

**PRACTICE RULES FOR PART 61**  
**JUSTICE BARRY R. OSTRAGER**

**Courtroom hours are from 9:30 a.m. to 4:30 p.m. in Room 232 at 60 Centre Street. Lunch recess is from 1:00 p.m. to 2:15 p.m., with the courtroom closed at that time.**

1. The Uniform Civil Rules for the Supreme Court and the Rules of the Commercial Division govern all cases before Justice Ostrager, unless modified by the Individual Rules of Justice Ostrager set forth herein. <http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>

2. Appearances are staggered by time to facilitate an orderly calendar. All counsel are expected to appear in a timely fashion for any scheduled appearance and to promptly check in with the Part Clerk. Punctuality is strictly enforced. No party will be excused from any scheduled appearance date or time without first seeking and receiving leave from the Court. Counsel shall appear ready to discuss all matters, including settlement, at any scheduled appearance.

3. Part 61 is a working copy Part. Working copies of all motion papers, including any opposition and reply papers, shall be prepared with exhibit tabs and the e-filing confirmation sheet indicating the NYSCEF filing number and the motion sequence number. All such papers shall be delivered directly to Room 130, the Motion Submission Part, on the date the motion is calendared in Room 130. No additional courtesy copies are required. No motion papers may be delivered to the courtroom unless expressly requested by the Court in writing or if presented in connection with an Order to Show Cause pursuant to the separate procedure set forth below.

4. All other documents submitted to the Court for review and/or signature, such as stipulations and proposed orders, shall be accompanied by a brief cover letter that states on the first page the caption of the case, the Index Number, and the next scheduled appearance date. Working copies of all such papers shall be delivered to Room 232 with proof of e-filing.

5. The Part Clerk is unable to accept deliveries between 12:45 p.m. - 2:15 p.m. or after 4:15 p.m. No deliveries to Chambers will be accepted.

**Communications with the Court**

6. Neither Justice Ostrager nor anyone in Chambers will speak to any attorney or self-represented litigant regarding any matter without all parties to the action on the line. No calls to Chambers shall be placed, nor emails sent, unless authorized in advance by the judge or a member of the staff or as permitted by the Rules.

7. All inquiries regarding the scheduling of discovery conferences must be directed to the Part 61 Clerk, Alex Giuffre, at (646) 386-3169 between 9:30 a.m. and 12:45 p.m. and between 2:15 p.m. and 4:15 p.m. All inquiries regarding the scheduling of oral argument on a motion must be directed to Patricia DellaPeruta in Chambers at (646) 386-4150 with all parties on the line. Please have the Index Number of the case and appearance date readily available when you call. Any adjournment granted shall be confirmed in writing by the applicant with copies sent to all parties and the Court.

8. Any request for the adjournment of a settlement conference, a pre-trial conference or a trial, or for an extension of time to comply with a court order or rule, shall be made by letter to Justice Ostrager delivered to the courtroom with all relevant information and proof of e-filing.

9. Any party seeking any such adjournment or extension must receive Court permission at least 48 hours before the scheduled date, absent exceptional circumstances. To the extent the adjournment or extension must be So Ordered by the Court, the party seeking the adjournment or extension shall submit a proposed order.

## **Discovery Disputes and Conferences**

10. Justice Ostrager expects full compliance with all discovery orders, absent good cause shown. No motion of any type shall stay discovery, unless the Court has expressly granted a stay. Should a party have good cause to seek an extension or modification of any discovery deadline, counsel shall submit a written request well in advance of the deadline at issue, even if the proposed modification is on consent. Should any party fail to comply with a discovery deadline, or fail to follow the procedures set forth in these Rules, the Court in its discretion will consider imposing sanctions, such as conditional orders of preclusion or dismissal, an award of attorney's fees, or other appropriate relief.

11. Discovery motions are prohibited unless express permission has been given in advance on the record or in writing by Justice Ostrager or one of the Law Clerks. Counsel are expected to resolve discovery disputes through the meet and confer process. If rulings are required that cannot await the next scheduled discovery conference, counsel may seek to advance the appearance date by letter not exceeding one page describing the nature of the dispute. The letter shall be e-filed and delivered to the Part Clerk, and counsel shall thereafter telephone the Part Clerk with all counsel on the line to arrange an appearance date. Counsel shall bring to the conference all documentation and case law necessary to resolve the dispute and will be given the opportunity to present their arguments to Justice Ostrager on the record. Counsel shall thereafter order a copy of the transcript from the Court Reporter to be So Ordered by the Court and e-filed by the Part Clerk.

12. If a satisfactory resolution of the discovery dispute is not achieved through the court conference, the Court in its discretion may grant leave for the parties to file the appropriate motion. Failure to abide by this rule requiring prior permission for a discovery motion will result in a motion being denied in the discretion of the Court.

## **Motion Practice**

13. No pre-motion conference is required, except for discovery motions noted above.

14. All motion papers are required to have the appropriate Motion Sequence Number to which they are related placed on the front page below the Index Number, with the e-filing confirmation sheet and any redaction sheet attached to the back of the document, over the litigation back. The filing procedures are set forth at the beginning of these Rules.

15. Statements of Material Facts are required when moving for or opposing a motion for summary judgment. Any dispositive motion must be made within 60 days of the filing of the Note of Issue, unless the Court orders otherwise. Only one motion for summary judgment may be made, whether made before or after the filing of the Note of Issue, unless the Court orders otherwise.

16. Affirmations submitted in support of or in response to dispositive motions must be separate from any memoranda of law. Affirmations should not include arguments of law.

17. Upon the receipt of a fully submitted motion, oral argument will be scheduled by the Court via an official Court Notice transmitted through the e-filing system. All counsel are expected to keep their contact information updated through the E-filing Clerk's Office.

18. Following oral argument, the movant shall order the transcript and arrange with the Court Reporter to have a copy sent to the Court, delivered to the Part 61 Clerk. Justice Ostrager will So Order the transcript and the Part Clerk will e-file it.

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

19. As indicated above, working copies of all e-filed papers and exhibits for motions returnable in Room 130, the Motion Submissions Courtroom, must be delivered to Room 130 on the return date of the motion, and not to the Part Clerk in the Courtroom, unless the Court directs otherwise in a Court Notice.

20. Any application to adjourn a motion pending in Room 130 shall be directed to Room 130. No more than three adjournments for an aggregate of 60 days from the original return date shall be permitted absent a Stipulation So Ordered by Justice Ostrager.

### **Motions by Order to Show Cause**

21. An Order to Show Cause shall be initiated by filing working copies of the appropriate papers with the Commercial Division Clerk in Room 119, with proof of e-filing. Counsel are responsible for retrieving the Order to Show Cause from the Clerk's Office after it has been processed and delivering the official court file with a complete set of working copies to the Part Clerk in the courtroom 232.

22. Working copies of e-filed opposition and any permitted reply papers and exhibits related to an Order to Show Cause must be delivered to the Part 61 Courtroom, Room 232, between the hours of 9:30 a.m. – 12:30 p.m. and 2:15 p.m. - 4:15 p.m., by the date and time specified in the Order to Show Cause for service of the papers. No cross-motion will be accepted absent the prior permission of the Court sought by conference call or as specified in the OSC.

23. Absent compelling circumstances, all parties must be present when any temporary restraining order is sought. If the OSC seeks a preliminary injunction, counsel shall be prepared for an evidentiary hearing on the return date of the motion.

### **Trial Rules**

24. Assigned trial dates are considered firm. No adjournment of the trial date will be granted absent exceptional circumstances. Any request for an adjournment must be made in writing to the Court well before the scheduled trial date, with the reason briefly stated.

25. 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.

26. The parties are expected to meet and confer regarding the timely submission of pre-trial materials well in advance of the deadlines specified below. In addition to the documents listed below that must be e-filed and submitted in advance of the trial, counsel shall prepare for the Court a notebook of all trial exhibits and complete deposition transcripts. The contents of the notebook need not be e-filed. The notebook shall be presented to the Court on the date of trial. No documents will be accepted by email unless so requested.

27. At the conclusion of the trial, counsel are expected to e-file any exhibits admitted into evidence, along with deposition transcripts used and any other document required to complete the record for purposes of any appeal.

### **Documents to be E-filed and Submitted 14 Days Prior to Jury and Non-Jury Trials**

28. After meeting and conferring, each party shall e-file and submit to the Courtroom the following papers at least fourteen (14) days prior to the start date of the trial:

- Marked pleadings
- Pre-trial memoranda
- Proposed facts to be proven at trial
- A list of witnesses each party expects to call at trial. The list must state whether each witness is a fact witness or an expert witness and the expected length of the direct examination. If a witness is listed as an expert, briefly state the subject of the expert's testimony. Compliance with CPLR §3101(d) is expected.
- A list of exhibits each party expects to use at trial. The list must state for each exhibit whether the admissibility of the particular exhibit is agreed upon or disputed. Exhibits agreed upon by the parties will be immediately admitted into evidence when offered at trial and will be marked by the Court Reporter at that time.
- Designations of deposition testimony to be read, specifying the name of the deponent, the date of the deposition, and the pages and lines of testimony proposed to be read.

### **Documents to be E-filed and Submitted 10 Days Prior to Jury Trials**

29. After meeting and conferring, each party shall e-file and submit to the Courtroom the following at least ten (10) days prior to the start date of the trial:

- All motions *in limine* shall be made by Order to Show Cause. The papers must be e-filed and filed in hard copy with the Commercial Division Clerk in Room 119 so that the Order to Show Cause is processed by the Clerk and presented by counsel to Justice Ostrager in Room 232 for signature at least ten (10) calendar days before the scheduled trial date. The Court in its discretion will set the schedule for opposition papers and the return date of the Order to Show Cause.
- Proposed jury charges and a proposed verdict sheet. If a standard PJI charge is requested without modification, only the PJI number need be listed. If any modification of a PJI charge is requested, the entire charge shall be typed with the proposed modification clearly indicated. All submissions must be submitted in hard copy and on a CD or flash drive in Word format ten (10) calendar days before trial.
- Jury selection is conducted by counsel in the Central Jury Room. Justice Ostrager does not supervise jury selection but may set time limits for jury selection.
- The Court, in its discretion and consistent with the Commercial Division Rules, may also set time limits for opening statements, summations, and witness examinations and may limit the number of trial days and/or order that direct testimony be submitted by affidavit.

## **Confidentiality Orders and Sealing**

30. Should counsel wish to enter into a Confidentiality Order, the Order shall conform to the standard form order attached as an Appendix to the Commercial Division rules. Any modification sought shall be clearly indicated in a red-lined copy and shall be limited to exceptional circumstances. Any request to have Justice Ostrager So Order the Confidentiality Order shall be e-filed and submitted in hard copy to the Part Clerk with a cover letter confirming that the Order conforms to the standard form.

31. Sealing, including redactions beyond those permitted by the Redaction Rules (i.e., date of birth, Social Security number and account numbers), is discouraged. Any request for additional redactions or sealing shall be made by Order to Show Cause and must establish “good cause” pursuant to the Uniform Rules for Trial Courts, 22 NYCRR 216.1.

32. If the Court permits additional redactions or sealing of a document in whole or in part, counsel shall e-file both the redacted copy publicly and the unredacted copy of the document under seal. Additional instructions are available from the E-filing Clerk’s Office. Working copies of both the redacted and unredacted papers shall be delivered to the Court, with a designation clearly indicating on the cover page whether the papers are redacted or unredacted.

33. Once a matter proceeds to trial, all sealing orders shall automatically be vacated unless the Court expressly orders otherwise.

Revised January 2, 2018