JUSTICE JEFFREY K. OING

PART 48 RULES

SUPREME COURT
COMMERCIAL PART
COURTROOM 242
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NEW YORK, NY 10007
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E-Track Directive

Notification of developments in cases, including court appearance dates and adjournments, is now made exclusively through e-Track, the court system's case tracking and e-mail notification service. New York County Supreme Court no longer provides these notifications by regular mail. In all cases now pending in the Commercial Division and upon the assignment of any case to the Commercial Division hereafter, all counsel therein shall immediately register to create an e-Track account and then record each case therein, which will ensure that counsel will receive e-mail notifications about developments in the cases. As an alternative, counsel may subscribe to a private sector e-mail notification service that provides comparable notice. The e-Track link appears at the end of each electronic filing. The e-Track address is: https//iapps.courts.state.ny.us/webcivil/etracklogin. There is no charge to use e-Track. For further information, please contact e-Track at ecourts@nycourts.gov.

GENERAL RULES

1. Counsel and litigants (represented or self-represented) are advised that Justice Oing and his Law Clerks will not engage in ex parte communications.

2. All correspondence to the Court must be on notice to all parties and/or counsel. The Court will not consider any correspondence not in compliance with this directive.

3. Any correspondence related to a motion shall indicate the motion sequence no.

4. All inquires concerning appearances, adjournments, and case status shall be directed to the Part Clerk.

5. All adjournments (motions, conferences, trials) require prior Court approval. Requests for adjournments, in the first instance, shall be directed to the Part Clerk at 646-386-3265. **Do not telephone Chambers.**
6. Where all parties consent to the adjournment, the requesting counsel shall deliver such stipulation by facsimile to 212-952-6553, and shall be responsible for e-filing the stipulation.

7. Adjournment applications and stipulations shall be made at least 24 hours in advance of the scheduled Court appearance. Applications made in contravention of this rule may be declined.

8. A Court approved adjournment shall be reduced to a written stipulation prepared by the requesting counsel and must be signed by all counsel. If applicable, the stipulation shall set forth a briefing schedule. The requesting counsel shall deliver the stipulation to Part 48 by facsimile to 212-952-6553, and shall be responsible for e-filing the stipulation.

9. Papers and/or correspondence shall not be delivered by facsimile or e-mail unless expressly permitted by the Court.

10. All applications for admission pro hac vice shall be made by motion. The motion shall include an affidavit of support from a member of the Bar of the State of New York, an affidavit from the applicant, and a recent certificate of good standing from the applicant. The affidavit of the applicant must advise the Court as to the total number of times the applicant has been admitted in New York pro hac vice. The affidavit must also advise the Court whether the pro hac vice applicant has ever been or is presently subject to a disciplinary proceeding. Exhibit A is the form of the proposed order for pro hac vice applications.

11. All documents submitted to the Court for review or signature, whether stipulations, orders or letters, must contain, on all pages subsequent to the first, a header bearing the case name, index number and page number out of the total number of pages. For example:

    Plaintiff v. Defendant Page X of Y
    Index No.
    Mtn Seq. No. (if applicable)

12. All parties and counsel should familiarize themselves with the Commercial Division Rules (http://www.nycourts.gov/courts/comdiv/).

13. This Part is participating in a pilot program to promote earlier resolution of electronic discovery issues. For cases filed after June 15, 2011, the parties are required, absent an order to the contrary, to partake in the pilot and to complete an Electronic Discovery Order ("EDO") form, following a meet and confer. The EDO form and additional information are available at http://www.nycourts.gov/courts/comdiv/. The EDO form is available as a fillable document or may be printed and completed by hand.

14. Rule 11: The number of interrogatories, including subparts, shall be limited to 25, unless the Court permits otherwise.

15. Rule 14: If, after meeting and conferring in good faith, counsel are unable to resolve a dispute about disclosure, the aggrieved party shall outline the issue in a letter to the Court, on notice to opposing counsel, who will be expected to submit a letter in response. No further correspondence is permitted.

    In addition to e-filing such correspondence, counsel shall deliver a hard copy of the correspondence to Part 48.

    Once letters from all parties have been received, the Court will contact counsel to schedule a discovery conference.

16. Discovery motions shall not be made without first complying with this directive, and any such motion may be denied.

17. Correspondence shall not exceed 3 pages in length (excluding exhibits).

18. Counsel shall bring copies of all prior discovery orders to each and every Court appearance.

19. Counsel do not need to obtain Court permission to make non-discovery motions.

20. Electronic Filing

    All cases in Part 48 are required to be electronically filed through the New York State Courts E-Filing (NYSCEF) system, except cases involving pro se litigants.

All submissions to the Court (including briefs, proposed Orders and Judgments, and letters) are required to be electronically filed. Attorneys are expected to familiarize themselves with NYSCEF procedures, which are available at the NYSCEF website, https://iapps.courts.state.ny.us/fbem/mainframe.html.

21. Non-motion Papers

All e-filed papers that require judicial review and approval shall be delivered, by mail or hand-delivery, directly to Part 48, 60 Centre Street, Room 242. They are not be delivered by facsimile or e-mail unless expressly permitted by the Court. The Court does not require courtesy copies of the pleadings.

22. Transcripts

For motions, at the conclusion of oral argument, the movant shall order the transcript and bear the cost. The transcript shall be delivered to Part 48, Room 242, with a cover letter setting forth the case name, index number, and motion sequence no., to be so ordered by the Court. Counsel shall e-file the transcript.

For non-motions and other proceedings, the Court may direct counsel to order the transcript.

23. 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 such other mediation. In that letter, they should state whether they prefer that discovery continue or be stayed during the mediation process.

24. Confidentiality Order/Sealing Documents

Any order regarding the confidential exchange of information will be based on the Proposed Stipulation and Order for the Production and Exchange of Confidential Information, prepared by the New York City Bar Association for use in the Commercial Division, available on the Bar Association's website at: http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf (the “Model Form”). If the parties believe there is good cause to depart from the Model Form, they should submit their proposed order, along with a brief letter explaining the necessity of their suggested changes.

Applications to seal documents shall include the nature of the document, reason for the sealing request, and "good cause" therefor (22 NYCRR § 216.1). The Court will consider the application to seal documents by stipulation or motion.

Any party wishing to provide the Court with any motion paper, including any notice or memorandum of law, affidavit or declaration in support of such motion, that attaches, affixes, summarizes or excerpts Confidential or Highly Confidential information shall redact all such Confidential or Highly Confidential information before submitting the papers to the public file. On the appropriate return date, or on any other date ordered by the Court, a fully, unredacted copy of the motion papers shall be provided to the Court in Chambers labeled as follows: "Unredacted Chambers Copy – Redacted Copy Filed Pursuant to Court Order." After such motion is decided, the Court may, in its discretion, return the "Unredacted Chambers Copy" to the moving party, who will be required to maintain such documents pending the final outcome of the action, including any appeals, after which time the documents shall be disposed of pursuant to Stipulation and/or Order.

MOTION PRACTICE

1. Orders to Show Cause are returnable in Part 48 in the first instance. The Court will set forth a briefing schedule.

2. An OSC providing for temporary injunctive relief pending hearing of the OSC shall be made on notice unless an affirmation or affidavit sufficiently demonstrates that giving such notice would result in "significant prejudice" to the movant (22 NYCRR § 202.7(f); Commercial Division Rules, Rule 20).

3. Motions returnable in the Motion Submissions Part, Room 130, and assigned to the Part, will be scheduled at the Court's discretion for oral argument. Notice of such argument will be transmitted to counsel by the Court.

4. In addition to electronically filing motion papers, counsel shall submit a hard copy set of all papers related to any motion to the Motion Submissions Part in Room 130 on the return date. All hard copies of e-filed documents intended for judicial review must include exhibit tabs and backs. Courtesy copies are not required.

5. Affidavits/affirmations submitted in support of or in response to dispositive motions must be separate from any memoranda of law submitted in relation to the motion. Affidavits/ affirmations shall not include legal arguments. Memoranda of

law submitted in support of or in response to dispositive motions must include a Table of Contents and a Table of Authorities.

6. Discovery motions are strongly discouraged. If a discovery dispute arises after the issuance of a preliminary or compliance conference order, counsel shall telephone Part 48 to schedule a discovery conference with all counsel to resolve the discovery dispute. If the issue cannot be resolved following such conference, counsel may move for appropriate relief.

7. If a motion is withdrawn or resolved, counsel shall promptly notify Chambers by facsimile. Counsel shall also e-file such notice.

8. A copy of a decision can be obtained from www.nycourts.gov/supctmanh under "Case Information", www.nycourts.gov under E-courts, or from the County Clerk. Please do not call the Part Clerk or Chambers.

CONFERENCES (Preliminary, Compliance, Status, Pre-Trial)

1. The Court will schedule conferences. All cases are heard in the order in which they are ready. All counsel must be present for the case to be deemed ready. Do not check in with the Part Clerk until all sides are present.

2. Counsel appearing shall be familiar with the case and have the authority to discuss all discovery issues and to participate in a settlement conference.

3. Pending an appearance with the Court, counsel are advised to confer with each other and draft a preliminary or compliance conference order or stipulation providing for all remaining discovery. Discovery disputes will be resolved at the conference. Discovery orders/stipulations must set forth specific dates for all deadlines, including impleaders.

TRIALS AND EVIDENTIARY HEARINGS

1. Trials are scheduled for a date certain. There shall be no adjournment of a trial unless counsel demonstrates good cause. Further, no continuance will be granted if a witness is unavailable to testify unless counsel demonstrates good cause.

2. Counsel shall provide a list of exhibits that may be used at trial. Counsel shall pre-mark all the exhibits prior to trial. The exhibit list must state for each exhibit if that exhibit is agreed to or disputed by the parties as admissible evidence. Exhibits that are agreed to by the parties as admissible evidence will be entered into

evidence without objection upon introduction at trial. Court exhibits are roman numeral, plaintiff exhibits are numbered, and defendant exhibits are lettered.

3. Counsel shall provide the Court with a copy of the exhibit books and any other documents offered into evidence.

4. For jury trials, counsel shall submit to the Court at least five (5) calendar days prior to trial a witness list, proposed jury instructions, and a proposed verdict sheet. If the proposed jury instructions are verbatim from the Pattern Jury Instructions, providing the PJI numbers will be sufficient. If a PJI instruction is modified, exact language shall be submitted supported by appropriate authority.

5. For non-jury trials, at least five (5) calendar days prior to trial, counsel shall submit a witness list, proposed findings of fact, and a pre-trial memorandum of law.

6. For all trials, counsel shall submit marked pleadings and a copy of the bill of particulars. If a witness needs an interpreter, counsel shall notify Part 48 in writing seven (7) calendar days prior to trial. Please indicate the language and dialect.

7. For all trials, the witness list must state whether each witness is a fact or an expert witness. If a witness is listed as an "expert," state whether the parties agree or dispute the witness's status as an expert for purposes of the trial.

8. Motions in limine are to be submitted directly to Part 48 at least five (5) calendar days prior to the start date of trial.

9. Parties shall provide witness lists, a glossary of names, and any unusual words and any acronyms they anticipate to be using during the trial to the Court reporter the morning that the trial is set to begin.

10. Demonstrative evidence is not permitted without first obtaining the permission of the Court.

11. No electronic media devices will be permitted unless expressly permitted by the Court. Applications should be made to the Court in writing and the reasons for the request must be clearly stated.

12. 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.

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 said applicant having submitted in support thereof a stipulation of all parties dated_____ , 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 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.