

JUSTICE ROBERT R. REED

PART 43 – PRACTICES AND PROCEDURES

**Supreme Court of the State of New York
Commercial Division**

**60 Centre Street, Courtroom 222
New York, NY 10007**

<http://ww2.nycourts.gov/courts/comdiv/ny/newyork.shtml>

Part Clerk/ Courtroom Phone: 646-386-3238

Chambers Phone: 646-386-3026

Part 43 Email: SFC-Part43@nycourts.gov

Part 43 Clerk Email: SFC-Part43-Clerk@nycourts.gov

Principal Law Clerk:	Porsha Johnson, Esq.
Assistant Law Clerk:	Naja Williams
Commercial Division Law Clerk:	Matt Choi, Esq.
Part 43 Clerk:	Michael E. O'Connor

Oral Argument on Motions: Thursdays, or as otherwise directed.

Preliminary, Compliance, and Status Conferences: Tuesdays and Thursdays (as scheduled by the Court).

Pretrial Conferences: As scheduled by the Court.

1. GENERAL

- a) All parties or their counsel must familiarize themselves with these Practice Rules and the Rules of the Commercial Division, 22 NYCRR 202.70.¹
- b) To create opportunities for attorneys knowledgeable with the subject matter of the action, but who historically have been underrepresented in the Commercial Division, the Court strongly encourages courtroom participation by such attorneys. Participation may be achieved by having a less experienced attorney who prepared the brief on the motion, argue the motion before Justice Reed.
- c) Counsel and litigants (represented or self-represented) are advised that Justice Reed, his Law Clerks, and Part Clerk will not engage in any *ex parte* communications.
- d) The Part Clerk is unable to accept deliveries between 1:00 p.m. and 2:15 p.m., or after 4:30 p.m.
- e) Counsel must notify the Court as soon as practicable, of any settlement or resolution of active cases or pending motions. Counsel may contact the Court by conference call to the Part Clerk, or by email to chambers with a carbon copy to all counsel assigned to the matter.

2. ELECTRONIC FILING & SUBMISSION OF DOCUMENTS

- a) Part 43 is an e-filing Part. All e-filed documents must be text-searchable.
- b) Do not email courtesy copies of e-filed documents to chambers. However, documents requiring

¹ The Commercial Division Rules are available at: <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70>.

Justice Reed's signature for so-ordering must be emailed to Chambers at SFC-part43@nycourts.gov.

- c) All electronically submitted memoranda of law must contain bookmarks and hyperlinks pursuant to Commercial Division Rule 6.

3. COMMUNICATION WITH THE PART CLERK AND CHAMBERS

- a) Justice Reed does not accept any letters, documents, or papers by email or mail unless expressly permitted by these Part Rules, Commercial Division Rules 2 and 18, or by prior approval of the Court.
- b) Do not copy the Court on letters exchanged between the parties.
- c) Should the parties desire a conference, a request should be sent to Chambers at SFC-part43@nycourts.gov, stating the reason for the conference request. The Court will schedule a conference, if appropriate.

4. ADJOURNMENTS

- a) All requests for adjournments (motions scheduled for oral argument, conferences, trials) require prior court approval. Without prior approval, a stipulation will not be accepted and failure to appear may result in a default, or appropriate sanction. *Ex parte* applications will not be considered. All adjournment requests must provide a reason for the request.
- b) All requests to adjourn a conference shall be directed to the Part Clerk at 646-386-3238 or by emailing the Part Clerk at SFC-Part43-Clerk@nycourts.gov. Applications to adjourn a conference shall be made at least 48 hours in advance of the scheduled conference. Do not call Chambers regarding scheduling matters or requests for adjournments.
- c) Parties may adjourn a conference no more than two times, and for no more than a total of two (2) months.
- d) In general, motions scheduled for oral argument will only be adjourned by stipulation. The parties must first consult with the Part Clerk before selecting a new date for the oral argument. Applications to adjourn a motion scheduled for oral argument should be made at least 72 hours in advance of the oral argument.
- e) Except for emergency situations, adjournments for motions scheduled for oral argument will not be given if the application is made less than 72 hours before the scheduled appearance.
- f) To adjourn a motion that is in the Submissions Part (Room 130):
 - i. If the parties wish to adjourn the motion to a date less than sixty (60) days from the original return date, the parties may adjourn by stipulation without an order from the Court. The stipulation must be electronically filed and filed in the Submissions Part on the return date of the motion.
 - ii. If the parties wish to adjourn the motion to a date more than sixty (60) days from the original return date, the parties must submit a stipulation of adjournment to the Court for approval.

- 1) Parties must deliver the proposed stipulation to the Court by emailing chambers at SFC-part43@nycourts.gov.
 - 2) If approved, the So-Ordered version of the stipulation will be electronically filed, so that the parties may retrieve the signed order from the electronic filing system and present it to the Submissions Part on the return date.
- g) To adjourn a hearing or trial, the parties must contact the Part Clerk at 646-386-3238 on a conference call with all parties on the line. The parties may also email the Part Clerk at SFC-Part43-Clerk@nycourts.gov. All parties should be copied on the email. Applications for adjournments shall be made at least 48 hours in advance of the scheduled hearing or trial.
- h) All Court approved stipulations to adjourn must be electronically filed by the parties.

5. MOTION PRACTICE

- a) Summary judgment motions must be filed not later than 60 days after the filing of the Note of Issue. Each party must comply with commercial Division Rule 19-a by submitting a separate statement of material facts.
- b) Only one motion for summary judgment may be made, whether made before or after the filing of the Note of Issue, unless the Court orders otherwise.
- c) Substantive motions with opposition will be scheduled for oral argument at the discretion of Justice Reed, after the final appearance in the Submission Part (Room 130). Motions submitted on default or with no opposition are not generally scheduled for oral argument.
- d) Following oral argument, the movant shall order the transcript and arrange with the court reporter to have the transcript emailed to the Court at sfc-part43@nycourts.gov. If a decision and order has been issued on the record, Justice Reed will “so order” the transcript, and the Part Clerk will e-file the “so ordered” transcript.
- e) Affirmations submitted in support of or in response to dispositive motions must be separate from any memoranda of law. Affirmations should not include arguments of law.
- f) All memoranda of law must include a Table of Contents and Table of Authorities.
- g) Word limits specified in Commercial Division Rule 17 will be strictly enforced, unless permission to expand the word limit is granted in advance of the filing of papers.
- h) Combined briefs – similarly situated parties (e.g., multiple defendants moving to dismiss on overlapping grounds) should make reasonable efforts to consolidate their briefing papers to avoid duplication. The Court will consider requests to enlarge applicable word limitations to facilitate the filing of combined briefs.
- i) Each exhibit must be e-filed under its own document number and include a short label identifying the nature of the exhibit (e.g., Complaint, Contract dated 10/23/22, etc.).
- j) Orders to show cause with requests for temporary restraining orders, including requests for a temporary stay of an action, will generally not be heard *ex parte*. See 22 NYCRR 202.7(f); 22

NYCRR 202.70, Rule 20. OSC opposition papers shall be e-filed 72 hours before the motion is to be heard. The Court will not accept replies on any OSC.

- k) The CPLR does not provide for sur-reply papers, however denominated. Papers or letters regarding a motion should not be presented to the court after submission of the motion in the Motion Submissions Part Courtroom (Room 130), or after argument in the Part, if any, except with the advance permission of the court. Materials presented in violation of this Rule will not be read.
- l) Requests for *pro hac vice* admission should include: a joint stipulation consenting to the admission, if possible; and an affidavit by the attorney seeking admission, accompanied by a certificate of good standing for all jurisdictions admitted.
- m) Requests for Commissions should be made by stipulation, if possible.

6. CONFERENCES AND DISCOVERY DISPUTES

- a) Only attorneys thoroughly familiar with the case may appear for a conference. Attorneys should bring signed copies of all prior decisions, orders, and stipulations (both substantive and discovery related) to the conference.
- b) On the conference form, please write legibly. Indicate the names, addresses, telephone numbers, and email addresses of all counsel appearing at the conference. Number the pages (e.g., 1 of 3, 2 of 3). At the top of page 1 of the Compliance Conference Order, please indicate whether this is the 1st, 2nd, or 3rd compliance conference. Use specific cut-off dates (e.g., “on or before December 31, 2022”). Do not use open-ended dates or general timeframes, such as “within 45 days,” etc.
- c) Preliminary Conferences: The parties may request a preliminary conference by email to SFC-part43@nycourts.gov. At least seven days prior to the preliminary conference date, the parties must comply with Commercial Division Rule 8, and submit a consent preliminary conference order to the part. An approved consent preliminary conference order will obviate the need to appear for a conference. If the parties cannot agree on a discovery schedule, the plaintiff and any party asserting a counterclaim must submit a Commercial Division Rule 11(a) statement, and a letter not exceeding three single spaced pages, setting forth the discovery dispute. Parties are to use this Part’s standard form Preliminary Conference Order. Copies are available on the Commercial Division website (<http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>).
- d) Compliance Conferences: At least seven days prior to the compliance conference, counsel shall submit a joint letter not exceeding three single-spaced pages, setting forth the status of discovery, describing any significant disputes to be addressed at the conference, whether there are any outstanding motions and/or appeals, and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement. The joint letter must be filed to NYSCEF and sent by email to SFC-part43@nycourts.gov.
- e) Status Conference: At least seven days prior to the status conference, counsel shall submit a joint letter not exceeding three single-spaced pages, setting forth a summary of the case, the current schedule for completion of discovery and filing of the Note of Issue, and proposed revisions to the schedule and reasons therefor, whether there are any outstanding motions and/or appeals, and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement. The joint letter must be filed to NYSCEF and sent by email to SFC-part43@nycourts.gov.
- f) The following procedures shall be followed if a conference is conducted in-person. After filling out

the appropriate form, counsel must check-in with the Park Clerk. At check-in, please hand in your conference form to the Part Clerk. The Part Clerk will then call your case when the Court is ready for your conference. All appearing parties must be present for a case to be conferenced. Without a conference, the order will not be signed. A conference has not been completed until either Justice Reed or one of his Law Clerks has reviewed the completed form and conferenced the case.

- g) Settlement Conferences: The parties may, on consent, request a settlement conference by emailing chambers at SFC-part43@nycourts.gov.
- h) Discovery motions are discouraged. If a dispute cannot be resolved after good faith efforts to meet and confer, the parties should proceed in accordance with Commercial Division Rule 14. The parties shall coordinate to make a single Rule 14 submission to chambers at SFC-part43@nycourts.gov, containing both the initial letter and any responsive letter(s). No exhibits or attachments shall be included.
- i) The filing of a dispositive motion does not stay discovery. Commercial Division Rule 11(g) applications will be denied absent unusual or compelling circumstances.

7. TRIALS/ EVIDENTIARY HEARINGS

- a) The submissions required under Commercial Division Rules 26, 27, 28, 29, 31(a), 31(b), and 32, plus marked pleadings and a Joint Statement of Stipulated Facts and Procedural History, shall be made at least 10 days prior to the final Pre-Trial Conference.
- b) In addition to the above, for jury trials the following materials shall be submitted at least 10 days prior to the final Pre-Trial Conference:
 - i. A short summary (one or two sentences) of each party's claims to be used by the Court as part of the preliminary instructions to the jury; and
 - ii. Proposed jury instructions, including the text of relevant PJI Instructions, should be submitted by e-mail to Chambers (SFC-part43@nycourts.gov) in Word format. The submission should note the instructions to which the parties have stipulated. Any proposed deviations from PJI Instructions should be highlighted and explained, with citations to legal authority where appropriate.
- c) If an attorney wishes to make an objection, the attorney may do so by standing and saying "objection," with a brief generic ground for the objection (e.g., hearsay, leading, relevance, asked and answered, etc.). No speaking objections will be permitted.
- d) All remarks related to objections should be directed to the Court. Comments should not be made to opposing counsel.
- e) Do not approach a witness, the jury, or the bench without permission of the Court. Please allow the witness to complete his/her answer to your question before asking another question.
- f) For non-jury trials, the parties shall submit proposed findings of facts and conclusions of law within ten (10) calendar days of the close of the record, unless otherwise directed by the Court.
- g) Any post-trial motion shall be made by OSC within the time allotted pursuant to CPLR 4405.

- h) Trial extracts will be filed by the Part Clerk within 30 days of entry of the verdict or decision.

8. ALTERNATIVE DISPUTE RESOLUTION

- a) If, at any point, the parties decide that they would benefit from the Commercial Division ADR program, they should submit via email a joint letter to the Court asking to be referred to ADR. Discovery will not be stayed during the ADR process.
- b) The Court may also order parties to the Commercial Division ADR program without the parties' request or consent. For more information regarding the ADR program, please visit: http://www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml.

9. CONFIDENTIALITY ORDER/SEALING DOCUMENTS

- a) In the interest of reducing unnecessary litigation costs, any order regarding the confidential exchange of information must adhere to the Proposed Stipulation and Order for the Production and Exchange of Confidential Information ("the Model Form").
- b) Justice Reed is mindful that minor additions/deletions/edits to the Model Form will only drive-up litigation costs. Therefore, if the parties believe there is good cause to depart from the Model Form, they must submit the following:
 - i. The proposed stipulation and order
 - ii. A red-lined version of the proposed stipulation and order, indicating any departures from the Model Form
 - iii. A party affirmation establishing good cause for any proposed departures from the Model Form. Amended Model Forms unaccompanied by the red-lined version and affidavit will not be approved
- c) Sealing, including redactions beyond those permitted by the Redaction Rules (i.e., date of birth, Social Security number and account numbers), is discouraged. Any request for additional redactions or sealing shall be made pursuant to the Uniform Rules for Trial Courts 22 NYCRR 216.1.
- d) Motions to seal and/or redact shall be made by order to show cause and shall include a spreadsheet as follows: Movant's memorandum of law shall set forth the basis of the purported good cause to seal or redact each document or piece of information, and movant's papers shall include a spreadsheet/chart that clearly and specifically identifies: (1) each document, by bates stamp or similar; (2) the categorization of each document (see below); (3) the good faith basis to seal or redact the particular document/information; and (4) citation(s) to applicable law or authority supporting movant's good cause to seal/redact the document/information.
- e) Movant's proposed categories shall be identified with specificity in the spreadsheet and legal memoranda to facilitate issuance of a workable and efficient order; for instance, vague categories such as "confidential business information" or "proprietary trade information" are not generally adequate; examples of specifically-identified categories include "third-party borrower personal identifying information," "pricing terms for international customers," "investment methodologies," "capital contribution information of private entities," and "strategies for structuring, collateralizing, and marketing structured products." A carefully tailored list of categories incorporated into movant's spreadsheet that articulate precise categories of information is required. Generic categories generally

will not establish the requisite good cause to seal or redact, and thus could unnecessarily lead to successive/further motion practice.

- f) If the Court permits additional redactions or sealing of a document in whole or in part, counsel shall e-file both the redacted copy publicly and the unredacted copy of the document under seal. Additional instructions are available at [Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases](#).