

HON. JOEL M. COHEN

PART 3 – PRACTICES AND PROCEDURES (*revised September 14, 2020*)

**Supreme Court of the State of New York
Commercial Division
60 Centre Street, Courtroom 208
New York, NY 10007**

**Part Clerk/Courtroom Phone: 646-386-3275
Chambers Phone: 646-386-4927**

Principal Court Attorney: Kartik Naram, Esq. (knaram@nycourts.gov)
Law Clerk: Herbert Z. Rosen, Esq. (hrosen@nycourts.gov)
Courtroom Part Clerk: Sharon Hill (shill@nycourts.gov)
Chambers Email Address: sfc-part3@nycourts.gov

Courtroom hours are from 9:30 a.m. to 4:30 p.m.
Lunch recess is from 1 p.m. to 2:15 p.m. The courtroom is closed during that time.

Preliminary, Compliance, and Status Conferences generally are held on Tuesdays beginning at 9:30 a.m. Pre-trial Conferences and oral argument on motions will be held as scheduled by the Court.

I. GENERAL

- A. The Rules of the Commercial Division, 22 NYCRR 202.70, are incorporated herein by reference, subject to minor modifications described below.
- B. The Court strongly encourages *substantive* participation in court proceedings by women and diverse lawyers, who historically have been underrepresented in the commercial bar. The Court urges litigants to be mindful of in-court advocacy opportunities for such lawyers who have not previously had substantial court experience in commercial cases, as well as less experienced lawyers generally (*i.e.* lawyers practicing for five years or less). **A representation that oral argument on a motion will be handled or shared by such a lawyer will weigh in favor of holding a hearing when otherwise the motion would be decided on the papers.**
- C. Neither Judge Cohen nor his law clerks will speak to any attorney or litigant regarding any matter without all parties to the action present or on the phone. If it appears that opposing counsel is refusing to participate for tactical reasons, the Court will take appropriate steps to permit the party seeking relief to be heard.

- D. Judge Cohen's law clerks only accept phone calls between 3:00 p.m. and 5:00 p.m. Communications at other times should be directed to Sharon Hill (Part Clerk) or by email to Chambers at sfc-part3@nycourts.gov.
- E. Voicemail and email to Chambers or the Part are not substitutes for seeking relief through filings on NYSCEF. Such communications generally should be limited to scheduling and logistical matters. Parties and counsel should not assume that voicemails and emails have been heard or read unless they have received a response. All email communications to Chambers, including administrative matters and transmittals of documents, must copy all counsel.

II. SUBMISSION OF DOCUMENTS

- A. Part 3 is an e-filing Part. Judge Cohen does not accept working/courtesy copies of documents.
- B. Copies of proposed orders to show cause should be e-mailed to Chambers at sfc-part3@nycourts.gov in Word format. **If expedited relief is sought**, hard copies of the proposed order to show cause, including supporting materials, must be hand delivered to the Part promptly after e-filing.

III. CONFERENCES

- A. Preliminary Conferences. 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/PDFs/PC-Order-Part-3.pdf>), from the Part Clerk, or in the Courtroom. Parties are to meet and confer and fill out the Preliminary Conference Order in advance of the Conference and must be prepared to address the topics listed in Commercial Division Rule 8.
- B. 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.
- C. Status Conferences. 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 Note of Issue, any 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.

- D. Settlement Conferences. The parties may, on consent, request a settlement conference by emailing Chambers at sfc-part3@nycourts.gov or filing a letter on NYSCEF.
- E. Transcripts. **Following all Conferences conducted on the record, the parties are to obtain a copy of the transcript and upload it to NYSCEF.**

IV. CONFIDENTIALITY ORDERS

- A. Model Confidentiality Order. Any proposed order regarding the confidential exchange of information shall be based on the model Stipulation and Order for the Production and Exchange of Confidential Information, available at: <http://www.courts.state.ny.us/courts/comdiv/PDFs/Confidentiality-Stipulation-and-Order.pdf>
- B. Deviations from Model Order. If the parties propose to deviate from the Model Order, other than simply to fill in details about the case, they shall file: (1) a copy of the parties' proposed confidentiality order; (2) a redline of the document showing proposed deviations from the Model Order; and (3) a letter to the Court explaining the reasons for such deviations.

V. MOTION PRACTICE

- A. Limited Use of Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (*e.g.*, applications for provisional relief), a stay is required, a statute mandates so proceeding, or by leave of Court. (Commercial Division Rule 19.)
- B. Pre-Motion Letters. Except for discovery motions (Section VI below), no prior permission or letters pursuant to Commercial Division Rule 24 are required before making a motion. If the parties believe the dispute may be resolved quickly without the need for formal motion practice, they can request a pre-motion conference.
- C. Memoranda of Law. All motion papers (in support, opposition, and reply), whether by notice of motion or order to show case, must include a Memorandum of Law, subject to the word limits set forth in Commercial Division Rule 17. **Affidavits or Affirmations of counsel containing legal argument should not be submitted.**
- D. 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.

- E. Motions for Summary Judgment. Commercial Division Rule 19-a statements are required. The responsive statement submitted by the non-moving party should include the text of the moving party's statement to which each paragraph-specific response is addressed.
- F. Motion Sequence Number. All papers must have the Motion Sequence Number to which they are related placed on the front page.
- G. Oral Argument. Requests for oral argument may be included in the Notice of Motion or in the Opposition papers. If the Court concludes that oral argument is not necessary, a written Decision will be issued on the submitted papers.
- H. Exhibits. Exhibits to motions shall be uploaded to NYSCEF individually, with each Exhibit clearly labeled with its respective identifying information.
- I. Transcripts. **Following all hearings on motions, the parties are to obtain a copy of the transcript and upload it to NYSCEF.**

VI. DISCOVERY

- A. The Court expects parties and counsel to proceed cooperatively and professionally during discovery, with an emphasis on efficiency, practicality, and proportionality. Parties and counsel should assume that the Court is able to distinguish between those who solve problems and those who create them unnecessarily.
- B. 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 the Court containing both the initial letter and any responsive letter(s).

VII. TRIAL RULES

- A. Pre-Trial Submissions. 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 **fourteen days prior to the final Pre-Trial Conference**.
- B. Additional Pre-Trial Submissions in Jury Trials. In addition to the above, for jury trials the following materials shall be submitted at least **fourteen 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 email to Chambers (sfc-part3@nycourts.gov) in Word format. The submissions 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. Exhibits.

- i. On or before the first day of trial, counsel shall provide the Court with a flash drive containing copies of their proposed exhibits, as well as any binders of documents that will be shown to witnesses.
 - ii. After trial, counsel shall e-file a list of the exhibits that were admitted into evidence. Counsel shall provide the Court with a flash drive containing copies of the *admitted* exhibits, identified by exhibit number.
 - iii. Flash drives should be marked with the short caption and index number of the case.
 - iv. Exhibits must be pre-marked in accordance with Commercial Division Rule 28.
2. Transcripts. For multi-day trials, the Court requires that the parties order a daily copy of the transcript during trial. Counsel are to e-file the transcripts after trial.
3. Post-Trial Briefs. Two weeks after receiving the transcript in a non-jury trial, the parties are to submit post-trial briefs of up to 7,000 words (excluding caption, table of contents, table of authorities, and signature blocks). One week thereafter, the parties may file reply briefs of up to 4,200 words (subject to the same exclusions). The initial post-trial briefs should be organized as follows:
- i. Preliminary Statement (optional)
 - ii. Proposed Findings of Fact
 - iii. Proposed Conclusions of Law, separately for each cause of action (claim, counterclaim, crossclaim, and third-party claim)
 - iv. Conclusion – including specific relief sought for each cause of action
 - v. Proposed Judgment.

In addition to filing on NYSCEF, copies of the post-trial briefs **in Word format** should be emailed to Chambers at sfc-part3@nycourts.gov.