

**SUPREME COURT OF THE STATE OF NEW YORK – NASSAU COUNTY
COMMERCIAL DIVISION
Hon. Sharon M.J. Gianelli
100 Supreme Court Drive
Mineola, NY 11501
IAS - Part 8**

Part Rules

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General

Welcome to Part 8.

The Rules of the Commercial Division, 22 NYCRR 202.70, are incorporated herein by reference. All commercial matters assigned to Part 8 are subject to these rules. All counsel and self-represented (*pro se*) parties are responsible for familiarizing themselves with the Rules.

All counsel appearing on a case in Part 8 must be familiar with the case and prepared to discuss and take any necessary action. Self-represented parties are also required to be familiar with the case and prepared to act, as necessary.

Ex parte communications are not permitted. Counsel for all parties to the action must be present. Voicemail and e-mails to Chambers should generally be limited to scheduling and logistical matters. All e-mail communication to Chambers, including administrative matters and transmittals of documents must copy all parties.

Counsel shall notify the Court via e-mail as soon as is practicable of the settlement or imminent resolution of an active case or pending motion, and advise the Court as to the remaining issues, if any, for consideration. In the event that a matter is fully resolved, counsel shall advise the Court in writing, provide copies of an executed stipulation of settlement, and withdraw any pending motions.

Counsel and/or self-represented parties are to appear for conferences, or for required oral argument on motions, unless otherwise directed.

Request 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 of the applicant in another jurisdiction. The applicant must set forth his/her willingness to abide by the Disciplinary Rules of the State of New York and agree to disclose any change in his/her status as a member in good standing of the bar of another jurisdiction.

Conferences

Transcripts. Following all conferences conducted on the record, the parties are to obtain a copy of the transcript and upload it onto NYSCEF, if so directed by the Court.

Preliminary Conference

The Preliminary Conference and contemporaneous order establish a road map of the case from commencement to trial. Adherence to what is set forth in the preliminary conference order is essential to fair, efficient, and successful case management. As set forth in the Rules, a preliminary conference is to be held within 45 days of the assignment of the case to the Commercial Division, or as soon as practicable thereafter.

Parties must use this Part's Preliminary Conference Order. Copies are available on the Commercial Division website (<http://www.nycourts.gov/comdiv/ny/nassau.shtml>). Parties are required to meet and confer in a good faith effort to settle the matter, must complete a preliminary conference order in advance of the preliminary conference, and must be prepared to address the topics as set forth in the Commercial Division Rules. *See*, Rule 8.

A preliminary conference may not be adjourned, except for good cause, more than once or for more than 30 days.

The status of pre-answer motions, if any, shall be included in the preliminary conference order.

Compliance Conference. At least 7 days prior to the compliance conference, counsel shall jointly submit a completed Part 8 discovery conference form available on the Commercial Division website (<http://www.nycourts.gov/comdiv/ny/nassau.shtml>), setting forth a summary of the case; the current schedule for completion of discovery and filing, and note of issue; status of discovery, describing any significant disputes to be addressed at the conference, any non-compliance with a prior Order, and proposed revisions to the discovery schedule; whether any motions or appeals are outstanding; and whether the parties have attempted alternative dispute resolution (ADR) or other efforts at settlement.

Settlement Conference. The parties may, on consent, request a settlement conference by filing a letter requesting same on NYSCEF, and e-mailing Chambers at judgianelliremote@nycourts.gov.

Pre-trial Conference. **This “Pre-trial Conference” section is to be considered in conjunction with the “Trials” section below.**

The pre-trial conference is essential to trial preparation. It is to take place within 45 days prior to the trial start date. At the pre-trial conference the trial issues will be specifically outlined.

Pre-trial submissions required under Commercial Division Rules 26, 27, 28, 29, 31(a), 31(b), and 32, in addition to a joint statement of undisputed facts, shall be provided to the Court at the pre-trial conference. Some requirements are repeated below.

The parties are to submit to the Court marked copies of the pleadings.

The parties are to confer in a good-faith attempt to reach agreement on trial exhibits without objection. The parties are to identify the exhibits for which there is mutual agreement. Each party must mark for admission into evidence those exhibits it intends to offer and for which there is no objection, and mark for identification only, the contested exhibits. No pre-marking is required for exhibits not previously demanded and that are intended solely as credibility or rebuttal evidence. The Court will then rule on the contested exhibits as soon as is practicable.

The parties are also to confer in a good-faith attempt to reach agreement on the use, if any, of deposition testimony. Each side shall submit to the Court and other counsel a list of its relevant deposition testimony to which an objection has been made. The Court will rule on objections following consultation with counsel.

The parties thereafter shall submit to the Court for its use at trial an indexed binder of trial exhibits, along with a copy for each attorney and a binder of the originals for witnesses, preferably at the pre-trial conference, but no later than at least 14 days prior to the start of trial.

Any failure to comply with the rules regarding the pre-marking or identification of exhibits and/or deposition testimony could result in an order of preclusion by the Court.

Each party shall provide the Court and opposing counsel a written list of witnesses intended to be called at trial, the order in which they will testify, and the estimated length of the testimony. Additionally, the parties should separately identify for the Court which witnesses may be called for rebuttal or for purposes of credibility.

Counsel shall submit to the Court, with copies to opposing parties, any pre-trial memoranda, unless otherwise directed by the Court.

Motions in limine are to be submitted no later than 10 business days before the pre-trial conference, unless otherwise directed by the Court, and must be returnable by the date of the pre-trial conference.

In the case of a jury trial, parties are to provide case-specific requests to charge and proposed jury interrogatories. Proposed jury instructions, including the text of relevant PJI instructions are to be submitted by e-mail to Chambers at judgegianelliremote@nycourts.gov, **in Word format**. The submissions should note the instructions to which the parties have stipulated. Any proposed deviations from PJI instructions should be highlighted and explained, with citations to legal authority where appropriate. Counsel may update proposed jury instructions during the course of the trial. A short summary of each party's claims to be used by the Court as part of preliminary instructions to the jury shall also be provided.

Motion Practice

Rule 24 provides that a litigant cannot be precluded from making a motion without the prior approval of the Court. However, the Court may, in an effort to limit or resolve issues, schedule a conference prior to the filing of a motion. The Court may not deny the motion solely on the basis of the failure of a movant to participate, regardless of the merits, but may hold the motion in abeyance pending participation in a conference.

Generally, a matter shall be brought by notice of motion. Pursuant to Commercial Division Rule 19, a matter shall be brought by order to show cause only when there is genuine urgency, such as an application for provisional relief, a statutory mandate, or by leave of Court. The fact that a provisional remedy is sought shall be clearly noted on the cover page of the order to show cause.

Consistent with Rules 19 and 20 (in concert with the amendment of The Uniform Civil Rules for the Supreme Court and the County Court, adding new section 202.8-e), a party seeking relief via an order to show cause shall provide a 24-hour minimum notice to all other parties and annex an affidavit or affirmation of notice to the documents, unless the moving party can demonstrate significant prejudice by reason of giving notice, or that notice could not be given despite a good faith effort to do so.

Unless otherwise directed by the Court, the movant must give notice of the time, date and place that the application will be made, and provide copies of all supporting papers to the opposing parties sufficiently in advance to permit them an opportunity to appear and contest the application.

Any application for provisional relief, including but not limited to a motion for a stay or a temporary restraining order, shall contain, in addition to the other information required, an affirmation demonstrating either that: (a) notice has been given; or (b) notice could not be given despite a good faith effort to do so; or (c) there will be significant prejudice to the movant by the giving of notice.

Please note that this requirement shall not apply to orders to show cause or motions in special proceedings brought under Article 7 of the Real Property Actions and Proceedings Law, nor to orders to show cause or motions requesting an order of

protection under section 240 of the Domestic Relations Law, unless otherwise ordered by the Court.

All motion papers shall have the motion sequence number on the front page of all papers related to the motion or any cross-motion.

Requests for oral argument may be included in the notice of motion or in the opposition papers. If the Court concludes that oral argument is not necessary, a written decision will be issued on the submitted papers.

All motions are on submission, except where the Court has advised the parties, on the record or in writing, that oral argument will be heard on a day certain, and then an appearance is required.

All motion papers, moving as well as responsive, whether by notice of motion or order to show cause, must include a memorandum of law, subject to word limits set forth in Commercial Division Rule 17. Therefore, affidavits or affirmations of counsel should not contain legal arguments.

Where reference is made in a motion, or order to show cause, to testimony from a deposition or elsewhere, the party making such reference shall identify the exhibit, page and line number where the testimony is found.

Exhibits to motions shall be uploaded to NYSCEF individually, with each Exhibit clearly labeled with its respective identifying information.

For all motions and orders to show cause, the Court requires:

- (a) That electronically submitted memoranda of law include hyperlinks to cited court decisions, statutes, rules, regulations, treatises, and other legal authorities in either legal research databases to which the Court has access, or in state or federal government websites;
- (b) In addition to each electronically submitted memorandum of law, for other documents that cite to additional documents previously filed with NYSCEF, they shall include a hyperlink to the NYSCEF docket entry for the cited documents, enabling access to the cited documents through the hyperlink. Hyperlinks may not provide access to documents filed under seal or otherwise not in the public record. Cited documents filed with NYSCEF that are accessible through bookmarks in the electronically submitted document need not also be hyperlinked.

Other than a motion for summary judgment pursuant to CPLR 3213, Commercial Division Rule 19-a includes a prescription requiring statements on motions for summary judgment. It prescribes that the movant shall annex to the motion a short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue of fact. Opposing papers shall contain a correspondingly numbered paragraph responding to each numbered paragraph in the

movant's statement, and, if necessary, additional paragraphs containing a statement of the material facts upon which the opponent believes that there exists a genuine issue requiring trial. The responsive statement submitted by the non-moving party should include the text of the moving party's statement to which each paragraph-specific response is addressed.

Discovery

The Court expects parties and counsel to proceed cooperatively and professionally during discovery, mindful of proportionality and practicality and with the awareness that the Commercial Division Rules are designed to efficiently and fairly resolve matters within the limitations of scarce resources.

Counsel are under a continuing obligation to be familiar with all Commercial Division Rules, including Rule 12, failure to appear at a conference; Rule 13(a), adherence to discovery schedules; and Rule 24(d), the requirement that counsel be familiar with the case on which he/she appears.

Pursuant to Rule 11-e, specific responses to a request shall be served, or proper objections timely made pursuant to CPLR 3122(a).

Interrogatories are limited to 25 in number, including sub-parts, unless otherwise provided in the preliminary conference order, or other order, and are limited to the topics set forth in the Order.

Pursuant to Rule 11-d, depositions taken by plaintiffs, defendants, or third-party defendants are limited in time and number, unless otherwise permitted by the Court upon good cause shown.

Electronically Stored Information (ESI). The Commercial Division Rules seek to limit the cost and complexity of electronic discovery and related privilege logs. Counsel are directed to consider the relevant factors such as necessity and alternatives to electronic discovery, and to meet and confer prior to the preliminary conference regarding electronic discovery. Rules concerning discovery of ESI are found in Appendix A to the Rules of the Commercial Division. See also the Commercial Division, Nassau County Guidelines for Discovery of ESI.

Privilege Logs. The preparation of privilege logs requires the parties to meet and confer. Consistent with Rule 11-b, this Part directs that parties utilize the categorical designations as opposed to the document-by-document logging to reduce the time and complexity of log preparation. A requesting party may apply to the Court for an exception to this requirement, but only upon good cause shown, and upon notice to the producing party, who may apply for allocation of costs and attorney's fees to the requesting party.

Expert Discovery. 22NYCRR 202.70(g)(13)(c) provides for the parties to meet and confer regarding the scheduling of expert disclosure, including identification of experts, exchange of expert reports, and timetable for scheduling expert depositions, which should be completed not less than 30 days prior to the completion of fact discovery.

Discovery motions are not encouraged. If a discovery dispute cannot be resolved after good faith efforts by the parties to meet and confer, the parties should proceed in accordance with Commercial Division Rules 14 and 24 of 22 NYCRR 202.70 in a further effort to resolve the discovery dispute without the need for a motion.

Counsel with a discovery objection shall fill out the Part 8 discovery form available on the Commercial Division website (<http://www.nycourts.gov/comdiv/ny/nassau.shtml>) outlining with specificity the issue(s) presented and e-mail it to the Court at judgegianelliremote@nycourts.gov. Thereafter, counsel for the opposing side or any affected opposing party or non-party shall e-mail a specific responsive writing not exceeding 3 single-spaced pages to the Court at judgegianelliremote@nycourts.gov, within 5 business days of the original e-mail which set forth the dispute. The Part will thereafter schedule a telephonic or in-person conference, if necessary, aimed at resolving the disputed issue(s) consistent with Rule 14.

Rule 14-a provides for the parties to prepare a writing setting forth the resolutions to be signed by the presiding justice or dictated into the record at the conclusion of the conference, the transcript of which shall be submitted to the Court to be “so-ordered”, or the Court shall otherwise enter an order incorporating the resolutions reached.

Confidentiality Orders and Sealing

Sealing, including redactions beyond those generally permitted (i.e. date of birth, social security number, account numbers...), is not encouraged. The mere fact that a document is subject to a confidentiality agreement is not sufficient in and of itself to warrant sealing (*Mancheski v. Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2nd Dept. 2007]).

Any request for additional redactions or sealing shall be made by order to show cause and must establish “good cause” pursuant to the Uniform Rules for Trial Courts, 22 NYCRR 216.1.

Parties wishing to submit documents to the Court which have been deemed confidential shall provide notice to the party who designated them as confidential, at least 5 business days before filing the documents at issue. The parties shall meet and confer within 3 days of such notification. If the parties agree that the documents demonstrate compelling circumstances for sealing, they may proceed by means of a stipulation setting forth the good cause reasons for sealing, to be considered by the Court, and for the stipulation to be so-ordered. If the parties do not agree, the party seeking to have the document sealed or redacted may proceed by order to show cause giving proper

reasons and demonstrating good cause for sealing or redacting pursuant to 22 NYCRR 216.1.

A sealing motion must be accompanied by an unredacted version of the relevant documents, which shall be sent to the Court via e-mail for comparison with the redacted form of the documents contained in the motion. While the parties are free to exchange documents sought to be sealed, no unsealed version of the documents shall be filed unless found to be not subject to sealing in an Order on the sealing motion. At any time, the Court may require a motion concerning any request for sealing.

Adjournments

All adjournments (motions, conferences, trials) require prior Court approval, on notice to all parties.

Motions. Requests for adjournments of motions must be on consent of the other parties, and Chambers staff will accept the representation of counsel that he/she has the consent of the other parties. Self-represented parties seeking an adjournment may have a participating attorney make the request, or submit a stipulation signed by all parties. The Court requires the filing, e-mailing or faxing of a letter confirming the adjourned date, served upon all parties, on or before the return date of the motion. In the interest of justice, and/or effort to optimize the Court's calendar, the Court may *sua sponte* adjourn a motion.

Conferences. An adjournment of a scheduled conference may be obtained upon a written request to the Part, and upon consent of the other parties. The requesting party shall e-mail the request to the Court's remote e-mail address (judgegianelli@nycourts.gov), copied to all parties, and including a statement as to whether the adjournment request is on consent. Representations of counsel as to consent will be accepted and must be confirmed in writing on or before the conference date. Self-represented parties may have a participating attorney make the request, or submit a stipulation signed by all parties, also to be received on or before the scheduled date of the conference. In the interest of justice, and/or effort to optimize the Court's calendar, the Court may *sua sponte* adjourn a conference.

Stays of Proceeding

In the absence of a court order or a statute, a pending motion, a request for mediation or arbitration, or filing of a notice of appeal shall not automatically stay discovery or other proceedings in the action. Service of a notice of motion or an order to show cause under CPLR 3211, 3212, or 3213 shall not stay disclosure pending the determination of that motion, unless otherwise ordered by the Court.

Trials

The “Trials” section is to be considered in conjunction with the “*Pre-trial Conference*” section above.

The requirements set forth below (with the exception of the flash drive) shall have been satisfied by the time of the pre-trial conference, unless otherwise directed by the Court.

Pleadings. Prior to the start of trial, the party who filed the note of issue must ensure that copies of each pleading have been submitted to the Court, and that the pleadings are plainly marked to indicate which statements are admitted and which are controverted by the responsive pleading.

Bills of Particular. Parties must ensure that any bills of particular have been submitted to the Court.

Statutes. Any party who intends to rely on a statutory provision in effect at the time the cause of action arose shall ensure that copies have been submitted to the Court.

Memoranda of law. Parties must ensure that memoranda of law have been submitted to the Court.

Exhibits. Again, the parties shall submit to the Court for its use at trial an indexed binder of trial exhibits, along with a copy for each attorney and a binder of the originals for witnesses, preferably at the pre-trial conference, but no later than at least 14 days prior to the start of trial.

On or before the first day of trial, counsel shall provide the Court with a flash drive containing copies of their exhibits which have been stipulated into evidence, and a flash drive containing copies of their proposed exhibits which have not been stipulated to and marked for identification, corresponding to the binders (provided at the pre-trial conference or no later than at least 14 days prior to the start of trial).

Flash drives are to be marked with the short caption and index number of the case.

After trial, counsel shall e-file a list of the exhibits that were admitted into evidence. Counsel shall provide the Court with a flash drive containing copies of the admitted exhibits, identified by exhibit number.

Unless otherwise directed by the Court, for non-jury trials and hearings, the Court is to be provided a transcript of the trial or hearing by one or more of the parties.

We look forward to working with you.