

Practices in Part 54
Revised November 2015

Contact Information

Courtroom: 60 Centre Street, Room 228
Phone: (646) 386-3362

Chambers: 60 Centre Street, Room 555
Phone: (646) 386-3363
Fax: (212) 952-2777

Commercial Division Rules

All parties should familiarize themselves with the Commercial Division Rules, including what constitutes a commercial case. A copy of the Rules is available at:

http://www.nvcourts.gov/courts/comdiv/newwork_rules.shtml.

If a party believes a case assigned to Part 54 does not belong in the Commercial Division or should be assigned to another Justice (e.g., as a related case), the parties may call Chambers by following the procedures set forth below. Such requests should be made promptly after the filing of the RJL. No letters requesting transfer may be submitted.

If an action assigned to this part is designated for the court's ADR program, and the parties do not wish to participate in ADR, the parties shall call Chambers to discuss the process for opting out of the ADR program. Again, no letters may be submitted.

Electronic Filing

All cases in Part 54 must be electronically filed (e-filed) through the New York State Courts E-Filing (NYSCEF) system, except those cases involving pro se litigants. Pro se litigants are also encouraged to e-file, and should contact the Court for instructions on how to do so. Pro se litigants that are licensed to practice law in New York must e-file.

With the exception of pro se litigant submissions, all submissions to the Court must be e-filed. All e-filed documents must be OCR Text Searchable PDFs. Each exhibit to an e-filed pleading, affidavit or affirmation should be filed as a separate document. E-filed exhibits should be described in reasonable detail in the "Description" field, in addition to a number or letter in the "Document" field.

Courtesy copies of e-filed documents *should not* be provided to the court, except for: (1) motions papers on a motion returnable in Room 130 (i.e., a motion commenced by notice of motion), which shall be provided to Room 130 *only* (not the courtroom or chambers); (2) motions papers on a motion brought by order to show cause, which shall be hand-delivered to the courtroom; (3) proposed subpoenas and commissions to be so-ordered, which shall be hand-

delivered to the courtroom; (4) proposed stipulations and orders, which shall be faxed to chambers with the e-filing confirmation receipt; and (5) letters, which shall be faxed to chambers with the e-filing confirmation receipt, but *only* when submission of a letter is first authorized by the court. For NYSCEF instructions, contact the E-filing Support Center at (646) 386-3033 or www.courts.state.ny.us/efile, or see the Commercial Division's website for New York County at: <http://www.nycourts.gov/courts/comdiv/newyork.shtml>.

Scheduling

General questions about appearances may be addressed to the Part Clerk at (646) 386-3362. All requests for adjournments must be addressed to one of the court's law clerks by contacting Chambers in accordance with the procedure for commencing unscheduled telephone conferences discussed below. No adjournments will be granted over the phone unless all parties who have appeared are on the line. Adjournments will not be granted by letter or stipulation without prior court approval.

Please be advised that litigants must obtain court permission to adjourn a conference. Excepting emergencies, such permission must be obtained no later than 2 business days in advance of the scheduled appearance.

Attorneys must sign up for eTrack and regularly check eCourts for scheduled appearances. Defaults in appearing will not be excused for lack of notice from eTrack or an omission by the New York Law Journal.

Telephone Calls

Paralegals, secretaries, and other non-attorneys may not call Chambers. The court will only take calls from the parties' attorneys of record when the attorneys for all parties who have appeared are on the line.

Litigants may call Chambers at (646) 386-3363, Monday through Thursday, between 4 pm and 5:30 pm, to speak to one of the court's law clerks. Except in the case of a previously scheduled call, a mid-deposition dispute, an emergency, or to notify the court that a matter has settled, attorneys should not call Chambers outside of this time window, and should call only after conferring to discuss the matters to be raised with the court. To initiate a call with Chambers, the parties must either call in with all counsel on the line or provide the court with a conference call dial-in number. **Please note: no attorney in Justice Kornreich's chambers will communicate with a litigant *ex parte*, nor will they assist parties in the practice of law, such as by advising how to interpret a rule, law or decision.**

Letters, Facsimiles and E-mail

No party may e-file, mail, or fax a letter to the court or Chambers unless instructed to do so by the court. In the event this rule is violated, opposing counsel may not file a letter in response without prior court approval. Rather, if a letter is filed, counsel should contact the court

for further instructions. If the court directs that a letter is to be filed (e.g., the joint letter to submitted prior to the Preliminary Conference), the letter shall be e-filed and then faxed with the e-filing confirmation receipt. Hard copies of letters should *not* be provided to the court.

Conferences

All parties must meet and confer at least 2 weeks before the preliminary conference (PC), at which time they must jointly prepare a brief status letter, no more than 2 pages in length, that includes a summary of the relevant factual background, the causes of action, affirmative defenses and counterclaims, and the status of discovery. There is no need to prepare a proposed PC Order in advance, nor do the parties need to address ESI prior to the PC. The court will explain how discovery and ESI will be conducted at the PC.

Attorneys appearing for conferences must be fully familiar with the case. That is, thorough knowledge of all facts and claims in the pleadings, of all relevant contracts, of all prior court orders, and the discovery. Counsel should be prepared to discuss the merits of their case at all conferences.

Parties must bring copies of **ALL** prior discovery orders and motion decisions to each and every court appearance. Any party that wants to resolve a dispute about the sufficiency of a discovery response during a conference shall bring whatever will be needed to obtain a ruling, including copies of the disputed demands and responses.

Discovery

After an action is assigned to this part, but prior to a Preliminary Conference (PC), if the parties have a discovery dispute, they shall call Chambers to schedule a PC. Before making any discovery motion, the parties should call Chambers for a telephone conference.

When a discovery deadline is set forth in a court order, unless otherwise indicated, that deadline is 5:00 pm, New York time. The manner of document production will be discussed at the PC, but please note that all production must be electronic, searchable, and bates-stamped. A party that produces hard copy documents, non-searchable PDFs, or documents without bates stamps will be ordered to reproduce its production.

All objections to document requests and interrogatories shall be made with specificity; general objections will not be honored by the court. The court will provide further guidance at the PC as to how such objections must be drafted.

Interrogatories are limited to 25, including subparts, unless another limit is specified in the PC order. This rule is strictly enforced. This limit applies to consolidated actions as well. Interrogatories are not limited to the subjects set forth in Commercial Division Rule 11(b), but contention interrogatories at the conclusion of other discovery, as provided in Commercial Division Rule 11(e), are prohibited. Interrogatories should be focused on the identification of documents and witnesses.

Discovery is not stayed by the filing of a dispositive motion or a mediation, unless

otherwise directed by the court. Additionally, the filing of a motion to stay discovery *does not* automatically stay discovery. Parties must comply with court ordered discovery deadlines and will not be excused from doing so without a prior order of the court. If an extension of time is needed, it should be requested by calling Chambers *prior to the expiration of the deadline*. The court may grant extensions for good cause, but will not indefinitely grant extensions if the court finds that the parties are not diligently attempting to meet court deadlines.

If a party objects to a document demand on the ground of privilege, with its production, the party asserting the privilege shall serve on all other parties a privilege log of the responsive documents that are not being disclosed and a copy of the redacted documents, bates-stamped. The privilege log shall identify by all redacted and completely withheld documents by bates stamp numbers, dates, authors and recipients, the general subject matter of the document if it will not waive the privilege, and shall state the privileges being asserted. Failure to serve a privilege log with the party's production will, absent good cause, be deemed a waiver of the party's objection on the ground of privilege. Following service of a privilege log, the parties shall confer in an attempt to reach agreement on whether the asserted privileges apply. If agreement cannot be reached, the parties shall call the court Clerk to schedule a conference. At the PC, the court will provide further guidance on the manner in which privilege logs are to be served, the option of utilizing a categorical log, and the process for resolving privilege disputes.

Motions

Part 54 does not require pre-motion conferences or letters. However, counsel may contract Chambers to discuss setting a briefing schedule if the parties cannot reach an agreement.

With respect to motions returnable in Room 130, no appearance before Justice Kornreich shall occur on the return date. Hard copies of all e-filed motion papers, as well as pro se motion papers that have not been e-filed, are to be submitted in Room 130. No other hard copies of the motion papers shall be submitted to the court. The moving party will be contacted by Chambers within 2 weeks of the return date to discuss the scheduling of oral argument. If the moving party is not contacted within 2 weeks, the parties shall promptly contact Chambers. Once oral argument is scheduled, adjournments must be granted by the court at least 2 business days in advance. In the case of an emergency or if the case or motion is resolved, Chambers must be contacted immediately. Do not file a letter or stipulation. Call the court. The moving papers on a motion must contain *complete* copies of the pleadings, *complete* copies of all applicable contracts, and copies of all relevant prior court decisions. Counsel are prohibited from filing excerpts of contracts.

With respect to orders to show cause, unless otherwise indicated on the OSC, oral argument will be held on the return date. Unless otherwise indicated on the OSC, hard copies of the opposition (and, if permitted by the court, reply papers) must be hand-delivered to the courtroom no later than 3:30 on the date they are due. The court will not consider late opposition presented to the court on the return date. Absent good cause (e.g., where *ex parte* relief is absolutely necessary), the court will not sign an *ex parte* order to show cause, regardless of whether a TRO is sought, unless opposing counsel is notified beforehand and provided a copy of the papers. Compliance with the requirement must be confirmed in an attorney affirmation

accompanied by proof (e.g., email to opposing counsel). The court reserves the right to deny or limit the scope of TRO sought, even if the TRO is unopposed. The court will not issue a TRO if the moving papers do not contain *complete* copies of the pleadings and *complete* copies of the applicable contracts.

The following page limits are mandatory and are strictly enforced. Moving and opposition briefs have a 25-page limit. Reply briefs have a 15-page limit. These limits do not include cover pages, the table contents, and the table of authorities, all three of which are *mandatory*. Attorneys may use any professional font, but all text, *including footnotes*, must be no less than size 12. The body of the brief must be double spaced; the footnotes shall be single spaced. To seek a page limit extension, counsel must call Chambers *prior* to filing an oversized brief.

Attorney affirmations may only be used as an index of exhibits and, where appropriate, a brief procedural history may be provided. Argument should be confined to the brief.

Witness affidavits must comply with the CPLR and Commercial Division Rules. Legal argument should not be contained in witness affidavits.

As noted earlier, briefs, exhibits, and all other motion papers that are e-filed must be OCR Text Searchable. Hard copies of e-filed spreadsheets are required.

Motion sequence numbers shall appear on ALL motion papers. All exhibits *must* be separated by exhibit tabs. When e-filing an exhibit, the first page of the e-filed PDF should *not* be a blank page that states “Exhibit ___”. For instance, if Exhibit A is a contract, the first page of the contract should be the first page of the e-filed PDF.

All oral argument transcripts must be e-filed within 45 days of oral argument. Unless otherwise directed, the moving party shall order and pay for the transcript. If there is a cross-motion or motions filed by both parties, the costs shall be shared. If court decides a motion from the bench at oral argument, a hard copy of the transcript should not be provided to court, but should be e-filed. Motions will not be marked fully submitted and the court will not issue a decision until the transcript is e-filed and the court receives a hard copy from the court reporter.

Transcripts

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

Summary Judgment Motions

Prior to the filing of a summary judgment motion, the parties shall meet and confer to discuss the matters at issue on the summary judgment motion and shall prepare and file *one joint*

Rule 19-a statement of material facts at least 3 weeks before the summary judgment motion is filed. *If the parties cannot agree on a joint statement, no Rule 19-a statement of facts may be filed.* No party shall argue that a summary judgment motion should be denied for the failure to negotiate and file a joint statement of facts. The parties shall attempt to negotiate a joint statement in good faith, but cannot be compelled to agree. If summary judgment briefs cite to deposition testimony, a complete copy of that deposition transcript must be filed. Likewise, if an oral argument or hearing transcript is quoted, a complete copy must be filed.

Contact Information

All attorneys and pro se litigants must provide their contact information to the Trial Support Office, Room 158M, at 60 Centre Street, New York, NY 10007, and attorneys shall do so by filing a notice of appearance. All attorneys who appear in Part 54 must provide the Part Clerk with a business card that has the attorney's current contact information.

Confidentiality Agreements

Parties shall use the confidentiality agreement and order available at: http://www.nycourts.gov/courts/comdiv/ny/PDFs/Part54_Confidentiality_Agreement.pdf. Any changes that the parties wish to make to the order shall be electronically filed and submitted to the court with a redlined copy of the court's form agreement. A confidentiality agreement between the parties and approved by the court is for the purpose of disclosure only. To maintain the confidentiality of a document designated as confidential for purposes of discovery, any party who wants to submit it in connection with a motion must make a motion to seal, pursuant to 22 NYCRR 216. Hard copies of documents that the movant wishes to seal should be delivered to the courtroom in a sealed envelope marked confidential. E-filed memoranda of law or other submissions that must refer to the documents sought to be sealed should redact any such references and unredacted copies of the submissions also shall be delivered to the courtroom in a sealed envelope marked confidential.

Consolidation or Amendment of Captions

All orders on motions or stipulations to consolidate, to sever claims, or to amend captions shall be served with notice of entry on the Trial Support Office, Room 158M, at genclerk-ords-non-mot@nycourts.gov and on the County Clerk at cc-nyef@courts.state.ny.us. The County Clerk shall be served with a copy of the order or stipulation and a Notice to the County Clerk pursuant to CPLR 8019(c) (NYSCEF Form EF-22, available on the NYSCEF site).

Trials & Pre-Trial Hearings

Prior to trial, a pre-trial hearing will be held. Before that date, all *in limine* motions must be fully submitted in Room 130, and the following must have been exchanged: 1) witness lists and cross-designations of deposition testimony to be read into the record; 2) expert reports; and 3) pre-marked exhibits, together with a spread sheet containing the exhibit numbers or letters, a very brief description of the exhibit, and blank spaces for a) the opposing parties to object or agree to admission, b) a change of position after the parties meet and confer regarding any objections, and

c) a court ruling at the pre-trial hearing on the exhibits not agreed upon.

On the date of trial, the plaintiff shall provide the court with marked pleadings. If it is a bench trial, the parties will provide the court with a stipulation as to all agreed upon facts and pre-trial briefs. If it is a jury trial, the parties will submit requests to charge and contentions.

Requests for admission pro hac vice

A request for *pro hac vice* admission, whether made by motion or stipulation, shall be accompanied by a proposed order and an affidavit in support from a member of the Bar of the State of New York, an affidavit of the applicant and a recent certificate of good standing from the applicant.