

JUSTICE O. PETER SHERWOOD
PART 49 – PRACTICES AND PROCEDURES
(Revised April 2019)

Supreme Court of the State of New York
Commercial Division

60 Centre Steet
Courtroom 252
New York, New York 10007

111 Dr. Martin Luther King Jr. Blvd.
Courtroom 1601
White Plains, New York 10601

Part Clerk / Courtroom Phone: 646-386-4033
Chambers Phone: 646-386-3807
Fax: 212-295-4941

White Plains Chambers Phone: 914-824-5785
White Plains Fax: 914-824-5420

Principal Law Clerk:	Sara J. Crasson, Esq.
Commercial Division Law Clerk:	Alexa T. Bordner, Esq.
Part Clerk:	Julie Guadalupe
Secretaries:	Janet Sobolow (Manhattan Chambers) Paulette Salcito (White Plains Chambers)

Motions: Mondays, Tuesdays (afternoon) and Wednesdays (in Manhattan); Thursdays and Fridays (in White Plains). All motions are heard at times and places scheduled by court.

Pre-Trial Conferences: As scheduled by court

Preliminary, Compliance, and Status Conferences: Tuesdays (*see* ¶ 4)

1. General Matters

A. Commercial Division Rules. These practices are intended to implement the Commercial Division Rules with which counsel should be fully familiar (Uniform Rules for the New York State Trial Courts, 22 NYCRR § 202.70). These Rules are available at www.nycourts.gov/courts/comdiv/newyork.shtml. Counsel should pay particular attention to Rule 1 concerning appearance by counsel with knowledge and authority. Rule 1 provides in part: “[c]ounsel . . . must be fully familiar with the case . . . *and fully authorized to enter into agreements*, both substantive and procedural, on behalf of their clients” (emphasis added).

B. 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 hearings before the court, particularly where such members of the legal team drafted or contributed significantly to the underlying motion or prepared the witness. In those instances where the court is inclined to rule on the papers, or adhere to its default practice of permitting only one lawyer to argue, a representation that the argument would be handled by a such lawyer will weigh in favor of holding a hearing or permitting argument to be shared.

C. Timely Notice of Settlement of Cases or Issues. So as to conserve scarce court resources, counsel shall notify the court, as soon as practicable, by conference call to chambers [646-386-3807], of the settlement or imminent resolution of active cases or pending motions.

2. **E-Track Service Reminder:** Since 2012, notification of developments in cases, including court appearance dates and adjournments, has been accomplished through the Supreme Court, New York County case tracking and notification service, *E-Track*. **In order to receive notifications, counsel must register for E-Track**, preferably at the time counsel makes his/her first e-filing in the case. There is no charge for *E-Track* services. To sign up visit: <https://iapps.courts.state.ny.us/webcivil/etracklogin>

3. **Filing of Papers and Courtesy Copies.**

A. E-Filings. All cases in the Commercial Division must be electronically filed through the New York State Courts E-Filing (NYSCEF) system. All submissions made directly to Part 49 (including briefs, proposed Orders and Judgments, and letters) shall be electronically filed as well. The E-Filing Rules appear at Uniform Rule § 202.5-bb. For NYSCEF instructions or assistance, contact the E-filing Resource Center, Room 119M, by telephone (646) 386-3033, efile@nycourts.gov, or visit to the Center's website at: <http://www.nycourts.gov/efile>.

Any communication requesting action by the court that is not a motion should be e-filed, with a courtesy hard copy delivered by mail, overnight delivery service or hand-delivery directly to Part 49, together with the e-filing confirmation notice.

B. Hard Copies. Counsel shall provide hard copies only of memoranda of law and critical supporting documents, *e.g.* the contract at issue, to Submission Part in Room 130, *except* where a party is moving by order to show cause, in which case the movant shall deliver a working copy of the document to the Commercial Division Support Office, Room 119A. Courtesy copies of Order to Show Cause opposing papers shall be delivered to Part 49, Room 252, unless counsel is instructed otherwise. **Do not submit additional courtesy copies**, as the court will have access to all of the supporting papers on NYSCEF.

C. Exhibit Labeling. Each exhibit whether appended to an affidavit or otherwise should be e-filed separately with a descriptive title (Designation of a document as simply "Exhibit A" does not satisfy this requirement).

4. **Preliminary, Compliance and Status Conferences.** Please consult Commercial Division Rules 1 and 8. Conferences are posted on E-Track and are held in Manhattan on Tuesday mornings at 9:30 and 10:30 AM. By agreement, counsel may select other times between 9:30 and Noon, provided that the request is communicated to the Part 49 Clerk at or before noon on the day preceding the appearance date.
5. **Scheduling.** Questions about scheduling and adjournments should be addressed to the Part 49 Clerk, (646) 386-4033. **Court permission is needed to adjourn any scheduled appearance. Requests shall be e-filed (courtesy copy to Part 49 Clerk) no later than two (2) business days (or one (1) day for ¶ 4 conferences) in advance of the scheduled appearance. Requests submitted after the deadline will be denied absent a showing of good cause.**
6. **Communicating with the Court.**
 - A. Litigants may communicate with the court by mail or telephone. Letters may be e-filed with hard copies sent by mail, overnight delivery service, or hand-delivered to Part 49, Room 252, 60 Centre Street, New York, New York 10007. Correspondence may not be faxed without prior permission of the Part Clerk. Calls should be made to the Part 49 Clerk, (646) 386-4033.
 - B. Any party wishing to communicate with chambers by telephone should get the other parties on the phone before placing the call to the court. Questions pertaining to motion practice should be addressed to the Commercial Division Support Office at (646) 386-3020.
 - C. E-Mail. The court may use e-mail to communicate with counsel regarding scheduling or to make certain inquiries. **Counsel should not initiate communication with the court via email and shall not use e-mail to make arguments.**
 - D. **Please note: No attorney in Justice Sherwood's chambers may communicate with a litigant ex parte, nor will he or she assist litigants in the practice of law, such as by advising as to how to interpret a particular rule or law.**
7. **Transcripts.** Unless the court directs otherwise, the movant shall order the transcript of oral argument and shall be responsible for both e-filing the transcript and submitting a hard copy to Part 49. **A motion is not deemed *sub judice* until the transcript is received.**
8. **Confidentiality Orders.** Rule 11-g shall apply to requests for orders regarding the exchange of confidential information. The form of Stipulation and Order for the Production and Exchange of Confidential Information is set forth in Appendix B to the Rules of the Commercial Division and available at [http://nycourts.gov/rules/trialcourts/202.70\(g\)%20-%20Rule%2011-g%20\(attachment\).pdf](http://nycourts.gov/rules/trialcourts/202.70(g)%20-%20Rule%2011-g%20(attachment).pdf)

Any request for a confidentiality order shall be accompanied by a statement of counsel that the proposed order strictly follows the text of Appendix B. Parties seeking to deviate should follow Rule 11-g (b).

- 9. Document Sealing Procedures.** Parties wishing to submit documents to the court which have been deemed confidential shall provide notice to the party who designated those documents confidential at least five (5) business days before filing the documents at issue. Within three (3) business days of such notification, the parties shall meet and confer. If, after discussion, counsel conclude that the proposed redactions meet the standards for sealing, counsel may proceed by way of stipulation that articulates facts sufficient to support a finding of good cause and stating the conclusion reached. The stipulation shall be submitted to be so ordered. If a party objects to a document being filed unsealed and unredacted, that party may move by Order to Show Cause giving proper reasons to seal and good cause therefor, pursuant to 22 NYCRR section 216.1.

Please note that documents filed with the court will not be sealed merely on the ground that they are subject to a confidentiality agreement (*see Mosallem v Berenson*, 76 AD3d 345, 350 [1st Dept 2010]). Counsel should consult *MBIA Insurance Corporation v. Countrywide Home Loans, Inc.* (No. 602825/08, 2013 WL 450030 12013 NY Misc LEXIS 367 [Sup Ct New York County, January 3, 2013] [“MBIA Sealing Order II”]), *Mosallem* (76 AD3d at 348); and *Mancheski v Gabelli Group Capital Partners* (39 AD3d 499, 502 [2d Dep’t 2007]) for instructions on limits imposed on sealing. Typically, the Court will be interested in redacting only discrete passages containing potentially confidential information as opposed to the wholesale sealing.

The sealing motion should be accompanied by unredacted versions of the relevant documents as exhibits with the proposed redacted versions submitted as a subset of that exhibit (*i.e.* original document provided as Exhibit “1”; document with proposed redactions provided as Exhibit “1a”). The exhibits are to be hand delivered to the court so they can be reviewed in conjunction with the motion and are not to be e-filed. This is the only exception to the requirement that all submissions be e-filed.

The motion to seal should be accompanied by a spreadsheet or chart jointly created by the parties indexing: a) the title of the document to be sealed; b) the proponent of the request to seal; c) the reason the document should be sealed and/or redacted; and d) any objection to the request together with the basis therefor.

Although the parties are free to exchange documents that are the subject of a sealing motion prior to a ruling on a motion, no motion papers should be filed referencing or annexing the documents which are the subject of the motion until the motion is decided. No exceptions.

Please note that once a matter proceeds to trial, all sealing orders shall automatically be vacated unless the court expressly orders otherwise.

10. Discovery Related Matters

A. Disclosure Disputes. Under Commercial Division Rules 14 and 14-a, counsel should attempt to resolve discovery disputes through good faith efforts. *Pro forma* exchange of objections without meaningful efforts to compromise do not satisfy these rules. If, after good faith efforts, counsel are unable to resolve or narrow the items in dispute, the aggrieved party may contact the court by letter (no more than three pages in length) or telephone (with all counsel participating) to arrange a Rule 14 conference.

B. E-Discovery. Appendix A to Commercial Division Rules relating to disclosure of electronically stored information **applies to both parties and non-parties** (see Rules 11-c and Rule 8-b).

C. Stays of Discovery. Unless otherwise directed by the court, **discovery is not stayed** upon the filing of a dispositive motion.

D. Third-Party Disclosure. Although no court order is required before seeking document disclosure of a non-party, counsel are strongly encouraged to attempt to confine their requests to parties to the action and should resort to third-party disclosure only when it reasonably appears that the information being sought is otherwise unavailable. Any subpoena served on a non-party shall be simultaneously served on all parties and within five (5) days of compliance therewith, each party shall be given notice of receipt and of availability for inspection and copying, specifying the time and place thereof, CPLR 3120(3). See also Guidelines at Appendix A to Commercial Division Rules.

11. Consolidation and Change of Caption. All proposed orders on motions or stipulations to consolidate or change captions shall be sent to the General Clerk's Office, located in Room 119.

12. Inquest Procedures. A submission in support of an inquest should include:

A. An affidavit from a person with knowledge of the facts setting forth how damages are computed.

B. Attorney's affirmation setting forth a brief recitation of the facts and the grounds for liability. The affirmation should also discuss the damages incurred.

C. Exhibits should be submitted in support of all requests for damages. For example: (i) if the requested relief is attorneys' fees, the attorney's affirmation should attach the billing statements describing the activity, the identity and title of the person performing the activity, time, date, and billing rate; (ii) if the relief is for lost profits, financial statements for comparative time periods should be provided.

D. Whatever counsel believes would assist the court, including affidavits from experts (*e.g.* accountants, appraisers, *etc.*).

E. Proof of service shall be filed, indicating that all papers and exhibits submitted to the court were served on opposing parties.

- F. Proposed findings of fact and a proposed order should be e-filed.
- G. Papers in opposition should follow the format set forth above.
- H. For inquests not granted on default, submitted evidence shall be limited to causes of action as to which liability was found.

13. Motion Practice

- A. Motion Sequence Numbers shall appear on motion papers, including the notice of motion, memos of law, exhibits, affirmations, settled orders, and all correspondence pertaining to the motion.
- B. Questions pertaining to motion practice should be addressed in the first instance to the Commercial Division Support Office at (646) 386-3020.
- C. Discovery is not stayed during the pendency of any motion unless the court directs otherwise.
- D. Papers served on counsel pursuant to an Order to Show Cause shall be served in a manner that results in receipt by 5:00 p.m. on the date specified unless the court directs otherwise.
- E. Oral Argument. Generally, the court will hold oral argument on dispositive motions and those seeking injunctive relief. The court does not hear oral argument on motions for admission *pro hac vice*, to renew, to reargue or to amend a pleading. The court will notify counsel where it determines to depart from its usual practice. Oral argument will not be heard on the return date for motions brought on notice. *See also* ¶ 7 re: transcript of oral argument.

- 14. Requests for Admission Pro Hac Vice.** Requests for admission *pro hac vice*, including requests made by stipulation, shall be accompanied by an affirmation in support by a member of the Bar of the State of New York, an affirmation from the applicant, and a recent certificate of good standing for the applicant. The affirmation must also disclose whether the applicant has ever been, or is presently, subject to disciplinary proceedings. *See* form of order attached hereto.

FORM OF PROPOSED ORDER FOR PRO HAC VICE APPLICATIONS

_____, Esq., having applied to this court for admission pro hac vice to represent [plaintiff/defendant] _____ in this action, and said applicant having submitted in support thereof a stipulation of all parties dated _____, an affirmation, of _____, Esq., a member of the Bar of the State of New York and attorney of record herein for _____, an affirmation of the applicant dated _____, and a Certificate in Good Standing from the jurisdiction in which the applicant was admitted to the practice of law, and the court having reviewed the foregoing submissions and due deliberation having been had, it is now therefore

ORDERED that the motion is granted on consent and _____, Esq. is permitted to appear and to participate in this action on behalf of _____ ; and it is further

ORDERED that he/she shall at all times be associated herein with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the party in question and all pleadings, briefs and other papers filed with the court shall be signed by the attorney of record, who shall be held responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted pro hac vice shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the Rules of the Courts governing the conduct of attorneys and the Disciplinary Rules of the Code of Professional Responsibility; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction which affects his/her standing as a member of the Bar.

Date:

ENTER:

J.S.C.