

### Practices for Part 3

**Courtroom hours are from 9:15 a.m. to 5:00 p.m.  
Lunch recess is from 1 p.m. to 2:15 p.m, with the courtroom closed at that time.  
Due to financial constraints, these hours are strictly observed.**

1. The Commercial Rules govern all cases before Justice Bransten unless modified or changed below.
2. 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*

*Index No. 600XXX/20XX  
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3. Stipulations and any other documents submitted to the Court to be so-ordered must be provided in hard copy with an explanatory cover letter.
4. The Part Clerk is unable to accept deliveries between 12:45 - 2:15 p.m. or after 4:30 p.m. No deliveries to chambers will be accepted.
5. Parties are to bring copies of all prior discovery orders to each court appearance.

### **Communications with the Court**

1. Neither Justice Bransten nor any of her court attorneys will speak to any litigant or any attorney regarding any matter without all parties to the action on the line.
2. All inquiries regarding the scheduling of appearances must be directed to the Part 3 Clerk, Mr. Gregory D'Albero, who can be reached at (646) 386-3287 between 9:30 and 12:45 p.m. and between 2:15 and 4:30 p.m.
3. Requests for adjournments or extensions of time and/or page limits shall be made by letter, with notice to all parties. Such a request must include: (a) must be made at least two business days prior to scheduled appearance or deadline for submission; and (b) any party contacting the Court for an adjournment or extension of time must state: (i) the original date; (ii) the number of previous requests for adjournment or extension; (iii) whether prior requests were granted or denied; (iv) whether ALL other parties consent; and (v) assuming that ALL parties consent, and a request for an adjournment is being made, two proposed alternative dates. There shall be no adjournments without court permission.
4. A party will not be excused from a scheduled appearance without first seeking and receiving leave from the Court.

5. All correspondence to the Court must be e-filed, hand delivered in hard copy to the Clerk in Part 3 courtroom, Room 442, and sent to all parties. Faxes will no longer be accepted.
6. Correspondence to the Court should include each party recipient's email address.

### **Requests for Admission Pro Hac Vice**

1. All requests for admission must be made by order to show cause or motion and shall be accompanied by an affidavit in support from a member of the Bar of the State of New York and an affidavit and a recent certificate of good standing from the applicant. Each attorney seeking admission must file a separate motion or order to show cause.
2. The applicant's affidavit must advise the Court as to the total number of times the applicant has been admitted pro hac vice in New York. The applicant's affidavit must also advise the Court whether he/she has ever been or is presently subject to a disciplinary proceeding.
3. It is preferred that the parties stipulate to the pro hac vice admission. Inclusion of a stipulation signed by all parties with the motion papers will greatly shorten the application time period.

### **Confidentiality Orders & Sealing**

1. Any order regarding the confidential exchange of information shall be based on the Stipulation and Order for the Production and Exchange of Confidential Information as contained within the Rules of the Commercial Division, available on the New York Court's website at:  
  
[https://www.nycourts.gov/rules/trialcourts/202.70\(g\)%20-%20Rule%2011-g%20\(attachment\).pdf](https://www.nycourts.gov/rules/trialcourts/202.70(g)%20-%20Rule%2011-g%20(attachment).pdf)
2. If the parties deviate from the above model in any way whatsoever, the parties shall submit: (1) a copy of the parties' proposed confidentiality order; (2) a redline of the document showing the deviations from the form listed above at Point One; and, (3) a letter to the Court explaining the reasons for such changes. Any opposition to the proposed changes shall be submitted no later than three business days after the proposed order, redline, and accompanying letter are sent to the Court.
3. All parties wishing to submit documents under Seal to the Court, in connection with motion submissions, are required to file an Order to Show Cause showing proper reason to seal, and "good cause" therefor, pursuant to 22 NYCRR §216.1. Sealing may not be done by stipulation.

4. Prior to filing a motion seeking the sealing of documents, all parties are to meet and confer with one another concerning the request. The Court prefers a joint filing for sealing wherever possible.
5. All parties are to consult *MBIA Insurance Corporation v. Countrywide Home Loans, Inc.*, No. 602825/08, 2013 WL 450030 (Sup. Ct. N.Y. Cty. 2013) (“MBIA Sealing Order II”); *Mosallem v. Berenson*, 76 A.D.3d 345, 348 (1<sup>st</sup> Dep’t 2010); *Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 502 (2d Dep’t 2007) for instructions on limits imposed on sealing. The Court is typically interested in redacting potential confidential information from documents as opposed to the wholesale sealing of documents.
6. When submitting motions, the Court requires the original, unredacted version of the documents be provided as exhibits and the proposed redacted version of the documents provided as a subset of that exhibit. (i.e. Original document provided as Exhibit “1”; document with proposed redactions provided as Exhibit “1a”). These exhibits are to be hand delivered to the Court so they can be assessed in conjunction with the sealing motion and are not to be e-filed on NYSCEF. This is the only exception to the requirement that all submissions and motions and their exhibits are to be e-filed on NYSCEF.
7. Along with the motion to seal should be a spreadsheet or chart jointly created by the parties indexing: a) the title of the document to be sealed; b) the party wishing to seal it; c) the reason as why the document should be sealed and/or redacted; d) whether any party objects to this request and, if so, e) on what basis.
8. No motions should be submitted referencing or annexing the documents which are the subject of a sealing motion until a decision on the sealing motion has been issued. No exceptions.

### **Discovery Disputes and Conferences**

1. Parties are to use this Part’s Preliminary Conference Order and Compliance Conference Order in conjunction with Court conferences.

The New Revised Preliminary Conference Stipulation and Order can be found here: <http://www.nycourts.gov/courts/comdiv/ny/PDFs/PreliminaryConferenceOrderPart3-NewRevd101017.pdf>

The New Model Compliance Conference Stipulation and Order can be found here:

<https://www.nycourts.gov/courts/comdiv/ny/PDFs/COMPLIANCECONFERENCEORDER.pdf>

The New Model Status Conference Stipulation and Order can be found here:

<http://www.nycourts.gov/courts/comdiv/ny/PDFs/NewModelSCStipOrderPt3101017.pdf>

2. Pursuant to Commercial Division Rule 24(c), discovery disputes are preferred to be resolved through a court conference – not through motion practice – unless otherwise directed. The court conference will most often be an arranged conference call with chambers, where all parties are to be on the line and then place a call to chambers.
3. For all disputes, the parties shall outline their position in a pre-conference letter addressed to Justice Bransten not to exceed three pages (excluding exhibits). Font of the letters is to be Times New Roman, Size 12. The letter shall describe the good faith effort by the parties to resolve the dispute, *see* Commercial Division Rule 14, and must be delivered in hard copy to the Court. The non-moving party is to submit a rebuttal letter no later than 3 business days after the moving letter is filed. While all submissions must be electronically filed on NYSCEF, conferences will not be conducted until the Court receives hard copies of all submissions.
4. Each party is to submit only one letter per requested conference call, unless specific leave from the Court is given. As practical, parties are to join as many outstanding discovery issues as possible for resolution in this one letter. The opposing party's letter should only address each point in the requesting party's letter. If necessary, the opposing party may also file one letter requesting additional relief, which can be answered.
5. If satisfactory resolution is not achieved through a court conference, then leave will be given for the parties to file the appropriate motion. Failure to abide by this rule may result in a motion being held in abeyance until the Court has an opportunity to conference the matter.

### **Motion Practice**

1. All motion papers are required to have the appropriate Motion Sequence Number to which they are related placed on the front page.
2. All courtesy copies submitted in connection with a motion must include the correct motion sequence number, be properly backed, and, where necessary, include proper bottom tabs. Plaintiff shall use lettered exhibits ("Exhibit "A") with motion submissions; Defendant is to use numbered exhibits ("Exhibit "B"). Courtesy copies are required for all motion submissions.
3. All submitted papers are to have an e-file confirmation sheet attached to the back of the document, over the litigation back.
4. All motion submissions which include deposition transcripts, arbitration awards or hearing transcripts as exhibits must include the entire document, including the front page, the signature page, errata sheets and court reporter signature pages. If a decision is made

by another court based on argument and decision on the record, the record and/or transcript must be included with the order as an exhibit.

5. Absent compelling circumstances, all parties must be present when injunctive relief is sought. The moving party must provide sufficient notice to all parties and the opposing party cannot intentionally delay the Court's action on an Order to Show Cause for injunctive relief by not appearing.
6. At the conclusion of oral argument, the movant is to order the transcript and have a copy sent to the Court, delivered to the Part 3 Clerk, Room 442. The motion(s) will not be marked submitted for consideration until a transcript has been received.
7. Rule 19-a Statements of Material Facts are required when moving for or opposing summary judgment. The proponent of a motion for summary judgment shall state the undisputed material facts with reference to appropriate documentation. The opposing party in its response shall first repeat the movant's claimed undisputed facts followed by its response including reference to appropriate documentation.
8. 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. Affirmations should not include arguments of law. Counsel's "memo-affs" will not be considered by the Court.
9. All memoranda of law must include a Table of Contents and a Table of Authorities.
10. All footnotes in papers submitted to the Court must be in 12-point font.

#### **Motions by Notice of Motion**

11. Courtesy copies of all e-filed papers and exhibits for motions returnable in Room 130, the Submissions Courtroom, must be delivered to Room 130. Courtesy copies for motions returnable in the Submissions Courtroom may not be accepted in the Part 3 courtroom absent prior permission from the Court.

#### **Motions by Orders to Show Cause**

12. Courtesy copies of e-filed opposition and reply papers and exhibits related to Orders to Show Cause must be delivered to the Part 3 courtroom, Room 442, between the hours of 9:30 a.m. - 12:45 p.m. and 2:15 p.m. - 4:30 p.m, by the date specified in the Order to Show Cause. Courtesy copies may not be accepted during the lunch recess or after 4:30 p.m. Extra copies of papers will not be accepted, and it is not necessary to submit courtesy copies of an Order to Show Cause that has been signed by Justice Bransten.

### **Trial Rules**

1. Prior to being given a trial date, parties must present to some form of Alternate Dispute Resolution and/or mediation (either Court facilitated or private).
2. No adjournments of the trial date will be granted absent exceptional circumstances. Requests for an adjournment must be made in writing to the Court and not by phone call to the Clerk of the Part.
3. No electronic media devices will be permitted absent express permission from the Court. Requests should be made to the Court in writing and the reasons for the request must be clearly stated.
4. 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.
5. Failure to comply with the deadlines listed below may result in an adjournment of the scheduled trial date.
6. The parties are expected to meet and confer regarding the timely submission of pre-trial materials well in advance of the deadlines listed below.

#### **30 Days Prior to Jury and Non-Jury Trials**

7. After meeting and conferring, the parties are each to submit the following at least thirty days prior to the start date of the trial:
  - (a) Pre-trial memorandum briefs.
  - (b) Proposed facts to be proven at trial.
  - (c) A list of witnesses each party expects to call at trial. The witness list must state whether each witness is a fact or an expert witness. If a witness is listed as an “expert,” state: (i) the subject of the expert’s testimony and (ii) whether the parties agree or dispute that witness’s status as an expert for purposes of the trial. The Court need only be advised of witnesses each party will call as part of their case-in-chief. The Court reserves the right to permit rebuttal witnesses upon application from the parties.
  - (d) A list of exhibits that each party may use at 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 immediately entered into evidence upon introduction at trial. Parties are to contact and work with the court reporter to mark exhibits in advance of trial.
  - (e) All documentary evidence to be submitted at trial must be bates stamped.

All submissions should be both e-filed and hand delivered to the Part in hard copy. An inability to meet and confer, which promptly documented, will not excuse untimely submissions.

**20 Days Prior to Jury and Non-Jury Trials**

8. At least twenty days prior to the start date of the trial the parties are to each submit:

- (a) Motions in limine.
- (b) One copy of all exhibits to be used at trial. The parties should additionally be prepared to hand to the Court one copy of every document that is introduced at trial.

All submissions should be both e-filed and delivered to the Part in hard copy. An inability to meet and confer will not excuse timely submissions.

**10 Days Prior to Jury Trial**

9. If the trial is by jury, counsel will be required to submit proposed jury charges and a proposed verdict sheet. All submissions must be submitted in hard copy and on CD or thumb drive in Word format ten days before trial.

- (a) The Court will accept submissions of proposed opening jury charges for the Court to read to the jury upon the onset of the trial. Proposed opening jury charges must be submitted in hard copy and on CD or thumb drive in Word.
- (b) The Court supervises jury selection. Parties may submit proposed questions for use by the Court during jury selection.

10. The Court will expect each party to make a three-minute presentation to the jury panel regarding its case at the beginning of voir dire. If there are multiple defendants or plaintiffs, each side shall have a maximum of four minutes for its presentation, with the time to be divided among the parties' attorneys as they wish; however, each attorney is expected not to repeat the presentations offered by his or her colleagues.

All submissions should be both e-filed and delivered to the Part in hard copy. An inability to meet and confer will not excuse timely submissions.

11. If depositions are to be used at trial, the parties shall provide the Court with a copy of each such deposition for the Court's use.

**First Day of Trial**

12. Parties shall provide witness lists, a glossary of names and any unusual words and any acronyms they anticipate using during the trial to the court reporter the morning that the trial is set to begin.
13. For both jury and non-jury cases, the Court requires that the parties order a daily copy of the transcript during trial.

(Updated 10/27/17.)