Practices for Part 49
(Effective May 1, 2014)

1. **Commercial Division Rules.** Parties should be familiar with the Commercial Division Rules (Uniform Rules for the New York State Trial Courts, §202.70 ["Uniform Rules"]), available at www.nycourts.gov/courts/comdiv/newyork.shtml

2. **Note re: Rule 19-a:** On all motions for **summary judgment**, other than CPLR § 3213 motions, there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there are no genuine issues of fact to be tried.

3. **Electronic Filing, Courtesy Copies and Notifications.** In accordance with §202.5-bb(a) of the Uniform Rules of the Trial Courts, all documents filed and served (including letters) shall be electronically filed. All briefs shall be filed as text-searchable PDF documents. In addition, an unredacted hard copy set of all papers related to any motion shall be submitted to the Motion Submission Part in Room 130. Do not submit courtesy copies. A courtesy copy of every non-motion related document should be delivered by mail or hand-delivered directly to Part 49 together with the e-filing confirmation notice. *See* also ¶14G, below. For NYSCEF training, consult the "Training link on the NYSCEF website (www.nycourts.gov/efile). For assistance, contact the E-Filing Department, 60 Centre Street, Room 119A, New York, New York 10007, (646-386-3610 or at nyef@nycourts.gov).

4. **E-Track Reminder:** Notification of developments in cases, including court appearance dates and adjournments is made through the court's case tracking and notification service, ***e-Track***. The court no longer provides notification by regular mail. **In order to receive notification, counsel must register for *e-Track***, preferably at the time of the first e-filing in the case. An opportunity to click a link to the *e-Track* website appears at the end of each electronic filing. The *e-Track* address is: https//iapps.courts.state.ny.us/webcivil/etracklogin

5. **Preliminary and Compliance Conferences.** Please consult Commercial Division Rules 7-10. Scheduled conferences are held on Tuesdays at 9:30 AM. If the parties agree, they may appear at 10:30 AM, provided that a request to appear at the alternate time is communicated to the Part Clerk no later than 24 hours prior to your appearance.

6. **Scheduling.** All questions about scheduling and adjournments should be addressed to the Part 49 Clerk, (646) 386-4033. **Court permission is needed to adjourn any scheduled conference. Requests shall be e-filed no later than one (1) full business day in advance of the scheduled appearance, typically by 5:00 p.m. the Friday prior to the Tuesday conference day. Requests submitted after the deadline will be denied absent a showing of good cause.**

7. **Communicating with the Court.** Litigants may communicate with the court by mail or by telephone as follows:

A. Written correspondence. Hard copies of letters to Justice Sherwood may be mailed 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. All letters concerning a substantive issue (e.g., letter-briefs, discovery disputes) must also be e-filed.

B. Telephone calls. Litigants may call the Part Clerk, (646) 386-4033.

Please note: No attorney in Justice Sherwood's chambers will communicate with a litigant ex parte, nor will chambers staff assist litigants in the practice of law, including advising as to how to interpret any rule or law. If the parties wish to communicate with Justice Sherwood or one of his law clerks by telephone, they should first get all parties on the phone and then call the court. Questions pertaining to motion practice should be addressed to the Commercial Division Support Office, at (646) 386-3020.

8. **Transcripts.** Unless the court directs otherwise, on any motion the movant shall order the transcript of oral argument. The parties are responsible for both e-filing the transcript and submitting a hard copy to Part 49. No motion will not be deemed *sub judice* until a transcript is received.

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

10. **Confidentiality Orders.** Any order regarding the exchange of confidential information shall be based on 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, available 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 the Part Clerk to schedule a conference. 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]). Where a party wishes to seal a submission, the party shall submit a letter setting forth good cause for the requested relief.

11. **Discovery Related Matters**

A. **Disclosure Disputes.** Please consult Commercial Division Rules 10-15. If after good faith efforts, counsel are unable to resolve or narrow the issues involving discovery, the aggrieved party shall contact the court by letter or telephone to arrange a conference.

Where a party objects to disclosure on the ground of privilege, its response shall include a log of the documents being withheld and a copy of redacted documents, bates-stamped. The privilege log shall identify all withheld and

redacted documents by bates-stamp number; list date, author, and recipients (except where same is disclosed on redacted documents); and state the privilege(s) being asserted. Following service of the privilege log, counsel shall confer and if unable to reach an accommodation, the aggrieved party may contact the court to arrange a conference.

B. **Interrogatories** are limited to 25 in number, including subparts, unless another limit is specified in the preliminary conference order. This limit applies to consolidated actions as well. Unless otherwise ordered by the court, **interrogatories are limited to the following topics**: name of witnesses with knowledge of information material and necessary to the subject matter of the action, computation of each category of damage alleged, and the existence, custodian, location and general description of material and necessary documents, including pertinent insurance agreements, and other physical evidence.

C. Unless otherwise directed by the court, **discovery is not stayed** by a dispositive motion.

D. **Expert Disclosure.** No later than thirty days prior to the completion of fact discovery, the parties shall confer and attempt to agree on a schedule for expert disclosure, including the identification of experts, exchange of reports, and depositions. In the event that a party withholds consent to this procedure, the parties shall consult with the court. Unless otherwise stipulated or ordered by the court, expert disclosure must be accompanied by a written report -- prepared and signed by the witness -- if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report shall contain:

(1) A complete statement of all opinions the witness will express and the basis for them;
(2) The data or other information considered by the witness in forming them;
(3) Any exhibits that will be used to summarize or support them;
(4) The witness's qualifications, including a list of all publications authored in the previous 10 years;
(5) A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and
(6) A statement of the compensation to be paid for the study and testimony in the case.

12. **Inquest Procedures**. A party requesting an inquest shall submit the following information or documents:

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 by the party.

C. Exhibits should be submitted in support of all requests for damages. For example:
- if the 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.
- if the relief is for lost profits, financial statements for comparative time periods should be provided.

D. Whenever counsel believes it would assist the court, affidavits from experts (i.e., accountants, appraisers, etc.).

E. Proof of service must 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. Any additional submissions that will be helpful to the court.

H. Papers in opposition should follow the format set forth above.

I. For inquests that were not granted on default, do not submit evidence on causes of action that have been previously dismissed or on which no liability was found.

13. **Exhibits at Trials and Evidentiary Hearings.** At any evidentiary hearing or trial, the parties shall provide the court with a copy of the exhibit books and any other documents to be offered in evidence. Exhibits and other documents will be available to be retrieved at Part 49, Room 252, two days after the case/issue is decided and will be discarded if not collected within 14 days.

14. **Motion Practice** (Please consult Commercial Division Rules 16-24).

A. Motion Sequence Numbers shall appear on motion papers: the notice of motion, memos of law, exhibits, affirmations, settled orders, etc. They shall also appear on 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 by a dispositive motion unless the court directs otherwise.

D. On a motion brought on by Order to Show Cause, papers 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. Dispositive Motions (Deadline) shall be initiated not later than 60 days after filing of the note of issue.

F. No additional papers on a motion will be accepted for filing after the submission date.

G. Courtesy Copy, Memoranda, Statements and Proposed Orders on Computer Disk. On the submission date on any dispositive motion or motion for interim relief, unredacted versions of all memoranda of law, statements of undisputed facts and proposed orders shall be submitted in .rtf format on a computer disk along with the hard copies provided for in ¶3, above.

H. Oral Argument. No argument will be heard on the motion submission date. If thereafter, the court determines that oral argument should be heard, the court will notify counsel. See ¶8 re: transcript of oral argument.

15. **Requests for Admission Pro Hac Vice.** All requests for admission *pro hac vice*, whether made by motion or stipulation, shall be accompanied by an affirmation in support from a member of the Bar of the State of New York, an affirmation from the applicant, and a recent certificate of good standing from the applicant. The affirmation must also advise the court whether the applicant has ever been or is presently subject to disciplinary proceedings.

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 datedan 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.

ENTER:

_____

J.S.C.