

PART 54 RULES*
HON. JENNIFER G. SCHECTER, J.S.C.

CONTACT INFORMATION

Courtroom: 60 Centre Street, Room 228
(646) 386-3362
Part Clerk: Donna De Land ddeland@nycourts.gov

Law Clerks: Michael J. Rand, Esq. mrاند@nycourts.gov
Karen Touaf, Esq. ktouaf@nycourts.gov

GENERAL RULES

1. Parties must familiarize themselves with the Commercial Division Rules, including what constitutes a commercial case. A copy of the rules is available at: <http://www.nycourts.gov/rules/trialcourts/202.shtml#70>

Information about New York County’s Commercial Division can be found at:

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

2. If a party believes that a case assigned to Part 54 does not belong in the Commercial Division or should be assigned to another Justice (e.g., as a related case), it may, without prior leave of court, e-file and email a short letter explaining its position. Any responsive letter shall be e-filed and emailed to the court within two days.
3. A law clerk will be assigned to supervise your case. If the rules provide that you should contact a law clerk and one has not yet been assigned, please email Mr. Rand.
4. All emails to the court must copy all appearing parties. The law clerks will not communicate with an attorney or litigant *ex parte*.
5. Unopposed applications accompanied by an executed Word version of an e-filed stipulation consenting to the relief sought (such as consolidation, admission *pro hac*

* Virtual proceedings are here to stay. Whether or not your case is newly filed, please review Part 54’s substantially revised, searchable rules incorporating updated policies and procedures to increase efficiency.

vice or an open commission) should be emailed to the assigned law clerk along with the e-filing confirmation receipt.

6. Counsel must notify the court as soon as practicable by email to the assigned law clerk if an action or a pending motion has been resolved.
7. Attorneys and *pro se* litigants must always keep their contact information, including email addresses, current in the e-filing system. In cases that are NOT e-filed, *pro se* litigants and counsel must provide contact information to the Part Clerk. If your email address is not kept current, you may miss important communications.
8. A request for *pro hac vice* admission, whether made by motion or stipulation, shall be accompanied by a proposed order and an affidavit in support from a member of the Bar of the State of New York, an affidavit of the applicant and a recent certificate of good standing from the applicant. The proposed order shall conform to the order that appears after these rules.

ELECTRONIC FILING

9. All cases **must** be e-filed on NYSCEF except for cases involving *pro se* litigants who are not licensed to practice law in New York. Unrepresented litigants who are not licensed New York attorneys are highly encouraged to e-file (it is the best way to obtain easy access to court filings, keep up to date and serve other parties) and can find instructions at:

<https://iappscontent.courts.state.ny.us/NYSCEF/live/unrepresented/UnrepresentedHomePage.html>

For NYSCEF instructions, please contact the e-filing Resource Support Center at (646) 386-3033 or see <https://iapps.courts.state.ny.us/nyscef/HomePage>.

10. All e-filed documents must be OCR Text Searchable PDFs.
11. In those limited cases that **ARE NOT e-FILED**, TWO copies of motion papers must be properly submitted (in Room 130 if the motion is on notice and to the courtroom if the motion was made by order to show cause): one for the court file and an extra copy for the court's use.
12. Hard copies **SHALL NOT** be submitted unless specifically directed by the court.
13. PDFs of documents requiring the court's attention must be emailed to the assigned law clerk after they are e-filed along with the e-filing confirmation.

14. For stipulations to be so-ordered, the email must also include an EXECUTED Microsoft Word version (electronic signatures are permitted). For proposed orders, the email must include a Microsoft Word version. For the avoidance of doubt, there is no need to attach a Word version of documents that do not need to be signed by the court (i.e., PDFs of letters are sufficient).

COMMUNICATIONS WITH THE COURT

Scheduling

15. General questions about appearances may be addressed to the Part Clerk by email or by phone at (646) 386-3362, or by email to Mr. Rand. The Part Clerk is NOT authorized to grant adjournments.
16. To adjourn a scheduled appearance (e.g., a conference or oral argument), the court's permission must be obtained no later than two business days in advance, except in the event of an emergency.
17. Requests to adjourn scheduled appearances must be addressed to the assigned law clerk by email and must indicate whether the request is on consent of all parties. If the request is opposed, a responsive email should be emailed to the assigned law clerk either promptly or by a deadline that will be communicated by the court.
18. Requests to adjourn a motion returnable in the submissions part (i.e., Room 130) or an OSC returnable "on papers only" shall be made by e-filed letter that shall also be emailed to the assigned law clerk. If the request is opposed, a responsive letter should be e-filed and emailed to the assigned law clerk either promptly or by a deadline that will be communicated by the court. No party should assume the court will necessarily grant an adjournment request made on the eve of or after a briefing deadline has passed, regardless of whether a prior adjournment request has been made, and if the court does grant such an adjournment, it will likely be much shorter than if the request had been made expeditiously.
19. Unless the parties stipulate to an adjournment, the submissions part is NOT authorized to grant adjournments. The submissions part checks with the court before granting adjournments so parties should not request opposed adjournments directly from the submissions part (either in person or electronically). Instead, the parties should follow the procedure in Part Rule 18. Adjournments granted by the submissions part without a stipulation or court approval ARE VOID, and if and when they are brought to the court's attention the court will issue an order ruling on the adjournment request.

20. Attorneys must sign up for eTrack and regularly check eCourts for scheduled appearances. Defaults in appearing will not be excused for lack of notice from eTrack or an omission by the New York Law Journal.

Telephone Calls

21. Unless in the case of an emergency, no one should call Chambers. Basic questions or updates should be emailed to the assigned law clerk. If a party requires an urgent call with the court--such as an unscheduled call to address a discovery dispute, to resolve a dispute during a deposition, or any other urgent matter--a short email should be sent to the assigned law clerk requesting a call along with a brief explanation of the issues, and the court will notify the parties when there will be a call on Microsoft Teams for which the court will send a Teams invite.
22. Unless otherwise directed, all calls and discovery conferences will be on Microsoft Teams (audio only, cameras off). The Teams invite will always have a dial-in number alternative for anyone who cannot use Teams. Unless the court has already sent a Teams invite, at least two business days prior to a conference, the parties shall either send an invite or request that the court do so. All parties must join the Teams call at least five minutes before the conference is scheduled to begin.

Authorized Letters

23. Parties should not file Commercial Division Rule 14 letters without prior leave of court. Leave may be requested by emailing the assigned law clerk.
24. All e-filed letters must be emailed to the assigned law clerk along with the e-filing confirmation.
25. Unless otherwise directed, letters shall have a 3-page limit.
26. The court DOES NOT require Commercial Division Rule 24 letters, no such letters are permitted unless otherwise directed by the court, and parties DO NOT need leave prior to filing a dispositive motion (such as pre-NOI partial summary judgment motions). The filing of a dispositive motion DOES NOT stay discovery. Discovery motions, however, require prior leave of court pursuant to Part Rule 28.

DISCOVERY

27. After an action is assigned to this part, but before the preliminary conference (PC), if the parties have a discovery dispute, they shall email Mr. Rand to request guidance on how to resolve the dispute. However, if the dispute is only about whether discovery should be stayed pending a motion to dismiss or motion for summary

judgment, the party requesting the stay shall either move by OSC or letter motion seeking a stay. If a letter motion is filed, the parties shall confer on an opposition date and shall notify the court of that date or if they cannot agree on timing. Replies are not permitted. The parties shall email Mr. Rand when both letters are filed and indicate if they wish to discuss them in a conference.

28. After the PC, before making any discovery motion, the parties must meet and confer about all disputes and either raise the issue at the next scheduled conference or email the assigned law clerk to request an earlier conference or leave to file a motion. **Discovery motions MAY NOT be made without prior authorization and any discovery motion must set forth who authorized the motion and when.** Failure to comply with this rule may result in the summary denial of the discovery motion. This rule does not apply to non-parties, though they may email the assigned law clerk to request a conference in lieu of making a motion. This rule also does not apply to post-judgment discovery disputes, for which a motion may be filed without prior leave of court.
29. The parties must strictly comply with all court-ordered discovery deadlines. If an extension of time is needed, it must be requested by emailing the assigned law clerk BEFORE expiration of the deadline. The court may grant extensions for good cause but will not indefinitely grant extensions if the parties are not diligently attempting to meet deadlines. Absent compelling cause, an agreement among the parties, or an order entered prior to the deadline, the failure to serve discovery demands by the deadline set in the PC order will result in the waiver of the right to serve discovery demands, and the failure to serve responses and objections by the deadline set in the PC order will result in a waiver of all objections, other than privilege, to all demands that are not palpably improper.
30. Discovery IS NOT stayed by the filing of a dispositive motion or mediation unless otherwise ordered by the court. After the PC, motions to stay discovery must be made by order to show cause. However, parties may email the assigned law clerk to request a conference to address a stay request in lieu of a motion. Parties will not be relieved from the consequences of violating discovery orders unless the court issues a stay order prior to the deadline. Parties should not expect that stay or extension requests on the eve of a deadline will necessarily be granted, particularly if such request could have been made more expeditiously. Parties who have made multiple prior extension requests or have previously failed to comply with discovery deadlines should not expect their extension requests to be granted absent compelling cause.
31. Unless otherwise indicated, when a discovery deadline is set forth in a court order, that deadline is 5:00 p.m., New York time (for the avoidance of doubt, unless otherwise ordered by the court or dictated by the rules of the submissions part, this

rule does not affect the presumptive midnight deadline for motion papers). Details related to the manner of document production will be discussed at the PC. However, all production must be electronic, searchable and bates-stamped. A party that produces hard copy documents, non-searchable PDFs or documents without bates stamps will be ordered to re-produce its materials. Moreover, if the parties agree to additional technical specifications for production in an ESI protocol, such specifications will be strictly enforced. If parties intend to produce documents with their discovery responses prior to entering into an ESI protocol, the parties should meet and confer about their preferred manner of production prior to making the production. Documents that are not produced prior to close of fact discovery WILL NOT be admissible on summary judgment, at trial as part of direct testimony, or on cross-examination if they were requested during discovery.

32. Objections to document requests and interrogatories must be made with specificity in accordance with Commercial Division Rule 11-e(a) and CPLR 3133(a), respectively; general objections will be summarily overruled.
33. If a party objects to a document demand on the ground of privilege, with its production, the party must serve on all other parties a privilege log of the responsive documents that are not being disclosed and, if applicable, bates-stamped redacted documents along with a redactions log. The privilege log shall identify all redacted and completely withheld documents by bates-stamp numbers, dates, authors and recipients, the general subject matter of the document if it will not waive the privilege and the privileges being asserted. Failure to serve a privilege log with the party's production will, absent good cause, be deemed a waiver of the party's privilege objections. Following service of a privilege log, the parties shall confer in an attempt to reach agreement on whether the asserted privileges apply. If agreement cannot be reached, the parties shall email the assigned law clerk to schedule a conference.
34. Interrogatories are limited to 25, including subparts, in accordance with Commercial Division Rule 11-a(a), unless another limit is specified in the PC order. This rule is strictly enforced and applies to consolidated actions. Interrogatories are limited to the subjects set forth in Commercial Division Rule 11-a(b). Contention interrogatories, however, are not permitted.

Conferences

35. Prior to the PC, the parties must e-file and email the assigned law clerk a joint letter, not to exceed two pages, that includes a summary of the relevant factual background, the causes of action, affirmative defenses and counterclaims, the status of discovery, and the status of any motions. The letter should also indicate if the parties want to mediate before setting a discovery schedule and if the parties want

to take limited discovery in aid of mediation. The deadline to submit this letter will either be communicated by email or set by court order (e.g., in the court's decision on a motion to dismiss). There is no need to prepare a proposed PC order in advance. The court will explain how discovery (including ESI issues) will proceed during the PC.

36. Attorneys appearing for conferences must be fully familiar with the case in accordance with Commercial Division Rule 1(a). They must have thorough knowledge of all facts and claims in the pleadings, all relevant contracts, all prior court orders and all discovery proceedings. Counsel should be prepared to discuss the merits of their case at all conferences. Repeated failure to comply with this rule may result in a default.
37. In lieu of a conference, the court may direct the parties to provide a discovery update by letter or email. Such updates may be submitted at any time on or before the date they are due, but parties must always timely provide an update or request an extension by the deadline.

Confidentiality Agreements

38. Parties shall use the confidentiality agreement and order available at:

[https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Confidentiality Stip Part 54.pdf](https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Confidentiality%20Stip%20Part%2054.pdf)

If the parties make any changes to this form order they shall e-file and email the court an executed version and a redline. The confidentiality agreement shall not create any presumption that there is good cause to seal a document.

39. Any party who wants to file a redacted version of a document or file a document under seal must make a motion to seal by OSC. If provisional sealing status was employed the OSC should include a TRO maintaining such status pending a decision on the motion. Since sealing of entire documents is rarely permitted, the moving papers shall include narrowly tailored proposed redactions and the movant shall email the court and opposing counsel a version of the documents with highlighted proposed redactions.

MOTIONS

40. When a motion is fully briefed, the movant shall notify Mr. Rand by email. The parties will be notified that the motion will either be decided on the papers or scheduled for an oral argument on Microsoft Teams, and if the latter the court will

propose an argument date, and once confirmed the parties will be sent a Teams invite and further logistical information.

41. Parties may request oral argument by single-page letter or on the face of their motion papers in accordance with Commercial Division Rule 22. **A representation by letter that argument will be made by an attorney whose participation enhances diversity in the bar or an attorney admitted to practice fewer than five years will weigh in favor of the court deciding to hold oral argument.** The letter should identify the attorney and the portion of the motion that such attorney will argue. Such a letter may also be submitted with the opposition papers.
42. Briefs and memoranda of law must comply with the requirements set forth in Commercial Division Rule 17, including word limits (7,000 for opening and opposition briefs, 4,200 for reply briefs, and 7,000 for affidavits and affirmations) and certifications of compliance by counsel.
43. If there are multiple motions (e.g., if a plaintiff must respond to multiple motions to dismiss), parties are highly encouraged to request leave to file omnibus briefs for which reasonable word limit extensions will be granted.
44. Attorney affirmations may only be used as an index of exhibits and, where appropriate, a brief procedural history may be provided. Argument must be confined to the brief. A memorandum of law with a table of contents and table of authorities must accompany every motion (except for relatively minor motions such as *pro hac vice* motions). Bookmarking and hyperlinking are not required.
45. Witness affidavits must comply with the CPLR and Commercial Division Rules. Legal argument should not be contained in witness affidavits.
46. Motions for a default judgment must indicate the causes of action on which the default judgment is sought and must always be accompanied by a memorandum of law and an affidavit of merit. The brief should make clear whether the movant seeks a default judgment on liability only and whether the court should determine damages on the papers (in which case they must include clear calculations and appropriate proof) or at an inquest.
47. As noted earlier, briefs, exhibits and all other motion papers that are e-filed must be OCR Text Searchable. Spreadsheets that have been e-filed must be emailed to the assigned law clerk along with the e-filing confirmation receipts.
48. Motion sequence numbers shall appear in bold on the front page of ALL papers related to any motion or cross-motion, except exhibits. Each exhibit to an e-filed pleading, affidavit or affirmation must be e-filed as a separate document and must be described in reasonable detail in the “Description” field, in addition to a number

or letter in the “Document” field. The first page of the e-filed PDF should NOT be a blank page that states “Exhibit ___.” For instance, if Exhibit A is a contract, the first page of the contract should be the first page of the e-filed PDF. If the court requires hard copies, each hard-copy volume of exhibits MUST be separated by exhibit tabs and include a cover page containing the motion sequence number.

49. The moving papers on a motion must contain complete and legible copies of (a) the pleadings, (b) all applicable contracts, and (c) entire transcripts of depositions and court proceedings if reference is made to the deposition or proceedings in the motion. Excerpts of contracts and transcripts may not be filed without prior leave of court.
50. In an emergency or if a case or motion is resolved, please email the assigned law clerk immediately. Do not merely e-file a letter or stipulation. If the assigned law clerk does not respond or if you receive an out-of-office message, you may email the other law clerk and the part clerk.
51. Unless otherwise ordered, summary judgment motions must be filed no later than 60 days after the note of issue is filed.

Orders to Show Cause

52. The movant on an order to show cause (OSC), regardless of whether a temporary restraining order (TRO) is sought, shall email the papers to Mr. Rand IMMEDIATELY after the OSC is e-filed and await instructions on how to proceed. The email shall include a Microsoft Word version of the OSC. The parties SHALL NOT appear in court to present their OSC.
53. The court will indicate in the OSC if, when and where oral argument will be held on the return date or if the motion is returnable “ON PAPERS ONLY.” Unless otherwise ordered, the parties SHALL NOT provide hard copies or appear in court on the return date.
54. In the absence of significant prejudice, a movant seeking a TRO must email their motion papers to opposing counsel and Mr. Rand at least 24 hours in advance of when the movant wants to be heard on its TRO application. Absent an emergency, if notice is provided on a Friday, the court may not hear the TRO application until the following Tuesday. The failure to e-file proof of such notice that includes the other’s side’s email address may result in delayed consideration of the TRO. A party who wishes to be heard on a more expeditious or *ex parte* basis shall e-file an affidavit justifying the request. If *ex parte* relief is legally authorized, you must still email the papers to Mr. Rand as soon as practicable.

55. After receiving the email required by Part Rule 54, the court will notify parties when a letter in opposition to the TRO request should be e-filed and emailed to the court and when there will be call on Microsoft Teams to address the TRO request. The ability to file a TRO letter will be without prejudice to submitting formal opposition.
56. In most cases, a party filing an OSC before the action has been assigned to this part cannot give advance notice consistent with Part Rules 52-55. Upon assignment to this part, movant shall carefully review and, as quickly as possible, comply with those advance-notice rules. Delay may result in delayed consideration of the OSC. Additionally, if the Commercial Division Support Office notifies movant of a procedural error (such as omission of a CPLR 2217 certification), any failure to promptly correct the problem may also result in delayed consideration of the OSC.
57. The court may deny or limit the scope of the TRO sought, even if the TRO is unopposed. The court will not issue a TRO if the moving papers do not contain complete copies of the pleadings and complete legible copies of the applicable contracts.

Summary-Judgment Motions

58. Before filing a summary-judgment motion, the parties shall meet and confer to discuss the matters at issue on the motion and shall prepare and file **one joint statement of material facts**. The joint statement may cite and be filed with joint exhibits that will be considered part of the summary-judgment record without the need to separately file them with the parties' motion papers. **If the parties cannot agree on a joint statement, competing Rule 19-a statements of facts are strictly prohibited.** If a party violates this rule, opposing counsel SHALL NOT file a responsive statement of facts, but rather should e-file and email the court a letter noting the rule violation and requesting that the statement be stricken from the record. No party shall argue that a summary-judgment motion should be denied for the failure to negotiate and file a joint statement of facts. Nor is any party precluded from filing a pre-note-of-issue partial summary judgment motion if they in good faith believe that negotiating a joint statement would be futile or that doing so will cause a prejudicial delay in filing their motion. CPLR 3213 motions do not require a joint statement and competing Rule 19-a statements are **not** to be submitted.

Oral Arguments & Transcripts

59. If oral argument is held on Microsoft Teams, the parties will be provided with a Teams invite and logistical information. Clients are permitted to observe and do not need to request permission to do so. Counsel may forward the invite to their clients. All invites will include a dial-in number which may be used by observers, but arguing attorneys should, expect as otherwise directed (such as during a TRO call), appear on camera on Teams. Any member of the public who wants to observe

proceedings on Teams should email Mr. Rand within one week of the scheduled proceedings and they will either be added to the Teams invite or provided with a link to a livestream. Similar access may also be requested and will be provided for discovery conferences. Clients and members of the public must always keep their cameras off and microphones on mute.

60. All oral argument transcripts must be e-filed within 45 days of oral argument, even if the court decides a motion from the bench after oral argument. Unless otherwise directed, the moving party shall order and pay for the transcript. If there is a cross-motion or motions are filed by both parties, the costs shall be shared. If the court reserves on a motion, it will not be marked fully submitted and the court will not issue a written decision until the transcript is e-filed.
61. If a party requests that a transcript be “So Ordered” then:
 - Transcripts shall be e-filed and emailed to the court with an errata sheet correcting **all** errors in the record, including any agreed-upon errors in transcription of the court’s statements.
 - If all parties consent to the proposed corrections or agree that no corrections are required, a stipulation to that effect shall be e-filed and emailed to the court with the errata sheet or transcript.

CONSOLIDATION OR AMENDMENT OF CAPTIONS

62. All orders on motions or stipulations to consolidate, to sever claims or to amend captions shall be served with notice of entry on the County Clerk and the General Clerk’s Office in accordance with Section J of the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (available at <https://www.nycourts.gov/courts/1jd/supctmanh/Efil-protocol.pdf>).

TRIALS & PRE-TRIAL CONFERENCES

63. Generally, a trial date will not be set until after a pre-trial conference is held. After summary judgment motions are decided (or if there are no such motions after the note of issue is filed) the court will schedule a conference to discuss exactly what will be expected of each case at their pre-trial conference. All pre-trial submissions, including all *in limine* motions, must be e-filed and fully submitted at least three weeks before the pre-trial conference. The court will notify the parties if hard copies will be required. Generally, the pre-trial submissions must include:
 - (a) marked pleadings

- (b) pretrial memoranda
- (c) witness lists setting forth whether the witness is a fact witness or an expert and the expected length of direct examination
- (d) expert reports
- (e) cross-designations of deposition testimony including the pages and lines
- (f) pre-marked exhibits containing their bates stamps, together with a spreadsheet containing the exhibit numbers or letters, a very brief description of the exhibit and blank spaces for a) the opposing parties to object or agree to admission, b) a change of position after the parties meet and confer regarding any objections and c) a court ruling at the pre-trial hearing on the exhibits not agreed upon
- (g) requests to charge including the applicable Pattern Jury Instruction (PJI) number and contentions. If any modification of the PJI is requested, the entire charge shall be typed with the proposed modification clearly indicated in **BOLD**
- (h) a proposed verdict sheet
- (i) a stipulation as to all agreed-upon facts for non-jury trials

Form Order for Admission *Pro Hac Vice*

ORDERED that the motion for leave to appear *pro hac vice* is granted 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 during this action be associated 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 aforesaid party; and it is further

ORDERED that all pleadings, briefs, and other papers filed with the court shall be signed by the attorney of record, who shall be 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 be familiar with and 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 Rules of Professional Conduct; 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 that affects his/her standing as a member of the bar.

Dated: _____

ENTER:

J.S.C.