

JUSTICE ANDREA MASLEY

PART 48 RULES

**SUPREME COURT
COMMERCIAL PART
COURTROOM 242
60 CENTRE STREET
NEW YORK, NY 10007
PHONE: 646-386-3265
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E-Track Directive

Notification of developments in cases, including court appearance dates and adjournments, is now made exclusively through e-Track, the court system's case tracking and e-mail notification service. New York County Supreme Court no longer provides these notifications by regular mail. In all cases now pending in the Commercial Division and upon the assignment of any case to the Commercial Division, all counsel shall immediately register to create an e-Track account and then record each case, which will ensure that counsel will receive e-mail notifications about developments in the cases. As an alternative, counsel may subscribe to a private sector e-mail notification service that provides comparable notice. The e-Track link appears at the end of each electronic filing. The e-Track address is: <https://iapps.courts.state.ny.us/webcivil/etracklogin>. There is no charge to use e-Track. For further information, please contact e-Track at ecourts@nycourts.gov.

Commercial Division Rules

The Rules of the Commercial Division, as well as the Uniform Civil Rules for the Supreme Court, shall apply unless modified by the individual Rules of Part 48. All parties and counsel should familiarize themselves with the Commercial Division Rules <http://www.nycourts.gov/courts/comdiv/>.

GENERAL INFORMATION

1. **Contact Information**

- a. All attorneys or *pro se* litigants must provide their **contact information** to the Trial Support Office, located in Room 158M. **Failure to provide the contact information will result in undeliverable communications from the Part.**
- b. Any issues related to incorrect contact information must be addressed **directly** with the Trial Support Office by counsel. The Part Clerk cannot change the contact information.

2. **Communications**

- a. Neither Justice Masley nor her law clerks will speak to any attorney or self-represented litigant regarding any matter without all parties to the action present. **No calls to Chambers shall be placed unless authorized in advance by the Court or as permitted by the rules.**
- b. Email is preferred for all communications to Chambers. **DO NOT SEND THE SAME COMMUNICATIONS USING MULTIPLE METHODS.**
- c. All inquires regarding the scheduling of conferences and/or oral arguments must be directed to the Part Clerk, Brendan Hanson, who can be reached at (646) 386-3265. Please have the index number readily available when you call.
- d. **Letters:** Letters shall not be filed without prior authorization of the Court. **Exceptions:** The following maybe submitted without prior authorization:
 - i. A joint letter outlining discovery issues to be resolved at a discovery conference previously scheduled by the Court. Such a letter must be submitted at least three (3) business day in advance of the scheduled conference.
 - ii. Letters authorized by Commercial Division Rule 2 and letters notifying the Court, in advance of an oral argument date, of the disposition or other resolution of the motion with a stipulation reflecting the disposition.

iii. Letters requesting ADR. See Mediation, Section 5 below.

iv. Letters authorized by Commercial Division Rule 18. However, such letters are limited to only the citation of a relevant post-submission court decision. The Court will not consider letters that argue the substance of the cited authority. The Court will notify the parties if it requires any further briefing on the cited authority.

3. **Requests for Adjournment**

a. All adjournments (motions, conferences, trials) require prior Court approval. Requests for adjournments, in the first instance, shall be directed to the Part Clerk at 646-386-3265. **Do not telephone Chambers.** Where all parties consent to the adjournment, the requesting counsel shall deliver a stipulation by email to bhanson@nycourts.gov, and shall be responsible for e-filing the stipulation.

b. Adjournment applications and stipulations shall be made at least 48 hours in advance of the scheduled court appearance.

c. A court approved adjournment shall be reduced to a written stipulation prepared by the requesting counsel and signed by all counsel. If applicable, the stipulation should set forth a briefing schedule. The requesting counsel shall send the stipulation to Part 48 by email to bhanson@nycourts.gov and shall be responsible for e-filing the stipulation.

4. **Request for admission *PRO HAC VICE***, shall be made by Order to Show Cause and shall be accompanied by 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 and a recent certificate of good standing from the applicant. The affidavit of the applicant must advise the court as to how many times the applicant has been admitted in New York *pro hac vice*, whether that admission *pro hac vice* has been vacated, and whether the applicant has even been or is presently subject to a disciplinary proceeding. Exhibit A, annexed to these Rules, is the form of the proposed order for *pro hac vice* applications.

5. **Mediation:** If, at any point, the parties decide that they could benefit from Commercial Division ADR or other mediation, they may write a joint letter to the Court asking to be referred to ADR or such other mediation. In that letter, they

should state whether they prefer that discovery continue or be stayed during the mediation process.

MOTION PRACTICE

1. **Motions**

- a. Motion sequence numbers must appear on **ALL** motion papers including: the notice of motion, memos of law, exhibits, affirmations, AND proposed/settled orders. Double-sided copies will not be accepted.
- b. A motion will not be scheduled for oral argument until it is fully submitted in the Submissions Part.
 - i. In light of recent changes in the E-filing Office, Part 48 cannot schedule newly filed motions for oral argument unless and until all parties to the motion have submitted “Working Copies” in hard copy form to the Submission Part (Room 130).
 - ii. In the event a party fails to timely submit the “Working Copies,” the Submissions Part may adjourn the return date, which will delay the scheduling of oral argument for the motion.
 - iii. Any issues related to the return date of a motion still on the submissions calendar must be addressed directly with the Submissions Part by counsel. No more than three adjournments for an aggregate of 60 days from the original return date shall be permitted absent a Stipulation So Ordered by Justice Masley. See Uniform Rules of the Trial Court 202.8 (e) (1).
- c. **Memorandums of Law** are required on **all** motions. Memoranda of law submitted in support of or in response to dispositive motions must include a Table of Contents and a Table of Authorities. Memorandums of law must be bound separately from the other papers.
- d. **Page Limit and Page Extension Requests** (enlarged briefs) will be denied absent an extraordinary showing of complexity. Parties requesting a page extension shall submit a short statement explaining the request to vcorbo@nycourts.gov. All parties must be included on this correspondence. Combined briefs for cross-motions are restricted to the

same page limits set forth in Commercial Division Rule 17, which provides that:

Rule 17. Length of Papers. Unless otherwise permitted by the court: (i) briefs or memoranda of law shall be limited to 25 pages each; (ii) reply memoranda shall be no more than 15 pages and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits and affirmations shall be limited to 25 pages each.

- e. **Affidavits/Affirmations** submitted in support of or in response to dispositive motions must be separate from any memoranda of law submitted in relation to the motion. Affidavits/ affirmations that contain substantive arguments, and do not merely annex exhibits, must be bound separately from exhibits. **Working copies of exhibits will not be accepted unless the e-filed exhibit(s) contains redacted information, then unredacted exhibit(s) must be submitted as working copies with exhibit tabs.**

- f. **Opposing Papers on Orders to Show Cause** are returnable directly to the Part (Room 242) between the hours of 9:30 a.m. - 1:00 p.m. and 2:15 p.m. - 4:30 p.m., and must be submitted at least one day prior to oral argument on the application, unless otherwise directed. Reply papers are **NOT** permitted prior to argument on the order to show cause, but may be requested at the argument.

- g. **Rules for Dispositive Motions**
 - i. **Rule 19-A statements** (Statements of Undisputed Facts) will **not** be accepted on summary judgment motions, unless the parties file a joint Statement of Undisputed Facts.

 - ii. **Summary judgment motions** should be initiated within 30 days after the filing the Note of Issue, unless otherwise directed. **Cross motions for summary judgment will not be accepted if beyond the 30-day time limit. This time limit is to be strictly adhered too.**

 - iii. **Discovery is not stayed** by the filing of a dispositive motion unless otherwise directed by the Court.

- h. **Oral argument** will not be scheduled on all motions. If Justice Masley chooses to hear argument, the parties will be contacted by the Part Clerk.
- i. **Prior Permission:** Except for discovery motions, no prior permission is required before making a motion. **Commercial Division Rule 24 letters are NOT accepted by Part 48.**
- j. **Discovery motions** are strongly discouraged. If a discovery dispute arises after the issuance of a preliminary or compliance conference order, counsel shall telephone the Part Clerk (646-386-3265) to schedule a discovery conference with all counsel to resolve the discovery dispute. If the issue cannot be resolved following such conference, counsel may move for appropriate relief. **All discovery motions** shall be made by **Order to Show Cause**. An OSC shall be initiated by filing the appropriate papers with the Commercial Division Support Office in Room 119 with proof of e-filing. Moving counsel is responsible for retrieving the OSC from the Commercial Division Support Office after it has been processed and delivering the jacket with a complete set of working papers to the Part Clerk in Room 242.
- k. **Transcript of Proceedings Required:** subsequent to each oral argument held on a motion, the moving party shall request from the court reporter a transcript of the proceedings and promptly provide a copy to the Court, to be delivered to the Part Clerk in Room 242 with a cover letter setting forth the case name, index number, and motion sequence number. The moving party shall bear the cost. Failure to provide a copy of the transcript to the Court when specifically directed by Chambers will result in the motion being marked abandoned. The name and contact information of the court reporter can be obtained from the Part Clerk.
- l. **Text Searchable:** briefs, exhibits, and all other motion papers that are e-filed must be OCR Text Searchable. Hard copies of e-filed spreadsheets are required.
- m. **E-Filing:** Please note that as of May 24, 2010, e-filing is **mandatory** in all commercial cases filed in New York County. For any questions with respect to e-filing rules and procedures, call the E-filing Office at (646-386-3610) or go to:
<http://www.nycourts.gov/courts/1jd/supctmanh/E-Filing.shtml>

- n. **Opt-out:** If parties are eligible and wish to opt-out from participating in mandatory e-filing, they must file a **Notice of Opt-Out** (Note: all forms can be found on the e-Filing Website).

- o. **Hard Copy Documents:** Any hard-copy documents in e-filed cases, including correspondence and stipulations to adjourn, that are sent to the Part 48 must be e-filed or will not be deemed a part of the record.

- p. Confirmation notices for e-filing must be attached to the last page and not as a cover page.

- q. **Working Copies (a.k.a. “Courtesy Copies”, “Originals”, “Duplicate Originals”):**
 - i. In addition to electronically filing motion papers, counsel shall submit a hard copy set of all papers related to any motion to the Motion Submissions Part in Room 130 on the return date (NOT TO THE PART OR CHAMBERS). All working copies of e-filed documents intended for judicial review must include blue backs. The working copies also must include: **original signatures, notaries, and proofs of service. Exhibits are not to be submitted unless the exhibit contains redacted information, then unredacted exhibit(s) must be submitted as working copies with exhibit tabs.** Unredacted exhibits must be bound in volumes not to exceed approximately 1.5 inches in thickness, if practicable. Velo binding is preferred.

 - ii. Do not submit additional working copies to the Part or Chambers, unless otherwise directed.

 - iii. Upon the Court’s disposition of the motion, ALL motion papers in an e-filed action will be discarded, unless counsel affixes a legend on the face of the motion papers requesting that they not be discarded. Counsel shall have 14 days from the date of entry of the disposition of the motion to retrieve the original motion papers from Part 48, or they will be discarded.

- r. **Signatures:** All papers submitted to the court with a signature (stipulations, affirmations, affidavits, etc.) must have the date next to such signature, so it is clear when it was signed.

POST ORAL ARGUMENT

1. **Settlement of Orders:** The following procedure **MUST** be adhered to if the parties are directed to settle an order or settle an order on notice during oral argument or on a short form order.
 - a. The parties must wait until a short form order has been issued by the court before submitting any orders for settlement. All proposed orders must be settled on notice, pursuant to **Uniform Rule 202.48**.
 - b. All notices, proposed orders, and accompanying transcripts, affidavits, and/or documents must contain the motion sequence number, shall be e-filed and provided to the Court in hard-copy form. Each shall be separately backed.
 - c. Proposed Orders submitted in connection with a **motion for a default judgment** should be sent to the Commercial Division Support Office, Room 119. Proposed Orders submitted in connection with **any motion except for a motion for default judgment** should be sent directly to the Part.
2. **Settlement of Transcripts:** In the event that a party requests that a transcript be “**So Ordered**” by the Court, the following procedure must be adhered to: Transcripts shall be submitted together with an errata sheet correcting all errors in the record, including presumed court errors. If all parties consent to the proposed corrections or agree that no corrections are required, a stipulation to that effect shall accompany the errata sheet or transcript. In the absence of consent as to the errata sheet, the requesting party shall notice the record for settlement pursuant to CPLR 5525 (c).
3. **Procedures for Inquests:** A party requesting or directed to submit an inquest in

Part 48 shall submit in hard-copy form and e-file the following information or documents:

- 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 by the party.
- c. Exhibits should be submitted in support of all requests for damages. Exhibits shall be e-filed only; no working copies will be accepted unless the exhibit contains redactions.
- d. Whenever counsel believes it would assist the court, affidavits from experts (i.e., accountants, appraisers, etc.) should be submitted.
- e. Proof of service must be filed indicating that all papers and exhibits submitted to the court have been served on opposing parties.

4. **Inquiries related to Orders/Transcripts**

a. **No party shall contact the Part or Chambers to inquire as to whether an order has been signed UNLESS it is an emergency (e.g. the order is time sensitive). In the meantime, parties are directed to check SCROLL, E-Filing, E-Courts and the County Clerk's file for orders. If the order is not there, it has not been signed. If an inquiry must be made, please send an e-mail, cc'ed to all parties, to vcorbo@nycourts.gov.**

b. SCROLL and E-Filing can be accessed here:

- i. <http://iapps.courts.state.ny.us/iscroll/>
- ii. <https://iapps.courts.state.ny.us/nyscef/Login>

c. Any document requiring Justice Masley’s signature (e.g. proposed/settled orders, stipulations or transcripts to be “so ordered”) shall be e-filed and provided to the Court in hard-copy form, separately backed.

d. All orders on motions or stipulations to **consolidate or change captions** shall be sent to the Trial Support Office, located in Room 158M.

DISCOVERY

1. **Confidentiality** For all commercial cases that warrant the entry of a confidentiality order, the parties shall submit to the Court for signature the proposed stipulation and order that appears in **Appendix B to the Rules of the Commercial Division.** In the event the parties wish to deviate from the form set forth in Appendix B, they shall submit to the Court a **red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.** See Commercial Division Rule 11-g (a) and (b).

a. **Applications to seal documents** shall include the nature of the document, reason for the sealing request, and “good cause” therefor (22 NYCRR § 216.1). The Court will consider the application to seal documents by Order to Show Cause.

b. **Unredacted Copies:** Any party wishing to provide the Court with any motion paper, including any notice or memorandum of law, affidavit or declaration in support of such motion, that attaches, affixes, summarizes or excerpts Confidential or Highly Confidential information shall redact all such Confidential or Highly Confidential information before submitting the papers to the public file. On the appropriate return date, or on any other date ordered by the Court, a fully, unredacted copy of the motion papers shall be provided to the Court in Room 242 labeled as follows: “Unredacted Chambers Copy – Redacted Copy Filed Pursuant to Court Order.” After such motion is decided, the Court may, in its discretion, return the “Unredacted Chambers Copy” to the moving party, who will be required to maintain such documents pending the final outcome of the action, including any appeals, after which time the documents shall be disposed of pursuant to Stipulation and/or Order.

2. **Discovery Conferences**

a. Part 48 conducts scheduled discovery conferences, in person, via telephone, or Skype on Tuesdays, Wednesdays, and Thursdays. If the parties elect to do a telephone conference, a party to the case must initiate the call with all parties on the line before contacting the court, or provide dial-in information (email - bhanson@nycourts.gov) at least 24 hours before the scheduled call. The parties shall make a good faith effort to appear at compliance conferences with a proposed compliance conference order or stipulation. If an emergency conference is needed, please contact the Part Clerk at 646-386-3265.

b. **Preliminary Conferences:** Counsel are encouraged to use the Form Preliminary Conference Order available in Part 48 and at http://www.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley

prior to the scheduled PC and confer with each other. Plaintiff's counsel shall bring a copy of the complaint to the PC.

3. **Discovery Disputes.** Notwithstanding the new Commercial Division Rule 14, discovery disputes will continue to be addressed pursuant to the prior Rule, as adopted by the Justices of the Commercial Division. That rule provides as follows:

Counsel must consult with one another in a good faith effort to resolve all discovery disputes (see § 202.7). If counsel are unable to resolve any disclosure dispute in this fashion, the aggrieved party shall contact the court to arrange a conference as soon as practicable to avoid exceeding the discovery cutoff date.

a. Counsel may request a conference by telephone or Skype if that would be more convenient and efficient than an appearance in court.

b. NO PARTY SHALL SEND A LETTER TO CHAMBERS RELATED TO A DISCOVERY DISPUTE (EXCEPTION: SEE PART 48 RULES GENERAL INFORMATION, 2 [d][i]). THE PARTIES MUST MEET AND CONFER ON THE ISSUE. IF THE PARTIES ARE UNABLE TO RESOLVE THE ISSUE, PLEASE CONTACT THE PART CLERK TO SCHEDULE A CONFERENCE. JUSTICE

MASLEY WILL NOT ENTERTAIN “MOTION LETTERS.” IF THE DISCOVERY ISSUE CANNOT BE RESOLVED AFTER A CONFERENCE, COUNSEL MAY MOVE FOR APPROPRIATE RELIEF BY ORDER TO SHOW CAUSE.

4. **Electronic Discovery:** After service of demands for discovery, and prior to the deadline for written responses and inspection/production of documents, parties shall confer in good faith in order to identify whether documents sought are computer stored data. Parties shall discuss the associated costs of production, the method and scope of the search to be conducted, and attempt to agree to search terms, and/or sampling. Generally, parties are expected to bear their own E-discovery costs, unless the data is not readily available, in which case, the requesting party bears the cost. The responding party will produce the information sought in commonly used digital formats, unless the parties agree otherwise, shall be accompanied by an index that identifies the document(s) produced in response to each demand, the electronic file where the document has been stored, and an affidavit, where requested. Any issues relating to electronic disclosure may be raised with the Court during a discovery conference.
5. **Interrogatories, including subparts,** are limited to 25 in number unless otherwise ordered by the court.
6. **Expert Disclosure:** No later than thirty (30) days prior to the completion of fact discovery, the parties shall confer on a schedule for expert disclosure, which shall include the identification of experts, the exchange of expert reports, and depositions. In the event that a party withholds consent to this procedure, the parties shall consult with the Court. Unless otherwise stipulated or ordered by the Court, expert disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:
 - a. a complete statement of all opinions the witness will express and the basis and the reasons for them;
 - b. the data or other information considered by the witness in forming them;

c. any exhibits that will be used to summarize or support them;

d. the witness's qualifications, including a list of all publications authored in the previous 10 years;

e. a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and

f. a statement of the compensation to be paid for the study and testimony in the case.

7. **Commissions:** Requests for commissions should be made by stipulation, if possible, or by Order to Show Cause.

8. **Trial Rules:** Please see Part 48 trial Rules, available on the Commercial Division website. **Note:** Motions in limine, pre-trial memoranda, exhibit books, and witness lists are due in the time frame set forth in Part 48 Trial Rules, and not at the pre-trial conference as set forth in Commercial Division Rules 27, 28, and 31.

Exhibit A

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 affidavit of _____, Esq., a member of the Bar of the State of New York and attorney of record herein for _____, an affidavit 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.

ENTER:

J.S.C.