

JUSTICE SALIANN SCARPULLA

PART 39 - PRACTICES AND PROCEDURES

**Supreme Court of the State of New York
Commercial Division
60 Centre Street, Courtroom 208
New York, NY 10007**

**Part Clerk/Courtroom Phone: 646-386-3275
Chambers Phone: 646-386-3690
Fax: 212-401-9154**

Principal Law Clerks: Ms. Ariella Zarfati, Esq. and Ms. Danielle Schweiloch, Esq.
Commercial Division Law Clerk: Ms. Alexis Marquez, Esq.
Assistant Law Clerk: Ms. Joelle Milov, Esq.
Part Clerk: Ms. Sharon Hill

Oral Argument on Motions: Tuesdays, Wednesdays, and Thursdays (as scheduled by the Court)

Pre-Trial Conferences: As scheduled by the Court

Preliminary, Compliance, and Status Conferences: Wednesdays at 2:15 p.m.

GENERAL

1. These Practices supplement the Rules of the Commercial Division, 22 NYCRR 202.70.¹
2. Counsel and litigants (represented or self-represented) are advised that Justice Scarpulla, her Law Clerks and Part Clerk will not engage in any *ex parte* communications.
3. The Part Clerk is unable to accept deliveries between 1:00 and 2:00 p.m. or after 4:30pm.
4. Counsel must notify the Court, as soon as practicable, by conference call or letter, of any settlement or resolution of active cases or pending motions, so as to avoid the unnecessary use of Court resources on matters that are resolved or will imminently be resolved. In this regard, note the requirements of 22 NYCRR 202.7, Rule 2.

¹ All parties or their counsel must familiarize themselves with the Commercial Division Rules, available at: <http://www.nycourts.gov/rules/trialcourts/202.shtml#70> .

COMMUNICATION / COURTESY COPIES

1. **Justice Scarpulla does not accept any correspondence, documents, or papers by mail or facsimile unless expressly permitted by these Practice Rules, the Rules of the Commercial Division, or by prior approval of the Court.**
2. Justice Scarpulla's Law Clerks will only accept phone calls between 3pm and 5pm with all parties on the line. There will be no *ex parte* communication with the court.
3. Part 39 is a pure-e-filing part. Justice Scarpulla **does not require nor accept** working copies of motions/documents. **Please do not send courtesy copies of any documents that were e-filed**, with the following exceptions:
 - a. **Documents requiring Justice Scarpulla's signature, including proposed orders and stipulations, must be e-filed, AND sent to Justice Scarpulla by either mail or facsimile** (e.g., proposed/settled orders, stipulations, or transcripts to be so-ordered); and
 - b. Documents that are filed under seal.

ADJOURNMENTS

1. All adjournments (motions, conferences, trials) require prior court approval. *Ex parte* applications for adjournments will **not** be considered.
2. Requests to **adjourn a conference**, in the first instance, shall be directed to the Part Clerk at 646-386-3275. Conferences will only be adjourned **by stipulation**. The parties must first consult with the Part Clerk before selecting a new date for the conference. Applications to adjourn a conference shall be made **at least 24 hours** in advance of the scheduled conference.
3. Parties may adjourn a conference no more than two times, and for no more than a total of three (3) months.
4. Requests to **adjourn a motion that is scheduled for oral argument**, in the first instance, shall be directed to the Part Clerk at 646-386-3275. Motions will only be adjourned **by stipulation**. If adjourning by stipulation, parties must first consult with the Part Clerk before selecting a new date for oral argument. Applications to adjourn a motion shall be made **at least 48 hours** in advance of the oral argument.
5. To **adjourn a motion that is in the Submissions Part** (Room 130):
 - a. If the parties wish to adjourn the motion for less than sixty (60) days the parties may adjourn **by stipulation** without an order from the Court. The stipulation must

be electronically filed and filed in the Submissions Part on the return date of the motion.

- b. If the parties wish to adjourn the motion for more than sixty (60) days from the original return date, then the parties must submit a stipulation of adjournment to the Court for approval.
 - i. Parties must deliver the proposed stipulation to the Court **by electronic filing**.
 - ii. If approved, the So-Ordered version of the stipulation will be electronically filed, so that the parties may retrieve the signed order from the electronic filing system and present it to the Submissions Part on the return date.
6. To **adjourn a hearing or trial**, the parties must contact the Part Clerk at 646-386-3275 on a **conference call with all parties** on the line. Applications for adjournments shall be made **at least 48 hours** in advance of the scheduled hearing or trial.
7. All Court approved stipulations to adjourn must be electronically filed by the parties.

CONFERENCES AND DISCOVERY DISPUTES

1. Only attorneys thoroughly familiar with the case may appear for a conference. The attorneys should bring signed copies of all prior decisions, orders and stipulations (both substantive and discovery-related) to the conference.
2. **Counsel and litigants must follow the directions below when appearing for a preliminary, compliance, or status conference.**
 - a. Counsel for all parties must consult prior to a preliminary or compliance conference about: (i) the resolution of the case, (ii) discovery and any other issues to be discussed at the conference, and (iii) the use of alternative dispute resolution to resolve all or some of the issues of the litigation. (Commercial Division Rule 8).
 - b. Counsel must fill out the appropriate conference form (preliminary conference order, or compliance conference order/stipulation form) upon arriving in the courtroom for the conference. Any disputes will be resolved at the conference.
 - i. On the conference form, please write legibly. Indicate the names, addresses, and telephone numbers of all counsel appearing at the conference. Number the pages (e.g., 1 of 3, 2 of 3). At the top of page 1 of the Compliance Conference Order, please indicate whether this is the 1st, 2nd, or 3rd compliance conference. Use specific cut-off dates (e.g. “on or before December 31, 2015”). **Do not use open-ended dates** (e.g. “within 45 days,” etc.).

- c. After filling out the appropriate form, counsel must check-in with the Part Clerk. At check-in, please hand in your conference form to the Part Clerk. The Park Clerk will then call your case when the Court is ready for your conference.
3. Conference calls are scheduled by the Court as needed. Parties wishing to schedule a conference call with the Court should do so by contacting Chambers between 3pm and 5pm at 646-386-3690 to arrange a mutually convenient time and date. If the parties would like to speak by telephone with one of the law clerks, ALL parties must be on the phone before placing the call to Chambers.

MOTION PRACTICE

1. Substantive motions with opposition will be scheduled for oral argument for a Tuesday, Wednesday, or Thursday after the final appearance in the Submission Part (Room 130).
2. Summary judgment motions must be filed **within sixty (60) days** of filing the note of issue. Each party must comply with Commercial Division Rule 19-a by submitting a separate statement of material facts.
3. Orders to Show Cause with requests for temporary restraining orders, including requests for a temporary stay of an action, will generally not be heard *ex parte*. See 22 NYCRR 202.7(f); 22 NYCRR 202.70, Rule 20.
4. Except for discovery motions, no prior permission is required before making a motion. **Commercial Division Rule 24 letters are NOT required in Part 39.** Discovery-related motions are strongly discouraged. Prior to making a discovery motions, parties must call Chambers between 3pm and 5pm at 646-386-3690 to arrange a mutually convenient time and date for a conference call. All discovery-related motions will be heard on Wednesdays at 2:15 p.m.
5. Requests for *pro hac vice* admission should be made by stipulation, if possible.
6. Similarly, requests for Commissions should be made by stipulation, if possible.
7. 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.
8. All memoranda of law **must** include a Table of Contents and Table of Authorities.
9. Each exhibit must be e-filed under its own document number and include a short label identifying the nature of the exhibit (e.g., Complaint, Contract dated 1/1/14, etc.).

ELECTRONIC FILING & E-TRACK

1. All cases in Part 39 are required to be electronically filed through the New York State Courts E-Filing (NYSCEF) system. Attorneys are expected to familiarize themselves with NYSCEF procedures at <http://iapps.courts.state.ny.us/nyscef/Login>. For more information on e-filing rules, parties may also visit: <http://www.nycourts.gov/courts/1jd/supctmanh/e-filing.shtml>
2. All e-filed documents must be text-searchable. The submission of documents containing hyperlinks and bookmarks is strongly encouraged.²
3. “eTrack” is a case tracking service that enables parties to track active Civil Supreme Court cases and to receive notice of scheduled appearances. All parties or their counsel must be registered for the eTrack service for all Part 39 cases. To register or log-in please visit: <http://iapps.courts.state.ny.us/webcivil/etrackLogin>.

ALTERNATIVE DISPUTE RESOLUTION

1. If, at any point, the parties decide that they could benefit from the Commercial Division ADR program, they should write a joint letter to the Court asking to be referred to ADR. In that letter, they should state whether they prefer discovery be stayed or continue during the mediation process.
2. The Court may also choose to order parties to the Commercial Division ADR program without the parties’ request or consent.
3. Pursuant to the Administrative Order dated June 23, 2014 and Rule 15 of the Rules and Procedures of the ADR Program creating the Pilot Project for Automatic Referral of Certain Cases to Mandatory Mediation (the “Pilot Project”), one (1) in five (5) cases newly assigned to the Commercial Division will be automatically referred to mediation.
4. For more information regarding the ADR program please visit: http://www.nycourts.gov/courts/comdiv/ADR_overview.shtml

CONFIDENTIALITY ORDER/SEALING DOCUMENTS

1. Any order regarding the confidential exchange of information shall be based on the Proposed Stipulation and Order for the Production and Exchange of Confidential

² See Statement of Procedures Governing Memoranda of Law and Certain Other Documents in Hyperlinked and Bookmarked Format in Electronically Filed Cases, available on page 13-15, <http://www.nycourts.gov/courts/1jd/supctmanh/EF-Protocol-8114.pdf>.

Information, prepared by the New York City Bar Association for use in the Commercial Division, available at the Bar Association's website at:

<http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf> (the "Model Form").

2. If the parties believe there is good cause to depart from the Model Form, they must submit their proposed stipulation and order, along with a red-lined version, indicating any departures from the Model Form.
3. 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 only by order to show cause or notice of motion.

TRIALS/EVIDENTIARY HEARINGS

1. Prior to the start of trial, please supply the Court with the following:
 - a. Marked pleadings.
 - b. All **prior decisions** in the case.
 - c. Any notices to admit, with responses.
 - d. Copies of transcripts of **depositions** intended for use at trial.
 - e. Proposed **jury verdict sheet**.
 - f. A list of ***all*** requested **PJI sections** from the most current volume to be included in the final charge to the jury. You may list the section by number only, if it does not call for any characterization of the evidence or the contentions of the parties. ***If the section does call for a characterization or description of the evidence or contentions of the parties, you must supply such description of evidence or contention in writing. If you are requesting other language, not based on the PJI, you must provide the proposed language in writing, along with the appropriate citations. Please provide copies of any cases upon which you rely for charge language.***
 - g. A short (one or two lines) **summary** of your party's claims to be used by the Court as part of the preliminary instructions given to the jury before opening statements.
 - h. Copies of **cases** and **authorities** upon which you will be relying on for *in limine* or other applications.

- i. Copies of any **statutes, coded** or **rules and regulations** which are pertinent to the case.
 - j. A list of **proposed witnesses**. If a witness needs an **interpreter**, please indicate the language and any dialect.
2. Please stipulate to all facts and documents not in dispute prior to trial. Have agreed-upon documents, photographs and other exhibits pre-marked into evidence by the court reporter while the jury is not present.
3. It is the duty of counsel, not court personnel, to make sure all subpoenaed documents have arrived in the subpoenaed records room at 60 Centre Street. Court personnel may only retrieve records from 60 Centre when not needed in the Courtroom.
4. Pre-trial memoranda of law, pre-trial orders and motions *in limine* are to be submitted at least seven (7) calendar days prior to the date of trial, unless otherwise advised by the Court.
5. All requests to set up audiovisual equipment in the Courtroom shall be directed to the Part Clerk in Part 39 at 646-386-3275.