

COMMERCIAL DIVISION PART 48 RULES & PROCEDURES

Last updated: 02/18/2020

Justice Andrea Masley

Supreme Court of the State of New York
County of New York, Commercial Division Part 48
60 Centre Street, Courtroom 242, New York, NY 10007

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

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Introduction

All matters before Part 48 are governed by the Rules of the Commercial Division, 22 NYCRR 202.70, except as supplemented, modified, and/or superseded by the Part 48 Rules & Procedures (Part Rules).¹ The Part Rules generally address matters that differ from the Commercial Division Rules.

Contacting Part 48, Adjournments, and General Matters

1. Mandatory E-Filing: All submissions to Part 48 shall be filed electronically in the New York State Courts Electronic Filing system (NYSCEF); please contact the NYSCEF Resource Center.²

¹ The Commercial Division Rules are available online at <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70> (updated there when those Rules are modified). An OCR-searchable, .PDF copy of the Commercial Division Rules (current through the last update of these Part Rules), and copies of all forms/materials referenced in these Part Rules, are available on the New York County Commercial Division website at https://www.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.

² For assistance with e-filing, the NYSCEF Resource Center is open weekdays from 8:00 a.m. to 5:00 p.m. and can be reached by telephone at (646) 386-3033, fax at (212) 401-9146, email at efile@nycourts.gov, and in person at 25 Beaver Street, 8th Floor. For emergencies after hours, please contact the Technical Help Desk: (800) 622-2522.

2. Communications, Deliveries, and Scheduling:

(A) Contacting Part 48: Except as otherwise directed in the Part Rules or by the court, all communication with Part 48 shall be sent by email, copying all counsel, to both Part 48 (sfc-part48@nycourts.gov) and the Part Clerk (lguerrer@nycourts.gov).

(B) Documents submitted to be so-ordered: All documents submitted with a request to be so-ordered shall be filed to NYSCEF and sent by email, copying all counsel, to sfc-part48@nycourts.gov.

Where the Part Rules direct correspondence pursuant to Part Rule 2 (B), copy all counsel and email sfc-part48@nycourts.gov. Under Part Rule 2 (B), copying the Part Clerk is not necessary.

(C) No ex parte contact: Always copy/include all counsel (no matter what method of communication) unless expressly directed by the court in writing.

(D) Paper copies³: Part 48 accepts paper copies for motions, orders to show cause, and other applications. When paper copies are required under these Part Rules, deliver a single set of papers to the Part Clerk in Room 242 during open courtroom hours⁴ or by overnight mail addressed as follows:

Commercial Division Support Office
Part 48 (Justice Masley), Attn: Lauren Guerrero
60 Centre Street, Room 119A, New York, NY 10007

(E) Motion/conference days: Motion and conference proceedings are conducted from Monday to Friday, as scheduled, during normal courthouse hours; there are no dedicated “motion days.”

3. General Adjournments:

(A) Appearances in Part 48: Submit requests to adjourn⁵ on consent by e-filing and sending the parties’ stipulation pursuant to Part Rule 2 (A); absent consent, send a brief statement (500 words or less) by email pursuant to Part Rule 2 (A). Please confirm with the Part Clerk all adjournment requests and dates.

(B) Appearances in the Submission Part: Requests to adjourn appearances in the Submission Part shall be directed to the Submission Part, Room 130, pursuant to 22 NYCRR 202.8 (e) (1),⁶ unless the original return date has been adjourned three or more times and/or for more than 60 days; if the latter, the requesting party shall e-file and send to Part 48 pursuant to Part Rule 2 (B) a proposed

³ See Part Rule 6 (A) for procedures for the submission of paper copies.

⁴ See e.g. Part Rules 5, 8, and 31 for the procedures regarding submissions for motions on notice (Part Rule 5), orders to show cause (Part Rule 8), and pre-trial materials (Part Rule 31), and additional Part Rules applicable in other contexts.

⁵ See Part Rule 28 for the procedures to request trial-related adjournments.

⁶ See https://www.nycourts.gov/courts/1jd/supctmanh/motions_on_notice.shtml for all Submission Part matters, including the procedures for adjournments with or without consent.

order (if the request is unilateral) or the parties' stipulation (if on consent) with a brief (500-word) statement for the request.

4. Letters: Part 48 does not accept Commercial Division Rule 24 letters; however, the following letters are pre-authorized and shall be e-filed and sent pursuant to Part Rule 2 (B):

(A) Joint pre-conference statement: the parties may jointly submit a letter identifying discovery or other issue(s) ahead a scheduled conference. At least two business days prior to the conference, e-file and email to sfc-part48@nycourts.gov the joint letter (1,500 words or less, excluding signature blocks and heading). No exhibits or attachments may be included.⁷

(B) Commercial Division Rule 2 and Rule 3 letters, and letters or stipulations informing the court that the parties have agreed to engage in private ADR. Such letters/stipulations shall be e-filed and sent to sfc-part48@nycourts.gov pursuant to Part Rule 2 (B) but shall not reveal the agreed-upon mediator's name.

(C) Commercial Division Rule 18 letters are permitted as modified: the letter may only identify, with full/complete citations, any relevant post-submission decisions. No substantive arguments are allowed in Rule 18 letters; however, the parties may request an opportunity to file post-submission briefs. E-file and send Rule 18 letters to sfc-part48@nycourts.gov pursuant to Part Rule 2 (B).

Motions and Applications⁸

5. Submission Part (Motions on Notice): All motions on notice shall be e-filed to NYSCEF and identify the return date for the motion in the Submission Part, Room 130; however, paper copies of motion papers shall be delivered to only the Part Clerk pursuant to Part Rule 2 (D) (do not deliver motion papers to the Submission Part/Room 130 at any time⁹).

On or before the return date, each party shall deliver a single, complete, unredacted set of its own motion papers/submissions to the court pursuant to Part Rule 2 (D).¹⁰

6. Formatting: All motion submissions shall be filed to NYSCEF under the applicable index number(s) and motion sequence number(s). Further, every motion or other application, whether brought by order to show cause or notice of motion, shall include a memorandum of law, paper copies of which shall be bound separately from all other papers, including affidavits and exhibits.

(A) Paper copies: Parties shall list the motion sequence number(s) on the cover of each paper submission. Paper copies may use only single-sided documents, shall use exhibit tabs with clear

⁷ See Part Rule 14 for additional information regarding discovery conferences and pre-conference letters.

⁸ For motions and other filings in pending New York County actions, specifically, please contact the General Clerk's Office, Room 119, (646) 386-3030.

⁹ Generally, a party need only appear in the Submission Part, Room 130, to request an adjournment without consent.

¹⁰ See Part Rule 13 (C) requiring submission of paper copies with proposed redactions for motions to redact specific information.

labels, and, when necessary, split affidavits and accompanying exhibits with tabs into multiple, 2" thick, consecutively-paginated volumes/binders which are clearly labeled on each cover and spine.

Prior to the return date, the parties shall meet and confer to reduce/eliminate the submission of duplicated paper copies; i.e., if a document is included with movant's papers as well as the opposition papers, the opposing party may use a placeholder identifying with specificity (i) the substituted document and (ii) where the full document is located in the adversary's papers/docket.¹¹

(B) E-filed documents: Parties shall clearly label/describe with specificity all documents in NYSCEF; e.g., describing a document as "Exhibit #_" or "Exhibit #_ to [Person's] Affidavit" is unhelpful. Every document shall have a description that identifies exactly what it is: if "Exhibit 1" is a deposition, for example, label/describe the document "Tr of [Entity/Person's] 6/21/18 Dep"; if it is an allonge to a loan document, label it "[1/2/92 Allonge to 8/9/90 Loan]."

(C) Limited use of placeholders in NYSCEF: A party may only use a placeholder filing which identifies with specificity which previously-filed document for which it stands and the NYSCEF Document Number of that original document so long as the original document was filed to NYSCEF in the same action with the same index number and under the same motion sequence number.

(D) Word limits: All memoranda are limited pursuant to the Commercial Division Rules; however, memoranda and affidavits shall be formatted with a standard 12-point font, double-spaced, with one-inch margins on all sides; footnotes shall be single-spaced with 12-point font.

Requests to extend word-count limits shall include a brief statement (500 words or less) of the request and shall be sent to sfc-part48@nycourts.gov pursuant to Part Rule 2 (B) at least five business days prior to the filing deadline for the applicable document.

(E) All referenced authorities shall have accurate and complete citations to accessible reporters. Official New York Reports citations shall be used when available; if unavailable, provide citations to widely-accessible reporters, such as Westlaw and Lexis Nexis (please supply both citations to both digital reporters where applicable). If authorities cited are not widely-available or are only summarized in a news publication (i.e., the NY Law Journal), include copies of the full decisions with the motion papers in NYSCEF and in separately-bound paper copies for the court.

(F) NYSCEF citations: All citations to the record in all motion papers require NYSCEF Document Numbers with pin-point citations and, where possible, hyperlinks to the actual NYSCEF Document.

(G) Deposition transcripts: All depositions shall be submitted in mini-script format. Excerpts of depositions, rather than full transcripts, may be submitted in connection with motions/applications. A

¹¹ Placeholders eliminating duplicates may be used only within a single sequence number; placeholders may not incorporate or reference documents submitted under a different sequence number than that under which the placeholder is being filed or documents simply located in the NYSCEF docket, generally.

party that submits excerpted deposition testimony must send, pursuant to Part Rule 2 (B), an unredacted, full-length mini-script copy of the certified transcript(s) in OCR-searchable .PDF format, including all indexes. The full-length copy shall include digital bookmarks identifying, with clear labels and NYSCEF Document Numbers, each of the pages filed as excerpts with the motion or application.

(H) Exhibits to all motions should be identified with numbers, not letters, regardless of which party or nonparty files the document; for example, use “Exhibit 27” as opposed to “Exhibit AA.” In all memoranda of law, however, exhibits shall be cited using the applicable NYSCEF Docket Numbers.

7. Pro Hac Vice Applications:

(A) Applications (by agreement or not): All motions for admission pro hac vice shall be made by order to show cause¹² and must be accompanied by: a recent certificate of the applicant’s good standing; and an affirmation of the applicant identifying how many times, if any, the applicant has been admitted pro hac vice in New York, whether any such admission was vacated, and whether the applicant is or ever was subject to a disciplinary proceeding in any jurisdiction. If the parties consent to the request for pro hac vice admission, an ex parte application may be filed, by order to show cause in the Commercial Division Office, including the above materials as well as a stipulation reflecting the parties’ agreement. In the instance of an ex parte application filed on consent, the proposed order to show cause will be reviewed promptly without any scheduled oral argument or additional submissions.

(B) Limitations on counsel admitted pro hac vice: Only the Sponsoring New York State Attorney may e-file documents to NYSCEF; counsel admitted pro hac vice are prohibited from e-filing unless/until they file proof of completion of a New York State/NYSCEF E-Filing CLE course.

Additionally, New York Counsel shall be present at every appearance in Part 48, regardless whether out-of-state counsel will appear.

(C) The Part 48 Proposed Pro Hac Vice Order form shall be included with every application for admission pro hac vice.¹³

(D) No appearance is required on the return date for unopposed pro hac vice applications.

8. Orders to Show Cause: Parties shall file a proposed order to show cause to NYSCEF and the movant shall collect the file(s), once processed, from the Commercial Division Office¹⁴ and deliver those files with all moving papers to the Part Clerk in Room 242. All cross motions to orders to show cause shall be made by new proposed order to show cause bearing a separate motion sequence number. A motion brought by order to show cause is not submitted to the court for the purposes of deadlines

¹² Please refer to Part Rule 8 for the procedures for filing proposed orders to show cause and, if assistance is needed, please contact the Commercial Division Support Office, Room 119A, (646) 386-3020.

¹³ The Part 48 Pro Hac Vice Proposed Order Form is available through the NY County Commercial Division webpage, <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>, in the section dedicated to Justice Masley’s Part 48 materials.

¹⁴ Commercial Division Support Office, Room 119A, (646) 386-3020.

(e.g., a discovery motion or motion in limine) unless and until it is presented to the court in appropriate form (in hard copy as prepared by the Commercial Division Office).

(A) Notice: When movant notifies any adversaries of the proposed order to show cause, movant shall also notify Part 48 pursuant to Part Rule 2 (A).

(B) Filing and delivery: If signed, all further papers relating to the motion shall be filed to NYSCEF as directed by the order unless the court directs otherwise in writing. The parties shall deliver a single, complete, and unredacted set of their own motion papers pursuant to Part Rule 2 (D) as directed by the signed order or as otherwise instructed by the court in writing. The parties shall deliver papers copies of all submissions to the court pursuant to Part Rule 2 (D) on the same date those papers are served upon the party's adversary. Unless the court orders otherwise, all paper copies, including all reply submissions, shall be delivered to the Part Clerk no later than Noon on the business day preceding the scheduled argument.

(C) Service: The method of service of an order to show cause, regardless what method of service of the order to show cause is provided for in the motion, is not a substitute for service of pleadings consistent with the CPLR and does not obviate a party's obligations to properly serve, under the CPLR and other applicable law, an adversary for the purposes of jurisdiction.

9. Dispositive Motions:

(A) Pre-joinder dispositive motions: Discovery is stayed automatically only when a party has filed a dispositive motion seeking to dismiss the entire pleading (not on a motion seeking partial dismissal) prior to joining issue (e.g., a pre-answer motion to dismiss all causes of action); however, any party may seek to stay or compel discovery prior to resolution of a motion by requesting a discovery conference pursuant to Part Rule 2 (B).¹⁵

(B) Summary judgment motions shall be made no more than 30 days after the Note of Issue has been filed or, if the Note of Issue was not timely filed, no more than 30 days after the Note of Issue deadline expired. There are no extensions of the prescribed 30-day period absent explicit court order. Additionally, the court does not accept cross motions for summary judgment. All summary judgment motions shall be separately filed within the 30-day period and bear their own motion sequence numbers. The time to file a summary judgment motion cannot be extended by the filing of a cross motion.

Pursuant to Part Rule 6, all exhibits submitted with a summary judgment motion, as with all motions, shall be given descriptive labels on NYSCEF and cited in legal memoranda using the applicable NYSCEF Document Numbers.

(C) Optional Commercial Division Rule 19-A Statements are helpful for all summary judgment motions if every fact in the Statement is supported by pin-point citation(s) to the corresponding

¹⁵ See Part Rule 14 for the procedures concerning discovery disputes and expedited discovery conferences.

NYSCEF Document Numbers for the party's submissions in support or opposition to the applicable motion sequence.

Rule 19-A Statements may not be cited as authority in a party's memorandum of law or other motion papers: citations in all legal memoranda and motion papers (i.e., affidavits, attorney's affirmations) must use pin-cites to the appropriate NYSCEF Document Numbers.

(D) Joint statements: The court encourages the use of stipulated Joint Statements of Undisputed Fact(s) to reduce duplicated and/or unnecessary submissions and to narrow the scope of the issues/facts in dispute. Accordingly, the parties are required to meet and confer, prior to filing any motion for summary judgment (other than those pursuant to CPLR 3213), to attempt in good faith to reach and memorialize in a Joint Statement their agreed-upon facts. A Joint Statement of Undisputed Fact(s) may be cited in the parties' legal memoranda.

10. Oral Argument: See the Rules of the Commercial Division, Preamble § 3.

Expanded opportunities for speaking roles: The court is aware that in this century very few cases go to trial and, as a result, there are fewer speaking opportunities in court, particularly for less experienced lawyers (i.e., lawyers practicing for less than seven years). The court is also cognizant of the virtual absence historically of lawyers from diverse backgrounds and women appearing in such roles in commercial cases. The court strongly encourages litigants to be mindful of opportunities for less experienced lawyers, lawyers from diverse backgrounds, and lawyers who are women to conduct proceedings before the court, particularly where such members of the legal team drafted or significantly contributed to the underlying matter (i.e., the motion papers for oral argument; witness preparation for a hearing).

11. Discovery Motions: Part 48 comports with the Commercial Division Rules pertaining to discovery disputes/conferences; however, Rule 24 letters are not permitted. To the extent the Part Rules further depart from the Commercial Division Rules for discovery disputes and conferences, the applicable procedures are addressed in Part Rule 14 below.

12. Amending any Pleading: Motions/stipulations to amend/seeking leave to amend and/or all submissions to amend as of right any pleading (e.g., complaints, answers, etc.), shall be accompanied by a copy of the original pleading, a clean copy of the proposed amended pleading, and a red-line copy identifying all modifications/additions. If submitted by stipulation, the party seeking to amend shall include a cover letter stating the basis of any changes.

Procedures for Sealing and/or Redacting

13. Motions to Seal and/or Redact Documents/Information: Documents or information may not be sealed or redacted by stipulation. Parties seeking to seal and/or redact shall move, by order to show

cause, for the appropriate relief and the following procedures are implemented to streamline the process.¹⁶

Sealing entire documents or categories of documents is typically a drastic remedy; the courts are obligated to fashion narrowly-tailored orders to seal or redact certain highly-sensitive information to maintain the transparency of the court's affairs and to balance the public's interests with those of the parties. The court strongly encourages parties to consider, either as an alternative request in a motion to seal whole documents or in the original instance, motions to redact specific, protectable information from the applicable documents.

(A) Motions to seal and/or redact shall be made by order to show cause and shall include a spreadsheet as follows: Movant's memorandum of law shall set forth the basis of the purported good cause to seal or redact each document or piece of information and movant's papers shall include a spreadsheet/chart that clearly and specifically identifies: (1) each document, by bates stamp or similar; (2) the categorization of each document (see below); (3) the good faith basis to seal or redact the particular document/information; and (4) citation(s) to applicable law or authority supporting movant's good cause to seal/redact the document/information.

Movant's proposed categories shall be identified with specificity in the spreadsheet and legal memoranda to facilitate issuance of a workable and efficient order; for instance, vague categories such as "confidential business information" or "proprietary trade information" are not generally adequate; examples of specifically-identified categories include "third-party borrower personal identifying information," "pricing terms for international customers," "investment methodologies," "capital contribution information of private entities," and "strategies for structuring, collateralizing, and marketing structured products." A carefully-tailored list of categories incorporated into movant's spreadsheet that articulate precise categories of information—as opposed to merely vague statements—allows the court to expeditiously resolve these motions and makes the process laboriously and financially economical for the parties as generic categories may not establish the requisite good cause to seal or redact and necessitate successive/further motion practice.

(B) Proposed sealed or redacted documents filed in connection with any motion shall be submitted to NYSCEF as follows:

(i) Every document sought to be sealed or redacted shall be filed on NYSCEF under temporary seal in completely unredacted form (Confidential Chamber's Copy), with all proposed redactions highlighted yellow, along with the mandatory spreadsheet outlined in Part Rule 13 (A);

¹⁶ For general information, please see "PROTOCOL ON COURTHOUSE AND COUNTY CLERK PROCEDURES FOR ELECTRONICALLY FILED CASES" in New York County: ([Revised January 23, 2019; Explaining how customary courthouse and County Clerk procedures are applied in e-filed cases](#)). For assistance with procedural e-filing issues, please contact the County Clerk's Office E-File Department, Room 141B, (646) 386-3737, cc-nyef@nycourts.gov, or the General Clerk's Office, Room 119, (646) 386-3030. Further, no motion is necessary to redact "Confidential Personal Information," including social security numbers and investment account numbers, as set forth in 22 NYCRR 214.12.

(ii) Every motion which seeks to redact information shall include a public copy of the document, filed on NYSCEF, containing movant's proposed redactions;

(iii) Motions to seal an entire document which seek, alternatively, to redact specific information in that document shall also include, under temporary seal on NYSCEF, an entirely unredacted copy of the document with all proposed redactions highlighted.

(C) A single set of all moving papers required under Part Rule 13 (A)-(B) shall be delivered to Part 48 pursuant to Part Rule 2 (D) on or before the return date: unredacted paper copies shall state "Confidential Chamber's Copy" and "UNREDACTED" on each cover page confidential submission, and all confidential copies will be enclosed in envelopes or boxes stating "Confidential" on all sides. Delivery shall be pursuant to Part Rule 8.

Paper copies of motions which seek to redact information shall be delivered to the court in wholly-unredacted form with all proposed redactions highlighted.

(D) Good cause found: Upon a finding of good cause, the court will issue a written order directing the party or parties to seal or redact documents or specific information in the documents filed in connection with the motion and to apply those written findings of good cause to any documents containing the same specific categories of highly-sensitive information for which good cause has been found, if or when other documents are later filed in connection with other motions or applications and reducing or eliminating the need for further motions to seal and/or redact.

Discovery, Conferences, and General Appearances

14. Discovery Disputes and Expedited Discovery Conferences:

(A) Commercial Division Rule 14 applies as modified: To request an advanced/expedited discovery conference after the parties have met and conferred under Commercial Division Rule 14, a party shall send the request by email, pursuant to Part Rule 2 (B), including only:

-- *Subject Line:* "Discovery Conference Request: [Index number, case name]";

-- *Email Body:* A statement, not more than 500 words, identifying the unresolved dispute(s) and, if the party believes it would be helpful, requesting authorization to submit individual pre-conference letters (see Part Rule 14 [D] below);

(B) Responses to conference requests: A non-requesting party may respond, within 24 hours of the requesting email, by replying all and indicating, in 500 words or less, whether the party (1) objects to scheduling the advanced discovery conference and/or (2) requests authorization for individual pre-conference letters.

(C) Court review: The court will review and inform all parties, at its earliest convenience, whether and when an expedited discovery conference is scheduled, whether individual letters are

authorized, and/or what, if any, additional information the parties shall provide to the court before or at the conference (to be held in-person or telephonically at the court's discretion).

(D) Individual pre-conference letters: If authorized or directed, individual pre-conference letters, 1,000 words or less, shall be filed to NYSCEF and emailed pursuant to Part Rule 2 (B) at least three business days before the conference.

15. Settlement Conferences: The parties may, on consent, request a settlement conference at any time by email pursuant to Part Rule 2 (B). The parties will be informed whether the request is granted, whether any additional information is sought, and whether clients shall be present for a scheduled conference.

16. Pro Se Litigants, Language Interpreters, and Accessibility Accommodations: The court greatly appreciates at least 72-hours' notice that a pro se litigant will appear before Part 48.

If any individual appearing in Part 48 requires a language interpreter or accessibility accommodations, the party or counsel shall notify Part 48, by email pursuant to Part Rule 2 (A), at least five business days before the appearance and indicate precisely for which language (including, where applicable, regional distinctions) an interpreter is needed and/or what accessibility accommodation(s) are sought.¹⁷

17. Confidentiality Stipulation and Proposed Order: The form Confidentiality Stipulation and [Proposed] Order accepted in Part 48 is available online¹⁸ and/or by email pursuant to Part Rule 2 (B).

The parties shall file to NYSCEF and send, pursuant to Part Rule 2 (B), the following: (i) the executed stipulation and proposed order; (ii) a red-line copy demonstrating any/all additions, subtractions, or modifications made to the Part 48 Form; and (iii) a cover letter briefly explaining all substantive changes.

However, If the parties have not changed the Part 48 Confidentiality Stipulation and [Proposed] Order form except to include only case-specific administrative/identifying information (i.e., the case caption, index number[s], party names, and signature blocks), the parties may execute and file the Confirmation of No Substantive Alterations To The Part 48 Form (attached as Exhibit 2 to the Part 48 Confidentiality Stipulation) in lieu of the above-required red-line copy and cover letter.

18. Exchange of Electronically Stored Information (ESI): Prior to the preliminary conference, the parties shall discuss with their clients then meet and confer with counsel as to the matters

¹⁷ See Part Rule 36 for procedures to request language interpreter/accessibility accommodations for hearings, trials, and other proceedings at which witnesses may testify.

¹⁸ Confidentiality Stipulation and [Proposed] Order Form: <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

memorialized in the Commercial Division Rules ESI Guidelines.¹⁹ The parties shall attempt, in good faith, to reach an agreement regarding the scope of ESI to be sought, the location, format, and custodians of such information, the burden of bearing costs for collecting/reviewing such information, and the amount of time anticipated to obtain, review, and produce such information. If no agreement can be reached prior to the preliminary conference, a party may email pursuant to Part Rule 2 (B) a request for an ESI conference. A sample Stipulation for the Exchange of Electronically-Stored Information is available online²⁰ or by email pursuant to Part Rule 2 (B).

The sample ESI exchange form does not address matters relating to searching or reviewing ESI for responsiveness to discovery demands or privilege. The parties may agree, relative to the discovery requests and responses exchanged, as to the manner in which they will search and review ESI for responsiveness (e.g., what search terms to employ, which ESI custodians to search, and whether to use technology-assisted analytics/software, third-party vendors, or other services). The protocols for disputes pertaining to the search, review, and/or production of ESI are set forth in Part Rule 14.

19. Preliminary Conferences: The Commercial Division Rules apply except as modified by these Part Rules. The parties are encouraged to use the Part 48 PC Order form, available online.²¹

20. Discovery Responses, Obligations, and Privilege Logs: Privilege logs and Commercial Division Rule 11-b Certifications²² are required for each production of documents/materials. Each response to a document request shall comply with and include the sworn statements contemplated by Commercial Division Rule 11-e. The discovery obligations contained in Part Rule 20 are mandatory and may not be waived or modified absent explicit order of the court.

At least 30 days prior to the close of fact discovery, or as otherwise ordered by the court, all responding parties shall verify satisfaction of any CPLR 3101 (h) continuing discovery obligations and comply with Commercial Division Rule 11-e (d) by exchanging affidavits of knowledgeable persons, certified by the Responsible Attorney,²³ as to each discovery request.²⁴

21. Note of Issue: Note of Issue deadlines will not be extended, adjourned, or otherwise stayed absent extraordinary circumstances. If the Note of Issue is not timely filed, the court may reduce the parties' time to file dispositive motions by the number of days that pass following expiration of the deadline.

¹⁹ Resources addressing ESI in the context of litigation include, for example, the Sedona Conference "Jumpstart Outline," available at https://thesedonaconference.org/publication/Jumpstart_Outline.

²⁰ Sample ESI Exchange Form is available with Justice Masley's materials at <http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml><http://www.nycourts.gov/courts/comdiv/ny>.

²¹ The Part 48 PC Order Form is available with Justice Masley's materials at <http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml><http://www.nycourts.gov/courts/comdiv/ny>.

²² Commercial Division Rule 11-b (b) (1); see 22 NYCRR 130-1.1a; 22 NYCRR 1200.41-a.

²³ See Commercial Division Rule 11-b (d).

²⁴ Commercial Division Rule 11-e (d) requires that "the responding party shall state, for each individual request: (i) whether the production of documents in its possession, custody or control and that are responsive to the individual request, as propounded or modified, is complete; or (ii) that there are no documents in its possession, custody or control that are responsive to the individual request as propounded or modified."

Proposed Orders/Judgments and Inquests

22. Proposed Orders and Judgments: All proposed/counter-proposed orders and/or judgments shall be settled on notice pursuant to 22 NYCRR 202.48. All proposed orders/judgments shall be filed to NYSCEF and sent directly to Part 48 by email pursuant to Part Rule 2 (B). Opposing parties are invited to submit, under 22 NYCRR 202.48, a counter-proposal in the same manner.

23. Inquests: Inquests are conducted pursuant to the CPLR, Uniform Rules, and other applicable authority.

Where an inquest on damages is requested or directed, the requesting or directed party shall e-file and deliver to Part 48, pursuant to Part Rule 2 (B) and (D), the following: (a) an affidavit from a person with knowledge of the facts setting forth the computation of damages; (b) an attorney's affirmation briefly reciting the facts and basis of liability and damages; (c) any necessary exhibits and expert affidavits; (d) a list of proposed witnesses in the event there is a hearing; and (e) proof of service of all filed papers upon opposing parties.²⁵ Where an inquest concerns attorneys' fees, an affirmation of services and resumes for all attorneys/other staff are expected.

Transcripts and Other Rules

24. Transcripts: All transcripts, including trial transcripts and transcripts of other non-motion proceedings, shall be e-filed and delivered, pursuant to Part Rule 2 (D), to the Part Clerk in certified form (signed by court reporter) not more than 30 days after conclusion of the applicable proceeding. Parties can obtain the court reporter's name and contact information by email request sent pursuant to Part Rule 2 (A).

(A) **Transcripts of argument on motion(s):** Movants are responsible for the costs, e-filing, and delivery of certified transcripts to the court (*see* Part Rule 2 [D]); paper copies shall include a cover letter identifying the case name, index number(s), motion sequence number(s), and proceeding date(s) and be delivered pursuant to Part Rule 2 (D). Motions will not be marked fully submitted until the certified transcript has been properly submitted.

(B) **Errata sheet/application for corrections:** An errata sheet stipulation shall be e-filed and emailed pursuant to Part Rule 2 (B) within 20 days of filing of the certified transcript. Absent consent to changes, the requesting party shall notice the record for settlement pursuant to CPLR 5525 (c) within 20 days from the date the certified transcript was filed on NYSCEF.

25. Commissions: Requests for commissions shall be made by stipulation, if the parties agree, and application via the Ex Parte Office or Commercial Division Office or else by order to show cause.

²⁵ See Part Rules 29 and 31-37 for the procedures that apply to exhibits, exhibit charts, witness lists, and other hearing materials.

26. Gender-Neutral Language and the Standards of Civility: Fair speech shall be employed,²⁶ and counsel shall adhere to the Standards of Civility,²⁷ in all appearances before, submissions to, and correspondence with Part 48.

Trial Dates, Trial Adjournments, and Other Trial Matters²⁸

27. Trial Rules: Commercial Division Rules 25, 26, 28, 29, 30, 31, 32, and 33 apply except as supplemented or modified by the Part Rules.

28. Trial Dates: Trial dates are assigned by only order of this court or other written communication from this court.

(A) **Adjournments:** Trial dates are firm and will not be adjourned absent a showing of extraordinary circumstances and formally requested pursuant to Part Rule 2 (A) and (C) not less than 60 days prior to the scheduled date of commencement. Requests to adjourn trial dates shall state, in 500 words or less, the basis of the request. Trial dates are not adjourned absent court order or written authorization confirming the court has granted the request.

(B) **Continuances:** There will be no continuances granted if a witness is unavailable to testify at the pre-determined time absent a demonstration of extraordinary circumstances. See Commercial Division Rule 25.

29. Pre-Trial Conference and Time Limits:

(A) **Trial limits:** Unless the court directs otherwise, the parties shall agree to time estimates and hard limits anticipated for all aspects of trial²⁹ and submit their agreed-upon estimates and limits to the court pursuant to Part Rule 2 (B) at least 10 days before the pre-trial conference. If the parties cannot reach an agreement, all Commercial Division Rule 26 estimates are compulsory and shall be exchanged and submitted to the court pursuant to Part Rule 2 (B) at least 10 days prior to the pre-trial conference. Unless previously directed by the court, or stipulated by the parties and so-ordered, time limits for witnesses, opening and closing statements, and the total duration of the trial will be resolved at the pre-trial conference.

(B) **Commercial Division Rule 30 (c):** At least 10 days prior to the pre-trial conference, counsel for the parties shall consult in good faith and file to NYSCEF a stipulation reflecting the aspects of their respective experts' anticipated testimony, if any, that are not disputed.

²⁶ See "Fair Speech: Gender Neutral Language in the Courts," New York State Judicial Committee on Women in the Courts, available at <http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/fair-broch2.pdf>.

²⁷ See 22 NYCRR 1200 Appendix A, available at <http://ww2.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

²⁸ The below trial procedures also apply to all exhibits, exhibit charts, witness lists, and other submissions in non-trial proceedings (e.g., hearings, inquests) at which witnesses may testify or exhibits are intended to be introduced.

²⁹ The parties shall agree to a "realistic estimate of the length of the trial," "the total number of hours . . . necessary for its direct examination, cross-examination, redirect examination, and argument during the trial" (see Commercial Division Rule 26).

30. Motions in Limine: Motions in limine shall be filed by order to show cause as directed by the court in a written order. Absent a court order setting explicit deadlines to file those motions, motions in limine shall be filed no more than 30 days after assignment of trial date(s) or 30 days after the court's entry on NYSCEF of all final orders resolving all post-NOI summary judgment motions. Motions in limine shall not, under any circumstance, be filed fewer than 60 days before commencement of trial unless directed by the court. Motions in limine not timely filed are deemed waived (*see* Part Rule 8).

Court orders entered during any pre-trial phase which seal or redact any documents or information will not apply to any documents or information introduced at trial absent further order of the court following a timely motion to seal or redact information made in limine. Unless otherwise ordered, the courtroom is open to the public and will not be closed for any portion of the trial.

31. Exchange and Filing of Trial Materials: The parties shall meet and confer on all matters relating to the exchange and filing of trial materials, as set forth in the Commercial Division Rules, not less than 30 days before commencement of trial, to minimize/eliminate duplication of exhibits intended to be offered at trial.

(A) Exchanging trial materials, including but not limited to exhibit books, exhibit charts,³⁰ witness lists, marked pleadings, joint statements of undisputed fact, direct testimony affidavits, and pre-trial memoranda of law, shall be completed at least 20 days before commencement of trial. Any audio or video presentations/aids intended to be used during opening and/or closing statements must be exchanged by counsel at least 12 hours in advance of the proceeding unless otherwise agreed.

(i) Exhibit books shall contain only single-sided pages and be bound in consecutively-paginated, clearly-labeled volumes not exceeding two inches in thickness.

(ii) Any deposition transcripts intended to be introduced at trial shall be in OCR-searchable mini-script format with index(es) and shall otherwise comport with Commercial Division Rule 29.

(B) Filing and delivering trial materials to Part 48: Not less than 7 days prior to commencement of trial, all trial materials (except for exhibits intended to be used at trial, proposed jury instructions, proposed verdict sheets, and the materials required in connection with instructions/verdict sheets³¹) shall be filed to NYSCEF and delivered in one full set of paper copies pursuant to Part Rule 2 (D). All court copies of trial-related documents shall be delivered in clearly-labeled and numbered packages indicating the case name(s) and index number(s), each of which shall identify, on the outside of the box or packages, the number of the package (i.e., [Party's Trial Materials], Box 1 of 5) and an index of the contents/documents contained in that package (i.e., [Party's] Trial Exhibits Books 1 – 10, containing P001 – P042).

³⁰ The Part 48 Exhibit Chart is available online at <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml> and by email pursuant to Part Rule 2 (B).

³¹ Delivery to Part 48 of pre-trial materials excepted from e-filing are set forth in Part Rule 31 (C).

All digital trial materials on NYSCEF or otherwise sent to the court shall be OCR searchable unless extraordinarily impracticable. Descriptive names for each trial document, including exhibits, shall be used: identify exhibits by pre-marked number and explain what each exhibit is; i.e., "P001 - P's Dep Tr, 01.01.2001."

(C) Delivery of materials not filed to NYSCEF: Exhibits intended to be used at trial, proposed jury instructions, proposed verdict sheets, and related materials shall be delivered to the Part Clerk in a single set of paper copies pursuant to Part Rule 2 (D) and digitally sent to the court pursuant to Part Rule 2 (B) at least 7 days before trial. Every digital document or trial material shall be in an individual, OCR-searchable file with specific, descriptive filenames.

(D) Direct testimony affidavits: Commercial Division Rule 32-a is mandatory in non-jury trials.

(E) Proposed jury charges and proposed verdict sheets: The parties must exchange proposed charges and verdict sheets no fewer than 20 days prior to commencement of a jury trial and counter proposals must be exchanged and no less than 10 days prior to commencement of the trial. Where a proposed jury instruction is verbatim from the most current edition of the Pattern Jury Instructions, PJI citations are sufficient; if a proposed instruction modifies any PJI instruction, the submitting party must include a cover letter providing appropriate authority for the proposed modifications and a red-line version demonstrating all changes to the PJI language. All documents above shall be delivered digitally and in paper copies pursuant to Part Rule 2 (B) and (D) not less than 7 days before trial.

32. Trial Exhibits and Exhibits Charts: Counsel shall comport with Commercial Division Rule 28 and all exhibits, in exhibit books complete with the Part 48 Exhibit Chart, shall be exchanged and sent pursuant to Part Rule 2 (B) at least 20 days prior to commencement of trial. Exhibits shall be pre-marked using only numbers: e.g., Plaintiff's Exhibit 1 = P001; Defendants' Exhibit 99 = D099; where there are numerous parties, identify party names with abbreviations, i.e., ABC001, XYZ199. Exhibit Charts shall identify whether admissibility of each exhibit intended to be used is disputed, as determined by the parties at their required Commercial Division Rule 28 meet and confer.

The parties shall be prepared with additional copies of all trial materials to provide to witnesses during examination at trial.

33. Filing Entered Exhibits After Trial: Only exhibits introduced at trial and entered into evidence by the court are deemed admitted for any purpose; exhibits not used and/or not entered into evidence at trial will not be considered by the fact finder. Only exhibits admitted into evidence shall be filed to NYSCEF after trial pursuant to Part Rule 39 (C).

34. Pre-Trial Memoranda and Joint Statements of Undisputed Fact: At least 30 days prior to trial, the parties must meet and confer to attempt to reach an agreement as to facts that are not in dispute. Not less than 20 days prior to commencement of trial, the parties shall exchange and e-file all pre-trial memoranda, formatted in accordance with the Commercial Division Rules and Part Rule 6, and any

Joint Statement of Undisputed Fact(s); paper copies and digital copies shall also be sent to the court Pursuant to Part Rule 2 (B) and (D).

35. Witness Lists: Parties must exchange and e-file a list of witnesses intended to be called in a chart/spreadsheet identifying whether each witness is a fact and/or expert witness and whether expert status, if any, is disputed. For expert witnesses, a brief explanation of the anticipated testimony shall be included (see also CPLR 3101 [d]). The parties, after meeting and conferring as required by the Part Rules and Commercial Division Rules, shall submit a proposed schedule for the examination of witnesses at the pre-trial conference; in no instance will the proposed schedule be filed and delivered to the court pursuant to Part Rule 2 (B) and (D) fewer than five business days prior to trial.

36. Language Interpreters and Accessibility/Accommodations: As set forth in Part Rule 16; however, where a translator is needed for language interpretation or accessibility/other accommodations may be necessary, the requesting party shall notify the Part Clerk pursuant to Part Rule 2 (A) at least 7 days prior to the commencement of trial. The notice shall include all pertinent information, including: the witness's name, date(s) of anticipated testimony, language and dialect used; and/or all other accommodations requested.

37. Demonstrative Evidence, Electronic Media, and Trial Tools: Part 48 strongly encourages the use of new media and technology, such as real-time transcription, to expedite and streamline trials; however, the parties shall provide their own courtroom technology. Requests for permission to use demonstrative evidence or other trial tools shall be made pursuant to Part Rule 2 (B) at least 15 days prior to commencement of trial. The court is willing to consider all trial-facilitating media or devices if the deadline above has been satisfied. Parties are responsible for providing equipment and staff to operate the equipment, if necessary.

38. Court Reporters: Prior to commencement of trial, the parties shall provide the Court Reporter(s) with contact information, witness lists, pre-marked exhibit lists and exhibit charts, and a glossary of names, unusual words, and/or acronyms that may be used during the trial. Court Reporters require notice of at least 15 days where real-time transcription of trial proceedings will be implemented. The parties may contact the Court Reporters' Office at Room 420, (646) 386-3050, and the court as set forth in Part Rules 2 (B) and 37.

Post-Trial Matters

39. Post-Trial Submissions and Filings: Within 30 days of the conclusion of trial, or as directed by the court, the parties shall exchange and file to NYSCEF all post-trial memoranda (limited as set forth in the Commercial Division Rules and formatted in accordance with the Part Rules), Mandatory Statements of Proposed Factual Findings, copies of all Exhibits Admitted at Trial, and a Joint Chart of Admitted Exhibits. All filings shall be OCR-searchable and the court's paper copies shall be submitted, pursuant to Part Rule 2 (D), in consecutively-paginated, clearly labeled, two-inch thick volumes containing only single-sided pages.

(A) Post-trial memoranda shall include proposed conclusions of law supported by citations to only evidence admitted at trial. Do not cite to Statements of Proposed Factual Findings as support for any fact or conclusion in legal memoranda. Reply Memoranda shall be served and filed not more than 45 days after the conclusion of trial (or as directed by the court) and are limited as set forth in the Commercial Division Rules and the Part Rules. Word limit extension requests shall be emailed pursuant to Part Rule 6 not more than seven days after the conclusion of trial.

(B) Mandatory statements of proposed factual findings: There is no word limit for proposed factual findings; however, every proposed factual finding shall be supported by citation(s) to evidence (exhibits and/or testimony) admitted and used at trial, with pin-point citations to the applicable NYSCEF Document Numbers for each exhibit or trial transcript.

(C) Admitted/entered exhibits: Following trial, all exhibits entered into evidence must be jointly prepared by the parties and filed to NYSCEF with a Joint Exhibit Chart (in the form accepted by Part 48) identifying each exhibit by its pre-marked number, the date on which it was admitted into evidence, and whether it was admitted into evidence over objection or otherwise. Admitted/entered exhibits shall be filed to NYSCEF within 30 days of the conclusion of trial. For inquiries as to non-traditional exhibits (i.e., large-format prints, models, etc.), email the court pursuant to Part Rule 2 (B).

40. Trial Transcripts: Shall be filed and delivered pursuant to Part Rule 24 within 30 days of the conclusion of trial.

41. Removing Trial Materials: All physical trial exhibits/copies used during trial shall be removed from Part 48 within 48 hours of the trial's conclusion or else they will be destroyed or discarded.

42. Index of Online Materials: For the convenience of all parties, copies of the below-listed Rules, proposed order forms, templates, samples, and other materials are available online with these Part Rules.³² Copies of the online materials may be available in an alternative format (i.e., .DOC/.DOCX, .XLS, or .PDF files) upon request made pursuant to Part Rule 2 (B).

- The Rules of the Commercial Division (22 NYCRR 202.70) (current through 02/18/2020);
- The Part 48 PC Order Form;
- The Part 48 Pro Hac Vice Proposed Order Form;
- The Part 48 Confidentiality Stipulation and Proposed Order Form;
- The Part 48 Exhibit Chart;
- The Standards of Civility (22 NYCRR 1200 Appendix A); and
- A Sample Stipulation for the Exchange of ESI

³² Please visit https://www.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.