

PRACTICES FOR PART 54

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

Chambers: General Number: (646) 386-4048

Law Clerks: Michael J. Rand, Esq. mrاند@nycourts.gov (212) 256-7848

Elizabeth S. Kimmel, Esq. ekimmel@nycourts.gov (646) 386-4744

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), the parties may call chambers by following the procedures set forth below. Such requests should be made promptly after the filing of the RJI. No letters requesting transfer may be submitted.
3. A law clerk will be assigned to supervise your case. When calling the court for a scheduled telephone conference, please use the individual telephone number for the assigned law clerk. If a law clerk has not yet been assigned to your case, or if you cannot reach the assigned law clerk, please call chambers at (646) 386-4048.

If the rules provide that you should email a law clerk, and one has not yet been assigned, please email Michael Rand at mrاند@nycourts.gov.

4. **No law clerk will communicate with an attorney or litigant *ex parte*, nor will they assist parties in the practice of law, such as by advising how to interpret a rule, law or decision. All communications with the court must be copied to all appearing parties and all parties must be on the line for telephonic communications.**

5. Unopposed applications accompanied by an executed, e-filed stipulation consenting to the relief sought (such as consolidation, admission *pro hac vice* or an open commission) should be emailed to the assigned law clerk along with the e-filing confirmation receipt.

Resolutions

6. Counsel must notify the court as soon as practicable by telephone call or email to the assigned law clerk if an action or a pending motion has been resolved.

Contact Information

7. **Attorneys and *pro se* litigants must always keep their contact information, including email addresses, current in the e-filing system so that the court is able to reach you.** In cases that are NOT e-filed, *pro se* litigants must provide contact information to the Part Clerk. If your email address is not kept current, you may miss important communications. All attorneys who appear in Part 54 must provide the Part Clerk with a business card that has the attorney's current contact information.

Admission *pro hac vice*

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 electronically filed (e-filed) through the New York State Courts e-Filing (NYSCEF) system except cases involving *pro se* litigants. *Pro se* litigants that are licensed to practice law in New York, however, must e-file. Unrepresented litigants are highly encouraged to e-file 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>.

With the exception of *pro-se*-litigant submissions, all submissions must be e-filed.

10. All e-filed documents must be OCR Text Searchable PDFs.
11. Each exhibit to an e-filed pleading, affidavit or affirmation must be e-filed as a separate document. e-filed exhibits must be described in reasonable detail in the “Description” field, in addition to a number or letter in the “Document” field.
12. 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 [OSC]): one for the court file and an extra copy for the court’s use.

Hard Copies

13. Except as otherwise provided, parties should only provide the court with hard copies of all motion and cross-motion papers (including all affidavits, affirmations and exhibits). NO other hard copies should be submitted.
14. For motions returnable in Room 130, one hard copy of all papers must be submitted directly to Room 130 and NOT to the courtroom or chambers.
15. One hard copy of all papers related to motions brought by OSC must be hand-delivered to the Part Clerk no later than seven days before the return date unless a different date is specified for hard copies in the OSC.

Stipulations, Orders and Authorized Letters

16. Proposed stipulations and orders along with their e-filing confirmation receipt must be emailed to the law clerk assigned to your case.
17. Authorized letters along with the e-filing confirmation receipt must be emailed to the law clerk that is assigned to your case only after a clerk has authorized the letter.

COMMUNICATIONS WITH THE COURT

Scheduling

18. General questions about appearances may be addressed to the Part Clerk at (646) 386-3362. The Part Clerk is not authorized to grant adjournments.
19. To adjourn a scheduled appearance, the court’s permission must be obtained no later than two business days in advance, except in the event of an emergency. Opposed requests for adjournment of scheduled appearances must be addressed to one of the court’s law clerks by contacting chambers in accordance with the procedure for commencing unscheduled telephone conferences discussed below. All parties who

have appeared must be on the line. If all parties consent to the adjournment request, you may instead email the assigned law clerk (copied to opposing counsel) to propose one or more new appearance date(s) to which all parties have agreed. If you cannot reach opposing counsel, you may email the assigned law clerk (copied to opposing counsel) to explain the situation and seek guidance. Adjournments will not be granted by letter or stipulation without prior court approval. For adjournments in room 130, see the MOTIONS section below.

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. Non-attorneys (including paralegals and secretaries) may not call chambers. Except in extenuating circumstances, chambers will take calls only from attorneys of record and unrepresented litigants and only when all appearing parties are on the line.
22. Counsel and unrepresented litigants may call chambers Monday through Thursday, between 4 and 5:30pm, during which time the court's law clerks are generally available for unscheduled calls. Except for scheduled calls, emergencies (including disputes arising during a deposition) or notifications that a motion has been withdrawn or a matter has settled, do not call chambers outside of this time window.

To initiate a call with chambers, call (646) 386-4048 with all parties on the line or provide chambers with a conference call dial-in number. Prior to the call, the parties must confer to discuss the matters to be raised with the court.

Authorized Letters

23. Letters that have not been authorized will not be considered by the court.
24. If the court directs that a letter is to be filed (e.g., the joint letter to be submitted prior to the Preliminary Conference [PC] or a joint letter related to a disclosure dispute that has been requested by a law clerk prior to a scheduled telephone conference), the letter shall be e-filed and then emailed to the assigned law clerk along with the e-filing confirmation receipt. Hard copies of letters should NOT be provided to the court.
25. If the court authorizes a letter related to a discovery dispute, the parties shall submit a joint letter of no more than five pages.
26. Commercial Division Rule 24 letters are prohibited.

DISCOVERY

27. After an action is assigned to this part, but before the PC, if the parties have a discovery dispute, they are to call chambers to schedule a PC.
28. Before making any discovery motion, the parties must confer and either raise the issue at the next scheduled telephone conference or contact chambers in accordance with the procedure for commencing unscheduled telephone conferences discussed above. Discovery motions may not be made without authorization and any discovery motion must set forth who authorized the motion and when.
29. Unless otherwise indicated, when a discovery deadline is set forth in a court order that deadline is 5:00 pm, New York time. Details related to the manner of document production will be discussed at the PC. 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.
30. 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 not be honored by the court. The court will provide further guidance at the PC as to how such objections must be drafted.
31. 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.
32. Parties must comply with court-ordered discovery deadlines. If an extension of time is needed, it should be requested by calling chambers 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 court deadlines.

Discovery is not stayed by the filing of a dispositive motion or mediation unless otherwise ordered by the court. Motions to stay discovery must be made by order to show cause. Parties will not be relieved from the consequences of violating discovery orders unless a temporary restraining order (TRO) is obtained.

33. If a party objects to a document demand on the ground of privilege, with its production, the party asserting the privilege must serve on all other parties a privilege log of the responsive documents that are not being disclosed and a copy of the redacted documents, bates stamped. 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 objection on the ground of privilege. 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 contact the assigned law clerk to schedule a conference. At the PC, the court will provide further guidance on the manner in which privilege logs are to be served, the option of using a categorical log and the process for resolving privilege disputes.

Conferences

34. All parties must meet and confer at least 2 weeks before the PC, at which time they must jointly prepare a brief status letter, no more than 2 pages in length, 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. There is no need to prepare a proposed PC Order in advance, nor do the parties need to address ESI prior to the PC. The court will explain how discovery (including ESI issues) will proceed at the PC.
35. 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, of all relevant contracts, of all prior court orders and of the discovery proceedings. Counsel should be prepared to discuss the merits of their case at all conferences.
36. Parties must bring copies of ALL prior discovery orders, motion decisions, pleadings and relevant contracts to each and every court appearance. Any party that wants to resolve a dispute about the sufficiency of a discovery response during a conference shall bring whatever will be needed to obtain a ruling, including copies of the disputed demands and responses.

Confidentiality Agreements

37. Parties shall use the confidentiality agreement and order available at: [www.nycourts.gov/courts/comdiv/ny/PDFs/Confidentiality Stip Part 54.pdf](http://www.nycourts.gov/courts/comdiv/ny/PDFs/Confidentiality%20Stip%20Part%2054.pdf). Any changes that the parties wish to make to the order shall be electronically filed and submitted to the court with a redlined copy of the court's form agreement. A confidentiality agreement between the parties and approved by the court is for the purpose of disclosure only.
38. To maintain the confidentiality of a document designated "confidential" for purposes of discovery, any party who wants to submit it in connection with a motion must make a motion to seal by OSC, pursuant to 22 NYCRR 216. Hard copies of

documents that the movant wishes to seal should be delivered to the courtroom in a sealed envelope marked confidential with the index number and motion sequence number included on the envelope. e-filed memoranda of law or other submissions that absolutely must refer to the documents sought to be sealed should redact any such references and unredacted copies of the submissions also shall be delivered to the courtroom in the same manner as the underlying documents sought to be sealed.

MOTIONS

39. Discovery motions cannot be made without authorization (*see* DISCOVERY above).
40. To request an adjournment of a briefing deadline or return date on a motion returnable in room 130, refer to the Motions on Notice web page of the Civil Branch of the Supreme Court of the State of New York, New York County: https://www.nycourts.gov/courts/1jd/supctmanh/motions_on_notice.shtml. Adjournments permitted by room 130 on consent of the parties do not require the court's consent unless otherwise ordered.

To request an adjournment not on consent of the parties, by court order or on a motion by order to show cause, call chambers in accordance with the procedure for commencing unscheduled telephone conferences discussed above.

If all parties consent to such adjournment, you may instead email the assigned law clerk (copied to opposing counsel) to propose the new deadline.

41. For motions returnable in Room 130, the parties shall not appear in Part 54 on the return date. After the court receives the motion from Room 130, it will contact the parties by email to schedule oral argument, if necessary. If the moving party is not contacted within two weeks of the return date, the parties shall promptly contact the Part Clerk. Once oral argument is scheduled, adjournments must be sought at least two business days in advance.
42. 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.
43. 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.

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 must accompany every motion.
45. 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 motion should make clear whether the movant seeks a default judgment on liability only or wishes for the court to determine damages on the papers, which must provide a clear calculation and appropriate proof. If requesting an inquest before a special referee, make clear whether the movant consents to a reference to hear and determine.
46. Witness affidavits must comply with the CPLR and Commercial Division Rules. Legal argument should not be contained in witness affidavits.
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 hard-copy volume of exhibits *must* be separated by exhibit tabs and include a cover page containing the motion sequence number. When e-filing an exhibit, however, 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.
49. The moving papers on a motion must contain *complete and legible* copies of (a) the pleadings, (b) all applicable contracts, (c) entire transcripts of depositions and court proceedings if reference is made to the deposition or proceedings in the motion and (d) copies of all relevant prior court decisions. Excerpts of contracts and transcripts may not be filed.
50. In an emergency or if a case or motion is resolved, please contact chambers immediately. Call the court. Do not file a letter or stipulation. If you cannot reach chambers by phone, email the assigned law clerk (copied to opposing counsel).
51. Dispositive motions must be made no later than 60 days after the note of issue is filed.

Orders to Show Cause

52. The court will indicate, in the OSC, whether oral argument will be held on the return date or the motion is returnable “on papers only.” In the latter case, no appearance is required.
53. Hard copies of the opposition (and, if permitted by the court, reply) papers must be hand-delivered to the Part Clerk no later than the date specified in the OSC. The court will not consider late papers.
54. In the absence of significant prejudice to the applicant for a temporary restraining order (TRO), Uniform Rule 202.7(f) requires good faith efforts to ensure that the opposing party will have an opportunity to appear in response.

Accordingly, **TRO applicants must email their application to opposing counsel, copied to the court at mrand@nycourts.gov, at least 24 hours in advance of the hearing sought**, or as soon as practicable if good cause exists to excuse the 24-hour notice period (e.g., an emergency or in a pre-RJI action that is unrelated to any case pending before the court). **If *ex parte* relief is legally authorized, you must still email the application to the court as soon as practicable.** You will then be notified of a time to appear. If you appear without complying with this rule, you may be required to leave and come back to be heard the following business day. Without prejudice to submitting opposition papers, the party opposing the TRO may e-file and email (copied to all counsel and mrand@nycourts.gov) a brief letter setting forth its opposition to the TRO and any applicable caselaw.

55. Absent compelling circumstances, ALL parties must be present when a TRO is sought. If the party opposing the TRO cannot timely appear in-person (e.g., an out of state attorney with inadequate time to travel to court), they may be permitted to appear telephonically.
56. 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.
57. Absent an unanticipated emergency, any OSC seeking a TRO must be presented to the court with all parties present no later than noon on Fridays.

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 Rule 19-a statement of material facts** at least three weeks before the summary judgment

motion is filed. **If the parties cannot agree on a joint statement, a Rule 19-a statement of facts is not permitted.** No party shall argue that a summary-judgment motion should be denied for the failure to negotiate and file a joint statement of facts. If summary-judgment briefs cite to deposition testimony, a complete copy of that deposition transcript accompanied by a word index must be filed. Likewise, if an oral argument or hearing transcript is quoted, a complete copy must be filed.

Transcripts

59. 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, then the costs shall be shared. Motions will not be marked fully submitted and the court will not issue a written decision until the transcript is e-filed and the Part Clerk receives a hard copy of the transcript with the e-filing confirmation receipt.
60. If a party requests that a transcript be “So Ordered” then:
- 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.

CONSOLIDATION OR AMENDMENT OF CAPTIONS

61. 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

62. A pre-trial conference will be held at which a trial date will be set. At least three weeks before the pre-trial hearing, all *in limine* motions must be fully submitted in Room 130 and the following must have been exchanged and delivered to the court in hard copy and by e-filing, unless otherwise noted:
- (a) marked pleadings

- (b) pretrial memoranda
- (c) proposed facts to be proven at trial
- (d) witness lists setting forth whether the witness is a fact witness or an expert and the expected length of direct examination
- (e) hard copies ONLY of previously exchanged 3101(d)'s and reports related to expert witnesses who will be testifying (unless previously submitted to room 130 in connection with a motion in limine)
- (f) cross-designations of deposition testimony including the pages and lines
- (g) hard copies ONLY of pre-marked exhibits, together with a spread sheet 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
- (h) 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
- (i) a proposed verdict sheet
- (j) a stipulation as to all agreed-upon facts for non-jury trials

Key Revisions (addressed by current rule number)

- Revised February 2019 to add new rules 40 (motion briefing deadlines), 42 (oral argument requests) and 54 (notice for TRO), to clarify rules 18 and 19 (adjourning appearances), 22 (deposition teleconferences) and 62 (pre-trial hard copies) and to modify rules 7 (contact information), 32 (staying discovery), 36 (documents for conferences), 45 (default judgment) and 61 (amending captions)
- Revised January 2019 to add rule 26 (no Rule 24 letters) and to modify rule 3 (court email address) and 49 (complete documents in motion papers)
- Revised October 2018 to modify rules 5 (no hard copies for applications on stipulation), 8 (*pro hac vice* admission request form), 43 (word limits) and 62 (pretrial deadlines)

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.