

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

111 Dr. Martin Luther King, Jr., Blvd.
White Plains, New York 10601

**PRACTICE GUIDE TO COMMERCIAL DIVISION
HON. GRETCHEN WALSH, J.S.C.**

Contact Information

Lisa Nousek, Principal Court Attorney

Email: lnousek@nycourts.gov

Tel: (914) 824-5164

Fax: (914) 824-5885

Toni Guida, Principal Secretary

Email: tguida@nycourts.gov

Tel: (914) 824-5193

Fax: (914) 824-5885

Peter McIlmurray, Part Clerk

Email: pemcilmu@nycourts.gov

Tel: (914) 824-5446

Fax: (914) 824-5885

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, Peter McIlmurray, by letter correspondence uploaded to NYSCEF and emailed to the Part Clerk at pemcilmu@nycourts.gov. Do not contact Chambers regarding such issues. Requests for adjournment of matters appearing on the weekly Commercial Division Calendar should be made by not later than 12:00 p.m. on the day before. Requests made after that will likely not be granted. All requests for adjournments must be made with the request 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 must familiarize themselves with the statewide E-Filing Rules available at www.nycourts.gov/efile and the Westchester County E-Filing Protocol (available at <https://www.nycourts.gov/LegacyPDFS/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) is scheduled to begin on February 1, 2011. Submissions to the Court including motion papers, proposed orders, proposed judgments, and letters (after prior permission to send such letters is provided), 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 as a cover page firmly fastened thereto a copy of the confirmation notice received from the NYSCEF site upon the electronic filing of the document. Hard copies not bearing such cover page shall be discarded, unread. All working copies of e-filed documents intended for judicial review must include exhibit tabs and backs.

For matters on submission only, 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. **If an appearance is scheduled on the return date, working copies must be received in Chambers by 3:00 pm the day before.**

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 CANNOT BE ACHIEVED, COUNSEL ARE TO CALL OUR PART CLERK AT (914) 824-5446.

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 prior permission except with regard to the scheduling of appearances and requests for adjournment addressed to the Part Clerk. Written correspondence sent by letter, fax or any other means, without permission will not be read and will be discarded.

(b) Telephone calls:

1. Counsel may call Chambers and/or the Part Clerk to arrange for a telephone conference with the Court or with the Principal Court Attorney.
2. Counsel may not contact Chambers without all opposing counsel on the phone, except for the purpose of scheduling 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 submittal 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 at 9:30 a.m. 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 are governed by Rule 16(c) of the Commercial Division Rules.

Motions are submitted without oral argument, unless otherwise directed by the Court.

Reply papers are not permitted, unless: (a) the right of reply is obtained by service of a notice of motion in accordance with CPLR 2214(b); or (b) expressly permitted by the Court. Counsel may submit supplemental citations as allowed by Rule 18 of the Commercial Division Rules. 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 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 12 point. Papers which do not comply may be rejected.

All motions for summary judgment shall be accompanied by a Statement of Undisputed Facts that complies with the requirements of Rule 19-a (a), (d) of the Commercial Division Rules. A motion for summary judgment which lacks such a statement may be rejected. All opposing papers must include a response to the Statement of Undisputed Facts that shall comply with Rule 19-a (b), (d) of the Commercial Division Rules.

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.

No motion papers will be sealed without a prior, or contemporaneous, application for sealing made pursuant to Part 216 of the Rules of the Chief Administrative Judge.

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

Discovery Disputes:

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 (1) page in length. Counsel must obtain permission from Chambers prior to the submission of such letter application.

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 (1) 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 (8) days of service of the motion. Counsel must obtain permission from Chambers prior to the submission of a letter application. 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.

Preliminary Conferences:

Upon receipt of correspondence 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). Counsel are advised that the Court will usually require that discovery be completed within six months of the date of the Preliminary Conference. However, the Court will consider the amount of discovery anticipated (*i.e.*, the number of potential witnesses to be deposed and the volume of document production) in scheduling the discovery cut-off date. These submissions shall be furnished to the Court not later than 12 p.m. on the day prior to the Preliminary 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.

At the Preliminary Conference the Court will review all the proposed dates and, if those dates are acceptable, will sign the Preliminary Conference Order. While the interim dates may be adjusted without a further order from the Court, the date scheduled for the completion of discovery and the date scheduled for the Trial Readiness Conference may not be modified without the Court's prior written approval (*i.e.*, a so-ordered stipulation).

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. Counsel should be advised that absent extraordinary circumstances, an action will not be stayed pending mediation process.

Trial Readiness Conference:

At the Trial Readiness Conference, the Court will expect that the parties will report that all discovery is completed so that the Court may certify that the case is ready for trial through the issuance of a Trial Readiness Order, which will also direct that Plaintiff serve and file the Note of Issue within 10 days of the Trial Readiness Order. If the Court has not heard from the parties since the Preliminary Conference concerning any discovery dispute, the Court may well determine at the Trial Readiness Conference that all discovery not completed has been waived. At the Trial Readiness Conference, counsel must be prepared to address whether they wish to file summary judgment motions or if they wish to go directly to trial, in which case the Court will schedule the Trial Date and the Pre-Trial Conference Date, which will be held at least 10 days before trial. Absent unusual circumstances, the Court will likely direct in the Trial Readiness Order that all motions (**no cross-motions for summary judgment will be permitted**) for summary judgment must be served/filed within 45 days of the service/filing of the Note of Issue. At the Trial Readiness Conference (or any time during the pendency of an action), counsel may request that a settlement conference with the Court be scheduled.

Pre-Trial Conference:

Prior to the Pre-Trial Conference, counsel shall be expected to have exchanged: (1) witness lists; (2) deposition designations; and (3) proposed exhibits. Counsel are expected to meet and confer

concerning the deposition designations so that they may be jointly submitted with each side's designations to follow the other side's designations in page order in a joint binder. They are further expected to have resolved all non-substantive issues concerning the admissibility of the proposed exhibits such as extraneous writings found on such exhibits. At the Pre-Trial Conference, each side is expected to provide two sets of exhibit binders to the Court (one set for the witness, which shall be the official set, and one set for the Court) as well as one set for his/her adversary. The parties are requested to use different color binders (*e.g.*, Plaintiff using white binders and Defendant using black binders, but any color combination is acceptable) so that each side's exhibits are readily distinguishable. The proposed exhibits may be pre-marked for identification (one party using numbers and the other party using letters of the alphabet). **All motions *in limine* must be made returnable by no later than the date scheduled for the Pre-Trial Conference.**

At the Pre-Trial Conference, in addition to the witness lists, deposition designations and exhibit binders, counsel must also submit: (1) pre-trial memoranda of law; (2) a copy of all expert reports; and (3) for jury trials, proposed jury charges and special verdict sheets (both in hard copy and electronic form). With regard to proposed jury charges, unless a deviation from the pattern charge is sought, only the PJI numbers and topics need be submitted. If a deviation is sought, counsel must submit the full text of the proposed charge, together with a legal memorandum supported by case law.

Settlement Conferences:

Any party may request a settlement conference with the Court at any time. In addition to the attendance of counsel with authority to settle, the Court requires the attendance of the parties to the action unless otherwise directed by the Court. Counsel are advised that, in an effort to foster open settlement discussions, the Court may meet with one side or the other apart from opposing counsel. Counsel are presumed to have consented to the Court doing so unless an objection is stated.