

**PRACTICE GUIDE TO THE COMMERCIAL DIVISION, WESTCHESTER COUNTY
CASES PENDING BEFORE HON. ALAN D. SCHEINKMAN**

Counsel are expected to be familiar with the Commercial Division Rules and comply therewith. The following information is offered as a guide to the practices followed by this Court.

Scheduling:

All questions about scheduling appearances or adjournments should be addressed to the Part Clerk, Maryann Tamberella, at (914) 824-5348. Do not contact Chambers regarding such issues. Requests for adjournment of matters appearing on the weekly Commercial Calendar should be made by not later than 3:00 p.m. on the day before. Requests made after that will likely not be granted. All requests for adjournments must be made with the request of all opposing counsel and, if approved by the Court, confirmed by a signed Stipulation of all counsel. If consent cannot be obtained, then the requesting counsel must either arrange for a conference call with the Court and, if one cannot be timely arranged, then the application must be made at the call of the calendar.

E-Filing Rules and Protocol:

All parties should familiarize themselves with the statewide E-Filing Rules (available at www.nycourts.gov/efile) and the Westchester County E-Filing Protocol (available at <http://www.nycourts.gov/courts/9jd/efile/WestchesterCountyJointProtocols.pdf>) and 202.70 of Uniform Civil Rules of the Supreme and County Courts as amended on 7/1/10. General questions about e-filing should be addressed to the E-Filing Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Filing of Papers:

Mandatory e-filing of all Commercial Division actions through the New York State Courts E-Filing system (NYSCEF) is scheduled to begin on February 1, 2011. Submissions to the Court including motion papers, proposed orders, proposed judgments, and letters (after prior permission to send such letters is provided), must be electronically filed. Pre-trial submissions are not to be filed electronically, and shall be delivered to the Court at the Pre-Trial Conference or as the Court may otherwise direct.

Working Copies:

E-filing rules provide that a court may require the submission of “working copies” of any electronically filed documents intended for judicial review. A working copy is defined as “a hard copy that is an exact copy of a document that is electronically filed.”

The Commercial Division, Westchester County, requires that working (courtesy) copies of all papers filed electronically be mailed to Chambers. Pursuant to Uniform Rule 202.5-b(d)(4), the working copy shall bear as a cover page firmly fastened thereto a copy of the confirmation notice received from the NYSCEF site upon the electronic filing of the document. Hard copies not bearing such cover page shall be discarded, unread. All working copies of e-filed documents intended for judicial review must include exhibit tabs and backs.

Working copies of all documents, except stipulations to be so-ordered, are to be mailed or hand delivered so as to be received by Chambers by the return date or notice of settlement date.

WORKING COPIES OF STIPULATIONS TO BE SO-ORDERED (INCLUDING REQUESTS FOR ADJOURNMENT) MUST BE RECEIVED BY CHAMBERS 48 HOURS BEFORE THE EXISTING SCHEDULED DATE. IF THIS CAN NOT BE ACHIEVED, COUNSEL ARE TO CALL OUR PART CLERK AT (914) 824-5348.

Hard Copy Submissions:

Part will reject any hard copy submissions in e-filed cases unless those submissions bear the Cover Sheet for Hard Copy Submission – E-Filed Case required by Uniform Rule § 202.5-b(d)(1). The form is available at www.nycourts.gov/efile.

Communications With the Court:

(a) *Written correspondence:* No written correspondence may be sent to the Court without prior permission. Written correspondence sent by letter, fax or any other means, without permission will not be read and will be discarded.

(b) *Telephone calls:*

1. Counsel may call the Part Clerk with respect to the scheduling of appearances and with respect to adjournment applications.
2. Counsel may call Chambers and/or the Part Clerk to arrange for a telephone conference with the Court or with the Law Secretary.
3. Counsel may not contact Chambers without all opposing counsel on the phone, except for the purpose of facilitating a conference call.

Motions:

No motion shall be made, except as allowed by Rule 24 of the Commercial Division Rules, without a prior conference with the Court, which conference may be obtained either by conference call or, upon obtaining permission from chambers, the submittal of a brief letter application, not exceeding 1 page in length. At the conference, the Court will set a schedule for making the motion, opposing it, and, if applicable, for reply.

Motions are to be returnable on Fridays at 9:30 a.m. Motions made returnable at any other time, absent prior permission of the Court, will be adjourned by the Part Clerk to the next available Friday.

Adjournments are governed by Rule 16(c) of the Commercial Division Rules.

Motions are submitted without oral argument, unless otherwise directed by the Court.

Reply papers are not permitted, unless: (a) the right of reply is obtained by service of a notice of motion in accordance with CPLR 2214[b]; or (b) expressly permitted by the Court. Counsel may submit supplemental citations as allowed by Rule 18 of the Commercial Division Rules. Sur-reply papers, including reply papers in support of a cross-motion, are not permitted, absent prior permission of the Court. Any unauthorized papers will not be read and will be discarded.

All papers must comply with the applicable provisions of the CPLR and with Rules 16 and 18 of the Commercial Division Rules. In addition, the font size of text and footnotes must be no smaller than 12 point. Papers which do not comply may be rejected.

All motions for summary judgment shall be accompanied by a Statement of Undisputed Facts Pursuant to Rule 19-a of the Commercial Division Rules. A motion for summary judgment which lacks such a statement may be rejected. All opposing papers must include a response to the Statement of Undisputed Facts.

All exhibits shall be separately tabbed. In the event that multiple affidavits or affirmations are submitted in support of a motion under the same legal back, each such exhibit shall be accompanied by a clearly discernible side or bottom tab containing the last name of the affiant.

No motion papers will be sealed without a prior, or contemporaneous, application for sealing made pursuant to Part 216 of the Rules of the Chief Administrative Judge.

The Court generally does not stay disclosure pending determination of motions to dismiss or motions for summary judgment (made prior to completion of discovery).

Discovery Disputes:

With respect to cases already assigned to this Court at the time that a discovery dispute arises, no motion with respect to the dispute shall be made without a prior conference with the Court, which may be obtained by submission of a letter application, not exceeding one (1) page in length. Counsel must obtain permission from Chambers prior to the submission of such letter application.

With respect to cases in which a discovery motion accompanies the Request for Judicial

Intervention which leads to the assignment to this Court, no opposition papers shall be served until there has been a prior conference with the Court, which may be obtained by letter application, not exceeding one (1) page in length. The application for a discovery conference may be made by the movant or by the opposing counsel; however, the application must be made within eight (8) days of service of the motion. Counsel must obtain permission from Chambers prior the submission of a letter application. Failure to request a discovery conference may result in the denial of the motion.

The Court endeavors to resolve discovery disputes promptly, usually by conference, which may be held telephonically or in person. In the event that the dispute is not resolved, the Court will set an expedited briefing schedule. Counsel shall, prior to requesting a conference, meet in person to discuss the issues and endeavor to resolve or limit them, prior to seeking judicial intervention.

Preliminary Conferences:

Upon receipt of a letter from the Court scheduling a preliminary conference, counsel shall meet in person and shall **jointly** prepare a brief statement describing the case and the contentions of the parties. In addition, counsel shall **jointly** complete a proposed Preliminary Conference Order, on the form supplied by the Court (also available on the Court's website). Counsel are advised that, absent very unusual complexity, the Court will require that discovery be completed within six months of the assignment of the case to the Court. These submissions shall be furnished to the Court not later than 12 p.m. on the day prior to the conference. In the event that the Court does not receive the submissions, the Court will take such action as may be appropriate under the circumstances, including adjournment of the conference, requiring counsel to complete the forms at the conference, or other steps.