s) to which all parties have agreed. If you cannot reach opposing counsel, you may email the assigned law clerk (copied to opposing counsel) to explain the situation and seek guidance. Adjournments will not be granted by letter or stipulation without prior court approval. For adjournments in room 130, see the MOTIONS section below.

20. Attorneys must sign up for eTrack and regularly check eCourts for scheduled appearances. Defaults in appearing will not be excused for lack of notice from eTrack or an omission by the New York Law Journal.

### **Telephone Calls**

21. Non-attorneys (including paralegals and secretaries) may not call chambers. Except in extenuating circumstances, chambers will take calls only from attorneys of record and unrepresented litigants and only when all appearing parties are on the line.
22. Counsel and unrepresented litigants may call chambers Monday through Thursday, between 4 and 5:30pm, during which time the court's law clerks are generally available for unscheduled calls. Except for scheduled calls, emergencies (including disputes arising during a deposition) or notifications that a motion has been withdrawn or a matter has settled, do not call chambers outside of this time window.

To initiate a call with chambers, call (646) 386-4048 with all parties on the line or provide chambers with a conference call dial-in number. Prior to the call, the parties must confer to discuss the matters to be raised with the court.

### **Authorized Letters**

23. Letters that have not been authorized will not be considered by the court.
24. If the court directs that a letter is to be filed (e.g., the joint letter to be submitted prior to the Preliminary Conference [PC] or a joint letter related to a disclosure dispute that has been requested by a law clerk prior to a scheduled telephone conference), the letter shall be e-filed and then emailed to the assigned law clerk along with the e-filing confirmation receipt. Hard copies of letters should NOT be provided to the court.
25. If the court authorizes a letter related to a discovery dispute, the parties shall submit a joint letter of no more than five pages.
26. Commercial Division Rule 24 letters are prohibited.

## **DISCOVERY**

27. After an action is assigned to this part, but before the PC, if the parties have a discovery dispute, they are to call chambers to schedule a PC.
28. Before making any discovery motion, the parties must confer and either raise the issue at the next scheduled telephone conference or contact chambers in accordance with the procedure for commencing unscheduled telephone conferences discussed above. Discovery motions may not be made without authorization and any discovery motion must set forth who authorized the motion and when.
29. Unless otherwise indicated, when a discovery deadline is set forth in a court order that deadline is 5:00 pm, New York time. Details related to the manner of document production will be discussed at the PC. All production must be electronic, searchable and bates-stamped. A party that produces hard copy documents, non-searchable PDFs or documents without bates stamps will be ordered to re-produce its materials.
30. Objections to document requests and interrogatories must be made with specificity in accordance with Commercial Division Rule 11-e(a) and CPLR 3133(a), respectively; general objections will not be honored by the court. The court will provide further guidance at the PC as to how such objections must be drafted.
31. Interrogatories are limited to 25, including subparts, in accordance with Commercial Division Rule 11-a(a), unless another limit is specified in the PC order. This rule is strictly enforced and applies to consolidated actions. Interrogatories are limited to the subjects set forth in Commercial Division Rule 11-a(b). Contention interrogatories, however, are not permitted.
32. Parties must comply with court-ordered discovery deadlines. If an extension of time is needed, it should be requested by calling chambers BEFORE expiration of the deadline. The court may grant extensions for good cause but will not indefinitely grant extensions if the parties are not diligently attempting to meet court deadlines.

Discovery is not stayed by the filing of a dispositive motion or mediation unless otherwise ordered by the court. Motions to stay discovery must be made by order to show cause. Parties will not be relieved from the consequences of violating discovery orders unless a temporary restraining order (TRO) is obtained.

33. If a party objects to a document demand on the ground of privilege, with its production, the party asserting the privilege must serve on all other parties a privilege log of the responsive documents that are not being disclosed and a copy of the redacted documents, bates stamped. The privilege log shall identify all redacted and completely withheld documents by bates-stamp numbers, dates, authors and

recipients, the general subject matter of the document if it will not waive the privilege and the privileges being asserted. Failure to serve a privilege log with the party's production will, absent good cause, be deemed a waiver of the party's objection on the ground of privilege. Following service of a privilege log, the parties shall confer in an attempt to reach agreement on whether the asserted privileges apply. If agreement cannot be reached, the parties shall contact the assigned law clerk to schedule a conference. At the PC, the court will provide further guidance on the manner in which privilege logs are to be served, the option of using a categorical log and the process for resolving privilege disputes.

### **Conferences**

34. All parties must meet and confer at least 2 weeks before the PC, at which time they must jointly prepare a brief status letter, no more than 2 pages in length, that includes a summary of the relevant factual background, the causes of action, affirmative defenses and counterclaims, the status of discovery and the status of any motions. There is no need to prepare a proposed PC Order in advance, nor do the parties need to address ESI prior to the PC. The court will explain how discovery (including ESI issues) will proceed at the PC.
35. Attorneys appearing for conferences must be fully familiar with the case in accordance with Commercial Division Rule 1(a). They must have thorough knowledge of all facts and claims in the pleadings, of all relevant contracts, of all prior court orders and of the discovery proceedings. Counsel should be prepared to discuss the merits of their case at all conferences.
36. Parties must bring copies of ALL prior discovery orders, motion decisions, pleadings and relevant contracts to each and every court appearance. Any party that wants to resolve a dispute about the sufficiency of a discovery response during a conference shall bring whatever will be needed to obtain a ruling, including copies of the disputed demands and responses.

### **Confidentiality Agreements**

37. Parties shall use the confidentiality agreement and order available at: [www.nycourts.gov/courts/comdiv/ny/PDFs/Confidentiality\\_Stip\\_Part\\_54.pdf](http://www.nycourts.gov/courts/comdiv/ny/PDFs/Confidentiality_Stip_Part_54.pdf). Any changes that the parties wish to make to the order shall be electronically filed and submitted to the court with a redlined copy of the court's form agreement. A confidentiality agreement between the parties and approved by the court is for the purpose of disclosure only.
38. To maintain the confidentiality of a document designated "confidential" for purposes of discovery, any party who wants to submit it in connection with a motion must make a motion to seal by OSC, pursuant to 22 NYCRR 216. Hard copies of

documents that the movant wishes to seal should be delivered to the courtroom in a sealed envelope marked confidential with the index number and motion sequence number included on the envelope. e-filed memoranda of law or other submissions that absolutely must refer to the documents sought to be sealed should redact any such references and unredacted copies of the submissions also shall be delivered to the courtroom in the same manner as the underlying documents sought to be sealed.

## **MOTIONS**

39. Discovery motions cannot be made without authorization (*see* DISCOVERY above).
40. To request an adjournment of a briefing deadline or return date on a motion returnable in room 130, refer to the Motions on Notice web page of the Civil Branch of the Supreme Court of the State of New York, New York County:  
[https://www.nycourts.gov/courts/1jd/supctmanh/motions\\_on\\_notice.shtml](https://www.nycourts.gov/courts/1jd/supctmanh/motions_on_notice.shtml).  
Adjournments permitted by room 130 on consent of the parties do not require the court's consent unless otherwise ordered.

To request an adjournment not on consent of the parties, by court order or on a motion by order to show cause, call chambers in accordance with the procedure for commencing unscheduled telephone conferences discussed above.

If all parties consent to such adjournment, you may instead email the assigned law clerk (copied to opposing counsel) to propose the new deadline.

41. For motions returnable in Room 130, the parties shall not appear in Part 54 on the return date. After the court receives the motion from Room 130, it will contact the parties by email to schedule oral argument, if necessary. If the moving party is not contacted within two weeks of the return date, the parties shall promptly contact the Part Clerk. Once oral argument is scheduled, adjournments must be sought at least two business days in advance.
42. Parties may request oral argument by single-page letter or on the face of their motion papers in accordance with Commercial Division Rule 22. **A representation by letter that argument will be made by an attorney whose participation enhances diversity in the bar or an attorney admitted to practice fewer than five years will weigh in favor of the court deciding to hold oral argument.** The letter should identify the attorney and the portion of the motion that such attorney will argue.
43. Briefs and memoranda of law must comply with the requirements set forth in Commercial Division Rule 17, including word limits (7,000 for opening and

opposition briefs, 4,200 for reply briefs and 7,000 for affidavits and affirmations) and certifications of compliance by counsel.

44. Attorney affirmations may only be used as an index of exhibits and, where appropriate, a brief procedural history may be provided. Argument must be confined to the brief. A memorandum of law must accompany every motion.
45. Motions for a default judgment must indicate the causes of action on which the default judgment is sought and must always be accompanied by a memorandum of law and an affidavit of merit. The motion should make clear whether the movant seeks a default judgment on liability only or wishes for the court to determine damages on the papers, which must provide a clear calculation and appropriate proof. If requesting an inquest before a special referee, make clear whether the movant consents to a reference to hear and determine.
46. Witness affidavits must comply with the CPLR and Commercial Division Rules. Legal argument should not be contained in witness affidavits.
47. As noted earlier, briefs, exhibits and all other motion papers that are e-filed must be OCR Text Searchable. Spreadsheets that have been e-filed must be emailed to the assigned law clerk along with the e-filing confirmation receipts.
48. Motion sequence numbers shall appear in bold on the front page of ALL papers related to any motion or cross-motion, except exhibits. Each hard-copy volume of exhibits *must* be separated by exhibit tabs and include a cover page containing the motion sequence number. When e-filing an exhibit, however, the first page of the e-filed PDF should *not* be a blank page that states “Exhibit.” For instance, if Exhibit A is a contract, the first page of the contract should be the first page of the e-filed PDF.
49. The moving papers on a motion must contain *complete and legible* copies of (a) the pleadings, (b) all applicable contracts, (c) entire transcripts of depositions and court proceedings if reference is made to the deposition or proceedings in the motion and (d) copies of all relevant prior court decisions. Excerpts of contracts and transcripts may not be filed.
50. In an emergency or if a case or motion is resolved, please contact chambers immediately. Call the court. Do not file a letter or stipulation. If you cannot reach chambers by phone, email the assigned law clerk (copied to opposing counsel).
51. Dispositive motions must be made no later than 60 days after the note of issue is filed.



## **Orders to Show Cause**

52. The court will indicate, in the OSC, whether oral argument will be held on the return date or the motion is returnable “on papers only.” In the latter case, no appearance is required.
53. Hard copies of the opposition (and, if permitted by the court, reply) papers must be hand-delivered to the Part Clerk no later than the date specified in the OSC. The court will not consider late papers.
54. In the absence of significant prejudice to the applicant for a temporary restraining order (TRO), Uniform Rule 202.7(f) requires good faith efforts to ensure that the opposing party will have an opportunity to appear in response.

Accordingly, **TRO applicants must email their application to opposing counsel, copied to the court at [mrand@nycourts.gov](mailto:mrand@nycourts.gov), at least 24 hours in advance of the hearing sought**, or as soon as practicable if good cause exists to excuse the 24-hour notice period (e.g., an emergency or in a pre-RJI action that is unrelated to any case pending before the court). **If ex parte relief is legally authorized, you must still email the application to the court as soon as practicable.** You will then be notified of a time to appear. If you appear without complying with this rule, you may be required to leave and come back to be heard the following business day. Without prejudice to submitting opposition papers, the party opposing the TRO may e-file and email (copied to all counsel and [mrand@nycourts.gov](mailto:mrand@nycourts.gov)) a brief letter setting forth its opposition to the TRO and any applicable caselaw.

55. Absent compelling circumstances, ALL parties must be present when a TRO is sought. If the party opposing the TRO cannot timely appear in-person (e.g., an out of state attorney with inadequate time to travel to court), they may be permitted to appear telephonically.
56. The court may deny or limit the scope of the TRO sought, even if the TRO is unopposed. The court will not issue a TRO if the moving papers do not contain *complete* copies of the pleadings and *complete legible* copies of the applicable contracts.
57. Absent an unanticipated emergency, any OSC seeking a TRO must be presented to the court with all parties present no later than noon on Fridays.

## **Summary-Judgment Motions**

58. Before filing a summary-judgment motion, the parties shall meet and confer to discuss the matters at issue on the motion and shall prepare and file **one joint Rule 19-a statement of material facts** at least three weeks before the summary judgment

motion is filed. **If the parties cannot agree on a joint statement, a Rule 19-a statement of facts is not permitted.** No party shall argue that a summary-judgment motion should be denied for the failure to negotiate and file a joint statement of facts. If summary-judgment briefs cite to deposition testimony, a complete copy of that deposition transcript accompanied by a word index must be filed. Likewise, if an oral argument or hearing transcript is quoted, a complete copy must be filed.

### **Transcripts**

59. All oral argument transcripts must be e-filed within 45 days of oral argument, even if the court decides a motion from the bench after oral argument. Unless otherwise directed, the moving party shall order and pay for the transcript. If there is a cross-motion or motions are filed by both parties, then the costs shall be shared. Motions will not be marked fully submitted and the court will not issue a written decision until the transcript is e-filed and the Part Clerk receives a hard copy of the transcript with the e-filing confirmation receipt.
60. If a party requests that a transcript be “So Ordered” then:
  - Transcripts shall be submitted together with an errata sheet correcting all errors in the record, including presumed court errors.
  - If all parties consent to the proposed corrections or agree that no corrections are required, a stipulation to that effect shall accompany the errata sheet or transcript.

### **CONSOLIDATION OR AMENDMENT OF CAPTIONS**

61. All orders on motions or stipulations to consolidate, to sever claims or to amend captions shall be served with notice of entry on the County Clerk and the General Clerk’s Office in accordance with Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (available at <https://www.nycourts.gov/courts/1jd/suptmanh/Efil-protocol.pdf>).

### **TRIALS & PRE-TRIAL CONFERENCES**

62. A pre-trial conference will be held at which a trial date will be set. At least three weeks before the pre-trial hearing, all *in limine* motions must be fully submitted in Room 130 and the following must have been exchanged and delivered to the court in hard copy and by e-filing, unless otherwise noted:
  - (a) marked pleadings

- (b) pretrial memoranda
- (c) proposed facts to be proven at trial
- (d) witness lists setting forth whether the witness is a fact witness or an expert and the expected length of direct examination
- (e) hard copies ONLY of previously exchanged 3101(d)'s and reports related to expert witnesses who will be testifying (unless previously submitted to room 130 in connection with a motion in limine)
- (f) cross-designations of deposition testimony including the pages and lines
- (g) hard copies ONLY of pre-marked exhibits, together with a spread sheet containing the exhibit numbers or letters, a very brief description of the exhibit and blank spaces for a) the opposing parties to object or agree to admission, b) a change of position after the parties meet and confer regarding any objections and c) a court ruling at the pre-trial hearing on the exhibits not agreed upon
- (h) requests to charge including the applicable Pattern Jury Instruction (PJI) number and contentions. If any modification of the PJI is requested, the entire charge shall be typed with the proposed modification clearly indicated in BOLD
- (i) a proposed verdict sheet
- (j) a stipulation as to all agreed-upon facts for non-jury trials

***Key Revisions (addressed by current rule number)***

- Revised February 2019 to add new rules 40 (motion briefing deadlines), 42 (oral argument requests) and 54 (notice for TRO), to clarify rules 18 and 19 (adjourning appearances), 22 (deposition teleconferences) and 62 (pre-trial hard copies) and to modify rules 7 (contact information), 32 (staying discovery), 36 (documents for conferences), 45 (default judgment) and 61 (amending captions)
- Revised January 2019 to add rule 26 (no Rule 24 letters) and to modify rule 3 (court email address) and 49 (complete documents in motion papers)
- Revised October 2018 to modify rules 5 (no hard copies for applications on stipulation), 8 (*pro hac vice* admission request form), 43 (word limits) and 62 (pretrial deadlines)

Form Order for Admission *Pro Hac Vice*

ORDERED that the motion for leave to appear *pro hac vice* is granted and

\_\_\_\_\_, Esq. is permitted to appear and to participate in this action on behalf of \_\_\_\_\_; and it is further

ORDERED that he/she shall at all times during this action be associated with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the aforesaid party; and it is further

ORDERED that all pleadings, briefs, and other papers filed with the court shall be signed by the attorney of record, who shall be responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted *pro hac vice* shall be familiar with and abide by the standards of professional conduct imposed upon members of the New York Bar, including the rules of the courts governing the conduct of attorneys and the Rules of Professional Conduct; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction that affects his/her standing as a member of the bar.

Dated: \_\_\_\_\_

ENTER:

\_\_\_\_\_  
J.S.C.



## **Biography**

O. Peter Sherwood was nominated to the Court of Claims by Governor David A. Paterson and confirmed by the New York State Senate in May 2008. He sits in the Court of Claims and as an Acting Justice of the Supreme Court, New York County assigned to the Commercial Division. Before being named to the bench, he was a partner in the litigation department at Manatt, Phelps & Phillips, LLP (and Kalkines, Arky, Zall & Bernstein, LLP which merged with the Manatt firm in January 2004) since 1994. Between 1991 and 1993, Judge Sherwood was the Corporation Counsel of the City of New York during the administration of Mayor David N. Dinkins. Between 1986 and 1991, he was the Solicitor General of the State of New York having been appointed to that position by Attorney General Robert Abrams. He also served as an Assistant Counsel for the NAACP Legal Defense and Educational Fund, Inc., the leading civil rights law firm in the Nation. Between 1971 and 1974, he served as Law Secretary to Hon. Fritz W. Alexander, II of the New York City Civil Court.

He served as a member of the New York City Procurement Policy Board from 1992 and 1994 and as a member of the New York State Ethics Commission between 1997 and 2003. He was a member of the Panel of Distinguished Neutrals of the CPR Institute for Dispute Resolution. He was also an arbitrator and mediator on the American Arbitration Association Roster of Commercial Neutrals and the Roster of Employment Neutrals for several years until his appointment to the bench.

Judge Sherwood taught as a visiting professor at the CUNY School of Law and as an Adjunct Professor of Law at the New York University School of Law. He has served as the Secretary of the Association of the Bar of the City of New York and on several of its committees. He is a member of the New York State Bar Association and was a member of the Board of Governors.

Judge Sherwood was born in Jamaica, West Indies. He grew up in Brooklyn, New York and attended parochial school there. He is a 1968 graduate of Brooklyn College of the City University of New York and received his law degree from New York University School of Law in 1971.

**JUSTICE O. PETER SHERWOOD**  
**PART 49 – PRACTICES AND PROCEDURES**  
**(Revised April 2019)**

**Supreme Court of the State of New York**  
**Commercial Division**

**60 Centre Steet**  
**Courtroom 252**  
**New York, New York 10007**

**111 Dr. Martin Luther King Jr. Blvd.**  
**Courtroom 1601**  
**White Plains, New York 10601**

**Part Clerk / Courtroom Phone: 646-386-4033**  
**Chambers Phone: 646-386-3807**  
**Fax: 212-295-4941**

**White Plains Chambers Phone: 914-824-5785**  
**White Plains Fax: 914-824-5420**

Principal Law Clerk:	Sara J. Crasson, Esq.
Commercial Division Law Clerk:	Alexa T. Bordner, Esq.
Part Clerk:	Julie Guadalupe
Secretaries:	Janet Sobolow (Manhattan Chambers) Paulette Salcito (White Plains Chambers)

**Motions:** Mondays, Tuesdays (afternoon) and Wednesdays (in Manhattan); Thursdays and Fridays (in White Plains). All motions are heard at times and places scheduled by court.

**Pre-Trial Conferences:** As scheduled by court

**Preliminary, Compliance, and Status Conferences:** Tuesdays (*see ¶ 4*)

**1. General Matters**

A. Commercial Division Rules. These practices are intended to implement the Commercial Division Rules with which counsel should be fully familiar (Uniform Rules for the New York State Trial Courts, 22 NYCRR ' 202.70). These Rules are available at [www.nycourts.gov/courts/comdiv/newyork.shtml](http://www.nycourts.gov/courts/comdiv/newyork.shtml). Counsel should pay particular attention to Rule 1 concerning appearance by counsel with knowledge and authority. Rule 1 provides in part: “[c]ounsel . . . must be fully familiar with the case . . . *and fully authorized to enter into agreements*, both substantive and procedural, on behalf of their clients” (emphasis added).

B. Expanded Opportunities for Speaking Roles. The court is aware that in this century very few cases go to trial and as a result, there are fewer speaking opportunities in court, particularly for less experienced lawyers (*i.e.* lawyers practicing for less than seven

years). The court is also cognizant of the virtual absence historically of lawyers from diverse backgrounds and women appearing in such roles in commercial cases. The court strongly encourages litigants to be mindful of opportunities for less experienced lawyers,



lawyers from diverse backgrounds and lawyers who are women to conduct hearings before the court, particularly where such members of the legal team drafted or contributed significantly to the underlying motion or prepared the witness. In those instances where the court is inclined to rule on the papers, or adhere to its default practice of permitting only one lawyer to argue, a representation that the argument would be handled by a such lawyer will weigh in favor of holding a hearing or permitting argument to be shared.

C. Timely Notice of Settlement of Cases or Issues. So as to conserve scarce court resources, counsel shall notify the court, as soon as practicable, by conference call to chambers [646-386-3807], of the settlement or imminent resolution of active cases or pending motions.

2. **E-Track Service Reminder:** Since 2012, notification of developments in cases, including court appearance dates and adjournments, has been accomplished through the Supreme Court, New York County case tracking and notification service, *E-Track*. **In order to receive notifications, counsel must register for *E-Track***, preferably at the time counsel makes his/her first e-filing in the case. There is no charge for *E-Track* services. To sign up visit: <https://iapps.courts.state.ny.us/webcivil/etracklogin>

3. **Filing of Papers and Courtesy Copies.**

A. E-Filings. All cases in the Commercial Division must be electronically filed through the New York State Courts E-Filing (NYSCEF) system. All submissions made directly to Part 49 (including briefs, proposed Orders and Judgments, and letters) shall be electronically filed as well. The E-Filing Rules appear at Uniform Rule ' 202.5-bb. For NYSCEF instructions or assistance, contact the E-filing Resource Center, Room 119M, by telephone (646) 386-3033, [efile@nycourts.gov](mailto:efile@nycourts.gov) , or visit to the Center's website at: <http://www.nycourts.gov/efile>.

Any communication requesting action by the court that is not a motion should be e-filed, with a courtesy hard copy delivered by mail, overnight delivery service or hand-delivery directly to Part 49, together with the e-filing confirmation notice.

B. Hard Copies. Counsel shall provide hard copies only of memoranda of law and critical supporting documents, *e.g.* the contract at issue, to Submission Part in Room 130, *except* where a party is moving by order to show cause, in which case the movant shall deliver a working copy of the document to the Commercial Division Support Office, Room 119A. Courtesy copies of Order to Show Cause opposing papers shall be delivered to Part 49, Room 252, unless counsel is instructed otherwise. **Do not submit additional courtesy copies**, as the court will have access to all of the supporting papers on NYSCEF.

C. Exhibit Labeling. Each exhibit whether appended to an affidavit or otherwise should be e-filed separately with a descriptive title (Designation of a document as simply "Exhibit A" does not satisfy this requirement).

4. **Preliminary, Compliance and Status Conferences.** Please consult Commercial Division Rules 1 and 8. Conferences are posted on E-Track and are held in Manhattan on Tuesday mornings at 9:30 and 10:30 AM. By agreement, counsel may select other times between 9:30 and Noon, provided that the request is communicated to the Part 49 Clerk at or before noon on the day preceding the appearance date.
5. **Scheduling.** Questions about scheduling and adjournments should be addressed to the Part 49 Clerk, (646) 386-4033. **Court permission is needed to adjourn any scheduled appearance. Requests shall be e-filed (courtesy copy to Part 49 Clerk) no later than two (2) business days (or one (1) day for ¶ 4 conferences) in advance of the scheduled appearance. Requests submitted after the deadline will be denied absent a showing of good cause.**
6. **Communicating with the Court.**
  - A. Litigants may communicate with the court by mail or telephone. Letters may be e-filed with hard copies sent by mail, overnight delivery service, or hand-delivered to Part 49, Room 252, 60 Centre Street, New York, New York 10007. Correspondence may not be faxed without prior permission of the Part Clerk. Calls should be made to the Part 49 Clerk, (646) 386-4033.
  - B. Any party wishing to communicate with chambers by telephone should get the other parties on the phone before placing the call to the court. Questions pertaining to motion practice should be addressed to the Commercial Division Support Office at (646) 386-3020.
  - C. E-Mail. The court may use e-mail to communicate with counsel regarding scheduling or to make certain inquiries. **Counsel should not initiate communication with the court via email and shall not use e-mail to make arguments.**
  - D. **Please note: No attorney in Justice Sherwood's chambers may communicate with a litigant ex parte, nor will he or she assist litigants in the practice of law, such as by advising as to how to interpret a particular rule or law.**
7. **Transcripts.** Unless the court directs otherwise, the movant shall order the transcript of oral argument and shall be responsible for both e-filing the transcript and submitting a hard copy to Part 49. **A motion is not deemed *sub judice* until the transcript is received.**
8. **Confidentiality Orders.** Rule 11-g shall apply to requests for orders regarding the exchange of confidential information. The form of Stipulation and Order for the Production and Exchange of Confidential Information is set forth in Appendix B to the Rules of the Commercial Division and available at [http://nycourts.gov/rules/trialcourts/202.70\(g\)%20-%20Rule%2011-g%20\(attachment\).pdf](http://nycourts.gov/rules/trialcourts/202.70(g)%20-%20Rule%2011-g%20(attachment).pdf)

Any request for a confidentiality order shall be accompanied by a statement of counsel that the proposed order strictly follows the text of Appendix B. Parties seeking to deviate should follow Rule 11-g (b).

- 9. Document Sealing Procedures.** Parties wishing to submit documents to the court which have been deemed confidential shall provide notice to the party who designated those documents confidential at least five (5) business days before filing the documents at issue. Within three (3) business days of such notification, the parties shall meet and confer. If, after discussion, counsel conclude that the proposed redactions meet the standards for sealing, counsel may proceed by way of stipulation that articulates facts sufficient to support a finding of good cause and stating the conclusion reached. The stipulation shall be submitted to be so ordered. If a party objects to a document being filed unsealed and unredacted, that party may move by Order to Show Cause giving proper reasons to seal and good cause therefor, pursuant to 22 NYCRR section 216.1.

Please note that documents filed with the court will not be sealed merely on the ground that they are subject to a confidentiality agreement (*see Mosallem v Berenson*, 76 AD3d 345, 350 [1st Dept 2010]). Counsel should consult *MBIA Insurance Corporation v.*

*Countrywide Home Loans, Inc.* (No. 602825/08, 2013 WL 450030 12013 NY Misc LEXIS 367 [Sup Ct New York County, January 3, 2013] [“MBIA Sealing Order II”]), *Mosallem* (76 AD3d at 348); and *Mancheski v Gabelli Group Capital Partners* (39 AD3d 499, 502 [2d Dep’t 2007]) for instructions on limits imposed on sealing. Typically, the Court will be interested in redacting only discrete passages containing potentially confidential information as opposed to the wholesale sealing.

The sealing motion should be accompanied by unredacted versions of the relevant documents as exhibits with the proposed redacted versions submitted as a subset of that exhibit (*i.e.* original document provided as Exhibit “1”; document with proposed redactions provided as Exhibit “1a”). The exhibits are to be hand delivered to the court so they can be reviewed in conjunction with the motion and are not to be e-filed. This is the only exception to the requirement that all submissions be e-filed.

The motion to seal should be accompanied by a spreadsheet or chart jointly created by the parties indexing: a) the title of the document to be sealed; b) the proponent of the request to seal; c) the reason the document should be sealed and/or redacted; and d) any objection to the request together with the basis therefor.

Although the parties are free to exchange documents that are the subject of a sealing motion prior to a ruling on a motion, no motion papers should be filed referencing or annexing the documents which are the subject of the motion until the motion is decided. No exceptions.

Please note that once a matter proceeds to trial, all sealing orders shall automatically be vacated unless the court expressly orders otherwise.

**10. Discovery Related Matters**

A. Disclosure Disputes. Under Commercial Division Rules 14 and 14-a, counsel should attempt to resolve discovery disputes through good faith efforts. *Pro forma* exchange of objections without meaningful efforts to compromise do not satisfy these rules. If, after good faith efforts, counsel are unable to resolve or narrow the items in dispute, the aggrieved party may contact the court by letter (no more than three pages in length) or telephone (with all counsel participating) to arrange a Rule 14 conference.

B. E-Discovery. Appendix A to Commercial Division Rules relating to disclosure of electronically stored information **applies to both parties and non-parties** (see Rules 11-c and Rule 8-b).

C. Stays of Discovery. Unless otherwise directed by the court, **discovery is not stayed** upon the filing of a dispositive motion.

D. Third-Party Disclosure. Although no court order is required before seeking document disclosure of a non-party, counsel are strongly encouraged to attempt to confine their requests to parties to the action and should resort to third-party disclosure only when it reasonably appears that the information being sought is otherwise unavailable. Any subpoena served on a non-party shall be simultaneously served on all parties and within five (5) days of compliance therewith, each party shall be given notice of receipt and of availability for inspection and copying, specifying the time and place thereof, CPLR 3120(3). See also Guidelines at Appendix A to Commercial Division Rules.

**11. Consolidation and Change of Caption.** All proposed orders on motions or stipulations to consolidate or change captions shall be sent to the General Clerk's Office, located in Room 119.

**12. Inquest Procedures.** A submission in support of an inquest should include:

A. An affidavit from a person with knowledge of the facts setting forth how damages are computed.

B. Attorney's affirmation setting forth a brief recitation of the facts and the grounds for liability. The affirmation should also discuss the damages incurred.

C. Exhibits should be submitted in support of all requests for damages. For example: (i) if the requested relief is attorneys' fees, the attorney's affirmation should attach the billing statements describing the activity, the identity and title of the person performing the activity, time, date, and billing rate; (ii) if the relief is for lost profits, financial statements for comparative time periods should be provided.

D. Whatever counsel believes would assist the court, including affidavits from experts (*e.g.* accountants, appraisers, *etc.*).

E. Proof of service shall be filed, indicating that all papers and exhibits submitted to the court were served on opposing parties.

- F. Proposed findings of fact and a proposed order should be e-filed.
- G. Papers in opposition should follow the format set forth above.
- H. For inquests not granted on default, submitted evidence shall be limited to causes of action as to which liability was found.

**13. Motion Practice**

- A. Motion Sequence Numbers shall appear on motion papers, including the notice of motion, memos of law, exhibits, affirmations, settled orders, and all correspondence pertaining to the motion.
- B. Questions pertaining to motion practice should be addressed in the first instance to the Commercial Division Support Office at (646) 386-3020.
- C. Discovery is not stayed during the pendency of any motion unless the court directs otherwise.
- D. Papers served on counsel pursuant to an Order to Show Cause shall be served in a manner that results in receipt by 5:00 p.m. on the date specified unless the court directs otherwise.
- E. Oral Argument. Generally, the court will hold oral argument on dispositive motions and those seeking injunctive relief. The court does not hear oral argument on motions for admission *pro hac vice*, to renew, to reargue or to amend a pleading. The court will notify counsel where it determines to depart from its usual practice. Oral argument will not be heard on the return date for motions brought on notice. *See also* & 7 re: transcript of oral argument.

- 14. Requests for Admission Pro Hac Vice.** Requests for admission *pro hac vice*, including requests made by stipulation, shall be accompanied by an affirmation in support by a member of the Bar of the State of New York, an affirmation from the applicant, and a recent certificate of good standing for the applicant. The affirmation must also disclose whether the applicant has ever been, or is presently, subject to disciplinary proceedings. *See* form of order attached hereto.

**FORM OF PROPOSED ORDER FOR PRO HAC VICE APPLICATIONS**

\_\_\_\_\_, Esq., having applied to this court for admission pro hac vice to represent [plaintiff/defendant]\_\_\_\_\_ in this action, and said applicant having submitted in support thereof a stipulation of all parties dated\_\_\_\_\_, an affirmation, of\_\_\_\_\_, Esq., a member of the Bar of the State of New York and attorney of record herein for\_\_\_\_\_, an affirmation of the applicant dated\_\_\_\_\_, and a Certificate in Good Standing from the jurisdiction in which the applicant was admitted to the practice of law, and the court having reviewed the foregoing submissions and due deliberation having been had, it is now therefore

ORDERED that the motion is granted on consent and\_\_\_\_\_, Esq. is permitted to appear and to participate in this action on behalf of \_\_\_\_\_; and it is further

ORDERED that he/she shall at all times be associated herein with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the party in question and all pleadings, briefs and other papers filed with the court shall be signed by the attorney of record, who shall be held responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted pro hac vice shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the Rules of the Courts governing the conduct of attorneys and the Disciplinary Rules of the Code of Professional Responsibility; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction which affects his/her standing as a member of the Bar.

Date:

\_\_\_\_\_

ENTER:

\_\_\_\_\_  
J.S.C.

