

Part 60 Temporary Rules

These Temporary Rules (effective April 8, 2020) supplement the Part 60 Practices and Procedures.¹

New York State Unified Court System Administrative Orders, Memoranda, Temporary Procedures, and Other Directives

The New York State Unified Court System (UCS) has created a webpage with information concerning UCS operations during the coronavirus public health emergency (<https://www.nycourts.gov/index.shtml>). In addition, the Supreme Court, New York County-Civil Term has issued Temporary Procedures, effective March 17, 2020 and revised March 19, 2020 (NY Sup. Civil Temp. Procedures). Selected orders, memoranda, and temporary procedures, which are cited in the Part 60 Temporary Rules and pertain to civil litigation in New York Supreme Court, are listed in Exhibit A to these Rules, with hyperlinks to the documents. Parties should familiarize themselves with the Part 60 Temporary Rules and all UCS administrative orders, memoranda, and other statements, directives, and orders governing Court operations and procedures during the coronavirus public health emergency. The Exhibit A list is provided as a courtesy and should not be treated as exhaustive. Parties should continue to review the UCS coronavirus webpage and the Court's website for information and updates. The Court further directs parties to the UCS Coronavirus Telephone Hotline (833-503-0447) for general inquiries concerning UCS operations, policies, and procedures during the coronavirus public health emergency. Parties should also consider signing up to receive alerts via the New York Courts Alert Emergency Portal (www.nycourts.gov/alerts/).

In these unprecedented circumstances the directives for litigation in this Court are evolving. It is anticipated that further administrative directives will be forthcoming. The following Temporary Rules apply to the extent consistent with current and future directives.

1. Communicating with the Court

New York City courthouses remain open only for essential functions. All judges and non-judicial employees not assigned to those essential functions have been directed to remain at home. (See March 15, 2020 Memorandum from Chief Administrative Judge Lawrence Marks [March 15 Memo.].) In addition, the NYSCEF system is not accepting filings for non-essential matters. (March 22, 2020 Administrative Order of Chief Administrative Judge Lawrence Marks [AO/78/20].)

Parties should not attempt to contact chambers or the Part 60 clerk by phone. Until further notice, communications with the Court should be directed to the Part 60 email at SFC-PART60@nycourts.gov. Parties may submit letters by email that fall within categories (2) and (4) of Rule 10 of the Part 60 Practices and Procedures, regarding notice of settlement and supplemental authority, respectively. If, after reviewing these Temporary Rules and the other

¹ The Part 60 Temporary Rules were drafted with the invaluable assistance of principal court attorney, Hayley Lowe.

directives of UCS and the Supreme Court, New York County-Civil Term, the parties have an immediate need for further clarification, the parties may submit a brief joint email to Part 60 requesting further instructions. Parties should submit any such emails sparingly. All other communications with Part 60 should be strictly limited to what is specifically allowed by the following Temporary Rules. All appearing parties must be copied on all emails to Part 60. The Court will not provide a substantive response to any ex parte email communications.

2. Appearances

There will be no in-court appearances in Part 60 until further notice. (See March 13, 2020 Memorandum from Chief Administrative Judge Lawrence Marks [March 13 Memo.]; March 15 Memo.; NY Sup. Civil Temp. Procedures; March 19, 2020 Administrative Order of Chief Administrative Judge Lawrence Marks [AO/71/20].)

- a. Preliminary Conferences, Compliance Conferences, and Pretrial Conferences
Pursuant to NY Sup. Civil Temp. Procedures, all conferences, including phone conferences, were previously cancelled until further notice. The Court will now hold remote conferences as appropriate. (See April 7, 2020 Memorandum from Chief Administrative Judge Lawrence Marks.) If a conference is claimed to be imperative, or would otherwise facilitate the progression or resolution of the action, the parties may submit a joint letter to the Part 60 email. The letter should not exceed three (3) pages and should concisely set forth the issues and the parties' respective positions thereon. Discovery conferences are more specifically addressed by Temporary Rule 7.
- b. Oral Argument
In accordance with the NY Sup. Civil Temp. Procedures, “[f]ully briefed motions previously scheduled for oral argument will be marked submitted on the scheduled date without oral argument, unless otherwise directed by the assigned Justice at a later date.”
- c. Trials
No civil trials shall commence until further notice. (March 15 Memo.)

Unless specifically directed otherwise, the parties should not contact the Court now to schedule any in-court appearance. The Court will contact the parties to schedule such appearances once it resumes normal operations. It is anticipated that once the Court resumes normal operations, Part 60 will issue further directives regarding requests by parties for future in-court appearances.

3. Adjournments

AO/71/20 provides:

“Where a party, attorney or other person is unable to meet discovery or other litigation schedules (including dispositive motion deadlines) for reasons related to the coronavirus health emergency, the parties shall use best efforts to postpone

proceedings by agreement and stipulation for a period not to exceed 90 days. Absent such agreement, the proceedings shall be deferred until such later date when the court can review the matter and issue appropriate directives. In no event will participants in civil litigation be penalized if discovery compliance is delayed for reasons relating to the coronavirus public health emergency.”

“In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters,” Governor Andrew Cuomo issued Executive Order 202.8 on March 20, 2020 tolling all limitations periods and filing deadlines for legal actions in New York State. Consistent with AO/71/20, the Executive Order, and the typical practices in Part 60 and the Commercial Division, the parties should confer regarding pending deadlines and adjournments. Stipulations as to extensions of deadlines and adjournments, with proposed orders if appropriate, should be submitted to the Court in accordance with Part 60 Temporary Rule 4.

Parties should not submit stipulations adjourning any appearance date to a specific date, as all currently scheduled appearances (conferences and oral arguments) have been cancelled until further notice. (See Part 60 Temporary Rule 2.)

It is always the Court’s expectation that parties will confer with a view to reaching agreement on scheduling and other matters. Given the current exigent circumstances, it is especially important that the parties make all reasonable efforts to reach agreement. In the unlikely event that the parties are unable to reach agreement on scheduling or an adjournment of deadlines, the parties may submit a joint letter to the Part 60 email. The letter should not exceed one (1) page and should concisely set forth the issues and the parties’ respective positions thereon.

4. Stipulations and Proposed Orders

Stipulations with proposed orders, including orders adjourning deadlines or staying proceedings, shall be submitted to the Part 60 email. Due to the suspension of the NYSCEF system, the Court will address the submission by responsive email. When the NYSCEF system is restored to normal function, the parties should not file submissions previously made in accordance with this Temporary Rule. The Court will upload so ordered stipulations or other orders effective nunc pro tunc.

5. Proposed Judgments

Proposed judgments, including consent judgments, may be submitted to the Part 60 email. All appearing parties must be copied on the email submission. If there are specific circumstances requiring filing or entry of the judgment by a date certain (as in certain RMBS cases), such circumstances may be set forth in the email submission. The parties are advised that there may be delays in the formal entry of judgments due to the ongoing public health emergency.

6. Discovery

Where possible, parties are encouraged to proceed with discovery in a manner that is feasible under the exigent circumstances and consistent with current health and safety directives. It is incumbent upon parties to endeavor to resolve discovery disputes that may arise during this time without the Court's intervention. Parties may submit a discovery dispute to the Court for a proposed conference only in accordance with Part 60 Temporary Rule 2(a). Parties shall, however, only seek a conference if, after exhausting efforts to confer, there is a remaining discovery dispute that prevents, or substantially limits, the progression of discovery that may be safely conducted during the ongoing public health emergency.

Adjournments of discovery deadlines are addressed by Part 60 Temporary Rules 3 and 4.

7. Motions and Essential or Emergency Applications

The March 22, 2020 Administrative Order of Chief Administrative Judge Lawrence Marks (AO/78/20) directs: “[E]ffective immediately and until further order, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters attached as Exh. A.” The directive applies to both paper filings and electronic filings via the NYSCEF system. With respect to this Court, the only functions deemed essential and permitted by the Administrative Order are “emergency applications related to the coronavirus” and “any other matter that the court deems essential.” (AO/78/20 Exh. A, §§ C [6], E.) UCS has further clarified that the latter category “catch-all provision” is intended to “address the very rare cases where individual facts necessitate an immediate hearing notwithstanding current public health concerns,” and that it is to be “interpreted restrictively.” (UCS Posting - Administrative Order: Limiting Court Filings, addressed to All Attorneys and Parties in Litigation Before the New York State Courts [UCS-Limiting Court Filings].)

a. Non-Essential Motions

Parties may continue briefing pending motions, dispositive motions not subject to Commercial Division Rule 24, and motions for which the Court has previously conducted a Commercial Division Rule 24 conference. In lieu of service by NYSCEF, the parties should serve motion papers on all other parties by email or other agreed upon means of service. All motion papers should thereafter be filed on NYSCEF within a reasonable time after the NYSCEF system is restored to its normal function. Unless specifically directed otherwise by the Court, motion papers should not be submitted to the Part 60 email.

b. Orders to Show Cause

An Order to Show Cause shall be brought only if it meets the standard for an essential application set forth in AO/78/20. (See also Part 60 Temporary Rule 7(d).)

c. Working Copies

“Parties should not submit working copies in Room 130, either in person, or by mail, until directed to do so by the court.” (NY Sup. Civil Temp. Procedures.)

d. Essential Applications

The scope of permissible essential applications is defined by AO/78/20. As relevant to the Commercial Division, AO/78/20 allows for “emergency applications related to the coronavirus” and “any other matter that the court deems essential.” (AO/78/20 Exh. A, §§ C [6], E.) With respect to essential applications made under the AO/78/20 Section E “catch-all provision” of “any other matter that the court deems essential,” UCS has further directed: “Persons who believe that a specific pending or new matter should be included in this highly restrictive group should apply to the court for this designation by emergency application by order to show cause, including a detailed explanation of the applicant’s rationale.” (UCS-Limiting Court Filings.) The Supreme Court, New York County-Civil Term has also issued procedures concerning essential applications. The March 17 Temporary Procedures provided generally: “Essential applications will be heard at 60 Centre Street by the Ex Parte Judge.” Most recently, the Supreme Court, New York County-Civil Term issued a further Protocol, effective April 2, 2020 for Emergency Applications Pursuant to Administrative Order 78/20 (NY Sup. Civil AO/78/20 Protocol). That Protocol directs that parties seeking leave to file a Section E essential application shall make the request by email submission to SFC-essentialmatters@nycourts.gov. The Protocol further states that any such submission “will be reviewed by clerical staff and forwarded to a Supreme Court Judge.” Parties should refer to that Protocol for guidelines for the submission of essential applications in this Court. We look forward to further protocols as to when AO/78/20 essential applications made in existing Part 60 cases will be assigned to Justice Friedman. Parties making an essential application in matters assigned to Part 60 should submit a copy to the Part 60 email of any papers filed or otherwise submitted to SFC-essentialmatters@nycourts.gov. The submission to the Part 60 email should include the subject line “AO/78/20 Emergency Application.”

Exhibit A to Part 60 Temporary Rules

March 13, 2020 Memorandum from Chief Administrative Judge Lawrence Marks
<https://www.nycourts.gov/whatsnew/pdf/MEMO-3.13.20.pdf>

March 15, 2020 Memorandum from Chief Administrative Judge Lawrence Marks
<https://www.nycourts.gov/whatsnew/pdf/Updated-Protocol-AttachmentA3.pdf>

Supreme Court, New York County-Civil Term Temporary Procedures, effective March 17, 2020 and revised March 19, 2020
<https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/PDF/Temporary-Procedures.pdf>

March 19, 2020 Administrative Order of Chief Administrative Judge Lawrence Marks (AO/71/20)
<https://www.nycourts.gov/whatsnew/pdf/AO71-20.pdf>

March 22, 2020 Administrative Order of Chief Administrative Judge Lawrence Marks (AO/78/20)
<https://www.nycourts.gov/whatsnew/pdf/AO-78-2020.pdf>

UCS Posting - Administrative Order: Limiting Court Filings, addressed to All Attorneys and Parties in Litigation Before the New York State Courts
<https://www.nycourts.gov/limited-filings.srehtml>

Supreme Court, New York County-Civil Term Protocol for Emergency Applications Pursuant to Administrative Order 78/20, effective April 2, 2020
<https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/PDF/Emergency-Applications-Protocol.pdf>

April 7, 2020 Memorandum from Chief Administrative Judge Lawrence Marks (posted on various bar association websites)