

# COMMERCIAL DIVISION PART 48 TRIAL PROCEDURES

*Last updated: April 2023*

Justice Andrea Masley

Supreme Court of the State of New York  
County of New York, Commercial Division Part 48  
60 Centre Street, Courtroom 242, New York, NY 10007  
Commercial Division Support Office, Room 119A

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

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## Trial Dates, Trial Adjournments, and Other Trial Matters<sup>1</sup>

**1. Trial Rules:** Commercial Division Rules 25, 26, 27, 28, 29, 30, 31, 32, and 33 apply except as supplemented or modified here or by the Part Procedures.<sup>2</sup>

**2. OCR-Searchable:** All PDFs filed in NYSCEF or sent to the court must be OCR-searchable.

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<sup>1</sup> These trial procedures apply to all exhibits, exhibit charts, witness lists, and other submissions in all fact-finding proceedings (e.g., jury trials, bench trials, hearings, inquests) at which witnesses may testify or exhibits are intended to be introduced.

<sup>2</sup> Unless otherwise indicated, reference to Part Procedure means the general Part 48 Procedures, available at:

<https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/JMasley-PracticeRules.pdf>.

**3. Trial Dates:** Trial dates are discussed at a Trial Scheduling Conference and assigned by order of this court or other written communication from this court. Once the trial dates are scheduled, the number of trial days cannot be increased. If there are no dispositive motions, the parties shall email the court pursuant to Part Procedure 2 (A) within 45 days of filing the note of issue to schedule the Trial Scheduling Conference. If there are dispositive motion(s), the parties shall contact the Part Clerk at [SFC-Part48-Clerk@nycourts.gov](mailto:SFC-Part48-Clerk@nycourts.gov) within 7 days of a decision on the dispositive motion(s) to schedule a Trial Scheduling Conference.

(A) **Witness Scheduling:** The parties shall send a schedule of witnesses, identifying all witnesses, their addresses, how long each witness is projected to testify, on direct, cross-examination, and re-direct, to the court pursuant to Part Procedure 2 (A), 24 hours prior to the Trial Scheduling Conference, otherwise the Trial Scheduling Conference will be cancelled. To project accurate timing, parties should consider efficiencies in witness scheduling such as expanding cross examination for a witness who is being called by more than one party. For example, if defendant will be called by plaintiff, then the parties should organize defendant's testimony such that the defendant will not be called twice or the witness's testimony will be in an odd order. The parties might agree for the defendant to be called by plaintiff and to submit its trial affidavit on plaintiff's direct case and plaintiff immediately cross examines defendant.

(B) **Adjournments:** Trial dates are firm and will not be adjourned absent a showing of extraordinary circumstances and requested pursuant to Part Procedure 2 (A). Requests to adjourn trial dates shall state, in 500 words or less, the basis of the request. Trial dates are not adjourned absent court order or written authorization confirming the court has granted the request.

(C) **Continuances:** There will be no continuances granted if a witness is unavailable to testify at the pre-determined time absent a demonstration of extraordinary circumstances.

**4. Pre-Trial Conferences:** One or more Pre-Trial Conferences will be scheduled to resolve witness scheduling issues, and draft jury charges and verdict sheets, if not already finalized, and any other logistics. In the absence of such Pre-Trial Conferences, parties with upcoming trials shall email the court pursuant to Part Procedure 2 (A), copying all counsel, two weeks prior to commencement of trial to confirm all parties are ready to proceed and for guidance as to how to proceed.

## **5. Appearances, Time Limits:**

(A) Appearances during trial: All trials, jury and bench, are presumptively in person unless the court rules otherwise. All court appearances, before and during trial, are virtual unless a party specifically requests to appear in person, and the court so permits.

(B) Trial time limits: Generally, there are 5-6 hours per day of trial time. Unless the court directs otherwise, the parties shall agree to time estimates and hard limits anticipated for all aspects of trial and submit their agreed-upon estimates and deadlines to the court pursuant to Part Procedure 2 (A) at least 7 days prior to commencement of trial. If the parties cannot reach an agreement, the parties shall submit competing proposed schedules to the court pursuant to Part Procedure 2 (A) at least 7 days prior to commencement of trial.

(C) Openings and Closings: Opening statements or closing statements may not exceed 15 minutes.

**6. Motions in Limine**: Motions in limine shall be filed by order to show cause. (See Part Procedure 7.) Unless otherwise directed in a written order, motions in limine shall be filed at least 60 days prior to commencement of trial. Motions in limine not timely filed are deemed waived. Omnibus motions in limine are encouraged.

(A) Court orders entered during any pre-trial phase which seal or redact any documents or information will not apply to any documents or information introduced at trial absent further order of the court following a timely motion to seal or redact information made in limine.

(B) Unless otherwise ordered, the courtroom is open to the public and will not be closed for any portion of the trial. Such motions should be made by OSC at least 60 days prior to commencement of trial.

**7. Exchanging and Filing of Trial Materials**: Attorneys must meet and confer about exhibits, witness schedules, deposition transcript designations, jury charges, verdict sheets, and to attempt to reach an agreement as to facts that are not in dispute, as well as any other trial issues, at least 60 days prior to commencement of trial. Otherwise, the trial will be cancelled.

(A) Exchanging Trial Materials: Parties shall exchange Trial Materials including but not limited to witness lists, marked pleadings, and joint statements of undisputed fact, at least 7 days prior to commencement of trial. Counsel shall comport with Commercial Division Rule 28 and all exhibits, in exhibit books complete with the Part

48 Exhibit Chart,<sup>3</sup> shall be exchanged at least 7 days prior to commencement of trial. Parties are encouraged to prepare joint exhibits. If a party modifies an exhibit or any other Trial Material, the modified document must be sent to all other parties before it is offered to the court or substituted in the court's exhibit books.

(B) Filing and Delivery of Trial Materials: Counsel shall file the Part 48 Exhibit Chart in OCR-searchable format to NYSCEF at least 7 days prior to commencement of trial. Trial exhibits shall be delivered to the Part Clerk at 60 Centre Street, Room 242, in a single set of paper copies and on a thumb drive included with the boxes of paper copies, at least 7 days prior to commencement of trial. Every digital document or Trial Material filed in NYSCEF or saved on a thumb drive shall be in an individual, OCR-searchable file with specific, descriptive filenames. For virtual bench trials, paper copies of exhibits are not required, only a thumb drive. Should the court need a particular document to be printed on paper for a virtual bench trial, the court will inform the parties.

(C) Format of Trial Materials: Exhibits shall be pre-marked using only numbers: e.g., Plaintiff's Exhibit 1 = P001; Defendants' Exhibit 99 = D099; where there are numerous parties, identify party names with abbreviations, i.e., ABC001, XYZ199. Exhibit Charts shall identify whether admissibility of each exhibit intended to be used is disputed, as determined by the parties at their required meet and confer. (See Trial Procedure 7.) Exhibit books shall contain only single-sided pages and be bound in paginated, clearly-labeled volumes not exceeding two inches in thickness with tabs separating each exhibit.

(D) Any deposition transcripts intended to be introduced at trial shall be provided to the court at least 7 days prior to commencement of trial in their entirety in OCR-searchable mini-script format with index(es) on thumb drives and paper copies and shall otherwise comport with Commercial Division Rule 29. For virtual bench trials, paper copies are not required, only a thumb drive.

(E) The parties shall be prepared with additional copies of exhibits and deposition transcripts to provide to witnesses during examination at trial.

**8. Joint Statements of Undisputed Fact**: Not less than 7 days prior to commencement of trial, the parties shall exchange and e-file any Joint Statement of Undisputed Fact(s); digital copies shall be sent to the court Pursuant to Part Procedure 2 (A).

**9. Witness Lists**: Parties must exchange and e-file a list of witnesses intended to be called in a chart/spreadsheet identifying whether each witness is a fact and/or expert

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<sup>3</sup> The Part 48 Exhibit Chart is available online at <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

witness, how a party wishes to describe its expert's area of expertise, and whether expert status, if any, is disputed. For expert witnesses, a brief explanation of the anticipated testimony shall be included (see also CPLR 3101 [d]). The parties, after meeting and conferring as required by the Trial Procedures (see Trial Procedure 7) and the Commercial Division Rules, shall submit a proposed schedule for the examination of witnesses at the Pre-Trial Conference; in no instance will the proposed schedule be sent to the court fewer than 7 days prior to commencement of trial. Parties are responsible for tracking testimony time. Parties shall meet and confer daily as to testimony time. If a party fails to abide by the times set forth in the final witness schedule, time will be deducted from other witness's testimony.

**10. Language Interpreters and Accessibility/Accommodations:** Where a translator is needed for language translation or accessibility/other accommodations may be necessary, the requesting party shall notify the Part Clerk pursuant to Part Procedure 2 (A) at least 7 days prior to commencement of trial. The notice shall include all pertinent information, including: the witness's name, date(s) of anticipated testimony, language and dialect used; and/or all other accommodations requested.

**11. Court Reporters:** Prior to commencement of trial, the parties shall provide the Court Reporter(s) with contact information, witness lists, pre-marked exhibit lists and exhibit charts, and a glossary of names, unusual words, and/or acronyms that may be used during the trial. Court Reporters require notice of at least two weeks where real-time transcription of trial proceedings will be implemented. The parties may contact the Court Reporters' Office at Room 420, (646) 386-3050, and the court as set forth in Part Procedure 2 (A).

**12. Demonstrative Evidence:** Requests for permission to use demonstrative evidence, including what the demonstrative evidence is and how the party intends to use it, shall be made pursuant to Part Procedure 2 (A) at least 24 hours prior to use of the demonstratives at trial. The court will consider all trial-facilitating media or devices if the deadline above has been satisfied.

**13. Jury Trial:** Parties to a jury trial must also comply with the following procedures:

(A) **Proposed jury charges and verdict sheets:** The parties must e-file to NYSCEF and email to the court, pursuant to Part Procedure 2 (A), **FINAL** proposed charges and verdict sheets no fewer than 30 days prior to commencement of a jury trial, unless ordered otherwise (e.g., in a particularly complex case), otherwise the trial is cancelled. Where a proposed jury instruction is verbatim from the **most current edition** of the Pattern Jury Instructions, PJI citations are sufficient; if a proposed instruction modifies any PJI instruction, the submitting party must include a cover letter providing appropriate authority for the proposed modifications and a red-line version demonstrating all changes to the PJI language. The court directs discussion between

the parties concerning proposed charges and verdict sheets before their final submission to the court. The court considers the proposed charges and verdict sheets submitted 30 days prior to commencement of trial to be final.

(B) Electronic Media and Trial Tools: Part 48 strongly encourages the use of media and technology, such as real-time transcription, to expedite and streamline trials. All exhibits must be electronically published to the jury and the parties shall work together to select a mode of electronic publication. The parties may use the court's audiovisual cart or import their own equipment. The party's audiovisual must include one large screen, as well as two small screens, one for each side of the jury box. All communications concerning technology should be sent to the Part Clerk. The parties should contact the Part Clerk to arrange a time prior to commencement of trial to set up equipment in the courtroom and a day after trial to take it down.

(C) Jury Selection and Questionnaire: The court will supervise jury selection. The parties must be prepared to select a jury in one day, as long as sufficient jurors are available. The parties are directed to prepare a juror questionnaire including a list of witnesses, counsel, and parties, as well as relevant questions unique to the case. The parties shall submit the juror questionnaire to the court at least 7 days prior to commencement of trial.

**14. Bench Trials**: Parties to a bench trial must also comply with the following procedures:

(A) Direct testimony affidavits: Commercial Division Rule 32-a is mandatory in non-jury trials. Direct testimony affidavits shall be exchanged and submitted to the court at least 7 days prior to commencement of trial.

(B) Pre-Trial Memoranda: Not less than 7 days prior to commencement of a bench trial, the parties shall exchange and e-file all pre-trial memoranda, formatted in accordance with the Commercial Division Rules and Part Procedure 5; digital copies shall be sent to the court Pursuant to Part Procedure 2 (A).

(C) Filing Exhibits: The parties shall file all exhibits to NYSCEF at least 7 days prior to commencement of a bench trial.

### **Post-Trial Matters**

**15. Filing Exhibits Entered into Evidence After Trial**: Only exhibits introduced at trial and entered into evidence by the court are deemed admitted for any purpose; exhibits not used and/or not entered into evidence at trial will not be considered by the fact finder.

## **16. Post-Trial Submissions and Filings:**

(A) Mandatory statements of proposed findings of fact: There is no word limit for proposed findings of fact. Every proposed finding of fact shall be supported by citation(s) to evidence (exhibits and/or testimony) admitted and used at trial, with pin-point citations to the applicable NYSCEF Document Numbers for each exhibit or trial transcript. Transcripts shall be cited using "page number: Line(s)." Findings of fact shall not be combined with conclusions of law.

(B) Admitted/entered exhibits: The parties must file to NYSCEF a final Joint Exhibit Chart (in the form accepted by Part 48) identifying each exhibit by its pre-marked number, the date on which it was admitted into evidence, and whether it was admitted into evidence over objection or otherwise. For inquiries as to non-traditional exhibits (i.e., large-format prints, models, etc.), email the court pursuant to Part Procedure 2 (A).

### (C) Jury Trials:

1. Post-trial motions in jury trials will be made consistent with the CPLR unless the court orders otherwise.

2. If post-trial motions are made, then the parties shall only file exhibits in NYSCEF that have been entered into evidence and are in support of the motion.

### (D) Bench trials:

1. Within 30 days of the conclusion of trial, or as directed by the court, the parties shall exchange and file to NYSCEF all post-trial memoranda formatted in accordance with the Part Procedures, Mandatory Statements of Proposed Findings of Fact, copies of all Exhibits Admitted at Trial, and the Part 48 Trial Exhibit Chart. All filings shall be OCR-searchable. Post-trial memoranda shall include proposed conclusions of law supported by citations to only evidence admitted at trial. Do not cite to Statements of Proposed Findings of Fact as support for any fact or conclusion in legal memoranda; cite the record only. Memoranda in response shall be served and filed not more than 30 days after receipt of the motion (or as directed by the court.)

2. The parties shall confirm that, pursuant to Trial Procedure 14 (C), all exhibits used during the trial have been filed to NYSCEF.

**17. Trial Transcripts:** Shall be e-filed to NYSCEF in OCR-searchable format at the conclusion of trial. Delivery of trial transcripts to the courtroom is not required.

**18. Removing Trial Materials:** At the conclusion of the trial, the parties shall provide the court with all physical trial exhibits that were admitted/entered into evidence. Exhibits will be destroyed after post-trial motions unless parties indicate within 30 days after trial that they wish to retrieve exhibits.

## CHART OF TRIAL DEADLINES

DEADLINES	JURY TRIALS	BENCH TRIALS
To email court re: Trial Scheduling Conference	Within 45 days of filing note of issue or within 7 days of a decision on dispositive motion(s)	Within 45 days of filing note of issue or within 7 days of a decision on dispositive motion(s)
To send a witness schedule to court	24 hours prior to the Trial Scheduling Conference	24 hours prior to the Trial Scheduling Conference
To email court about upcoming trial	Two weeks prior to commencement of trial	Two weeks prior to commencement of trial
To submit joint or competing proposed trial schedules	At least 7 days prior to commencement of trial	At least 7 days prior to commencement of trial
To file motions in limine	60 days prior to commencement of trial	60 days prior to commencement of trial
To meet and confer about exhibits, witness schedules, deposition transcript designations, jury charges, verdict sheets, and to attempt to reach an agreement as to facts that are not in dispute, as well as any other trial issues	At least 60 days prior to commencement of trial	At least 60 days prior to commencement of trial
To exchange Trial Materials	At least 7 days prior to commencement of trial	At least 7 days prior to commencement of trial
To exchange all exhibits, in exhibit books complete with the Part 48 Exhibit Chart	At least 7 days prior to commencement of trial	At least 7 days prior to commencement of trial (all exhibits should also be filed to NYSCEF 7 days prior to commencement of trial)
To file the Part 48 Exhibit Chart to NYSCEF	At least 7 days prior to commencement of trial	At least 7 days prior to commencement of trial
To deliver trial exhibits (on thumb drive and paper) to the Part Clerk	At least 7 days prior to commencement of trial	At least 7 days prior to commencement of trial (no need for paper copies in a virtual bench trial, unless requested by court)
To provide deposition transcripts to the court on thumb drive and paper copies	At least 7 days prior to commencement of trial	At least 7 days prior to commencement of trial (no need for paper copies in a virtual bench trial, unless requested by court)
To exchange, e-file, and send to court any Joint Statement of Undisputed Fact(s)	At least 7 days prior to commencement of trial	At least 7 days prior to commencement of trial
To submit a proposed witness schedule	At the Pre-Trial Conference/no less than 7 days prior to commencement of trial	At the Pre-Trial Conference/no less than 7 days prior to commencement of trial
To notify the Part Clerk of a need for a translator or accessibility/other accommodations	At least 7 days prior to commencement of trial	At least 7 days prior to commencement of trial

To provide required information and documents to court reporters	Prior to commencement of trial	Prior to commencement of trial
To provide court reporters notice of real-time	At least two weeks prior to commencement of trial	At least two weeks prior to commencement of trial
To request permission to use demonstrative evidence	At least 24 hours prior to use of the demonstrative at trial	At least 24 hours prior to use of the demonstrative at trial
To e-file and email to the court final proposed jury charges and verdict sheets	At least 30 days prior to commencement of trial, unless ordered otherwise (e.g. in a particularly complex case)	N/A
To submit a juror questionnaire	At least 7 days prior to commencement of trial	N/A
To exchange and submit to court direct testimony affidavits	N/A	At least 7 days prior to commencement of trial
To exchange and e-file all pre-trial memoranda	N/A	Not less than 7 days prior to commencement of trial
To retrieve any paper exhibits	Within 30 days after trial	Within 30 days after trial
To make post-trial motions	Consistent with the CPLR, unless otherwise ordered by the court	Post-trial memoranda, Mandatory Statements of Proposed Findings of Fact, copies of all Exhibits Admitted at Trial, and the Part 48 Trial Exhibit Chart must be exchanged and filed to NYSCEF within 30 days of conclusion of trial, or as directed by the court; response memoranda shall be served and filed not more than 30 days after receipt of the motion (or as directed by the court)