

INDIVIDUAL PRACTICES OF
JUSTICE MELVIN L. SCHWEITZER
PART 45

1. Commercial Division Rules

All parties should familiarize themselves with the Commercial Division Rules, available at http://www.nycourts.gov/courts/comdiv/newyork_rules.shtml

2. Electronic Filing

All cases in Part 45 should be electronically filed through the Court's Filing By Electronic Means (FBEM) system. All submissions to the Court (including briefs, proposed Orders and Judgments, and letters) should be electronically filed. For FBEM instructions, contact the Efiling Support Center at (646) 386-3033 or efile@courts.state.ny.us, or see the Commercial Division's website for New York County at: <http://www.nycourts.gov/courts/comdiv/newyork.shtml>

3. Scheduling

All scheduling of appearances or adjournments, and questions pertaining to scheduling, should be addressed to our Part Clerk, Marcia Wilson, at (646) 386-3306. Appearances shall be scheduled at either 60 Centre Street, Room 300, or at 26 Broadway, 10th Floor.

4. Communications with Chambers

Litigants may communicate with the Court by mail, fax or telephone, more specifically as follows:

- A. Written Correspondence. Hard copies of letters may be mailed or hand delivered to Chambers at 26 Broadway, 10th Floor, New York, NY 10004. All letters concerning a substantive matter (*e.g.* letter-briefs, discovery disputes) also should be electronically filed.
- B. Faxes. Faxes to Chambers (212) 361-8173 are permitted so long as they are followed by a hard copy sent to Chambers.
- C. Telephone Conferences. Litigants must call our Part Clerk, Marcia Wilson, at (646) 386-3306 to schedule a telephone conference with Chambers on substantive

matters. Such calls generally will be scheduled after 4 p.m. Counsel for all litigants must be on the call.

5. Motion Practice

- A. Motion Sequence Numbers. Shall appear on ALL motion papers: the notice of motion, memos of law, exhibits, affirmations, settled orders, etc. They shall also appear on all correspondence with Chambers pertaining to the motion.
- B. Questions. Questions pertaining to motion practice should be addressed in the first instance to the Commercial Division Support Office at (646) 386-3020.
- C. Discovery. Discovery is not stayed by a dispositive motion unless the Court otherwise directs.
- D. Dispositive Motions; Deadline. These must be initiated not later than 30 days of filing the note of issue.
- E. Motion Submission; Papers. No additional papers on a motion will be accepted for filing after the papers in support of and in opposition to the motion are filed on the submission date in the Motion Submission Part, Room 130.
- F. Courtesy Copy. The Court will notify the parties if a courtesy copy of all motion papers must be submitted directly to Chambers (26 Broadway, 10th Floor) in addition to the hard copy on E-filed motions that is required to be submitted in the Motion Submission Part, Room 130.
- G. Oral Argument. The Court will notify the parties if oral argument is required at some time after papers in support of and in opposition to the motion have been received by the Motion Submission Part, Room 130, on the submission date.
- H. Transcript. If oral argument is held, at its conclusion the movant is to order the transcript and have a copy sent to the Court. The motion will not be deemed *sub judice* until a transcript has been received.

6. Pre-Trial or Pre-Evidentiary Hearing Conferences

- A. When. A pre-trial or pre-hearing conference (TPC) will be scheduled to be conducted by the Court's Law Clerk in Chambers at 26 Broadway approximately two weeks prior to the trial or evidentiary hearing. In the event an evidentiary hearing is to be conducted on an accelerated time schedule (*e.g.* a preliminary

injunction), the Court will arrange for acceleration of the TPC and its attendant time deadlines pertaining to the matters to be addressed.

- B. Matters to be Addressed. Attention is directed to the following Commercial Division Rules: Rule 26 (Estimated Length of Trial), Rule 27 (Motions *in Limine*), Rule 28 (Pre-Marking of Exhibits), Rule 29 (Identification of Deposition Testimony), Rule 30(b) (Pre-Trial Conference), Rule 31 (Pre-Trial Memoranda, Exhibit Book and Requests for Jury Instructions), Rule 32 (Scheduling of Witnesses) and Rule 33 (Preclusion). Litigants are directed to address all matters referenced in these rules prior to the TPC (between themselves, where appropriate) and to comply with them so that they come to the TPC prepared to have these matters disposed of in a Pretrial Order. With respect to the exhibit binder or book (Rule 32), the Court requires TWO copies, not one, for its own use.
- C. The TPC will result in the entry of a Pretrial Order, signed by the Court, which will govern the trial or hearing.

7. Non-Jury Trial or Evidentiary Hearings

Unless otherwise ordered, all direct testimony of a party's own witnesses (including expert witnesses) in non-jury trials or evidentiary hearings shall be submitted in affidavit form. At the trial or hearing itself, each witness shall swear to the contents of the affidavit, followed by the opposing side's objections to the testimony and cross-examination. Affidavits containing direct testimony shall be exchanged with the adversary and delivered to Chambers at 26 Broadway at least one week prior to the commencement of the trial or hearing (unless this deadline is accelerated by the Court for a hearing conducted on an accelerated time schedule). Counsel need not submit direct testimony in affidavit form if a witness is not within the party's control.