

COMMERCIAL DIVISION PART 48 PROCEDURES¹

Last updated: April 2023

Justice Andrea Masley (she/her)

Supreme Court of the State of New York
County of New York, Commercial Division Part 48
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Commercial Division Support Office, Room 119A

<https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>

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Introduction

All matters before Part 48 are governed by the Rules of the Commercial Division, 22 NYCRR 202.70, except as supplemented, modified, and/or superseded by the Part 48 Procedures (Procedures). The purpose of these procedures is to answer your questions and eliminate inefficiencies.

Contacting Part 48, Adjournments, and General Matters

¹ For trial or hearing procedures, see Part 48 Trial Procedures.

1. Mandatory E-Filing: All submissions to Part 48 shall be filed electronically in the New York State Courts Electronic Filing system (NYSCEF); please contact the NYSCEF Resource Center for assistance.²

2. Communications, Deliveries, and Scheduling:

(A) Contacting Part 48: Please refrain from calling Chambers. All communication with Part 48 shall be sent by email, copying all counsel, to both Part 48 (sfc-part48@nycourts.gov) and the Part Clerk (sfc-part48-clerk@nycourts.gov).

(B) Documents submitted to be so-ordered: All documents submitted with a request to be so-ordered shall be filed to NYSCEF and sent by email, copying all counsel, to sfc-part48@nycourts.gov.

(C) No ex parte contact: Always copy/include all counsel (no matter what method of communication) unless expressly directed by the court in writing.

(D) Motion/conference days: Arguments and conferences are conducted from Monday to Friday, as scheduled, during normal courthouse hours; there are no dedicated "motion days."

(E) NYSCEF Calendar Public Remarks: A glossary, located at the end of this document, is provided to explain comments you see on appearance notices.

3. General Adjournments:

(A) Appearances in Part 48: Stipulations to adjourn³ appearances shall be e-filed and emailed in accordance with § 2(A); absent consent, send a brief statement (500 words or less) by email pursuant to § 2(A). Please confirm the new date with the Part Clerk for all adjournment requests and dates.

(B) Appearances in the Motion Submission Part: Requests to adjourn appearances in the Motions Submission Part shall be directed to the Motions Submission Part, Room 130, unless the original return date has been adjourned three or more times and/or for more than 60 days; then the parties shall submit a stipulation in accordance with § (2)(B).

4. Letters: Part 48 does not accept (1) requests for any type of relief more appropriately requested during conferences or in motions, or (2) Commercial Division Rule 24 letters. However, the following letters are pre-authorized and shall be e-filed and sent pursuant to § 2(A):

² For assistance with e-filing, the NYSCEF Resource Center is available by telephone at (646) 386-3033, fax at (212) 401-9146, and email at efile@nycourts.gov from 8:00 a.m. to 5:00 p.m.

³ To request trial-related adjournments, see Part 48 Trial Procedures.

(A) Pre-conference statement: the parties may submit a letter identifying discovery or other issue(s) ahead of a scheduled conference 24 hours prior to the conference. Letters shall be no more than 1,500 words. No exhibits or attachments may be included.

(B) Commercial Division Rule 18 letters are permitted as modified: the letter may only identify, with full/complete citations, any relevant post-submission decisions. No substantive arguments are allowed in Rule 18 letters; however, the parties may request an opportunity to file post-submission briefs. Attach a copy of the decision if it is not publicly available. E-file and send Rule 18 letters pursuant to § 2(A).

Motions and Applications

5. Formatting: All motions shall be filed to NYSCEF under the applicable index number(s) and motion sequence number(s). Further, every motion or other application, whether brought by order to show cause or notice of motion, shall include a memorandum of law. Memoranda and affidavits shall be formatted with a standard 12-point font, double-spaced, with one-inch margins on all sides, and left-justified; footnotes shall be single-spaced with 12-point font.

(A) NYSCEF citations: All citations to the NYSCEF record/docket in all motion papers require NYSCEF Document Numbers with pin-point citations to NYSCEF page number and, where possible, hyperlinks to the actual NYSCEF Document. To avoid any timing issues, parties may file their briefs without NYSCEF numbers to meet any filing deadlines, and then re-file the briefs under the new document category of Memo of Law with NYSCEF Numbers to permit the parties to go back and fill in the NYSCEF Numbers identifying documents that were not filed prior to the briefs.

(B) E-filed documents: Parties shall clearly label/describe with specificity all documents in NYSCEF. Describing a document as "Exhibit #_" or "Exhibit #_ to [Person's] Affidavit" is useless. Every document shall have a description that identifies exactly what it is: if "Exhibit 1" is a transcript, for example, label/describe the document "Tr of [Person's] 6/21/18 Dep"; if it is an allonge to a loan document, label it "[1/2/92 Allonge to 8/9/90 Loan]."

(C) Word limits: All memoranda are limited pursuant to the Commercial Division Rules. Requests to extend word-count limits shall include a brief statement (500 words or less) of the request and shall be emailed pursuant to § 2(A) at least five business days prior to the filing deadline.

(D) Deposition transcripts: All deposition transcripts shall be submitted in their entirety, highlighting the relevant cited sections, and in mini-script format.

(E) Exhibits to all motions should be identified with numbers, not letters, regardless of which party or nonparty files the document; for example, use "Exhibit 27"

as opposed to “Exhibit AA.” In all memoranda of law, however, exhibits shall be cited using the applicable NYSCEF Docket Numbers. Parties may opt out of hyperlinking only if they cite to the appropriate NYSCEF Numbers. Opting out does not require notice to the court. DO NOT CITE TO EXHIBIT NUMBERS OR LETTERS LISTED IN AFFIDAVITS OR AFFIRMATIONS. THEY ARE USELESS. ONLY USE NYSCEF NUMBERS.

(F) Do not use placeholders. Parties shall make a motion to seal or redact instead.

(G) Motion Sequence Numbers must be included on all documents with the exception of exhibits, if it is known.

(H) Unpublished Opinions: A copy of any unpublished opinion cited in a party’s motion papers, such as an opinion printed in the New York Law Journal, or that is otherwise not available on Westlaw or Lexis, must be filed as a separate document with the party’s motion papers.

6. Attorneys and Pro Hac Vice Applications:

(A) Pro Hac Vice Applications (by agreement or not): All motions for admission pro hac vice shall be made by order to show cause and must be accompanied by: a recent certificate of the applicant’s good standing in each state where admitted; and an affirmation of the applicant identifying how many times, if any, the applicant has been admitted pro hac vice in New York, whether any such admission was vacated, and whether the applicant is or ever was subject to a disciplinary proceeding in any jurisdiction.⁴ If the parties consent to the request for pro hac vice admission, an ex parte application may be filed, by order to show cause in the Commercial Division Office, including the above materials as well as a stipulation reflecting the parties’ agreement. Only the Sponsoring New York State Attorney may e-file documents to NYSCEF; counsel admitted pro hac vice are prohibited from e-filing unless/until they file proof of completion of a New York State/NYSCEF E-Filing CLE course.

Additionally, New York Counsel shall be present at every appearance in Part 48, regardless of whether out-of-state counsel will appear.

(B) ANY AND ALL attorneys shall inform the court within five business days of any suspensions or public ethics proceedings in any jurisdiction.

⁴ The Part 48 Pro Hac Vice Proposed Order Form is available with Justice Masley’s materials https://ww2.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.

(C) Fair speech shall be employed,⁵ and counsel shall adhere to the Standards of Civility,⁶ in all appearances before, submissions to, and correspondence with Part 48.

7. Orders to Show Cause: Part 48 requires prior notice of all orders to show cause. When a movant notifies any adversaries of a proposed order to show cause, movant shall also notify Part 48 by emailing sfc-part48@nycourts.gov. The movant shall also email sfc-part48@nycourts.gov immediately after the OSC is filed, regardless of whether a TRO is sought. Parties shall not deliver hard copies to Part 48 unless directed by the court. If a TRO is sought, the court will email the parties with instructions on how to proceed and whether the court will hear argument on the TRO. **All cross motions to orders to show cause shall be made by a new proposed order to show cause bearing a different motion sequence number.**

(A) Service: Service of an order to show cause, regardless of what method of service of the order to show cause is provided for in the order to show cause, is not a substitute for service of process consistent with the CPLR and does not obviate a party's obligations to properly serve, under the CPLR and other applicable law, an adverse party for the purposes of jurisdiction.

8. Dispositive Motions:

(A) Pre-joinder dispositive motions: Discovery is stayed automatically only when a party has filed a dispositive motion seeking to dismiss the entire pleading (not on a motion seeking partial dismissal) prior to joining issue (e.g., a pre-answer motion to dismiss all causes of action); however, if a party seeks to compel discovery prior to resolution of a motion to dismiss, the party shall make a request at the argument on the motion to dismiss or by filing a motion by OSC at least ten days prior to the argument on the initial motion.

(B) Summary judgment motions shall be made no more than 30 days after the Note of Issue has been filed. There will be no extension of the prescribed 30-day period without extraordinary good cause. ADR does not stay the prescribed period. Additionally, the court does not accept cross motions for summary judgment. All summary judgment motions shall be separately filed within the 30-day period and bear their own motion sequence numbers. The time to file a summary judgment motion is not extended by the filing of a cross motion.

⁵ See "Fair Speech: Gender Neutral Language in the Courts," New York State Judicial Committee on Women in the Courts, available at <http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/fair-broch2.pdf>.

⁶ See 22 NYCRR 1200 Appendix A, available at <http://ww2.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

(C) Optional Commercial Division Individual Rule 19-A Statements are helpful for all summary judgment motions if every fact in the Statement is supported by pin-point citation(s) to the corresponding NYSCEF Document Numbers for the party's submissions in support or opposition to the applicable motion sequence.

Individual Rule 19-A Statements may not be cited as authority in a party's memorandum of law or other motion papers: citations in all legal memoranda and motion papers (i.e., affidavits, attorney's affirmations) must use pin-cites to the appropriate NYSCEF Document Numbers.

(D) Joint statements: The court encourages the use of stipulated Joint Statements of Undisputed Fact(s) to reduce duplicated and/or unnecessary submissions and to narrow the scope of the issues/facts in dispute. Accordingly, the parties are required to meet and confer, prior to filing any motion for summary judgment (other than those pursuant to CPLR 3213), to attempt in good faith to reach and memorialize in a Joint Statement their agreed-upon facts. A Joint Statement of Undisputed Fact(s) may be cited in the parties' legal memoranda.

9. Oral Argument:

(A) Expanded opportunities for speaking roles: The court is aware that in this century very few cases go to trial and, as a result, there are fewer speaking opportunities in court, particularly for less experienced lawyers (i.e., lawyers practicing for less than seven years). The court is also cognizant of the virtual absence historically of lawyers from diverse backgrounds and women appearing in such roles in commercial cases. The court strongly encourages litigants to be mindful of opportunities for less experienced lawyers, lawyers from diverse backgrounds, and lawyers who are women to conduct proceedings before the court, particularly where such members of the legal team drafted or significantly contributed to the underlying matter (i.e., the motion papers for oral argument; witness preparation for a hearing).

(B) Appearances presumptively virtual: All appearances are presumptively virtual using Microsoft Teams unless otherwise indicated. Parties, of course, are welcome to appear in person and should copy all counsel and email sfc-part48@nycourts.gov ten days before the proceeding to request an in-person proceeding.⁷ For virtual appearances, the court will supply a Microsoft Teams link using the email addresses registered in E-Filing/NYSCEF. Participants should download the Microsoft Teams application and test it beforehand. Teams links are typically distributed on the Friday before the appearances. Please email sfc-part48@nycourts.gov if you have not received a Microsoft Teams invitation.

⁷ For all court appearances, counsel shall meet and confer, at least 24 hours before the in-person appearance, to confirm that all parties are aware of the appearance.

10. Discovery Motions: All discovery motions shall be brought by an Order to Show Cause. Rule 24 letters are not permitted. A pre-conference is not required.

11. Amending any Pleading: Motions/stipulations to amend/seeking leave to amend and/or all submissions to amend as of right any pleading (e.g., complaints, answers, etc.), shall be accompanied by a copy of the original pleading, a clean copy of the proposed amended pleading, and a red-line copy identifying all modifications or additions.

Procedures for Sealing and/or Redacting

12. Motions to Seal and/or Redact Documents/Information: Documents or information may not be sealed or redacted by stipulation. Parties seeking to seal and/or redact shall move, by order to show cause, for the appropriate relief and the following procedures are implemented to streamline the process.⁸

Sealing entire documents or categories of documents is typically a drastic remedy; the courts are obligated to fashion narrowly-tailored orders to seal or redact certain highly-sensitive information to maintain the transparency of the court's affairs and to balance the public's interests with those of the parties. The court strongly encourages parties to consider redacting instead of sealing.

(A) 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 number or similar identification method; (2) NYSCEF document number of each filed copy of a document; (3) the categorization of each document (see below); (4) the good faith basis to seal or redact the particular document/information; and (5) citation(s) to applicable law or authority supporting movant's good cause to seal/redact the document/information.

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,"

⁸ For general information, please see "PROTOCOL ON COURTHOUSE AND COUNTY CLERK PROCEDURES FOR ELECTRONICALLY FILED CASES" in New York County: ([Revised August 15, 2019; Explaining how customary courthouse and County Clerk procedures are applied in e-filed cases](#)). For assistance with procedural e-filing issues, see footnote 2. Further, no motion is necessary to redact "Confidential Personal Information," including social security numbers and investment account numbers, as set forth in 22 NYCRR 214.12.

“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—as opposed to mere vague statements—allows the court to expeditiously resolve these motions. More detailed descriptions are economical for the parties as generic categories may not establish the requisite good cause to seal or redact and necessitate successive/further motion practice.

(B) Proposed sealed or redacted documents filed in connection with any motion shall be submitted to NYSCEF as follows:

(i) Every document sought to be sealed or redacted shall be filed on NYSCEF under temporary seal in completely unredacted form (Confidential Chamber’s Copy), with all proposed redactions highlighted yellow, along with the mandatory spreadsheet outlined in § 12(A);

(ii) Every motion which seeks to redact information shall include a public copy of the document, filed on NYSCEF, containing movant’s proposed redactions;

(iii) Motions to seal an entire document which seek, alternatively, to redact specific information in that document shall also include, under temporary seal on NYSCEF, an entirely unredacted copy of the document with all proposed redactions highlighted.

(C) Judiciary Law § 4, the parties are reminded that all court proceedings, taking place remotely or in-person, are open to the public.

13. Discovery Disputes and Discovery Conferences:

(A) Requesting a Discovery Conference: To request a discovery conference after the parties have met and conferred as required by Commercial Division Rule 14, a party shall send the request by email, pursuant to § 2(A), including only:

-- Subject Line: “Discovery Conference Request: [Index number, case name]”;

-- Email Body: A statement, not more than 500 words, identifying the unresolved dispute(s) and, if the party believes it would be helpful, requesting authorization to submit individual pre-conference letters. A non-requesting party may respond, within 24 hours of the requesting email, by replying all and indicating, in 500 words or less, whether the party (1) objects to scheduling the discovery conference and/or (2) requests authorization for individual pre-conference letters. **All substantive emails (not scheduling emails) must also be filed to NYSCEF.**

In lieu of conferences, parties shall submit a joint update in accordance with § 2(A). If the parties agree that a virtual conference is imperative, they may request a conference with the court by emailing sfc-part48@nycourts.gov.

(B) Individual pre-conference letters: See Procedure § 4(A). Individual pre-conference letters, 1,500 words or less, **shall be filed to NYSCEF** and emailed pursuant to § 2(A) at least 24 hours before the conference.

(C) Updates regarding the status of discovery are presumptively by email to sfc-part48@nycourts.gov, preferably by joint email. If the parties cannot agree, they may file competing email updates. **All email updates must also be filed to NYSCEF.**

14. Unrepresented Litigants, the Public, and the Press

The court greatly appreciates notice that an unrepresented litigant will appear before Part 48. Unrepresented litigants, the public, and the press are instructed to contact the Part Clerk by emailing sfc-part48-clerk@nycourts.gov to determine the method of appearance, and if virtual, receive a Microsoft Teams link.

Members of the public and press may contact the email address 48 hours before the appearance to request links to proceedings. **Observers must turn off their microphones and cameras and may not record proceedings. Screenshots of any proceedings are not permitted without a prior court order.**

15. Language Interpreters and Accessibility Accommodations:

If any individual appearing in Part 48 requires a language interpreter, hearing devices, or accessibility accommodations, the party or counsel shall notify Part 48, by email pursuant to § 2(A), as soon as possible before the appearance and indicate precisely for which language (including, where applicable, regional distinctions) an interpreter is needed and/or what accessibility accommodation(s) are sought.

16. Confidentiality Stipulation and Proposed Order: The form Confidentiality Stipulation and [Proposed] Order accepted in Part 48 is available online.⁹

The parties shall file to NYSCEF and send, pursuant to § 2(A), the following: (i) the executed stipulation and proposed order; (ii) a red-line copy demonstrating any/all additions, subtractions, or modifications made to the Part 48 Form; and (iii) a cover letter briefly explaining all substantive changes.

However, if the parties have not changed the Part 48 Confidentiality Stipulation and [Proposed] Order form except to include only case-specific administrative/identifying information (i.e., the case caption, index number[s], party

⁹ Confidentiality Stipulation and [Proposed] Order Form:
https://ww2.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.

names, and signature blocks), the parties may execute and file the Confirmation of No Substantive Alterations To The Part 48 Form (attached as Exhibit 2 to the Part 48 Confidentiality Stipulation) in lieu of the above-required red-line copy and cover letter.

17. Exchange of Electronically Stored Information (ESI): Counsel shall discuss with their clients then meet and confer as to the matters memorialized in the Commercial Division Rules ESI Guidelines. The parties shall attempt, in good faith, to reach an agreement regarding the scope of ESI to be sought, the location, format, and custodians of such information, the burden of bearing costs for collecting/reviewing such information, and the amount of time anticipated to obtain, review, and produce such information. If no agreement can be reached prior to the preliminary conference, a party may email pursuant to § 2(A) a request for an ESI conference. A sample Stipulation for the Exchange of Electronically-Stored Information is available online.¹⁰

18. Preliminary Conferences: The parties are encouraged to use the Part 48 PC Order form, available online.¹¹

Proposed Orders and Judgments

19. Proposed Orders and Judgments: Proposed judgments and Orders must be emailed in a Microsoft Word document pursuant to § 2(A).

Transcripts and Other Procedures

20. Transcripts:

(A) Movants shall be responsible for the costs of providing certified transcripts to the court unless the court orders otherwise. **Transcripts shall be sent to the court, pursuant to § 2(A), within 24 hours of receiving the transcript from the court reporter.** Movants shall e-file, under the appropriate sequence number, and email an original copy without NYSCEF markings. Motions will not be marked fully submitted until the certified transcript has been properly submitted unless the court orders otherwise. If movant has not received the transcript from the reporter within 30 days of the proceeding, the movant shall email the part clerk. Parties can obtain the court reporter's name and contact information by email request sent pursuant to § 2(A).

(B) **Errata sheet/application for corrections:** The parties shall adhere to the deadlines set forth in CPLR 5525 (c) if there are corrections to the transcript. Additionally, a copy of all proposed corrections and/or objections to the transcript, by either party, must be sent to the court pursuant to § 2(A) under each party's respective

¹⁰ Sample ESI Exchange Form is available with Justice Masley's materials at https://ww2.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.

¹¹ The Part 48 PC Order Form is available with Justice Masley's materials at https://ww2.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.

deadlines set forth in CPLR 5525 (c). In the event the moving party has no corrections, but the non-moving party has proposed corrections, the moving party has 48 hours to advise the court whether it agrees or objects to the non-moving party's proposed corrections. Alternatively, each party shall notify the court if there are no changes within the deadlines in CPLR 5525 (c). If the parties agree on the changes, the parties will send the court, pursuant to § 2(A), an errata sheet stipulation within 30 days of receiving the transcript from the court reporter. Absent a stipulation or timely notice to the court of changes to the transcript, the court may so-order the transcript as received. Non-compliance with any deadline set forth under CPLR 5525 (c) is a waiver.

21. Commissions: Requests for commissions shall be made by stipulation, application via the Ex Parte Office, or else by order to show cause.

CALENDAR PUBLIC REMARKS

UPDATE VIA EMAIL	Parties shall send a joint status update by email (see Procedure 2[A].) There will be no in-person or remote appearance.
MS TEAMS CONFERENCE	A remote conference will be held by Microsoft Teams.
IN PERSON CONFERENCE	A conference will be held in person in the courtroom (Room 242).
CONTROL DATE/NO APPEARANCE	A deadline for submission of transcript or other documents. Not an argument date.
ORAL ARGUMENT – IN PERSON	Oral argument will be held in person in courtroom (Room 242).
ORAL ARGUMENT – REMOTE	Oral argument will be held remotely by Microsoft Teams.