

JUSTICE ANDREA MASLEY

PART 48 TRIAL RULES

Updated: 07/30/2018

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, COMMERCIAL PART 48
60 CENTRE STREET, COURTROOM 242
NEW YORK, NY 10007**

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Note: The Part 48 Trial Rules supplement the Part 48 Practice Rules. Parties and counsel must be familiar with both sets of Rules, each available online on the nycourts.gov website.

I. Prior to the Commencement of Trial

1. **Pre-trial Conference:** Trial dates will be provided by the Part Clerk. Once trial date(s) are selected, parties shall contact the Part Clerk to schedule a pre-trial conference with Justice Masley. At the pre-trial conference, Justice Masley shall set time limits for the examination of each witness.
2. **Motion(s) in Limine** must be made at least 60 days prior to the commencement of trial.
3. **All Electronic Submissions** to the court must be OCR text searchable.
4. **Direct Testimony in Non-Jury Trials By Affidavit:** For non-jury trials, all direct testimony of a party's own witness shall be submitted in **affidavit form**. Upon being called at trial, a witness shall swear to the contents of his/her affidavit, the court shall hear opposing counsel's objections (if any) to the direct testimony, followed by cross examination and re-direct, if any, of the witness in court. At

least 10 business days prior to the commencement of trial, parties shall exchange direct testimony affidavits. **Direct testimony affidavits must also be e-filed, and with working copies delivered to the Part Clerk in Courtroom 242 at 60 Centre Street, at least 10 business days before trial commences.**

Exceptions:

(A) In a bench trial, a witness's direct testimony need not be submitted in affidavit form if the witness is not within the control of the party who/which intends to call the witness.

(B) **In a jury trial, a witness's direct testimony is elicited in open court, not by affidavit.**

5. **Witness Lists:** Parties shall exchange witness lists 10 business days prior to the commencement of trial. The witness list shall designate whether the witness is being called as an "expert" or "fact" witness. If designated as an expert witness, it should be indicated whether the parties agree or dispute the witness' status. Objections to the introduction of a particular witness shall be raised at trial. **Witness lists must be delivered to the Part Clerk in Courtroom 242 at 60 Centre Street at least 10 business days before trial commences.**

6. **Trial Exhibits:** Parties shall exchange exhibit books at least 20 business days prior to the commencement of trial; all exhibits must be pre-marked, and counsel must state for each exhibit whether the parties agree or dispute the exhibit's admissibility. **Exhibit books shall include a chart listing all pre-marked exhibits intended to be introduced at trial in the form reproduced in Exhibit A to these Trial Rules (see below).** Exhibits shall be pre-marked using only numbers, e.g., P1-P100; D1-D100. All exhibit pages must be one sided. Deposition transcripts shall be in miniscript format. **Exhibits must be entered into evidence at trial; exhibits not used at trial will not be entered into evidence, regardless whether the parties have stipulated to the admissibility of the evidence.** All objections to the introduction and entering of a particular exhibit shall be raised at trial.
 - (i) Trial exhibit books must be delivered to the Part Clerk in Courtroom 242 at least 20 business days prior to commencement of trial; trial exhibit books submitted to the court must not exceed 2 inches in thickness. Parties and/or counsel shall contact the Part Clerk to coordinate delivery of the actual exhibits directly to Part 48, Courtroom 242, prior to commencement of trial.

Notes: (A) Parties shall be prepared to provide each witness being examined with one paper copy of every document intended to be introduced at trial.

(B) Within 30 days of the trial's conclusion, the exhibits **entered into evidence at trial** must be submitted to Part 48 in Courtroom 242 in digital, OCR text-searchable format on either external thumb drive or CD/DVD (*see* Part II below for additional information regarding Post-Trial submissions).

7. **Pre-Trial Memoranda and Statements of Agreed Upon Facts:** Must be delivered directly to the Part Clerk in Courtroom 242, and electronically filed, at least 10 business days prior to the commencement of trial. **Only a Joint Statement of Agreed Upon Facts will be accepted; if there are no facts to which the parties agree, the parties shall not submit any statement.**
8. **Marked Pleadings:** Should be delivered directly to the Part Clerk in Courtroom 242 and electronically filed 10 business days prior to the commencement of trial.
9. **Foreign and Sign Language Translators:** Where a translator is needed, the party shall notify the Part Clerk at least 30 days prior to the commencement of trial and provide the following: witness's name, date(s) of anticipated testimony, and language and dialect spoken.
10. **Confirmation of Trial Date:** Parties shall notify the Part Clerk 7 business days prior to the commencement of the trial to confirm that the trial is going forward as scheduled. Applications to adjourn trial dates must be directed to both the Part Clerk (bhanson@nycourts.gov) and Chambers (vcorbo@nycourts.gov) no later than 2 weeks prior to commencement of trial, and there shall be **no adjournments granted absent a demonstration of good cause.** Further, no continuance will be granted if a witness is unavailable to testify absent a showing of good cause.
11. **Provide Information to the Court Reporter:** The morning/afternoon on which the trial shall begin, the parties must provide the Court Reporter with their contact information, copies of the witness lists and pre-marked exhibit lists/charts, and a glossary of names, unusual words, and/or acronyms that may be raised at trial.
12. **Demonstrative Evidence and Electronic Media:** Please contact the Part Clerk (bhanson@nycourts.gov) and Chambers (vcorbo@nycourts.gov) at least 5 business

days prior to commencement of trial for permission to use demonstrative evidence, including charts, graphics, enlarged contract language, video depositions, and electronic media devices. The court encourages the use of technology to expedite the trial; e.g., real-time transcription.

13. **Jury Trials:** For jury trials, the parties shall submit to the Court, at least 10 business days prior to trial, a witness list, proposed jury instructions, and a proposed verdict sheet. If the proposed jury instructions are verbatim from the Pattern Jury Instructions, providing the PJI numbers will be sufficient. If a PJI instruction is modified, exact language shall be supported by appropriate authority and a redline version of the changes must be submitted.

II. Post-Trial Submissions

1. Post-Trial Memoranda Briefs with Conclusions of Law and Attached Exhibits

Referenced Therein: No later than 30 days after the trial's conclusion, the parties must submit to the Part Clerk in Courtroom 242 post-trial memoranda and a thumb drive or CD/DVD with digital, OCR text-searchable copies of all exhibits entered into evidence at trial:

(A) Post-trial memoranda must be delivered to Courtroom 242 in hard copy with paper working copies of all trial exhibits referenced in the memoranda; post-trial memoranda must also be delivered to Courtroom 242 in digital, OCR text-searchable format on a thumb drive or CD/DVD. **Post-trial memoranda may not exceed 25 pages, and attached working copies of referenced exhibits shall be bound in volumes not exceeding 2 inches in width.**

(i) Separate findings of fact are optional; if submitted, findings of fact shall be delivered to the Part Clerk in Courtroom 242 in both hard copy and OCR, text-searchable digital format on a thumb drive or CD/DVD within 30 days of the conclusion of trial. There is no page limit for separate findings of fact.

(B) Within 30 days after the conclusion of trial, the parties shall submit **digital copies of all exhibits entered into evidence at trial in OCR text-searchable format on an external thumb drive or CD/DVD; exhibits not entered into evidence at trial shall not be included** (i.e., exhibits to which the parties stipulated would be admissible but which were not used and entered into evidence during the trial are **not** trial evidence and may not be included in the parties' post-trial submissions, memoranda, or findings of fact).

(i) Trial exhibit submissions must include an OCR text-searchable chart identifying and briefly describing each entered exhibit, as well as a paper working copy of the chart. The parties shall include only one exhibit per file, and each file must bear a filename identifying the corresponding exhibit number.

Note: Unless the files are so large or numerous that multiple electronic storage devices are necessary, the parties shall submit only one thumb drive/CD/DVD containing the above post-trial materials neatly and clearly organized into folders. For instance, a single thumb drive containing folders with descriptive filenames: “Plaintiff’s Post-Trial Memo and Findings of Fact”; “Defendant’s Trial Exhibits and Chart.”

2. **Discarding of Trial Materials:** After a decision is issued, the court will discard all post-trial submissions and trial exhibits. All materials produced for the trial must be removed by the parties within 48 hours of the conclusion of trial. Any trial materials not timely removed will be discarded.