

Justice Marcy S. Friedman

Part 60 - Practices and Procedures

**New York State Supreme Court
Commercial Division
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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. Two working copies 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. Additional copies of such papers should not 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 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 a hard copy is 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 a hard copy of each is 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 a hard copy with the Clerk of Part 60. The transcript will be so ordered only after the hard copy is 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. 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, if possible, to make telephone calls to Chambers only after 4 p.m. 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 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 Proposed Stipulation and Order for the Production and Exchange of Confidential Information prepared by a committee of the New York City Bar Association for use in the Commercial Division available at <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>.

If the parties seek to deviate from the Model Form, 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): At the pre-trial conference, the Court will schedule the return date for motions in limine, if any.