

JUSTICE LINDA S. JAMIESON

COMMERCIAL DIVISION RULES

**Supreme Court of the State of New York
Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601
Courtroom 103 - 1st Floor
Tel: (914) 824-5415
Fax: (914) 824-5885**

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Staff

Judith M. Shampanier, Principal Court Attorney: (914) 824-5416
Joseph S. Hadala, Assistant Court Attorney / Secretary: (914) 824-5415
Demary Lopez, Part Clerk: (914) 824-5345 / dlopez@nycourts.gov

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 by email to the Part Clerk, Demary Lopez, at dlopez@nycourts.gov. Do not contact Chambers regarding such issues.

Requests for a motion adjournment should be made by email only. Request for a conference adjournment should be filed in NYSCEF, and MUST state the next appearance date. Any other relief should be requested by filing letter in NYSCEF.

Requests for adjournment of matters should be made by not later than two business days prior to the conference. Requests made after that will likely not be granted. All requests for adjournments must be made with the consent all opposing counsel.

If consent cannot be obtained, then the requesting counsel must explain to the Part Clerk by email the efforts made to obtain consent, and the reason for the adjournment.

E-Filing Rules and Protocol:

All parties should 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/courts/9jd/e-file.shtml>) and 202.70 of Uniform Civil Rules of the Supreme and County Courts as amended on 5/15/2023.

General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov.

Note that NYSCEF does not automatically remove former counsel from a matter; former counsel must contact NYSCEF to remove themselves, otherwise they will continue to receive notifications.

Filing of Papers:

Mandatory e-filing of all Commercial Division actions through the New York State Courts E-Filing system (NYSCEF) began on February 1, 2011. Submissions to the Court including motion papers, proposed orders, proposed judgments, and letters must be electronically filed.

Working Copies:

Except as otherwise specified in these Part Rules, **do not send** working copies unless the Court requests them. However, the Court requires the working copies of all pre-trial documents, including witness lists, exhibit lists, motions *in limine* and pretrial memoranda.

Pursuant to Uniform Rule 202.5-b(d)(7), the Court may require or permit a party to file in hard copy an exhibit or other document which it is impractical or inconvenient to file electronically.

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 via NYSCEF without copying all parties or their counsel. ALL correspondence must state the next appearance date.

(b) Telephone calls:

1. Counsel must conform to the “**Scheduling**” section above with respect to the scheduling of appearances and with respect to adjournment applications. If counsel has not received a response within 24 hours, they may call.

2. Counsel may write a letter to Chambers and/or the Part Clerk to arrange for a telephone conference with the Court or with the Principal Court Attorney. They must state the next appearance date in the letter.

3. Counsel may not contact Chambers without all opposing counsel on the phone, except for the purpose of facilitating 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 by the submission of a brief letter application, not exceeding 1 page in length. This letter must state the next appearance date. At the conference, the Court will set a schedule for making the motion, opposing it and for reply. Motions are to be returnable on Fridays. 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. Sur-reply papers are not permitted, absent prior permission of the Court. Any unauthorized papers will not be read and will be disregarded.

All papers must comply with the applicable provisions of the CPLR and with Rules 16, 17 and 18 of the Commercial Division Rules. In addition, the font size of text and footnotes must be no smaller than 11 point. Papers which do not comply may be rejected.

The Court requires that all motions for summary judgment, other than a motion made pursuant to CPLR Sec. 3213, **shall include a Statement of Material Facts** as set forth in 22 NYCRR § 202.8-g.

All exhibits shall be separately tabbed if in hard copy, or uploaded separately to NYSCEF. 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. **ALL EXHIBITS MUST BE UPLOADED AS SEPARATE DOCUMENTS**; if exhibits are uploaded as one document, the Court will not be able to review them.

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:

A. Motions

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 page

in length. Such letter must state the next appearance date.

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 conference with the Court, which may be obtained by letter application, not exceeding one 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 days of service of the motion. 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.

B. Other Discovery Issues

The number of interrogatories, including subparts, shall be limited to 25, unless another limit is specified in the Preliminary Conference Order or as ordered by the Court.

Preliminary Conferences:

Upon receipt of a letter from the Court scheduling a preliminary conference, counsel shall meet 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). The Court also requires the ADR forms be uploaded prior to the Preliminary Conference.

These submissions shall be furnished to the Court no later than 12 p.m. on the day prior to the 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.

Compliance Conferences:

The Court will schedule a Compliance Conference at the Preliminary Conference. The purpose of the Compliance Conference is to monitor the progress of discovery, make rulings about any issues that have arisen and explore potential settlement. The parties must fill out the Compliance Conference Order, available on the Court's website, and submit it to the Court no later than 12 p.m. on the day prior to the 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.

Settlement Conferences:

Settlement Conferences require the appearance of trial counsel or attorney of record.

Transcripts:

Where the Court decides a motion on the Record, the prevailing party shall order the transcript, and promptly e-file the transcript.

Mediation:

Mediation is presumptive. That means that unless there is a good reason for holding it in abeyance, the parties should be prepared to mediate their dispute at the outset of the action.

Pre-Trial Conferences and Trials:

At the pre-trial conference, the Court will schedule the return date for motions in limine, if any.

At the pre-trial conference, at least 20 days prior to the start of the trial, the parties are to submit:

(A) pre-trial memoranda

(B) a list of proposed facts to be proven at trial

(C) a list of witnesses each party expects to call at trial, with each witness listed as an expert or fact witness. If the witness is an expert, state whether the parties agree or dispute that witness' status as an expert.

(D) a list of exhibits that each party plans to use at trial. The list must state whether the exhibit is in dispute or not. Exhibits that are not in dispute must be pre-marked; parties are to contact and work with the court reporter to mark exhibits prior to the trial. Parties should have copies of the exhibits for all parties, the witness and the Court. The Court's exhibits should be tabbed, in a binder.

(E) if it is a jury trial, the parties must submit a **complete and exhaustive** list of requested charges (including introductory and closing charges). Failure to include any charge may result in the Court refusing to instruct the jury on that charge. Unless counsel seek a deviation from the pattern charge or additions to the pattern charge, only the PJI numbers and title of the charge need be submitted. The parties must discuss these charges prior to appearing in Court, and note any disagreements on their requests to charge, along with the reasons therefor. Where deviations or additions are requested, the full text of such requests must be submitted, together with any supporting legal precedents.

(F) if it is a jury trial, counsel must submit an agreed upon verdict sheet with all claims and counterclaims listed.