

HON. JOEL M. COHEN

PART 3 – PRACTICES AND PROCEDURES (*revised February 13, 2019*)

**Supreme Court of the State of New York
Commercial Division
60 Centre Street, Courtroom 222
New York, NY 10007**

**Part Clerk/Courtroom Phone: 646-386-3287
Chambers Phone: 646-386-4927**

Principal Court Attorney:	Lauren A. Jones, Esq. (ljones@nycourts.gov)
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Courtroom Part Clerk:	Michael O'Connor
Chambers email address:	sfc-part3@nycourts.gov

Courtroom hours are from 9:30 a.m. to 4:30 p.m.

Lunch recess is from 1 p.m. to 2:15 p.m. The courtroom is closed during that time.

Oral Argument on Motions: As scheduled by the Court.

Pretrial Conferences: As scheduled by the Court.

Preliminary, Compliance, and Status Conferences: Tuesdays beginning at 9:30 a.m.

I. GENERAL

- A. The CPLR and the Rules of the Commercial Division, 22 NYCRR 202.70, are incorporated herein by reference.
- B. Neither Judge Cohen nor his law clerks will speak to any attorney or litigant regarding any matter without all parties to the action present or on the phone. If it appears that opposing counsel is refusing to participate for tactical reasons, the Court will take appropriate steps to permit the party seeking relief to be heard.
- C. Judge Cohen's law clerks only accept phone calls between 3:00 p.m. and 5:00 p.m. Communications at other times should be directed to the Part Clerk or by email to Chambers at sfc-part3@nycourts.gov.
- D. Voicemail and email to Chambers or the Part are not substitutes for seeking relief through filings on NYSCEF. Parties and counsel should not assume that such communications have been heard or read unless they have received a response.

II. SUBMISSION OF DOCUMENTS

- A. Part 3 is an e-filing Part. Judge Cohen does not accept working/courtesy copies of documents, with the following exceptions:
- a. Orders to Show Cause. Hard copies of proposed orders to show cause seeking expedited relief, including supporting materials, must be hand delivered to the Part promptly after e-filing. The proposed order to show cause should also be e-mailed to Chambers at sfc-part3@nycourts.gov as a Word document.
 - b. Post-Trial Briefs: A courtesy copy of each party's post-trial brief (*see* VII (d) *infra*) should be emailed to Chambers at sfc-part3@nycourts.gov as a Word document.

III. CONFERENCES

A. Preliminary Conferences.

- a. Parties are to use this Part's standard form Preliminary Conference Order. Copies are available on the Commercial Division website (<http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>), from the Part Clerk, or in the Courtroom.
- b. Parties are to meet and confer and fill out the Preliminary Conference Order in advance of the Conference. If there are no disputes between the parties as to the Proposed Order, *and the Proposed Order does not extend the time periods set forth in the Part's standard form*, the parties may drop off the Proposed Order at or before the designated conference time and leave, or the parties may upload a Proposed Order to NYSCEF. Signed Orders will be uploaded to NYSCEF. If the Court requires a discussion regarding the Proposed Order, the parties will be notified.

B. Compliance Conferences.

- a. At least seven days prior to the compliance conference, counsel shall submit a joint letter not exceeding three single-spaced pages setting forth the status of discovery, describing any significant disputes to be addressed at the conference, whether there are any outstanding motions and/or appeals, and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement.

C. Status Conferences.

- a. At least seven days prior to the status conference, counsel shall submit a joint letter not exceeding three single-spaced pages setting forth a summary of the case,

the status of discovery, any proposed revisions to the schedule through Note of Issue, whether there are any outstanding motions and/or appeals, and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement.

IV. ADJOURNMENTS

- A. Absent extraordinary circumstances, all adjournment requests must be made at least: (i) 24 hours in advance of a scheduled conference; (ii) 48 hours in advance of a scheduled oral argument or other hearing; or (iii) two weeks in advance of trial, and must state the reason for the adjournment, whether all parties consent, and whether any prior adjournments of the date have been sought or obtained.

V. MOTION PRACTICE

- A. Pre-Motion Letters. Except for discovery motions (Section VI below), no prior permission or letters pursuant to Commercial Division Rule 24 are required before making a motion. If the parties believe the dispute may be resolved quickly, and without the need for formal motion practice, they can request a pre-motion conference.
- B. Memoranda of Law.
- a. All motion papers (in support, opposition, or reply), whether by notice of motion or order to show case, must include a Memorandum of Law containing (if it exceeds ten pages) a Table of Contents and Table of Authorities. Affidavits or Affirmations of counsel containing legal argument should not be submitted.
 - b. In cases with multiple plaintiffs and/or defendants, parties with common interests and arguments are strongly encouraged to file joint briefs.
- C. Motion for Summary Judgment. The provisions of Commercial Division Rule 19-a are applicable in this Part. The Court welcomes hyperlinked versions of complex summary judgment briefs (with links to exhibits and cases), but they are not required.
- D. Motion Sequence Number. All papers must have the appropriate Motion Sequence Number to which they are related placed on the front page.
- E. Oral Argument.
- a. Requests for oral argument may be included in the Notice of Motion or in the Opposition papers. If the Court concludes that oral argument is not necessary, a written Decision will be issued on the submitted papers.

- b. Requests for oral argument are more likely to be granted if counsel identifies a lawyer out of law school for five years or less who will argue the motion and references this rule in the request.

VI. DISCOVERY

- A. The Court expects parties and counsel to proceed cooperatively and professionally during discovery, with an emphasis on efficiency, practicality, and proportionality. Parties and counsel should assume that the Court is able to distinguish between those who solve problems and those who create them unnecessarily.
- B. Discovery motions are discouraged. If a dispute cannot be resolved after good faith efforts to meet and confer, the parties should proceed in accordance with Commercial Division Rule 14.

VII. TRIAL RULES

A. Pretrial Submissions:

- a. The submissions required under Commercial Division Rule 26 shall be made at least **seven days prior to the Pretrial Conference**.
- b. The submissions required under Commercial Division Rules 27, 28, 29, 31(a), 31(b), and 32, plus marked pleadings and a Joint Statement of Stipulated Facts and Procedural History, shall be made at least **ten days prior to Trial**.
- c. The following shall be submitted at least **ten days prior to a Jury Trial**:
 - i. A short summary (one or two sentences) of your party's claims to be used by the Court as part of the preliminary instructions to the jury before opening statements.
 - ii. Proposed jury instructions, including the text of PJI instructions, should be submitted by email to Chambers (sfc-part3@nycourts.gov) in Word format. The submissions should note the instructions to which the parties have stipulated.
 - iii. Any proposed deviations from PJI instructions should be highlighted and explained, with citations to legal authority where appropriate.

B. Transcripts. For both jury and non-jury cases, the Court requires that the parties order a daily copy of the transcript during trial. The parties are to e-file the transcripts after trial.

C. Submission of Exhibits After Trial. After trial, counsel shall upload to NYSCEF a list of exhibits that were admitted into evidence. Counsel should provide to Chambers (via the

Part Clerk) a flash drive containing copies of those exhibits, identified by exhibit number. The flash drive should be clearly marked with the short caption and index number of the case.

D. Post-Trial Briefs.

- a. Two weeks after receiving the transcript in a non-jury trial, the parties are to submit post-trial briefs of up to 7,000 words (excluding caption, table of contents, table of authorities, and signature blocks). For extraordinarily complex trials, the Court will consider requests for expanded word limits, particularly if similarly situated parties will be submitting joint briefs.
- b. The post-trial briefs should be organized as follows:
 - i. Preliminary Statement (optional)
 - ii. Proposed Findings of Fact
 - iii. Proposed Conclusions of Law, separately for each cause of action (claim, counterclaim, cross-claim, and third-party claim)
 - iv. Conclusion – including specific relief sought for each cause of action
- c. No responsive briefs will be accepted unless requested by the Court.
- d. The Court welcomes hyperlinked versions of post-trial briefs (with links to exhibits and cases), but they are not required.