

HON. MARGARET CHAN
PART 49 PRACTICES AND PROCEDURES
last updated August 2024

Supreme Court of the State of New York
County of New York, Commercial Division
60 Centre Street, Courtroom 252, New York, NY 10007

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I. GENERAL

A. The Rules of the Commercial Division, 22 NYCRR 202.70,¹ are incorporated herein by reference, subject to minor modifications described below. These rules also apply to the non-Commercial Division cases that Justice Chan retained from her former IAS Part 33.² All counsel must be familiar with these rules.

B. Part 49 accommodates schedules both in person and virtual appearances. However, unless otherwise noted, all appearances shall be scheduled as in person. Please email the Part Clerk at least 48 hours in advance of a scheduled appearance if circumstances necessitate a virtual appearance. Virtual appearances are supported on the Unified Court System’s approved Microsoft Teams platform.

C. All scheduling and logistical matters, including questions regarding a motion’s status, shall be directed to Part Clerk John Howard at SFC-Part49-Clerk@nycourts.gov. All email communications, including administrative matters and transmittals of documents, must copy all counsel. If unable to reach the Park Clerk, Justice Chan’s law clerks will

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

² Pursuant to the Administrative Order of the Chief Administrative Judge of the Courts AO/270/20, select Commercial Division Rules now apply to General IAS Supreme Court parts. Attorneys practicing before the legacy Part 33 are advised to familiarize themselves with the rules, available at: <https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO%20Commercial%20Division%20rules%20in%20civil%20courts.pdf>

accept telephone calls, but only between 2:30 pm and 4:30 pm.

- D. For letter requests that require a time-sensitive response from the court, the parties shall upload the letter requests onto the court's E-Filing system, NYSCEF, and concurrently notify the court of the time-sensitive request by email to one of Justice Chan's Law Clerks, copying all counsel.
- E. All non-Submissions Part adjournments require prior Court approval; ex parte applications for adjournments will not be considered. Applications for adjournments must be made at least 48 hours in advance of a scheduled appearance, except in cases of emergency. As further noted below, adjournment applications shall not be submitted by order to show cause.
- F. To adjourn a motion that is in the Submissions Part (Room 130):
- i. If the parties wish to adjourn a motion the first time the motion is on the Calendar in the Submissions Part, for less than 30 days, the parties may do so by stipulation without an order from the Court. The stipulation must be electronically filed and also filed in the Submissions Part on the return date of the motion. The stipulation must clearly indicate the relevant motion sequence number.
 - ii. If the parties wish to adjourn a motion other than the first time the motion is on the calendar in the Submissions Part or for more than 30 days from the original return date, then the parties must submit a stipulation of adjournment to the Court for approval. Any such submission must include a signature line for Justice Chan to "So Order."
- G. Counsel shall timely notify the Court as soon as practicable, by email to SFC-Part49-Clerk@nycourts.gov, of the settlement or imminent resolution of active cases or pending motions and provide the Court with a stipulation of settlement as soon as practicable. The parties need not reveal the terms of a settlement but must notify the court that a resolution has been reached and that both sides have agreed to discontinue the case. In addition to notifying the court of a settlement or discontinuance, counsel shall withdraw any pending motions and any pending appeals.
- H. When only Westlaw or Lexis citations are available, the Court has a preference that Westlaw citations be used if possible.
- I. Parties are encouraged to submit documents in Times New Roman or Century fonts, 12-point font size and in double-spaced line format. Parties are discouraged from submitting documents in Courier font.

J. When a transcript of a conference, hearing, or trial is required, the parties shall obtain a copy of the transcript and file it on NYSCEF.

II. SUBMISSION OF DOCUMENTS

- A. Part 49 is an e-filing Part. All cases are required to be electronically filed through NYSCEF, and attorneys are expected to familiarize themselves with NYSCEF procedures. For NYSCEF instructions or assistance, contact the [E-Filing Resource Center](#), Room 119M, by telephone at (646) 386-3033 or by email at efile@nycourts.gov. For more information on e-filing rules, parties may visit: <https://www.nycourts.gov/courts/1jd/supctmanh/E-Filing.shtml>
- B. All e-filed documents must be text-searchable. All electronically submitted memoranda of law must contain bookmarks, pursuant to Commercial Division Rule 6. Submissions of documents containing hyperlinks is required.
- C. Hyperlinks: The parties shall serve all documents associated with a motion or order to show cause on the dates required for their submission and service. The parties shall also, on such dates, upload the exhibits to NYSCEF (i.e., so that there is a document to hyperlink to). Memoranda of law and corresponding affidavits that hyperlink to the exhibits previously uploaded may be e-filed on the return date.
- D. Justice Chan generally does not accept working /courtesy copies of documents unless specifically requested. If the court requests hard copies, flash drives, or other courtesy copies, please deliver the materials to: Justice Margaret A. Chan, 60 Centre Street, Room 252, New York, NY 10007.

III. CONFERENCES

- A. Preliminary, Compliance, and Status Conferences are held on Wednesdays beginning at 10:30 a.m. via Microsoft Teams. Pre-trial Conferences and oral argument on motions will be held on Tuesdays beginning at 10:30 am or as otherwise directed. Only attorneys who are thoroughly familiar with the case may appear for a conference.
- B. Preliminary Conferences. If the parties wish to request a preliminary conference, they must do so both by email to the Part Clerk and by concurrently filing a Preliminary Conference Request form on NYSCEF (https://www.nycourts.gov/legacyPDFs/courts/6jd/forms/SRForms/req_prelimconf.pdf). Prior to the Preliminary Conference, the parties must meet and confer, fill out a Preliminary Conference Order available on the Commercial Division website (<http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70>), and submit a proposed order via NYSCEF for the court's review. If the parties agree on

a schedule, submission of the proposed Preliminary Conference Order will be in lieu of a conference. In the event of any dispute regarding the Preliminary Conference Order, the parties shall submit proposed schedules, noting any areas of disagreement, no later than two (2) day prior to the scheduled Preliminary Conference and be prepared to address the topics listed in Commercial Division Rule 8.

- C. Compliance and Status Conferences. On the Monday prior to the scheduled compliance or status conference, counsel shall jointly submit a letter to the court describing the status of discovery, any significant disputes to be addressed at the conference, any non-compliance with prior orders, proposed revisions to a discovery schedule, and whether the parties have attempted Alternative Dispute Resolution or other efforts at settlement. If there are no issues to discuss with the court on the date of the conference, the parties shall inform the court and indicate a proposed date for the next conference.
- D. Settlement Conferences. The parties may, on consent, request a settlement conference prior to the filing of the Note of Issue by emailing Chambers and by filing a letter on NYSCEF.
- E. Adjournments. To adjourn a conference, please contact chambers with all counsel of record copied on the email.

IV. CONFIDENTIALITY ORDERS AND SEALING

- 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 in Appendix F to the Commercial Division Rules ([https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/202.7\(g\)%20-%20Appendix%20F%20-%20Exhibit%201.pdf](https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/202.7(g)%20-%20Appendix%20F%20-%20Exhibit%201.pdf)). If the parties make any changes to this form order, they shall e-file a redline indicating the changes and an affirmation describing good cause for any proposed departures from the Model Form. **If no redline is provided at the time of filing, the court will not sign the proposed order.**
- B. Sealing. Sealing, including redactions beyond those required by Redaction Rules (e.g., date of birth, Social Security number, and account numbers), is discouraged. Any request for additional redactions or sealing shall be made by Order to Show Cause and must establish “good cause” pursuant to the Uniform Rules for Trial Courts, 22 NYCRR 216.1.
 - i. In connection with a sealing application, a movant must submit a memorandum of law stating the purported good cause basis to seal or redact each document or piece of information. A movant must also submit sealing/redacting chart that clearly identifies (1) each document sought to be

sealed or redacted with the corresponding NYSCEF Docket Number; (2) the categorization of each document; (3) whether movant seeks to seal or redact the document; (4) the proposed good faith basis to seal or redact; and (5) citations to applicable authority supporting good cause to seal/redact.

- ii. A movant should identify specific proposed categories in the chart and legal memorandum to facilitate issuance of a workable and efficient order. Vague categories, such as “confidential business information” or “proprietary trade information,” are not generally adequate.
- iii. Except under extraordinary circumstances, the court will not permit parties to seal or redact any pleading. The court may, however, consider narrowly tailored redactions to exhibits attached to pleadings
- iv. For documents sought to be sealed, counsel shall e-file both the unredacted (with the designation “Request to Seal”) and redacted documents. Additional instructions are available from the E-filing Clerk’s Office and at <https://www.nycourts.gov/LegacyPDFS/courts/ljd/supctmanh/Efil-protocol.pdf>.

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 to so proceed, or by leave of Court) (Commercial Division Rule 19). Absent advance permission, reply papers shall not be submitted on orders to show cause. For the avoidance of doubt, applications for adjournments or extensions of time are not matters of genuine urgency and shall instead be submitted to the court in the form of a letter request.
- 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 that the dispute may be resolved quickly without the need for formal motion practice, they may 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. Therefore, Affidavits or Affirmations of counsel should not contain legal arguments.
- D. Combined Briefs. Similarly situated parties (e.g., multiple defendants

moving to dismiss on overlapping grounds) should make all 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. The Rule 19-a statement is not a substitute for including a Statement of Facts (with citations to the record) in the Memorandum of Law. Where practicable, the parties shall submit a joint/stipulated statement of undisputed facts prior to the motion return date.
- F. Pleadings. Pleadings that are required in support of a motion (the complaint, answer, answer with counterclaims) shall be uploaded in that motion.
- G. Motion Sequence Number. All papers must have the Motion Sequence Number in bold on the front page of all papers related to any motion or cross motion.
- H. Oral Argument. Oral arguments do not occur on the return date for motions on notice. Requests for oral argument may be included in the Notice of Motion or in the Opposition papers. If oral arguments are necessary, the court will contact counsel (based on NYSCEF appearances) to schedule motion appearances. If the Court concludes that oral argument is not necessary, a written decision will be issued on the submitted papers.
- I. Exhibits. Exhibits to motions shall be uploaded to NYSCEF individually, with each Exhibit clearly labeled with its respective identifying information.
- J. Use NYSCEF Numbers. When citing to any document on the docket, use NYSCEF Numbers with pin-point citations and, where possible, hyperlinks to the NYSCEF document. Citing to exhibit numbers, letters, or "Affidavit/Affirmation of [Name]" is not helpful.
- K. Transcripts. Following all hearings on motions, when required, the parties must obtain a copy of the transcript and upload it onto NYSCEF. A motion is not considered fully submitted until the transcript is uploaded on NYSCEF.
- L. Participation. The Court supports the professional development of junior attorneys and encourages their participation in trials and oral arguments on motions. The Court also strongly encourages substantive participation in court proceedings by women and diverse lawyers who historically have been underrepresented in the commercial bar.

M. Pro Hac Vice Applications. Pro hac vice motions must include a proposed order and an affidavit in support from a member of the Bar of the State of New York and an affidavit of the applicant (attaching a recent certificate of good standing from the applicant). The affidavit of the applicant must advise the Court as to whether the applicant has ever been or is presently subject to a disciplinary proceeding. If there is no opposition to the motion, the movant should include a stipulation indicating as much. A model Part 49 Pro Hac Vice Proposed Order Form is available at <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml> in the section dedicated to Justice Chan's Part 49 materials. **Pro hac vice motions shall not be submitted by order to show cause.**

VI. DISCOVERY

- A. The Court expects parties and counsel to proceed cooperatively and professionally during discovery, with an emphasis on efficiency, practicality, and proportionality.
- B. Discovery disputes shall not be raised in the first instance at a preliminary, compliance, or status conference. If a discovery dispute is raised for the first time during a conference, the court shall direct the parties to first meet and confer and otherwise follow the procedures set forth below.
- C. 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 Rules 14 and 14-a. Counsel seeking or objecting to discovery shall submit via NYSCEF a letter not exceeding 3 pages, single spaced, and fill out the Part 49 discovery form available on the Commercial Division website (<http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70>). Counsel shall submit a courtesy copy of both the letter and the completed discovery form to the Court at SFC-Part49-Clerk@nycourts.gov, copying Justice Chan's Law Clerks. After the form is e-filed, and counsel have made a good faith effort to resolve the dispute, counsel for the affected opposing party or non-party shall file on NYSCEF a responsive letter not exceeding 3 pages, single spaced, and submit a courtesy copy to SFC-Part49-Clerk@nycourts.gov, copying Justice Chan's Law Clerks. The parties shall coordinate to make a single Rule 14 submission to the Court containing both the initial Part 49 discovery form and any responsive letter.
- D. Stays of Discovery. There is no automatic stay of discovery absent the death or bankruptcy of a party. It is counsel's responsibility to immediately notify the court and all other counsel by email in the event of the death or bankruptcy of a party.
- E. Third-Party Disclosure. Although no court order is required before seeking document disclosure from a nonparty, counsel are encouraged to confine

their requests to the parties and to resort to third-party disclosure only when it reasonably appears that the information is not otherwise available. Counsel must simultaneously serve any nonparty subpoena on all parties and provide them with notice of receipt and availability pursuant to CPLR 3120(3) within five days of the nonparty's compliance.

- F. Discovery Responses and Certifications. Counsel must serve privilege logs and Commercial Division Rule 11-b Certifications with all document productions, and compliance with Commercial Division Rule 11-e is mandatory. The parties must verify their satisfaction of Rule 11-e(d) by providing a Certification of the Responsible Attorney at least 30 days prior to the close of fact discovery.
- G. Documents Not Produced. Absent compelling circumstances, documents not produced during discovery will not be admitted as evidence at trial.

VII. ALTERNATIVE DISPUTE RESOLUTION

- A. The parties are encouraged to identify as early as possible any case where ADR would be appropriate. In addition, and if at any point, the parties decide that they would benefit from the Commercial Division ADR program, they should write a joint letter to the Court asking to be referred to ADR. In that letter, they should state whether they prefer discovery to be stayed or continued during the mediation process.
- B. The Court may also order parties to the Commercial Division ADR program without the parties' request or consent.
- C. After the filing of the Note of Issue, the parties will be directed to participate in a mandatory settlement conference pursuant to Rule 30 of Rules of Practice for the Commercial Division, 22 NYCRR 202.70(g). The parties must select one of the following four ADR tracks: (1) settlement conference before the court; (2) settlement conference by referral a Judicial Hearing Officer/Special Referee; (3) settlement before another commercial Division judge or (4) private mediation.
- D. For more information regarding the ADR program, please visit: http://www.nycourts.gov/courts/comdiv/ny/ADR_overview.shtml.

VIII. TRIAL/EVIDENTIARY HEARING RULES

A. General

- i. Following the filing of the note of issue and after adjudication of dispositive motions, an initial pre-trial conference shall be scheduled with the court to discuss a schedule for the filing of all trial documents, any motions *in limine*, a joint exhibit list indicating which exhibits are to be admitted on stipulation and

which exhibits are subject to objection (and the basis for the objection), all other pre-trial submissions (including any verdict sheets and jury instructions), a final pre-trial conference date, and a tentative trial date. During the initial pre-trial conference, the parties shall indicate whether they will require the Court to preside over *voir dire* (in the case of a jury trial).

- ii. Trial submissions include marked pleadings, all prior decisions in the case, any notices to admit, with responses, copies of transcripts of depositions intended for use at trial, all trial exhibits, potential verdict sheets (in the case of a jury trial), direct testimony affidavit (in the case of a bench trial), potential jury instructions (in the case of a jury trial), which shall be based on the most current version of the PJI, potential *voir dire* statements (in the case of a jury trial), and questions the parties submit to the court for consideration (in the case of a bench trial). For a full list of submissions, see Commercial Division Rules 26, 27, 28, 29, 31(a), 31(b), and 32.
- iii. Motions *in limine* shall be brought by notice of motion with a return date set at two weeks prior to the final scheduled pre-trial conference.
- iv. When selecting a trial date, the parties shall provide a detailed schedule with the court, including the anticipated length of the trial and, where practicable, the dates on which witnesses will be testifying.
- v. The parties are to stipulate to all facts and documents not in dispute prior to trial and marked for admission. However, no exhibits (even those to be admitted without objection) shall be admitted until used by the parties at trial.
- vi. All request to set up electronic media and audio visual equipment in the Courtroom shall be directed to the Part Clerk in advance of trial.

B. Jury Trials

- i. If the court presides over *voir dire*, the following rules and procedures will apply:
 1. The Court will consider any proposed jury questionnaires submitted by counsel and any questions counsel would like the Court to query a particular juror about. The Court reserves the right to ask the question in the manner proposed by counsel, in a different manner or to

refrain from asking the question at all if the Court deems the question improper.

2. Counsel shall submit a brief *voir dire* statement to the Court as part of its pre-trial submissions for the Court's consideration. The *voir dire* statement should include a brief summary of what the claims/counter-claims are in the case, what the defenses are, what the damages sought are, who the witnesses are, who the lawyers are, and any other relevant information such that the Court gives sufficient information to potential jurors so that the Court can determine whether a potential juror is inappropriate to sit on the jury of the case at issue.
 3. The parties shall agree to a total number of peremptory challenges prior to the pretrial conference. If the parties cannot agree, the court shall decide the appropriate number of peremptory challenges.
 4. During jury selection, if both sides have exercised a peremptory challenge against the same potential juror, that potential juror shall not serve on the jury and neither side will be charged with the exercise of a peremptory challenge.
- ii. Following empanelment of the jury, counsel should assume that the trial will begin immediately.
 - iii. Post-trial briefs. Two weeks after receiving the conclusion of a jury trial, the parties are to file any motion to set aside the verdict by order to show cause of up to 7,000 words (excluding caption, table of contents, table of authorities, and signature blocks). Opposition papers shall be filed two weeks thereafter of up to 4,200 words (subject to the same exclusions). No reply briefing is permitted.

C. Bench Trials

- i. Direct Testimony: The Court may hear direct testimony live or by direct testimony affidavit.
- ii. If the Court is to hear the testimony live and not by direct testimony affidavit, the parties shall notify the court at the pretrial conference to ensure that the timed trial schedule accounts for live testimony.
- iii. Affidavits shall be reasonable in length and scope and, in any event, shall not exceed fifteen (15) pages including all exhibits to

any such affidavits absent prior leave of the court. Upon being called at trial, a witness shall swear to the contents of his/her affidavit, the court shall hear opposing counsel's objections (if any) to the direct testimony followed by cross examination and re-direct, if any, of the witness.

- iv. A bench trial may be held virtually in the discretion of the court.
- v. Post-Trial Briefs. Two weeks after the conclusion of 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:
 - Preliminary Statement
 - Proposed Findings of Fact
 - Proposed Conclusions of Law (separately for each cause of action, counterclaim, and/or third-party claim)
 - Conclusion (including specific relief sought for each cause of action)
 - Proposed Judgment.

D. Transcripts. For multi-day trials, the court requires that the parties order a daily copy of the transcript for the duration of the trial. Counsel shall e-file the transcripts after trial for any post-trial motions.

E. 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.