

**JUSTICE ANDREA MASLEY**

**PART 48 TRIAL RULES**

Updated: 10/04/2018

**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**

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Note: The Part 48 Trial Rules supplement the Part 48 Practice Rules. Parties and counsel must be familiar with both sets of Rules, each available online on the nycourts.gov website.

**I. Prior to the Commencement of Trial**

1. **Pre-trial Conference:** Trial dates are assigned by court order or by the Part Clerk. Once trial date(s) are assigned, parties shall contact the Part Clerk to schedule a pre-trial conference with Justice Masley. At the pre-trial conference, Justice Masley shall set time limits for the examination of each witness.
2. **Motion(s) in Limine:** Motions in limine must be filed within 30 days of assignment of trial date(s) unless otherwise directed by the court, and shall not be made in any instance fewer than 60 days prior to the commencement of trial.
3. **All Electronic Submissions** to the court must be OCR text searchable.
4. **Direct Testimony in Non-Jury Trials By Affidavit:** For non-jury trials, all direct testimony of a party's own witness shall be submitted in **affidavit form**. Upon being called at trial, a witness shall swear to the contents of his/her affidavit, the court shall hear opposing counsel's objections (if any) to the direct testimony,

followed by cross examination and re-direct, if any, of the witness in court. At least 10 business days prior to the commencement of trial, parties shall exchange direct testimony affidavits. **Direct testimony affidavits must also be e-filed, and working copies must be delivered to the Part Clerk in Courtroom 242, at least 10 business days before trial commences.**

**Exceptions:**

(A) In a bench trial, a witness's direct testimony need not be submitted in affidavit form if the witness is not within the control of the party who/which intends to call the witness.

(B) **In a jury trial, a witness's direct testimony is elicited in open court, not by affidavit.**

5. **Witness Lists:** Parties shall exchange witness lists 10 business days prior to the commencement of trial. The witness list shall designate whether the witness is being called as an "expert" or a "fact" witness. If designated as an expert witness, it should be indicated whether the parties agree or dispute the witness's status. Objections to the introduction of a particular witness shall be raised at trial. **Witness lists must be delivered to the Part Clerk in Courtroom 242 at 60 Centre Street at least 10 business days before trial commences.**
  
6. **Trial Exhibits:** Parties shall exchange exhibit books at least 20 business days prior to the commencement of trial; all exhibits must be pre-marked, and counsel must state for each exhibit whether the parties agree or dispute the exhibit's admissibility. **Exhibit books shall include a chart listing all pre-marked exhibits intended to introduced at trial in the format reproduced in Exhibit A to these Trial Rules (see below).** Exhibits shall be pre-marked using only numbers; e.g., P1-P100; D1-D100 (however, if multiple plaintiffs and/or defendants intend to submit exhibits, use party name abbreviations with numbers; i.e., ABC1-ABC100, XYZ1-XYZ100). All exhibit pages must be one sided. Deposition transcripts shall be in miniscript format. **Exhibits must be entered into evidence at trial; exhibits not used and offered into evidence at trial will not be entered, regardless whether the parties stipulated to the admissibility of that evidence.** All objections to the introduction and entry of a particular exhibit shall be raised at trial.  
  

(i) Trial exhibit books must be delivered to the Part Clerk in Courtroom 242 at least 20 business days prior to commencement of trial; **trial exhibit books**

**submitted to the court must not exceed 2 inches in thickness.** Parties and/or counsel shall contact the Part Clerk to coordinate delivery of the actual exhibits directly to Part 48, Courtroom 242, prior to commencement of trial.

Notes: (A) Parties shall be prepared to provide each witness being examined with one paper copy of every document intended to be introduced at trial.

(B) Within 30 days of the trial's conclusion, the exhibits **entered into evidence at trial** must be submitted to Part 48 in Courtroom 242 in digital, OCR text-searchable format on either external thumb drive or CD/DVD (*see* Part II below for additional information regarding Post-Trial Submissions).

7. **Pre-Trial Memoranda and Statements of Agreed Upon Facts:** Must be delivered directly to the Part Clerk in Courtroom 242, and electronically filed, at least 10 business days prior to the commencement of trial. **Only a Joint Statement of Agreed Upon Facts will be accepted; if there are no facts to which the parties agree, the parties shall not submit any statement.**
8. **Marked Pleadings:** Should be delivered directly to the Part Clerk in Courtroom 242 and electronically filed 10 business days prior to the commencement of trial.
9. **Foreign and Sign Language Translators:** Where a translator is needed, the party shall notify the Part Clerk at least 30 days prior to the commencement of trial and provide the following: witness's name, date(s) of anticipated testimony, and language and dialect spoken.
10. **Confirmation of Trial Date:** Parties shall notify the Part Clerk 14 business days prior to the commencement of the trial to confirm that the trial is going forward as scheduled. Applications to adjourn trial dates must be directed to both the Part Clerk ([bhanson@nycourts.gov](mailto:bhanson@nycourts.gov)) and Chambers ([vcorbo@nycourts.gov](mailto:vcorbo@nycourts.gov)) no later than 14 business days prior to commencement of trial. **There shall be no adjournments absent a demonstration of good cause, and no continuances granted if a witness is unavailable to testify absent a showing of good cause.**
11. **Provide Information to the Court Reporter:** The morning/afternoon on which the trial shall begin, the parties must provide the Court Reporter with their contact information, copies of the witness lists and pre-marked exhibit lists/charts, and a glossary of names, unusual words, and/or acronyms that may be raised at trial.

12. **Demonstrative Evidence and Electronic Media:** Please contact the Part Clerk ([bhanson@nycourts.gov](mailto:bhanson@nycourts.gov)) and Chambers ([vcorbo@nycourts.gov](mailto:vcorbo@nycourts.gov)) at least 5 business days prior to commencement of trial for permission to use demonstrative evidence, including charts, graphics, enlarged contract language, video depositions, and electronic media devices. The court encourages the use of technology to expedite the trial; e.g., real-time transcription.
13. **Jury Trials:** For jury trials, the parties shall submit to the Court, at least 20 business days prior to trial, a witness list, proposed jury instructions, and proposed verdict sheet. If the proposed jury instructions are verbatim from the Pattern Jury Instructions, providing the PJI numbers is sufficient. **If a PJI instruction is modified, the exact language employed shall be supported by appropriate authority and submissions must include a redline version of all changes to PJI language.**

## **II. Post-Trial Submissions**

### **1. Post-Trial Memoranda Briefs with Conclusions of Law and Attached Exhibits**

**Referenced Therein:** No later than 30 days after the trial's conclusion, the parties must submit to the Part Clerk in Courtroom 242 post-trial memoranda and a thumb drive or CD/DVD with digital, OCR text-searchable copies of all exhibits entered into evidence at trial:

(A) Post-trial memoranda must be delivered to Courtroom 242 in hard copy with paper working copies of all trial exhibits referenced in the memoranda; post-trial memoranda must also be delivered to Courtroom 242 in digital, OCR text-searchable format on a thumb drive or CD/DVD. **Post-trial memoranda may not exceed 25 pages, and attached working copies of referenced exhibits shall be bound in consecutively-paginated and clearly marked volumes not exceeding 2 inches in width.**

(i) Separate findings of fact are optional; if submitted, findings of fact shall be delivered to the Part Clerk in Courtroom 242 in both hard copy and OCR, text-searchable digital format on a thumb drive or CD/DVD within 30 days of the conclusion of trial. No page limit applies for separate facts. **Post-trial memoranda of law may not cite findings of fact as evidence.**

(B) Within 30 days after the conclusion of trial, the parties shall submit **digital copies of all exhibits entered into evidence at trial in OCR text-searchable format on an external thumb drive or CD/DVD; exhibits not entered into evidence at trial shall not be included** (i.e., exhibits to which the parties

stipulated would be admissible but which were not used and entered into evidence during the trial are **not** trial evidence and may not be included in the parties' post-trial submissions, memoranda, or findings of fact).

**(i) Trial exhibit submissions must include an OCR text-searchable chart identifying and briefly describing each entered exhibit, as well as a paper working copy of the chart.** For digital submissions, the parties shall include only one exhibit per file, with file names identifying the corresponding exhibit designation number.

Note: Unless the files are so large or numerous that multiple electronic storage devices are necessary, the parties shall submit only one thumb drive/CD/DVD containing the above post-trial materials neatly and clearly organized into folders. For instance, a single thumb drive containing folders with descriptive filenames: "Plaintiff's Post-Trial Memo and Findings of Fact"; "Defendant's Trial Exhibits with Exhibit Chart."

2. **Discarding of Trial Materials:** After a decision is issued, the court will discard all post-trial submissions and trial exhibits. All materials produced for the trial must be removed by the parties within 48 hours of the conclusion of trial. Any trial materials not timely removed will be discarded.

**EXHIBIT A:**

**MANDATORY TRIAL EXHIBIT CHART FORMAT<sup>1</sup>**

	A	B	C	D	E	F
			CHECK IF PARTIES CONSENT ADMISSIBILIT			CHECK IF ENTERED IN EVIDENCE AT
1	EXHIBIT #	EXHIBIT DESCRIPTION	Y	OBJECTION(S), IF ANY	RULING	TRIAL
2	.	.	.	.	.	.
3	.	.	.	.	.	.
4	.	.	.	.	.	.
5	.	.	.	.	.	.
6	.	.	.	.	.	.
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8	.	.	.	.	.	.
9	.	.	.	.	.	.
10	.	.	.	.	.	.

Note: The first page of each Trial Exhibit Chart must include the case caption, index number(s), and the party or parties submitting the Chart. If the Chart is submitted by some or all parties jointly, that information should be indicated. Additionally, each subsequent page of the Chart must bear a footer with the case name, name of the submitting part/parties, and page numbers (i.e., *Alpha Inc. v Beta LLC*, 123456/2018, Plaintiffs' Exhibit Chart page 2 of 10).

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<sup>1</sup> For a copy of this Chart in Microsoft Excel format, please email [vcorbo@nycourts.gov](mailto:vcorbo@nycourts.gov).