

JUSTICE LINDA S. JAMIESON

COMMERCIAL DIVISION RULES

**Supreme Court of the State of New York
Westchester County Courthouse
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Staff

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Frances Schiel-Doyle, Part Clerk (914) 824-5345

Counsel are expected to be familiar with the Commercial Division Rules and comply therewith. The following information is offered as a guide to the practices followed by this Court. In the event the Part Rules are silent, the Rules set forth in 22 NYCRR § 202.70 control.

Scheduling:

All questions about scheduling appearances or adjournments should be addressed to the Part Clerk, Frances Schiel-Doyle, at (914) 824-5345. Do not contact Chambers regarding such issues. Requests for adjournment of matters should be made at least two business days prior to the appearance. Requests made after that will likely not be granted. All requests for adjournments must be made with the consent of all opposing counsel and, if approved by the Court, confirmed by a signed stipulation of all counsel.

If consent cannot be obtained, then the requesting counsel must arrange for a conference call with the Court and, if one cannot be timely arranged, then the application must be made at the call of the calendar.

E-Filing Rules and Protocol:

All parties should familiarize themselves with the statewide E-Filing Rules (available at www.nycourts.gov/efile) and the Westchester County E-Filing Protocol (available at <http://www.nycourts.gov/courts/9jd/efile/WestchesterCountyJointProtocols.pdf>) and 202.70 of Uniform Civil Rules of the Supreme and County Courts as amended on 7/1/10.

General questions about e-filing should be addressed to the E-Filing Resource Center at 646-386-3033 or efile@nycourts.gov.

Filing of Papers:

Mandatory e-filing of all Commercial Division actions through the New York State Courts E-Filing system (NYSCEF) began on February 1, 2011. Submissions to the Court including motion papers, proposed orders, proposed judgments, and letters must be electronically filed. Pre-trial submissions are not to be filed electronically, and shall be delivered to the Court at the Pre-Trial Conference or as the Court may otherwise direct.

Working Copies:

E-filing rules provide that a court may require the submission of “working copies” of any electronically filed documents intended for judicial review. A working copy is defined as “a hard copy that is an exact copy of a document that is electronically filed.” **The Commercial Division, Westchester County, requires that working (courtesy) copies of all papers filed electronically be mailed to Chambers.** Pursuant to Uniform Rule 202.5-b(d)(4), the working copy shall bear a copy of the confirmation notice received from the NYSCEF site upon the electronic filing of the document, as a page firmly fastened to the **back** of the document. Counsel must write the motion sequence number on the first page of their submission, as well as the then-current return date.

Working copies not bearing such a page shall be discarded, unread. All working copies of e-filed documents intended for judicial review must include exhibit tabs and litigation backs.

Working copies of all documents, except stipulations to be so-ordered, are to be mailed or hand-delivered so as to be received by Chambers by the return date or notice of settlement date.

WORKING COPIES OF STIPULATIONS TO BE SO-ORDERED (INCLUDING REQUESTS FOR ADJOURNMENT) MUST BE RECEIVED BY CHAMBERS 48 HOURS BEFORE THE EXISTING SCHEDULED DATE. IF THIS CAN NOT BE ACHIEVED, COUNSEL ARE TO CALL OUR PART CLERK.

Hard Copy Submissions:

This Part will reject any hard copy submissions in e-filed cases unless those submissions bear the Cover Sheet for Hard Copy Submission – E-Filed Case required by Uniform Rule § 202.5-b(d)(1). The form is available at www.nycourts.gov/efile.

Communications With the Court:

(a) Written correspondence: No written correspondence may be sent to the Court without copying all parties or their counsel.

(b) Telephone calls: 1. Once a letter has been sent, counsel may call the Part Clerk with respect to the scheduling of appearances and with respect to adjournment applications.

2. Counsel may call Chambers and/or the Part Clerk to arrange for a telephone conference with the Court or with the Principal Court Attorney.
3. Counsel may not contact Chambers without all opposing counsel on the phone, except for the purpose of facilitating a conference call.

Motions:

No motion shall be made, except as allowed by Rule 24 of the Commercial Division Rules, without a prior conference with the Court, which conference may be obtained either by conference call or, upon obtaining permission from chambers, the submission of a brief letter application, not exceeding 1 page in length. At the conference, the Court will set a schedule for making the motion, opposing it, and, if applicable, for reply. Motions are to be returnable on Fridays. Motions made returnable at any other time, absent prior permission of the Court, will be adjourned by the Part Clerk to the next available Friday.

Adjournments of motions are governed by Rule 16(c) of the Commercial Division Rules.

Motions are submitted without oral argument, unless otherwise directed by the Court. Sur-reply papers, including reply papers in support of a cross-motion, are not permitted, absent prior permission of the Court. Any unauthorized papers will not be read and will be discarded. All e-filed documents must be text-searchable. The submission of documents containing hyperlinks and bookmarks is strongly encouraged.¹

All papers must comply with the applicable provisions of the CPLR and with Rules 16 and 18 of the Commercial Division Rules. In addition, the font size of text and footnotes must be no smaller than 11 point. Papers which do not comply may be rejected.

The parties are required to submit Rule 19-a statements with all motions for summary judgment. Any motion that omits such a statement will be denied, and any opposition that fails to respond to it as set forth in Rule 19-a will be disregarded.

All exhibits shall be separately tabbed. In the event that multiple affidavits or affirmations are submitted in support of a motion under the same legal back, each such exhibit shall be accompanied by a clearly discernible side or bottom tab containing the last name of the affiant.

If the parties cannot agree to confidentiality or sealing, the Court will consider a motion pursuant to Part 216 of the Rules of the Chief Administrative Judge after holding a conference, as set forth above.

The Court generally does not stay disclosure pending determination of motions to dismiss or motions for summary judgment (made prior to completion of discovery).

¹See 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>.

Discovery:

A. Motions

With respect to cases already assigned to this Court at the time that a discovery dispute arises, no motion with respect to the dispute shall be made without a prior conference with the Court, which may be obtained by submission of a letter application, not exceeding one page in length.

With respect to cases in which a discovery motion accompanies the Request for Judicial Intervention which leads to the assignment to this Court, no opposition papers shall be served until there has been a prior conference with the Court, which may be obtained by letter application, not exceeding one page in length. The application for a discovery conference may be made by the movant or by the opposing counsel; however, the application must be made within eight days of service of the motion. Failure to request a discovery conference may result in the denial of the motion.

The Court endeavors to resolve discovery disputes promptly, usually by conference, which may be held telephonically or in person. In the event that the dispute is not resolved, the Court will set an expedited briefing schedule. Counsel shall, prior to requesting a conference, meet in person to discuss the issues and endeavor to resolve or limit them, prior to seeking judicial intervention.

B. Other Discovery Issues

The number of interrogatories, including subparts, shall be limited as set forth in Rule 11-a.

Preliminary Conferences:

Upon receipt of a letter from the Court scheduling a preliminary conference, counsel shall meet in person and shall jointly prepare a brief statement describing the case and the contentions of the parties. In addition, counsel shall jointly complete a proposed Preliminary Conference Order, on the form supplied by the Court (also available on the Court's website).

These submissions shall be furnished to the Court no later than 12 p.m. on the day prior to the conference. In the event that the Court does not receive the submissions, the Court will take such action as may be appropriate under the circumstances, including adjournment of the conference, requiring counsel to complete the forms at the conference, or other steps.

Compliance Conferences:

The Court will schedule a Compliance Conference at the Preliminary Conference. The purpose of the Compliance Conference is to monitor the progress of discovery, make rulings about any issues that have arisen and explore potential settlement. The parties must fill out the Compliance Conference Order, available on the Court's website, and submit it to the Court no later than 12 p.m. on the day prior to the conference. In the event that the Court does not receive the submissions, the Court will take such action as may be appropriate under the circumstances, including adjournment of the conference, requiring counsel to complete the forms at the conference, or other steps.

Transcripts:

Where the Court decides a motion on the Record, the prevailing party shall order the transcript, and promptly e-file the transcript. A hard copy shall be delivered to Chambers to be so-Ordered.

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 other mediation. In the letter, they should state whether they prefer that discovery continue or be stayed during the mediation process. The Court will then determine whether it will allow the stay or not.

Trial Readiness Conference:

At the Trial Readiness Conference, the Court expects that the parties will report that all discovery is completed, and that the Court will issue a Trial Readiness Order. If the parties have not sought the Court's assistance with respect to any discovery disputes, the Court may determine that the issue has been waived. At the Trial Readiness Conference, the parties must state whether they intend to file motions for summary judgment. The parties shall be prepared to enter into a briefing schedule for such motions, which shall be made within 45 days of the filing of the Note of Issue, absent unusual circumstances.

Settlement Conference:

Prior to a Pre-Trial Conference, the Court will schedule a Settlement Conference. The parties may also request a Settlement Conference at any time during the pendency of the action. At a Settlement Conference, the Court requires the attendance of counsel with authority to settle the action, as well as the parties, unless the Court has previously waived the parties' appearances. The Court may meet with each side separately during such a Settlement Conference to facilitate settlement discussions.

Pre-Trial Conferences and Trials:

At the Pre-Trial Conference, the Court will schedule the return date for motions in limine, if any.

At the Pre-Trial Conference, at least 20 days prior to the start of the trial, the parties are to submit:

(A) pre-trial memoranda

(B) proposed facts to be proven at trial

(C) a list of witnesses each party expects to call at trial, with each witness listed as an expert or fact witness. If the witness is an expert, state whether the parties agree or dispute that witness' status as an expert.

(D) a list of exhibits that each party plans to use at trial. The list must state whether the exhibit is in dispute or not. Exhibits that are not in dispute must be pre-marked; parties are to contact and work with the court reporter to mark exhibits prior to the trial. Parties should have copies of the exhibits for all parties, the witness and the Court. The Court's exhibits should be tabbed, in a binder.

(E) if it is a jury trial, the parties must submit proposed jury charges and a proposed verdict sheet. Any charges that diverge in any fashion from the Pattern Jury Instructions must be accompanied by a brief memo, supported by case law.