

INDIVIDUAL PRACTICES OF  
JUSTICE MELVIN L. SCHWEITZER  
PART 45

The following rules serve to supplement the applicable CPLR and statewide Commercial Division Rules, except where indicated

1. Commercial Division Rules

All parties should familiarize themselves with the Commercial Division Rules, available at [http://www.nycourts.gov/courts/comdiv/newyork\\_rules.shtml](http://www.nycourts.gov/courts/comdiv/newyork_rules.shtml)

2. Electronic Filing

All cases in Part 45 must be electronically filed through the Court's Filing By Electronic Means (FBEM) system. All submissions to the Court (including briefs, proposed Orders and Judgments, and letters) must be electronically filed. For FBEM instructions, contact the E-filing Support Center at (646) 386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us) or see the Commercial Division's website for New York County at: <http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>

3. Scheduling

All scheduling of appearances or adjournments, and questions pertaining to scheduling, must be addressed to our Part Clerk Michele Crocitto, at (646) 386-3306. Appearances will be at either 60 Centre Street, Room 218, or at 26 Broadway, 10<sup>th</sup> Floor. Court permission is needed to adjourn any scheduled conference. Requests shall be made to Ms. Crocitto no later than two (2) business days in advance of the scheduled appearance. Requests submitted after the deadline will be denied absent a showing of good cause.

4. Communications with Chambers

If necessary, counsel and pro se litigants may communicate with the Court by mail, fax, e-mail or telephone, more specifically as follows:

Written Correspondence. Hard copies of letters not exceeding three (3) pages in length may be mailed or hand delivered to Chambers at 26 Broadway, 10<sup>th</sup> Floor, New York, NY 10004, or faxed to Chambers (212) 361-8173. All letters concerning a substantive matter also must be electronically filed.. Attachments may not exceed ten (10) pages in length.

Faxed Documents. Faxes of documents are permitted so long as they are followed by a hard copy, and are also electronically filed. Voluminous documents, if otherwise permitted, must be mailed or hand-delivered.

E-mail. Brief e-mail communications with Law Clerk to Justice Schweitzer, Tracy Young, will be permitted. All counsel and pro se litigants must be copied on any e-mail sent. If this is not done, the e-mail will be deleted and unread.

Telephone Conferences. Counsel and pro se litigants must call our Part Clerk Ms. Crocitto at (646) 386-3306 to schedule a telephone conference with Law Clerk Tracy Young in Chambers. Such calls generally will be scheduled after 4 p.m., and must be initiated by the callers. All counsel and pro se litigants must be on the call at the time assigned by Ms. Crocitto.

*Chambers will not communicate with counsel or a pro se litigant ex parte.*

## 5. Motion Practice

Motion Sequence Numbers. Motion sequence numbers must appear on the cover pages of ALL motion papers; i.e., the notice of motion, memos of law, exhibits, affirmations, etc. The numbers shall also appear on all correspondence, faxes and e-mails to Chambers pertaining to motions.

Questions. Questions pertaining to motion practice should be addressed in the first instance to the Commercial Division Support Office at (646) 386-3020.

Prior Permission. Commercial Division Rule 24 letters are not required in Part 45.

Discovery Motions. Discovery disputes are to be addressed as follows: Adversaries are first to meet and confer in good faith. If they are unable to resolve the dispute, the parties shall contact our Part Clerk Ms. Crocitto at (646) 386-3306 to schedule a telephone conference with Law Clerk Tracy Young in Chambers. Such calls generally will be scheduled after 4 p.m., and must be initiated by the callers. All counsel and pro se litigants must be on the call at the time assigned by Ms. Crocitto. No later than two days before the conference, the parties may e-mail brief letters describing the dispute to Ms. Young at [twyoung@nycourts.gov](mailto:twyoung@nycourts.gov). The letters must be single-spaced, may not exceed three pages, and must be e-filed. If the dispute remains unresolved after the conference, the aggrieved party may file an appropriate discovery motion.

Discovery Not Stayed. Discovery is not stayed when a dispositive motion is filed unless the Court otherwise directs.

Dispositive Motions Deadline. Dispositive motions must be initiated not later than 60 days following the filing of the note of issue.

Motion Submission Papers. Without prior permission from the Court, no additional papers on a motion or a cross-motion will be accepted for filing after the papers in support (opening and reply), and in opposition to the motion are filed on the submission (return) date in the Motion Submission Part, Room 130.

Working Copy. The Court requires the submission of a working paper copy of the motion to the Motion Submission Part in Room 130 by the submission date.

Oral Argument. No personal appearance before the court is required and no oral argument will be heard on the motion submission (return) date. Thereafter, if the Court determines that a personal appearance is required, or that oral argument should be heard, the Court will notify the parties. No scheduled oral argument will be adjourned unless the parties submit a written request to our Part Clerk Ms. Crocitto no later than two (2) business days prior to the scheduled date for oral argument.

Transcript. If oral argument is held, at its conclusion the movant is to order the transcript. The parties are responsible for both e-filing the transcript and submitting a hard copy to our Part Clerk Ms. Crocitto who, in turn, will submit it to Chambers. The motion will not be deemed *sub judice* until a transcript has been received in Chambers.

In the event that a party requests a transcript to be "So Ordered" by the Court, the following procedure must be adhered to: the transcript 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).

## 6. Discovery

Preliminary Conference. Prior to the scheduled Preliminary Conference, the parties shall meet and confer regarding all discovery issues raised in the Preliminary Conference (PC) Order, which can be accessed through a link appearing directly below the link to these Part Practices. The parties shall be prepared to discuss all issues raised by the PC Order, and in the meet-and-confer, at the PC. If the parties are not so prepared, the PC will be adjourned for no more than two weeks. If on the adjourned date the parties are not prepared to discuss the issues raised by the PC Order, the offending party(ies) (counsel only) will be sanctioned between \$500 and \$1,000, depending on the circumstances, unless there is "good cause" for the default.

Interrogatories. Interrogatories are limited to 25 in number, including sub-parts, unless another limit is specified in the PC Order. This limit also applies to consolidated actions.

Privilege. The parties shall comply with Commercial Division Rule 11-b.

Confidentiality Orders. Any order regarding the exchange of confidential information must be in the form of a stipulation to be “so ordered” by the Court, and the parties must use the Proposed Stipulation and Order for the Production and Exchange of Confidential Information, prepared by a committee of the Association of the Bar of the City of New York for use in the Commercial Division, accessed on-line at: <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>. If the parties believe there is good cause to depart from this model, they should call our Part Clerk Ms. Crocitto to schedule a telephone conference with Law Clerk Tracy Young.

Sealing. Documents filed with the court will not be sealed merely on the ground that they are subject to a confidentiality agreement. 22 NYCRR §216.1. Sealing must be requested by motion, and it may not be granted without a hearing before the Court.

Electronic Discovery. The parties shall comply with Rules 1(b) and 8(b) of the Rules of the Commercial Division, and Rules 202.12(b) and 202.12(c)(3) of the Uniform Civil Rules for the Supreme Court, and the requirements for e-filing set forth in the Preliminary Conference Order. The parties are also referred to Appendix A to the Rules of the Commercial Division.

Expert Disclosure. The parties are referred to Rule 13 of the Rules of the Commercial Division, and the Preliminary Conference Order.

## 7. Pre-Trial or Pre-Evidentiary Hearing Conferences

When. A pre-trial or pre-hearing conference (PTC) will be scheduled to be conducted by Law Clerk Tracy Young approximately: two weeks after entry of a decision and order disposing of all post-note of issue summary judgment motions (unless the case is fully disposed of); two weeks after the 60 day period for filing post-note of issue dispositive motions has run, and no such motion has been filed; or two weeks prior to the date scheduled for an evidentiary hearing to begin, unless the hearing is on an accelerated schedule (e.g. Order to Show Cause for a preliminary injunction).

Matters to be Addressed. Attention is directed to the following Commercial Division Rules: Rule 26 (Estimated Length of Trial), Rule 27 (Motions *in Limine*), Rule 28 (Pre-Marking of Exhibits), Rule 29 (Identification of Deposition Testimony), Rule 30(b) (Pre-Trial Conference), Rule 31 (Pre-Trial Memoranda, Exhibit Book and Requests for Jury Instructions), Rule 32 (Scheduling of Witnesses) and Rule 33 (Preclusion). Litigants are directed to address all matters referenced in these rules prior to the PTC (between themselves, where appropriate) and to comply with them so that they come to the PTC prepared to have these matters disposed of in a Pre-trial Order. The parties also shall provide the Court with a statement of agreed upon facts and of disputed contentions. With respect to the exhibit binder or book (Rule 32), **the Court requires TWO copies for its own use.**

The PTC will result in the entry of a Pre-trial Order, signed by the Court, which will govern the trial or hearing.

8. Non-Jury Trials or Evidentiary Hearings

**Unless otherwise ordered, all direct testimony of a party's own witnesses (including expert witnesses) in non-jury trials or evidentiary hearings shall be submitted in affidavit form.**

At the trial or hearing itself, each witness shall swear to the contents of the affidavit submitted, which shall be followed by the opposing side's objections to the testimony and cross-examination. Affidavits containing direct testimony shall be exchanged between or among adversaries and delivered to Chambers at 26 Broadway at least one week prior to the commencement of the trial or evidentiary hearing (unless this deadline is accelerated by the Court for a hearing conducted on an accelerated time schedule). Counsel need not submit direct testimony in affidavit form if a witness is not within the party's control.

9. Inquest Procedures

A party requesting an inquest shall submit the following information or documents: An affidavit from a person with knowledge of the facts setting forth how damages are computed; and an attorney's affirmation setting forth a brief recitation of the facts and the grounds for liability. The affirmation also should discuss the damages incurred by the party.

Exhibits should be submitted in support of all requests for damages. For example, if the relief is attorneys' fees, the attorney's affirmation should include as an attachment the billing statements describing the activity, the identity and title of the person performing the activity, time, date, and billing rate. If the relief is for lost profits, financial statements for comparative time periods should be provided.

Whenever counsel believes it would assist the Court, affidavits from experts (i.e. accountants, appraisers, etc.) should be submitted.

Proof of service must be filed indicating that all papers and exhibits submitted to the Court were served on opposing parties. Proposed findings of fact and a proposed order must be e-filed. Papers in opposition shall follow the format set forth above. For inquests that were not granted on default, no submissions of evidence should be made for causes of action that previously have been dismissed or on which no liability was found.

10. Court's Discretion

One or more of these practices may be modified in the court's discretion where a variation is deemed appropriate due to the nature and relative complexity of the matter before the court.