

HON. NANCY M. BANNON, J.S.C.

PART 61 RULES
(last updated March 2024)

SUPREME COURT, CIVIL TERM, NEW YORK COUNTY

Courtroom: 60 Centre Street, Room 232, New York, NY 10007
Part Clerk: Gregory Gonsieski – 646-386-3169 or
SFC-Part61-Clerk@nycourts.gov
Principal Court Attorney: Aryeh L. Roskies, Esq. – aroskies@nycourts.gov
Assistant Court Attorney: Craig Kapaj, Esq. – ckapaj@nycourts.gov

GENERAL RULES

1. All parties must familiarize themselves with the Rules of the Commercial Division (22 NYCRR 202.70 et seq.), which are incorporated by reference into the Part Rules set forth below.¹
2. Attorneys and pro se litigants must notify the court as quickly as practicable, by email to the Part Clerk at SFC-Part61-Clerk@nycourts.gov, when an action or pending motion has been resolved in whole or in part, when an action or pending motion has become moot in whole or in part, or when a party has died or filed a petition in bankruptcy.
3. **EX PARTE COMMUNICATIONS ARE STRICTLY PROHIBITED.** Every party must be copied on all communications with the court, including emails. Neither Justice Bannon nor her law clerks will communicate with any attorney or litigant *ex parte*.
4. All cases must be e-filed on NYSCEF except for cases involving pro se litigants who are not licensed to practice law in New York. Unrepresented litigants who are not licensed New York attorneys are highly encouraged to e-file (it is the best way to obtain easy access to court filings, keep up to date, and serve other parties) and can find instructions at:

<https://iapps.courts.state.ny.us/nyscef/UnRepresentedHome>

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

¹ The rules are available at: <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70>.

5. In all electronically filed cases, attorneys and pro se litigants are obligated to keep their contact information, including email addresses, current in the NYSCEF e-filing system, and to regularly monitor eCourts to track scheduled appearances. Do not ask the Part Clerk to update your contact information in the NYSCEF e-filing system or check eCourts for appearances for you.
6. Hard copies shall NOT be submitted unless specifically directed by the court.
7. The parties may, on consent, jointly request a settlement conference during any other conference before the court or by emailing the Part Clerk at SFC-Part61-Clerk@nycourts.gov. Settlement conference availability is very limited and not all requests will be granted. Conferences will be scheduled at the discretion of Justice Bannon. Parties appearing for a settlement conference must appear with full settlement authority. Failure to appear with settlement authority shall constitute a default pursuant to 22 NYCRR 202.27.

COMMUNICATIONS WITH THE COURT

Scheduling

8. General questions about appearances and scheduling shall be addressed to the Part Clerk by phone at 646-386-3169 or by email at SFC-Part61-Clerk@nycourts.gov. DO NOT contact Justice Bannon or her Law Clerks with questions about appearances or scheduling.
9. No scheduled conference, oral argument, or other appearance, whether in-person or virtual, may be adjourned without the court's prior approval. Without prior approval, any failure to appear will constitute a default pursuant to 22 NYCRR 202.27.
10. Any request to adjourn a scheduled appearance must be made in writing at least two (2) business days prior to the appearance date by email to the Part Clerk at SFC-Part61-Clerk@nycourts.gov, and must include a reason for the adjournment and indicate whether the request is on consent of all parties. If all parties consent to adjournment, a stipulation to that effect shall be attached to the email in Word format. If the adjournment request is opposed, a responsive email should be sent to the Part Clerk promptly. If the adjournment request is approved, the parties will be notified and receive a new date and further instructions. *Ex parte* requests for adjournment will not be considered.
11. For all motions pending in the Submissions Part (60 Centre Street, Rm. 130), follow that Part's rules regarding adjournments, scheduling, and withdrawals. For motions pending in Part 61, or where the rules of the Submissions Part require the court's

approval prior to granting an adjournment, the parties may seek an adjournment pursuant to the procedure outlined in Rule 10.

Telephone Calls

12. **DO NOT CALL CHAMBERS** except in the event of an emergency or when you have been specifically instructed to do so. If specifically instructed to call Chambers regarding a pending matter, such call may be placed only by attorneys or pro se litigants if not represented by an attorney. No law office employees, assistants, or aides may call Chambers.
13. **DO NOT** call the Part Clerk or Chambers for a status update or to ask whether a decision has been issued. All decisions and orders are scanned and available on the internet (eCourts or SCROLL).

Letters

14. **DO NOT** copy Judge Bannon, her Law Clerks, or her Part Clerk on letters, documents, or emails exchanged between counsel. The court will not read them and they will be discarded by the Part Clerk.
15. Unless otherwise directed by the court, letters or emails to the court shall be limited to the circumstances permitted by these Part Rules, *i.e.*, questions about appearances and scheduling, adjournment requests, and notifications as to settlement, withdrawal of a motion, the death of a party, or the filing of a petition in bankruptcy by a party.
16. Letters and emails to the court are not a substitute for seeking relief through proper filings on NYSCEF and in accordance with the CPLR. Parties should not assume that letters and emails have been read unless they have received a response.

MOTIONS/APPEARANCES BEFORE THE COURT

Motion Practice Generally

17. Briefs and memoranda of law must comply with the requirements set forth 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.
18. The first page of every motion paper (notice of motion, opposition, reply, exhibits, etc.) must reflect the relevant motion sequence number in the upper righthand corner.

19. Attorney affirmations may only be used as an index of exhibits and, where appropriate, a brief procedural history may be provided. Affidavits or affirmations of counsel should not contain legal arguments, which must be confined to the brief. A memorandum of law with a table of contents and table of authorities must accompany every motion (except for relatively minor motions such as pro hac vice motions). Bookmarking and hyperlinking are helpful but not required.
20. Exhibits and all other motion papers that are e-filed must be OCR Text Searchable.
21. The moving papers on a motion must contain complete and legible copies of (a) the pleadings, (b) all applicable contracts, and (c) entire transcripts of all depositions and court proceedings referenced in the motion. If a document to be submitted is voluminous and only discrete portions are relevant to the motion, counsel may attach excerpts and submit the complete document as a separate exhibit.
22. Documents submitted in support of a motion shall be filed separately and appropriately labeled and numbered. A single .pdf file under a single document number for all papers submitted on a motion is not acceptable. Each e-filed document must have its own, respective document number (e.g., Doc # 15, Notice of Motion; Doc # 16, Attorney Affirmation; Doc # 17, Affidavit; Doc # 18, Exhibit A; and Doc # 19, Exhibit B). All exhibits electronically submitted must be described in the NYSCEF heading of the attached exhibit (e.g., Exhibit A, Bill of Particulars; Exhibit B, Photographs), so that it is known what document is filed in the exhibit. Each page in any exhibit must be numbered. Reference to any exhibit must include pinpoint citations to the exact page within the exhibit.
23. If there is any discrepancy between the relief sought in the notice of motion and the relief sought in the supporting papers, the notice of motion is controlling.
24. Once motions are marked fully submitted, the court will not consider any further submissions unless expressly authorized by the court.
25. The filing of dispositive motions DOES NOT stay discovery in this Part unless otherwise ordered by the court.
26. When a transcript of a conference, hearing, or trial is required in connection with any motion sequence, the parties shall obtain a copy of the transcript and upload it onto NYSCEF. The motion will not be marked submitted, and the court will not issue a written decision, until the requisite transcript is e-filed.

Summary Judgment Motions

27. All summary judgment motions must be filed within sixty (60) days after the filing of the note of issue, unless otherwise directed by the court. Summary judgment motions filed after the deadline imposed by the court will be denied absent a demonstration, in the same motion, of good cause for the delay.
28. In accordance with Commercial Division Rule 19-a, this court, in its discretion, directs that all summary judgment motions must contain a “short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.” Pursuant to 22 NYCRR 202.8-g(e), a movant’s failure to submit an undisputed statement of facts will result in the denial of the motion with leave to renew upon proper papers, adjournment of the motion to allow the movant time to submit an undisputed statement of facts, or any other action this court deems just and proper.

Orders to Show Cause

29. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required, a statute mandates to so proceed (Commercial Division Rule 19) or by leave of court. Absent advance permission, reply papers shall not be submitted on orders to show cause.
30. Any questions regarding the procedure for filing proposed orders to show cause should be directed to the Commercial Division Support Office (60 Centre Street, Rm. 119A) at 646-386-3020.
31. Any party seeking immediate injunctive relief within an OSC must appear with the affected adversary or proof the adversary was notified but declined to appear when the application is presented for signature.
32. Orders to show cause will be returnable in the Part. Responsive papers to orders to show cause must be filed at least 4 days prior to the return date unless the court indicates otherwise.
33. Absent an emergency, orders to show cause may not be adjourned.

Discovery Motions

34. Discovery motions are strongly discouraged.
35. If the parties have a discovery dispute, they must consult with each other in a good faith effort to resolve the same (22 NYCRR 202.7[a]). Such consultation may take place by an in-person, telephonic, or virtual conference. In the event such an attempt

is unsuccessful, then the parties are required to email the Part Clerk at SFC-Part61-Clerk@nycourts.gov to request a discovery conference with the court to attempt to resolve the issue(s). Conferences requested on an expedited basis will be granted only at the court's discretion. If, after a conference with the court, the dispute still cannot be resolved, then the party or parties seeking relief may file a discovery motion. While written leave of court is not required to file the motion, no motion may be filed unless the court has first conferenced the case.

36. If a discovery motion is filed, the affirmation of good faith submitted in support of the same must "indicate the time, place and nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral with counsel for opposing parties was held" (22 NYCRR 202.7[c]). The affirmation of good faith must also indicate the identity of the individual who conferenced the case with the parties (i.e., Justice Bannon or one of her Law Clerks), as well as the date on which the case was conferenced by the court.
37. Failure to comply with Rules 35 and 36 will result in denial of the discovery motion.
38. The court, in its discretion, may decide a discovery motion on submission or schedule a discovery conference in lieu of hearing argument on the same.

Oral Arguments

39. Motions may be scheduled for oral argument at the discretion of Justice Bannon. If oral argument is scheduled, you will be notified electronically. Oral arguments are conducted remotely unless otherwise directed.
40. Failure to appear for a scheduled oral argument constitutes a default.
41. Attorneys and self-represented litigants arguing motions must be familiar with the case on which they appear and be fully prepared and authorized to discuss and resolve the issues which are the subject of the motion. Attorneys who appear for argument of dispositive motions must also have full settlement authority. Failure to comply with this rule may be treated as a default pursuant to 22 NYCRR 202.27.
42. Attorneys and self-represented litigants appearing for oral argument shall conduct themselves in a civil and respectful manner. To that end:
 - i. Please do not talk over each other. Only one person speaks at a time.
 - ii. It is called "oral argument," but that does not mean you are here to fight with the court or opposing counsel. Please present your arguments in a cogent, calm, and courteous manner.
 - iii. All remarks should be directed to the court, not to opposing counsel.

43. The court supports the professional development of junior attorneys and encourages their participation at oral arguments on motions.

DISCOVERY

44. The parties are expected to proceed cooperatively and professionally during discovery, with an emphasis on efficiency, practicality, and proportionality.

45. Discovery conferences are generally scheduled on Thursdays between 10 a.m. and 1 p.m. Discovery conferences are conducted remotely unless otherwise directed.

46. Counsel attending any conference are expected to be familiar with the case, including all prior conference orders, and have authority to discuss and stipulate to resolve all discovery issues.

47. At each compliance or status conference, the attorney or litigant must bring a list of all discovery previously ordered, but not yet completed, as well as new discovery requested which could not have been previously addressed. Failure to address all outstanding discovery existing at the time of the compliance or status conference may be deemed a waiver of the right to obtain said discovery.

48. The parties are **required** to jointly confer and complete a proposed conference order prior to each preliminary, compliance, or status conference. The proposed order must be e-filed no later than 9 a.m. on the morning of the conference. The proposed order must:

- i. Be legibly written and contain the names of all counsel appearing at the conference;
- ii. Use firm cut-off dates, such as “on or before December 31, 2015;” and
- iii. Specify with reasonable exactness which items of discovery previously ordered remain outstanding and provide a reasonable excuse why the previous order was not complied with.

Failure to submit a proposed conference order as set forth herein may constitute a default pursuant to 22 NYCRR 202.27.

49. The parties must strictly comply with all court-ordered discovery deadlines. If an extension of time is needed, the parties may request such extension at their next conference and the court may grant the extension for good cause. Good cause does not include settlement negotiations, dispositive motion practice, general scheduling conflicts, or other excuses of like nature. The court will not indefinitely grant extensions if the parties are not diligently attempting to meet deadlines. Parties may not stipulate to extend court-ordered deadlines.

50. If all parties agree that discovery is complete before the final status conference, the final conference may be avoided by e-filing or faxing a stipulation to the Part Clerk at least two (2) days prior to the scheduled conference. The stipulation must certify that all discovery is complete and provide for the filing of the note of issue.
51. A party's failure to appear for a conference will result in the appearance being marked as a default as against that party pursuant to 22 NYCRR 202.27, and the conference will be adjourned, or the pleadings stricken, at the court's sole discretion.
52. Discovery IS NOT stayed by the filing of a dispositive motion (see Rule 25), mediation, or general settlement negotiation unless otherwise ordered by the court. Parties WILL NOT be relieved from the consequences of violating discovery orders unless the court issues a stay order prior to the applicable deadline.

CONFIDENTIALITY AGREEMENTS AND SEALING

53. Parties are encouraged to make use of general confidentiality agreements limiting the review, copying, dissemination and use of confidential and/or proprietary documents and information to be produced in the course of discovery. However, except in exceptional circumstances and for good cause shown, the court will not so-order any such private agreement between the parties. Further, the parties' execution of a confidentiality agreement shall not create any presumption that there is good cause to seal a document.
54. Any party who wants to file a redacted version of a document or file a document under seal must make a motion to seal by Order to Show Cause. If provisional sealing status was employed the Order to Show Cause should include a TRO maintaining such status pending a decision on the motion. Because sealing of entire documents is rarely permitted, the moving papers shall include narrowly tailored proposed redactions and the movant shall email a version of the documents with highlighted proposed redactions to the Part Clerk at SFC-Part61-Clerk@nycourts.gov, copying all parties.

TRIALS

55. At least fourteen (14) days prior to the first pre-trial conference scheduled by the court, the parties must furnish the following by email to the Part Clerk at SFC-Part61-Clerk@nycourts.gov, copying all parties: (i) the submissions required under Commercial Division Rules 26, 27, 28, 29, 31(b), and 32; (ii) all marked pleadings and bills of particular; (iii) all notices to admit and responses thereto; (iv) all prior decisions in the case, including any appellate decisions; and (v) a Joint Statement of Stipulated Facts and Procedural History.

The Rule 26 estimated trial schedule shall include the number of required trial days and the amount of time for direct and cross for each proposed witness. The Rule 32 list of proposed witnesses shall, in addition to the information specified in the Rule, include a statement as to whether the witness is a fact witness or an expert and the need for any interpreters with the required language and dialect.

At the option of the parties, a trial memorandum, not to exceed five (5) pages, may also be submitted briefly setting forth the party's position and the relevant factual and legal issues to be tried, citing relevant case law.

56. In addition to the items specified in Rule 55, for jury trials the following materials shall also be submitted at least fourteen (14) days prior to the first pre-trial conference by email to the Part Clerk, copying all parties:
 - i. Proposed jury verdict sheets, in Word format; and
 - ii. Proposed jury instructions, including the text of relevant PJI instructions, 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.
57. Parties are strongly encouraged to have the court stenographer pre-mark all exhibits for identification and/or evidence if without objection.
58. It is the duty of counsel, not court personnel, to ensure all subpoenaed documents have arrived in the subpoenaed records room at 60 Centre Street.
59. Trial dates scheduled by the court are firm and may only be adjourned upon application based upon an emergency. Trials are held every day of the week, unless otherwise directed by Justice Bannon. No adjournments will be granted if a witness is unavailable to testify unless the court concludes, in rare instances, that good cause exists.
60. Four (4) alternate jurors must be selected for all civil jury trials, unless otherwise ordered.
61. As the court supports the professional development of junior attorneys, senior trial counsel are encouraged to assign junior co-counsel to argue motions in limine and/or examine witnesses as appropriate during the trial.
62. Counsel shall retrieve any trial exhibits from the courtroom within 30 days of the close of the trial.
