

**I.A.S. Part 33**  
**Commercial Division Part A**  
**JUDGE LEONARD LIVOTE**  
Courtroom 122  
718-298-1043  
718-298-1158 (Fax)

**NO TELEPHONE INQUIRIES CONCERNING MOTIONS OR APPLICATIONS  
MAY BE MADE TO CHAMBERS.**

**All such inquiries must be made to Motion Support (718-298-1009) or to the Ex Parte  
Office (718-298-1018), or to the Clerk of the Part (718-298-1043 ).**

**DO NOT MAKE ANY INQUIRES VIA E-MAIL TO THE COURT.**

**COMMERCIAL DIVISION PART A MOTIONS**

, ALL COMMERCIAL DIVISION MOTIONS ASSIGNED TO JUDGE LIVOTE AND NOTICED TO BE HEARD ARE **RETURNABLE IN COMMERCIAL DIVISION PART A**. The following Rules apply to all Commercial Division motions returnable in Commercial Division Part A:

**The words “COMMERCIAL DIVISION” shall be clearly and conspicuously marked on the Notice of Motion or Order to Show Cause by the moving party. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE MOTION BEING CALENDARED IN THE CMP.**

1. Motions shall be heard on **Tuesdays at 9:30 a.m.** There will be two calls of the motion calendar. The **second call** of the calendar will be held **immediately after first call**.
2. The moving papers on non E filed cases shall be filed in the Motion Support Office at least five business days prior to the scheduled return date in order to be placed on the Part 33 commercial division motion calendar for the day noticed. Working copies of E-filed motions are to be delivered to the courtroom on the first return date of motion at the calendar call. No motion relating to disclosure will be accepted without an affirmation of good faith as required by 22 NYCRR §202.7.
3. Answering papers, including cross-motions, affirmations in opposition and reply affirmations, will be accepted only on the return date in the Part. **THE COURT WILL NOT CONSIDER PAPERS SENT TO CHAMBERS OR TO THE PART AFTER SUBMISSION OF THE MOTION, NOR CROSS-MOTIONS THAT DO NOT HAVE PROOF OF PAYMENT OF THE APPROPRIATE FEE (CPLR §8020(a)).**

4. Appearance of counsel and pro se litigants is **MANDATORY** on all disclosure motions (i.e. Motions to Vacate and Strike a Note of Issue, Motions to Strike Pleadings, Motions to Preclude). The motions will be heard for all purposes in the Part on the return date. On that date, the motion will be conferenced by the Justice or his Law Clerk with the expectation that the issues will be resolved by stipulation. Papers will not be accepted from calendar service inasmuch as a personal appearance by counsel and pro se litigants is required.
5. Appearance of counsel and pro se litigants is also **MANDATORY** on all Orders To Show Cause, and motions which seek to continue or vacate a temporary restraining order or to extend the time to file a note of issue. Again, papers will not be accepted from calendar service in as much as a personal appearance by counsel and pro se litigants is required.
6. Applications for adjournments on consent, or otherwise, will be entertained only at the call of the calendar, and **will not be entertained by mail, e-mail, fax or by telephone**. Applications for an adjournment will be granted as a matter of right for the first time but for no more than three weeks or as the court sees fit. No further applications will be granted without permission of the Court. Counsel must make every effort to notify their adversaries of their intention to seek an adjournment.
7. The Court further directs that any attorney appearing on a case for any purpose **MUST** be familiar with the case, ready and authorized to resolve any and all issues.
8. Appearances on all motions are mandatory on the submission date of motion as each motion shall be conferenced.

## **MOTION PAPERS**

All motion papers submitted shall be in compliance with 22 NYCRR §202.5, concerning papers filed with the court. In addition to the requirements of 22 NYCRR §202.5, all pages are to be numbered and all paragraphs are to be numbered. **All exhibits are to be preceded by a numbered exhibit tab which protrudes from the stack of papers. All submissions are to be securely fastened so as to prevent the papers from separating from each other and becoming lost. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION MAY RESULT IN REJECTION OR DENIAL OF THE OFFENDING SUBMISSION.**

**Any party annexing a deposition transcript in excess of one hundred (100) pages as an exhibit to a motion, shall submit such transcript on a disc, in lieu of paper, with the motion.**

Any party who files a motion and/or opposition thereto pursuant to the **NYS Courts Electronic Filing (“E-filing”)** shall provide this Court with working copies of the documents filed electronically, which shall be submitted to the Clerk of this part on the first noticed return date of the motion. If working copies are not submitted on the first return date of the motion the motion may be marked off without prejudice. Each working copy shall include, firmly affixed thereto, a copy of the Confirmation Notice received from the NYSCEF site upon the electronic filing of such document (22 NYCRR §202.5-b(d)(3)(ii)).

If the Court directs that an order be settled or submitted on a motion in an E-filed case, the proposed order and any proposed counter-order shall be filed with the court on-line with proof of service. **Working copies of all proposed orders MUST be submitted to the Motion Support Office before an order can be reviewed by the Court.** As appropriate, the Clerk may make changes on the proposed order/counter-order by hand.

**FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION MAY RESULT IN REJECTION OR DENIAL OF THE OFFENDING SUBMISSION OR THE SUBSTANTIAL DELAY IN PROCESSING THE SUBMITTED DOCUMENTS.**

### **COMMERCIAL DIVISION PART A TRIALS**

1. All counsel must submit to the court, prior to the commencement of trial, marked pleadings, a copy of the Bill of Particulars, a witness list, exhibit list, proposed jury instruction and a proposed verdict sheet.
2. Motions in Limine - On the first appearance in the Part for trial, any party intending to make a motion in limine shall submit a **brief** written affirmation setting forth the nature of the application and any supporting statutory or case. The party furnish the court with an original and one copy and provide counsel for all parties with a copy.
3. The trial will be conducted on a continual daily basis until conclusion.
4. No adjournments or delays during trial will be allowed unless exigent circumstances exist.
5. All counsel must call part two (2) days prior to the commencement of trial to confirm availability of part for the trial date.

### **COMMERCIAL DIVISION CASES:**

4. The call of the Pre-Trial Conference calendar and the Trial calendar will be held on **a date to be determined by the court.**
5. The parties shall comply with the relevant pre-trial conference and trial rules as required by 22 NYCRR §202.70, and **must supply the Court, at the time of the Pre-Trial Conference, with a copy of the marked pleadings.**
6. Motions in Limine - Any party intending to make a motion in limine shall be made no later than ten (10) days prior to the scheduled pre-trial conference date in compliance with Rule 27 of 22 NYCRR §202.70 (See Rule 27). Motions in limine which are not timely made will not be considered by the Court.
7. Where a party is represented by counsel, an attorney fully familiar with the case **shall** appear at the Pre-Trial Conference.

## SETTLEMENTS AND DISCONTINUANCES

If an action is settled, discontinued or otherwise disposed of, counsel shall immediately inform the court by submission of a copy of the stipulation or a letter directed to the Clerk of the Part. All Stipulations of discontinuances must be accompanied by proof of payment of the appropriate fee (CPLR §8020(d)(1)).

## PRELIMINARY CONFERENCE

A preliminary conference shall be scheduled (1) automatically by the Court within 45 days after filing a Request for Judicial Intervention, pursuant to 22 NYCRR §202.12(b); or (2) upon filing a written Request for a Preliminary Conference with the Clerk's Office, Room 140, in compliance with 22 NYCRR §202.12(a); or (3) when an appropriate notice is filed in malpractice or certiorari cases pursuant to 22 NYCRR §202.56 and §202.60; or (4) in compliance with 22 NYCRR §202.70 - Rule 7 for Commercial Division cases.

All preliminary conferences will be held on Tuesday's at 9:30 a.m. at the Preliminary Conference Part, **Room Number 314**, of the courthouse, and they are presided over by the court-appointed referee, unless otherwise directed by the Court. Failure to appear at the scheduled preliminary conference may result in discovery being ordered ex-parte or any other appropriate sanction including preclusion or dismissal.

**Any inquiry pertaining to preliminary conferences shall be made to the Preliminary Conference Part at (718) 298-1046.**

## COMPLIANCE CONFERENCES

**All Commercial Division Part A compliance conferences** shall be held on the date scheduled in the Preliminary Conference Stipulation and Order. Compliance Conferences shall be held in **Room Number 122** at 10 a.m. on the assigned date.

## PART 33 RULES APPLY

To the extent that there is no conflict with the above rules all Civil Term Part 33 Rules also apply to Commercial Division Part A cases.

[3/07/2017]