

PRACTICES FOR PART 54

CONTACT INFORMATION

Courtroom: 60 Centre Street, Room 228
(646) 386-3362
Part Clerk: Donna De Land ddeland@nycourts.gov

Chambers: General Number: (646) 386-4048

Law Clerks: Elizabeth S. Kimmel, Esq. ekimmel@nycourts.gov (646) 386-4744
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Karen Touaf, Esq. ktouaf@nycourts.gov (646) 386-4096

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 Karen Touaf at ktouaf@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 and a hard copy must be hand delivered to the Part Clerk.

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. All attorneys and *pro se* litigants must provide their contact information to the Trial Support Office, Room 158M, at 60 Centre Street, New York, NY 10007, and attorneys shall do so by filing a notice of appearance. **Contact information, including e-mail addresses, must always be kept current with the Trial Support Office and in the e-filing system so that the court is able to reach you.** 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.

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 e-mailed 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. All requests for adjournments 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. No adjournments will be granted over the telephone unless all parties who have appeared are on the line. Adjournments will not be granted by letter or stipulation without prior court approval.

19. Please be advised that permission must be obtained to adjourn a conference. Except in the event of an emergency, such permission must be obtained no later than two business days in advance of the scheduled appearance.
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. The court will only take calls from the parties' attorneys of record and only when the attorneys for all parties who have appeared and any unrepresented litigants are on the line.
22. Counsel and unrepresented parties may call chambers at (646) 386-4048, Monday through Thursday, between 4 pm and 5:30 pm, to speak to one of the court's law clerks. Except in the case of a scheduled call, an emergency or to notify the court that a motion has been withdrawn or a matter has settled, attorneys should not call chambers outside of this time window. Calls should only be made after all parties have conferred to discuss the matters to be raised with the court. To initiate a call with chambers, the parties must either call in with all counsel on the line or provide the court with a conference call dial-in number.

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 e-mailed 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.

DISCOVERY

26. After an action is assigned to this part, but before the PC, if the parties have a discovery dispute, they are to call the Part Clerk to schedule a PC. 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.

27. 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.
28. Objections to document requests and interrogatories must be made with specificity; 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.
29. Interrogatories are limited to 25, including subparts, unless another limit is specified in the PC order. This rule is strictly enforced. This limit applies to consolidated actions as well. Interrogatories are limited to the subjects set forth in Commercial Division Rule 11(b). Contention interrogatories, however, are not permitted.
30. Discovery is not stayed by the filing of a dispositive motion or mediation unless otherwise ordered by the court. Additionally, the filing of a motion to stay discovery does not automatically stay discovery. 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.
31. 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

32. 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.
33. Attorneys appearing for conferences must be fully familiar with the case. That is, thorough knowledge of all facts and claims in the pleadings, of all relevant contracts, of all prior court orders and the discovery. Counsel should be prepared to discuss the merits of their case at all conferences.
34. Parties must bring copies of ALL prior discovery orders and motion decisions 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

35. Parties shall use the confidentiality agreement and order available at: 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.
36. 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 a sealed envelope marked confidential with the index number and motion sequence number included on the envelope.

MOTIONS

37. Discovery motions cannot be made without authorization (*see* DISCOVERY above).
38. The parties shall not appear in Part 54 on the return date of a motion that is returnable in Room 130. After the court receives the motion from Room 130, it will contact the parties by email to schedule oral argument. If the moving party is not contacted within two weeks, the parties shall promptly contact the Part Clerk. Once oral argument is scheduled, adjournments must be sought at least two business days in advance.
39. Page limits are mandatory. Moving and opposition briefs have a 25-page limit. Reply briefs have a 15-page limit. These limits do not include cover pages, the table of contents and the table of authorities, all three of which are *mandatory*. All text, *including footnotes*, must be at least size 12. The body of the brief must be double spaced; the footnotes can be single spaced. To seek a page-limit extension, which will only be granted under exceptional circumstances, counsel must call chambers *prior* to filing an oversized brief.
40. 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.
41. Motions for a default judgment must always be accompanied by a memorandum of law.
42. Witness affidavits must comply with the CPLR and Commercial Division Rules. Legal argument should not be contained in witness affidavits.
43. 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.
44. Motion sequence numbers shall appear in bold on the front page of ALL motion and cross motion papers. All exhibits *must* be separated by exhibit tabs. When e-filing an exhibit, 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.
45. The moving papers on a motion must contain *complete* copies of the pleadings, *complete and legible* copies of all applicable contracts and copies of all relevant prior court decisions. Excerpts of contracts may not be filed.

46. 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.
47. Dispositive motions must be made no later than 60 days after the note of issue is filed.

Orders to Show Cause

48. Unless otherwise indicated on the OSC, oral argument will be held on the return date.
49. Hard copies of the opposition (and, if permitted by the court, reply) papers must be hand-delivered to the Part Clerk no later than seven days before the return date. The court will not consider late papers.
50. Absent good cause (e.g., where *ex parte* relief is legally authorized and absolutely necessary), the court will not sign an *ex parte* order to show cause, regardless of whether a temporary restraining order (TRO) is sought, unless opposing counsel is notified in advance and provided a copy of the papers. Compliance with this notice requirement must be confirmed in an attorney affirmation accompanied by proof (e.g., email to opposing counsel).
51. Absent compelling circumstances, ALL parties must be present when a TRO is sought.
52. 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.
53. 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

54. 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. The parties must attempt to negotiate a joint statement in good faith and if they cannot agree on anything by joint statement then counsel for the movant shall so affirm. 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

55. All oral argument transcripts must be e-filed within 45 days of 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. If the court decides a motion from the bench after oral argument, a copy of the transcript must be e-filed. Motions will not be marked fully submitted and the court will not issue a decision until the transcript is e-filed and the Part Clerk receives a hard copy of the transcript with the e-filing confirmation receipt.
56. 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.
 - In the absence of consent, the requesting party shall notice the record for settlement, pursuant to CPLR 5525(c).

Consolidation or Amendment of Captions

57. All orders on motions or stipulations to consolidate, to sever claims or to amend captions shall be served with notice of entry on the Trial Support Office, Room 158M, at genclerk-ords-non-mot@nycourts.gov and on the County Clerk at cc-nyef@courts.state.ny.us. The County Clerk shall be served with a copy of the order or stipulation and a Notice to the County Clerk pursuant to CPLR 8019(c) (NYSCEF Form EF-22, available on the NYSCEF site).

TRIALS & PRE-TRIAL HEARINGS

58. A pre-trial hearing 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:
- (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) copies of previously exchanged 3101(d)'s and reports related to expert witnesses who will be testifying
- (f) cross-designations of deposition testimony to be read into the record including the pages and lines of all testimony proposed to be read
- (g) 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 and pre-trial briefs for non-jury trials