

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX (12TH JUDICIAL DISTRICT)**

851 Grand Concourse Boulevard
Bronx, New York 10451

PART 32 - COMMERCIAL DIVISION RULES

HON. FIDEL E. GOMEZ, J.S.C.

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***** The Rules of the Commercial Division, 22 NYCRR 202.70, are incorporated herein by reference, subject to minor modifications described below.**

***** Where appropriate, the Part Rules reference certain portions of 22 NYCRR 202.70 to emphasize the importance of the same.**

***** Effective February 1, 2022, all newly filed actions in the Commercial Division must be e-filed.**

I. Inquiries/Correspondence:

All inquiries concerning scheduling, appearances, adjournments, and case status shall be directed to the Part Clerk by email. **Inquiries are not to be made via NYSCEF.**

All correspondence with Chambers must be by email. Telephone calls to Chambers are permitted only in situations requiring

immediate attention that cannot otherwise be obtained by email.

All inquiries/correspondence to the Court must indicate that a copy was sent to all other parties simultaneous with transmittal to the Court.

When parties file a letter on NYSCEF that requires the Court's attention, an email must be sent to Part to indicate the same.

II. Conferences:

Effective January 3, 2023, all conferences in this Part will be held in-person.

A. Who Must Appear:

In accordance with Commercial Division Rule 1 and 22 NYCRR 202.1, counsel who appear before the Court must be familiar with the case with regard to which they appear and be fully prepared and authorized to discuss and resolve the issues which are scheduled to be the subject of the appearance. **Failure to comply with this rule may be treated as a default for purposes of 22 NYCRR 202.27 and/or may be treated as a failure to appear for purposes of 22 NYCRR 130-2.1.**

B. Preliminary Conference:

At least seven (7) days prior to the Preliminary Conference, the parties must jointly submit a completed Preliminary Conference Order to the Part Clerk by email. The parties must use this Part's standard form Preliminary Conference Order, which is available on the Bronx County Supreme Court's Commercial Division webpage.

Upon receipt of the completed Preliminary Conference Order, the Court will cancel the scheduled Preliminary Conference, unless the parties indicate at the time of submission of the completed Preliminary Conference Order that there is a discovery dispute requiring Court intervention.

Parties are advised that the Court may alter the deadlines set by the parties, schedule a Compliance Conference, and/or prescribe a Note of Issue filing date. An executed copy of the Preliminary Conference Order will be filed on NYSCEF.

At the Preliminary Conference, the parties must be prepared to discuss the topics listed in Commercial Division Rule 8 and 22 NYCRR 202.11.

***** Failure to provide a completed Preliminary Conference Order may result in the adjournment of the Conference.**

C. Compliance Conference:

At least seven (7) days prior to the Compliance Conference, the parties must jointly submit a completed Discovery/Compliance Conference Form to the Part Clerk by email. The parties must use this Part's standard form Discovery Conference Form, which is available on the Bronx County Supreme Court's Commercial Division webpage.

Upon receipt of the completed Discovery/Compliance Conference Form, the Court will cancel the scheduled Compliance Conference, unless the parties indicate at the time of submission of the completed Discovery/Compliance Conference Form that there is a discovery dispute requiring Court intervention.

Parties are advised that the Court may alter the deadlines set by the parties, schedule a Settlement Conference, and/or prescribe a Note of Issue filing date. An executed copy of the Discovery/Compliance Conference Form will be filed on NYSCEF.

***** Failure to provide a completed Discovery/Compliance Conference Form may result in the adjournment of the Conference.**

***** Pursuant to CPLR § 3216, every Compliance Conference Order contains language indicating that the failure to file the Note of Issue as prescribed therein will result in dismissal of the action for failure to prosecute.**

D. Settlement Conference and Pretrial Conference:

The parties shall request a settlement conference with the Court prior to filing a note of issue. If the parties fail to make such a request, the Court will schedule one.

Counsel attending the Settlement Conference must be fully familiar with the action and authorized to discuss all factual

and legal issues presented by the litigation, settlement demands or offers. Counsel must be authorized to enter into binding settlement.

Counsel are advised that, in an effort to foster open settlement discussions, the Court may meet with counsel separately during the discussions. Counsel are presumed to have consented to the Court doing so unless an objection is made beforehand.

After one more unsuccessful Settlement Conferences, the Court will schedule a Pretrial Conference after which the case will be referred to STP Part for trial assignment.

E. Adjournment of Conferences:

A request to adjourn a conference must be made in writing by email to the Part Clerk at least forty-eight (48) hours in advance of the scheduled conference. The request must be copied to all parties.

All applications for adjournment must state: (1) the reason for the adjournment request; (2) whether the request is being made on consent of all of the parties; and (3) the length of the adjournment sought.

The Court will advise the parties by reply email whether the requested adjournment has been granted.

III. Discovery Disputes:

Discovery motions may not be made without a prior conference with the Court.

Pursuant to Commercial Division Rule 14, the parties must first consult with one another in a good faith effort to resolve all discovery disputes. If a dispute cannot be resolved after such good faith effort, the parties must submit a letter requesting a Rule 14 conference and advising the Court of the nature of the dispute and the efforts made to resolve it. The request must be submitted to the Part Clerk by email.

IV. Confidentiality Orders:

Commercial Division Rule 11-g applies to all requests for orders regarding the exchange of confidential information.

For all commercial cases that warrant the entry of a confidentiality order, the parties shall submit to the Court for signature the proposed stipulation and order that appears in Appendix B to the Rules of the Commercial Division.¹

In the event the parties wish to deviate from the form set forth in Appendix B, they must submit to the Court: (1) a copy of the parties' proposed confidentiality order; (2) a red-line of the proposed changes; and (3) a letter to the Court explaining the reasons for such deviations.

V. Sealing/Redaction of Documents:

Parties may not stipulate to seal or redact documents or information beyond those permitted by Redaction Rules (22 NYCRR 202.5[e] [i.e., date of birth, social security number, and account numbers]). The Court will consider an application for additional sealing or redaction of documents only by order to show cause. An application to seal or redact documents shall set forth the nature of the document, the reason for the request, and must establish "good cause" pursuant to 22 NYCRR 216.1. All documents to be sealed shall be clearly identified in the moving papers, including by the specific NYSCEF Doc. No.

If the Court permits additional sealing or redaction of a document in whole or in part, the parties shall e-file both the redacted copy publicly and the unredacted copy of the document under seal. 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.

VI. Motion Procedure:

The procedure prescribed by Commercial Division Rule 24 must be followed before any qualifying motion is made, including those promulgated by Rules 14 and 24. This Rule shall not apply to motions listed in Rule 24(b) and those made pursuant to CPLR §

¹ The form stipulation and order may be found at: [https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/202.70\(g\)%20-%20Rule%2011-g%20\(attachment\).pdf](https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/202.70(g)%20-%20Rule%2011-g%20(attachment).pdf).

3215.

All motions made before the Court must contain official citations rather than unofficial Westlaw or Lexis citations.

A. E-Filing:

1. Papers submitted by e-filing shall comply with the Bronx Supreme Court Filing Rules for E-filed Motions.²

B. Working hard copies of all motion papers, including opposition and reply papers ("Working Copies"), shall be submitted to Chambers by mail, with proof of e-filing, no later than the return date of the motion. Working copies of exhibits are not necessary. E-filed motions that are submitted without Working Copies shall be denied without prejudice.

C. General Motion Rules:

1. All papers must comply with CPLR §§ 2101, 2103 and 2214.
2. All submissions to this Part (**applicable only to Working copies submitted as per Section IV[B]**):
 - i. Shall comply with 22 NYCRR 202.5(a)(1);
 - ii. Shall be fully and securely bound, with all text legible and viewable without having to remove staples or binding;
 - iii. Shall include exhibit tabs that protrude from the stack of paper;
 - iv. Shall not exceed the word count set forth in Commercial Division Rule 17 absent leave of court; and

² The Filing Rules are available at:
<http://www.nycourts.gov/courts/12jd/BRONX/civil/filingrules-efile.shtml>.

- v. Shall have the Motion Sequence Number to which they are related placed on the front page.

Motions which do not adhere to these rules shall be denied without prejudice.

- 3. Pursuant to CPLR §3212(a), a motion for summary judgment shall be made **no later than thirty (30) days after the filing of the Note of Issue**, except with leave of court on good cause shown.
- 4. Unless an order indicating otherwise, CPLR § 3214(b) is expressly rendered inapplicable to motions to dismiss (CPLR § 3211), motions for summary judgment (CPLR § 3212), and motions for summary judgment in lieu of complaint (CPLR § 3213). Accordingly, the filing of the foregoing motions does not automatically stay discovery pending resolution of any such motions.
- 5. Commercial Division Rule 19-A statements are not required.
- 6. No sur-replies shall be submitted absent leave of court.
- 7. When submitting proposed orders or judgments in connection with a motion, the same shall be submitted as a separately bound document. Proposed orders or judgments incorporated within motion papers will be considered as exhibits and will be disregarded.
- 8. Where the Court issues a Bench Decision and a party desires a written Decision and Order, the party may submit a proposed Order to the Court, together with the transcript of the proceedings at which the Bench Decision was rendered to be "So Ordered".
- 9. Orders, judgments, counter-orders and/or counter-judgments submitted for signature on notice will not be signed unless an affidavit of service and notice of settlement for a date designated in accordance with 22 NYCRR 202.48 has been included.

10. Failure to appear at a calendar call will result in the denial of any motion made by the non-appearing party and the granting of any motion on default when the opposing party fails to appear.
11. The parties must advise the Court in writing by email to the Part Clerk as soon as practicable if any submitted motions have been resolved, withdrawn, or if the motion is moot because the case has been settled.

D. Motions Brought by Notice of Motion:

1. E-filed Motions:

Motions are returnable five (5) days a week. All opposition and reply papers must be e-filed by the return date of the motion. Opposition and reply papers will not be accepted after the return date.

Non-E-filed Motions:

Motions are returnable five (5) days a week in the Motion Support Office, Room 217. All opposition and reply papers must be submitted to the Motion Support Office by the return date of the motion. Opposition and reply papers will not be accepted after the return date.

2. All motions will be deemed submitted on the return date.
3. There shall be no oral argument or personal appearance required on any motion brought by notice of motion unless directed by the Court.

E. Motions Brought by Order to Show Cause:

1. All Orders to Show Cause are returnable on Mondays, except for court holidays, unless otherwise indicated.
Appearances are required.

2. E-Filed Motions:

Proof of service must be e-filed by 10:00 a.m. on the return date. **Non-compliance may result in a denial of the order to show cause.**

Non-E-Filed Motions:

- i. Orders to Show Cause must comply with 22 NYCRR 202.7(d) and be brought to the Motion Support Office, Room 217.
 - ii. Orders to Show Cause must include a fax number or an email address to permit a conformed copy of the signed Order to be sent to the movant.
 - iii. Proof of service must be emailed to the Part Clerk by 10:00 a.m. on the return date. **Non-compliance may result in a denial of the order to show cause.**
3. If a Temporary Restraining Order is sought within an Order to Show Cause, the papers must comply with Commercial Division Rule 20 and 22 NYCRR 202.8-e.

F. Adjournment of Motions:

1. E-filed Motions:

Stipulations of adjournment, compliant with 22 NYCRR 202.8(e)(1), shall be e-filed and emailed to the Part Clerk prior to the return date of the motion. A party seeking to adjourn an already submitted motion shall also follow the foregoing protocol.

Non-E-filed Motions:

Stipulations of adjournment, compliant with 22 NYCRR 202.8(e)(1), shall be emailed to the Part Clerk prior to the return date of the motion.

2. In accordance with 22 NYCRR 202.8-a(c), no motion may be adjourned on consent more than three times or for a cumulative total of more than sixty (60) days.
3. Applications seeking an adjournment shall only be made upon the failure to procure an adjournment on consent of all parties.

A request to adjourn a motion must be made in writing by email to the Part Clerk at least forty-eight (48) hours in advance of the motion's return date. The request must be copied to all parties.

All applications for adjournment must state: (1) the reason for the adjournment request; (2) the attempts made to adjourn the motion on consent; and (3) the length of the adjournment sought.

The Court will advise the parties by reply email whether the requested adjournment has been granted.

4. Oral applications seeking an adjournment will not be considered.

VII. Commercial Foreclosure Matters

All commercial foreclosure cases in Bronx County are assigned to the Commercial Division. However, given the backlog of commercial foreclosure cases, precipitated by the Covid-19 pandemic, the cases will not be assigned to Part 32 until a motion is deemed ready for resolution or until a conference is scheduled. Thus, until that time, the bulk of commercial foreclosure cases will be assigned to Part MFJ-2.

In addition to the foregoing Part Rules and the Rules of the Commercial Division (22 NYCRR 202.70), the following rules apply to all commercial foreclosure cases pending in Part 32.

1. If a party desires to have a conference for any reason,

an email must be sent to bxcommforeclosure@nycourts.gov, and the Court must concomitantly be apprised of the reason for the conference request. Moreover, when a conference is requested, the Court must also be apprised of whether any party in the action is *pro se* and any contact information for such party must be provided to the Court.

2. If a case is settled after a fiduciary such as a Referee, Receiver and/or a *Guardian Ad Litem* has been appointed, in addition to the stipulation of discontinuance which the parties must file, the parties must also file a proposed order providing for payment of the fiduciary and a termination of the same's services.
3. All judgments of foreclosure and sale must comply with the Administrative Order issued by Justice Doris M. Gonzalez on May 25, 2022, and all auctions must be conducted in accordance with the 2021 Amended Bronx Auction Plan incorporated therein.
4. All motions which seek the appointment of a fiduciary such as a receiver, or referee, must be accompanied by a proposed order.

VIII. Trials:

All cases in the Bronx County Supreme Court that are ready for trial are forwarded to the Special Trial Part (STP Part). This includes any cases brought in the Commercial Division. The Judge presiding in the STP Part then assigns trials to any one of the trial judges in the Bronx County Supreme Court. As such, the Judge in the Commercial Division could but will not necessarily be the trial judge for the cases brought in the Commercial Division.

Cases will be forwarded to the STP Part once all dispositive motions have been decided and when the parties indicate that they are ready for trial or when the Court determines that the case should proceed to trial. All parties should keep in

mind that if a case cannot be settled by the Court or through mediation, it must be tried as soon as possible.

Due to the Court's conference and motion calendars, there shall be no trials on Mondays.

A. Pre-Trial Conference:

1. When a case is assigned to this Part for trial, the Court will hold a Pre-Trial Conference prior to jury selection. The parties must be prepared to:
 - i. Alert the Court to any scheduling concerns and issues.
 - ii. Alert the Court to all anticipated issues of fact and law and provide the Court with the relevant law.
 - iii. Apprise the Court of any anticipated/pending motions *in limine*. Commercial Division Rule 27 shall not apply. Instead, if a motion *in limine* concerns jury selection, it is to be made orally prior to jury selection. If a motion *in limine* does not concern jury selection, it is to be made orally prior to the commencement of or during the trial. The parties are not required to submit any motions *in limine* in writing, unless otherwise directed by the Court.
 - iv. Alert the Court to any anticipated missing witness or document charge.
 - v. Alert the Court to the existence of any defaulting parties or any culpable non-parties against whom liability is sought to be apportioned.
 - vi. Stipulate to undisputed facts and the admissibility of clearly admissible documents.
 - vii. Provide the Court with any subpoenas it wishes the

Court to so-order.

viii. Make any special requests, such as requests for an interpreter, blackboards, media equipment, and etc.

2. Prior to jury selection, counsel must ascertain the availability of all witnesses and subpoenaed documents. Counsel shall request the subpoenaed records and the Court's file as soon as practicable.

3. The parties shall e-file and submit hard copies to the Court³ the following documents on the date jury selection begins or within 1 (one) day thereafter:

i. For commercial cases, all the documents required under Commercial Division Rules 26, 28, 29, 31(a), 31(b), and 32; and

ii. In all cases, a copy of the marked pleadings; proposed verdict sheets and requested jury instructions; all expert exchanges and reports; a procedural history; and all transcripts to be used during the trial. Portions of any depositions to be read into evidence on a party's case in chief must be disclosed in advance and the Court and all parties must be provided with all page and line numbers for the portions to be read.

B. Jury Selection:

There shall be no time limits imposed upon the jury selection process, but it is expected that the attorneys will select a jury as expeditiously as possible.

C. During the Trial:

1. None of the attorneys, witnesses, or parties are to have any communication with the jurors.

³ In non-e-filed cases, the parties may simply submit hard copies of the requested documents to the Court.

2. Speaking objections are prohibited. An objection shall be made by standing, stating "objection", and succinctly stating the basis for the objection. If the objection requires elaboration, parties should request a sidebar.
3. Requests to approach the bench during a trial should be kept to a bare minimum.
4. Any item which is sought to be shown to a witness must first be shown to opposing counsel.
5. Do not interrupt witnesses during examination, unless the answer is completely unresponsive and only then upon seeking a ruling from the Court.
6. While opportunity to preserve and make a record may not always be allowed when requested, all attorneys shall ultimately be granted ample opportunity to make a record.
7. Be prepared and organized. Be punctual and professionally attired. Be civil to the Court and to one another.

D. Exhibits:

Within seven (7) days of the conclusion of trial, the parties shall e-file a list of the exhibits that were admitted into evidence and file the hard copies with the Part Clerk.

Rev. 5-11-2023