

**KINGS COUNTY JUSTICES
AND LOCAL RULES**

Commercial Division - NY Supreme Court

Kings County - Brooklyn

Chambers and Part Information - Justice Demarest

Part Information

Kings County Commercial Division
Courtroom 756
360 Adams Street
Phone: 347-296-1104

Part Clerk: Melissa Dalia

Motions: Wednesday, 9:45 am
Conferences: Wednesday, 9:45 am

Chambers Information

Commercial Division, Kings County
Supreme Court of the State of New York
360 Adams Street, Room 1177
Brooklyn, NY 11201

Law Secretary:
Carl Regelman, Esq.

Assistant Law Clerk:
Maya Khodos, Esq.

Chambers Phone: 347-296-1458
Fax: 718-643-5875



Web page updated: April 22, 2014

**COMMERCIAL DIVISION
PRELIMINARY CONFERENCE ORDER
PURSUANT TO PART 202 OF THE UNIFORM CIVIL RULES
FOR THE SUPREME COURT KINGS COUNTY**

Date _____ 201_

-against-	Plaintiff(s)
	Defendant(s)

Index # _____

Plaintiff _____ is represented by
Firm: _____
Responsible attorney: _____
Address: _____
E-mail: _____
Telephone: _____ Fax: _____

Defendant _____ is represented by
Firm: _____
Responsible Attorney: _____
Address: _____
E-mail: _____
Telephone: _____ Fax: _____

Defendant _____ is represented by
Firm: _____
Responsible Attorney: _____
Address: _____
E-mail: _____
Telephone: _____ Fax: _____

Defendant _____ is represented by

Firm: _____

Responsible Attorney: _____

Address: _____

E-mail: _____

Telephone: _____ Fax: _____

Nature of the Case:

(a) Plaintiff's Claims / Counterclaim Defenses

Amount Demanded: \$ _____

(b) Defendant _____'s Claims / Defenses

Amount Demanded: \$ _____

Defendant _____'s Claims / Defenses

Amount Demanded: \$ _____

Defendant _____'s Claims / Defenses

Amount Demanded: \$ _____

Defendant _____'s Claims / Defenses

Amount Demanded: \$ _____

IT IS HEREBY ORDERED THAT THIS ACTION IS ASSIGNED TO THE

_____EXPEDITED_____STANDARD_____COMPLEX TRACK

AND DISCLOSURE SHALL PROCEED AS FOLLOWS:

(1) BILL OF PARTICULARS (See CPLR 3130(1)):

(a) Demand for a bill of particulars shall be served by _____ on or before _____

(b) Bill of Particulars shall be served by _____ on or before _____

(c) BILL OF PARTICULARS SERVED:

[] Satisfactory

[] Unsatisfactory - because:

(2) DOCUMENT PRODUCTION/ DISCOVERY AND INSPECTION:

(a) All Demands for Discovery and Inspection (CPLR 3120) shall be served not later than _____ days from the date of this Order.

(b) All responses to Discovery and Inspection demands shall be served not later than _____ days after receipt of the opposing party(ies) demand(s).

(c) All demands for production of books, documents, records and other writings relevant to the issues in this case shall be deemed to include a demand for production of any photograph(s), audio tape(s), video tape(s), computer disk(s) or program(s) and e-mail. The failure to comply herewith may result in preclusion from the introduction of such evidence.

(3) INTERROGATORIES: Limited to 25 questions per party

(a) Interrogatories shall be served by _____ on or before _____.

(b) Answers to interrogatories shall be served by _____ on or before _____.

(4) **DEPOSITIONS:** To be held as follows:
(Priority shall be in accordance with CPLR 3106 unless otherwise agreed or ordered)

Party	Date	Time	Place
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

FAILURE TO APPEAR FOR DEPOSITION AS SCHEDULED WILL BE DEEMED A WAIVER. FAILURE TO PRODUCE A SPECIFIED WITNESS FOR DEPOSITION WILL PRECLUDE SUCH WITNESS'S TESTIMONY AT TRIAL ON BEHALF OF THE PARTY FAILING TO PRODUCE. SUCH PARTY MAY ALSO BE DEEMED TO HAVE WAIVED THE DEPOSITION OF THE OPPOSING PARTY.

(5) **OTHER DISCLOSURE:**

(a) Commissions or letter rogatory (CPLR 3108): Identify and set forth the location of each witness:

(b) Expert disclosure (CPLR 3101[d])
Plaintiff(s) shall provide expert disclosure by _____
Defendant(s) shall provide expert disclosure by _____

(6) **PRESERVATION OF ELECTRONIC EVIDENCE:**

(a) The term ESI shall include, but not be limited to, e-mails and attachments, voice mail, instant messaging and other electronic communications, word processing documents, text files, hard drive spreadsheets, graphics, audio and video files, databases, calendars, telephone logs, transaction logs, internet usage files, offline storage or information stored on removable media, information contained on laptops or other portable devices and network access information and backup materials, Native Files and the corresponding Metadata which is ordinarily maintained.

(b) Within 10 days of the execution of this PC Order, all signatories hereto shall, in compliance with Rule 8(b) of the Uniform Commercial Division Rules (22 NYCRR 202.70), submit to the Court a copy of the agreed written plan/stipulation for the preservation of ESI related documents, data and tangible things reasonably anticipated to be subject to discovery in this action. Such plan, which may be updated, shall identify the categories of ESI to be preserved, individuals responsible for preservation, maintenance and production of ESI and issues relating to potential costs of maintenance, preservation and production of ESI. In the alternative, counsel may stipulate to limit and/or eliminate the discovery of ESI in whole or part and/or forego or

limit the production of information in electronic form. A copy of such stipulation must be submitted to the court within 10 days of this Order.

(c) For the relevant periods relating to the issues in this litigation, each party shall take all reasonable steps (including suspending aspects of ordinary computer processing and/or backup of data that may compromise or destroy ESI) necessary to maintain and preserve such ESI as may be (i) relevant to the parties' claims and/or defenses, or (ii) reasonably calculated to lead to the discovery of admissible evidence, including but not limited to all such ESI data generated by and/or stored on the party's computer system(s) and/or any computer system and storage media (i.e., internal and external hard drives, hard disks, floppy disks, memory sticks, flash drives and backup tapes), under the party's possession, custody and/or control. The failure to comply herewith may result in appropriate sanctions or such other relief as the court may be authorized to impose or award, including but not limited to precluding use of evidence, taking adverse inferences, and/or rendering judgment in whole or part against the offending party(ies).

(d) (i) When ESI is produced, it shall be produced on appropriate electronic media (i.e. CD, DVD or portable hard-drive) in the following format(s), as may be agreed:

___ Digital images endorsed with numbers and confidentiality legends, searchable text and agreed-to metadata fields with regard to the following data:

___ Native Format with metadata intact and, as appropriate under the circumstances, endorsed with numbers and confidentiality legends with regard to the following data:

___ The following format, as agreed by the parties, with regard to the following data:

(ii) In the absence of an agreement by the parties, the court shall direct the manner of production upon application of the party(ies).

(e) Issues with regard to cost shifting shall be brought to the attention of the Court as soon as practicable.

(7) CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT:

(a) In the event that there is a need for a Confidentiality/Non-Disclosure Agreement prior to disclosure, the party(ies) demanding same shall prepare and circulate the proposed agreement. If the party(ies) cannot agree as to same, they shall promptly notify the Court. The failure to promptly seek a confidentiality agreement may result in a waiver of same.

(b) _____ **320** _____ anticipates the need for a

Confidentiality Agreement as to the following issues: _____

(8) DISCOVERY - RELATED DISPUTES:

Issues relating to disclosure shall be resolved between counsel without Court intervention whenever possible. If Court intervention becomes necessary, a conference call may be arranged with the Judge or Law Clerk pursuant to Kings County Commercial Division Rule 18 and must take place prior to any motions being made.

(9) INSURANCE COVERAGE (IF APPLICABLE): _____

(10) IMPLAIDER: Shall be completed on or before _____

(11) END DATE FOR ALL DISCLOSURE: _____

(12) ALTERNATIVE DISPUTE RESOLUTION:

Requested

Declined

(13) COMPLIANCE CONFERENCE: Shall be held on _____

(14) NOTE OF ISSUE: A note of issue/certificate of readiness shall be filed on or before _____. Failure to file a note of issue by this date may result in the dismissal of this action.

(15) MOTIONS: Any dispositive motion(s) shall be made returnable on or before _____

(16) FINAL SETTLEMENT CONFERENCE: A final settlement conference, at which the parties must be present, shall be held on _____

THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED OR MODIFIED EXCEPT WITH APPROVAL OF THE COURT.

IN THE EVENT OF NON-COMPLIANCE WITH THE TERMS OF THIS ORDER, COSTS OR OTHER SANCTIONS MAY BE IMPOSED, INCLUDING PRECLUSION OF EVIDENCE.

IF A SETTLEMENT IS REACHED, THE COURT SHALL BE PROMPTLY NOTIFIED AND A COURTESY COPY OF THE STIPULATION OF DISCONTINUANCE SHALL BE PROMPTLY FORWARDED TO THE COURT. PLAINTIFF IS RESPONSIBLE FOR FILING THE STIPULATION WITH THE COUNTY CLERK AND SHALL PAY THE FEES UNLESS OTHERWISE AGREED BETWEEN THE PARTIES AS PART OF

THE WRITTEN STIPULATION.

Commercial Division - NY Supreme Court

Kings County - Brooklyn

Biography of Justice Carolyn E. Demarest

JUSTICE CAROLYN E. DEMAREST received her B.A. from New York University and her J.D. from New York Law School, where she served on the Editorial Board of the Law Review. She began practice in 1972 as an associate with a large corporate law firm in the private sector. Justice Demarest served for seven years as Assistant Chief of the Appeals Division of the New York City Law Department prior to her interim appointment by Mayor Koch to the Civil Court of the City of New York in 1983. In 1985, Mayor Koch appointed Justice Demarest to the Family Court of the State of New York, where she continued to serve until her appointment to the Supreme Court by Governor Cuomo in 1990. In 1991, Justice Demarest was elected to the Supreme Court. As a Supreme Court Justice, Justice Demarest has been assigned to both criminal and civil IAS Parts, and has presided over a wide diversity of cases, including torts, commercial, matrimonial and medical malpractice cases. She is one of the Judges designated to handle capital and complex cases in the Criminal Term.



Since 1989, Justice Demarest has served on the Civil Law and Skills Curriculum Committees for the annual Judicial Seminars and is the editor and an author of the Kings County Criminal Term Manual. She is also a frequent lecturer for State Bar Association CLE courses and was a member of the New York State Bar Association Task Force on CLE. Justice Demarest is one of two Justices designated to develop and preside over the Commercial Division in Kings County, which opened in December 2002.



Commercial Division - NY Supreme Court

Kings County - Brooklyn

Chambers and Part Information - Justice Schmidt

Part Information

Kings County Commercial Division
Courtroom 541
360 Adams Street
Phone: 347-296-1584

Part Clerk: Maura Alliano

Motions: Weekday 9:30 am
Conferences: Weekday 9:30 am

Chambers Information

360 Adams Street
Room 1066
Brooklyn, NY 11201

Law Secretary: Brad Coven
Assistant Law Clerk: Michael Ehrenreich

Chambers Phone: 347-296-1501
Fax: 718-643-7830



Web page updated: September 3, 2014

Commercial Division - NY Supreme Court

Kings County - Brooklyn

Biography of Justice David I. Schmidt

JUSTICE DAVID I. SCHMIDT received his B.A. from Brooklyn College and J.D. from Brooklyn Law School. He was a law secretary for eleven years to Hon. Gerard Rosenberg and was elected judge of the civil court in 1995. In 2000, Justice Schmidt was appointed an acting Supreme Court Justice by the Chief Administrative Judge and in 2006 he was elected Justice of the Supreme Court, Second Judicial District. Justice Schmidt currently presides over the settlement conference part, city settlement conference part, non-jury trial readiness part, IAS part 47 and commercial part.



Commercial Division - NY Supreme Court

Kings County - Brooklyn

Chambers and Part Information - Justice Solomon

Part Information

Kings County Commercial Division
Courtroom 424
360 Adams Street
Brooklyn, NY 11201
Phone: (347) 401-9053

Part Clerk: Christopher Sullivan

Motions: Thursday 9:30 A.M.
Conferences: Thursday 9:30 A.M.

First Calendar Call: 9:45 A.M.
Second Calendar Call: 10:45 A.M.

Chambers Information

360 Adams Street
Room 1123E
Brooklyn, NY 11201
Phone: (347) 296-1495
Fax: (718) 643-4861

Law Clerk: David Pepper



Web page updated: September 18, 2014

Civil Term - Part 38

Motions

1. Motions shall be heard every Thursday in Room 424, in 360 Adams Street. The calendar call is at 9:45 A.M. promptly. The Second Call is at 10:45 A.M. promptly. There is no check in procedure for the part. Motions that have not been previously adjourned or appropriately answered on the call, may be marked off, or a default may be entered, as appropriate. Counsels are advised that if a motion has been marked ready on the second call and no one appears to argue the motion when it is called to be heard, default may be taken against the party that answered ready and then failed to appear.

2. No courtesy copies of motion papers are to be filed with Chambers or the Courtroom, unless the action is subject to e-filing. A courtesy copy of all e-filed papers must be filed with the Part Clerk in the Courtroom.

3. Motion papers, answering affidavits and reply affidavits must be served on adversaries as per CPLR 2214.

4. All motions require appearances and oral arguments.

5. Motions may be adjourned twice upon consent of the parties or upon application to the Court. A confirmation, in stipulation form, is to be faxed to Chambers at 718-643-4861. Any further adjournments must be with the consent of the Court.

6. Summary judgment motions must be made within sixty (60) days of the filing of the note of issue.

7. Motions to either seek or enforce discovery may not be made without court approval.

8. Proposed orders to show cause must be brought to the Ex Parte Motion Support Office for review prior to submission to the part. Fees as required by law must be paid to the County Clerk prior to submission.

Trials

1. Marked Pleadings. Prior to trial, counsel shall furnish to the Court marked pleadings pursuant to CPLR Section 4012.

2. Exhibits. Counsel shall pre-mark all exhibits in the order which they intend to introduce them at trial. A list of the exhibits shall be provided to the Court prior to trial. Plaintiffs will number their exhibits and defendants will letter their exhibits. On the day of trial the exhibits and the list will be given to the Court reporter who will officially mark them before trial.

3. Witnesses. Prior to trial, Counsel shall provide to the court a list of potential witnesses in order in which they intend to call them at trial, including expert witnesses, their expertise, and summary of expected trial testimony.

4. Motions in Limine. Any potential evidentiary question or procedural or substantive law matter not previously adjudicated shall be brought to the Court's attention and addressed prior to trial by way of a written or oral motion in limine. A written memorandum of law with citations to the Official Reports is strongly encouraged; citations and copies of relevant court decisions and statutes should be furnished to the Court prior to commencement of plaintiff's case and when otherwise requested by the Court.

5. Demonstrative evidence is not permitted without first obtaining permission of the Court.

6. No electronic media devices will be permitted absent express permission from the Court. Request should be made to the Court in writing and the reasons for the request must be clearly stated.

7. Depositions. A copy of depositions intended to be used at trial should be furnished to the Court at the commencement of the trial.

8. Proposed Jury Charges and Verdict Sheets. All proposed jury charges and proposed verdict sheets shall be submitted to the Court in typed form no later than the close of plaintiff's case.

9. All materials used during the trial must be removed within 48 hours of the conclusion of the trial. All materials not timely removed will be discarded.

Civil Term - Commercial Part 10

1. Motions on in Commercial Part 10 will be called and heard in connection with the Part 38 motion calendar (see above) on Thursdays at 9:45 A.M. and 10:45 A.M. Counsels wishing to have a time slot for their motion to be heard should contact chambers at least 48 hours prior to the Calendar call.

2. A courtesy copy of all e-filed papers must be filed with the Part Clerk in the Courtroom.

3. Preliminary conferences and compliance conferences in Commercial Part 10 will be called immediately following the first and second call of the motion calendar and conferenced, as time permits, while motions are being heard.

4. The Part 38 Rules will apply to Commercial Part 10.

Commercial Division - NY Supreme Court

Kings County - Brooklyn

Biography of Justice Martin M. Solomon

JUSTICE MARTIN M. SOLOMON received his B.A. from SUNY Albany. He received his J.D. from New York Law School in 1975. He was hired by Senator Albert B. Lewis to open and run the Senator's first District Office. Justice Solomon was elected to the New York State Senate in 1978 and served until 1995. While in the State Senate, Justice Martin M. Solomon was the ranking member of the Insurance Committee and at various times, a member of the Banking, Judiciary and Health Committees. He was also a member of the Executive Committee of the National Conference of Insurance Legislators. Justice Solomon was in the private practice of law from 1976 to 1995. Justice Solomon was elected as a Judge of the Civil Court in 1995. In 2003, he was elected to the Supreme Court and in May 2012, was appointed by the Chief Administrative Judge to the Appellate Term for the 2nd, 11th and 13th Judicial Districts.



Web page updated: September 18, 2014

The Commercial Division
of The State of New York

KINGS COUNTY COMMERCIAL DIVISION RULES

GENERAL

- 1. The following rules are intended to supplement the Statewide Standards and Rules for the Commercial Division, which are applicable in Kings County. Counsel are expected to comply with all Statewide Rules as well as those promulgated herein.**

- 2. Attention is drawn to the recent modification of the monetary threshold by Administrative Order dated March 26, 2007. Effective March 26, 2007, the monetary threshold for cases in the Kings County Commercial Division has been raised from \$50,000 to \$75,000.**

- 3. Any party requesting a preliminary conference must annex a copy of the pleadings to the RJL when the request is filed with the court.**

- 4. Other than as expressly provided in the Rules of the Commercial Division, the Court will not accept or entertain letter applications for substantive relief. Unless directed by the Court, no communications are to be FAXED to Chambers other than stipulations of adjournment in compliance with these Rules and PC Orders prepared in conformity with Rule 7 herein.**

- 5. Courtesy copies should not be submitted unless requested or as herein provided. However, courtesy copies of all motion papers and proposed orders shall be submitted in cases in the court's Filing by Electronic Means Systems.**

CONFERENCES

- 6. Preliminary Conferences. All preliminary and compliance conferences will be held on Wednesdays at 9:45 a.m. unless otherwise directed by the Court. The conference calendar will be called after the first call of the motion calendar.**

- 7. Online Preliminary Conference Orders. Preliminary Conference Orders may be entered on consent of the Court and all parties by printing and filling out the Preliminary Conference Form posted on the Kings County Commercial Division website. Following a conference call with the Court, the PC Order, executed by all parties, must be faxed to Chambers two days prior to the date scheduled for the PC conference. Failure to timely comply with the procedural constraints herein**

will require an appearance on the scheduled date.

8. Prior to appearing for a preliminary conference, counsel should confer with clients so that schedules can be set for discovery.

9. **Adjournment of Preliminary Conference.** Adjournment of a preliminary conference may be requested by submission of a written stipulation at least two business days prior to the scheduled date. Stipulations must be accompanied by a cover letter explaining the reason for the adjournment. The adjournment of a conference is at the discretion of the Court and may be permitted for good cause shown. No preliminary conference shall be adjourned more than once or for more than 30 days. Fax numbers for all counsel must be provided in the cover letter or the stipulation. Any requests for further adjournments will be entertained only under the most compelling circumstances and must be made via a telephone conference call with the Court in which all parties participate.

10. Adjournments of any other conferences are permitted for good cause with the approval of the Court on written stipulation of all parties submitted at least two business days prior to the scheduled date of the conference.

Stipulations may be faxed to the Judges' Chambers. Fax numbers may be found on the Kings County Commercial Division website under the Judges' Part and Chambers Information.

MOTIONS

11. The Court will entertain motions, as scheduled in the New York Law Journal and on E-Courts, on Wednesdays unless otherwise directed by the Court. Information on future court appearances is available on E-Courts (www.nycourts.gov/ecourts). All motions require appearances and oral argument. All responsive papers must be filed with the Motion Support Office or the Clerk of the Part at least two days before the scheduled date of the motion.

12. The first call of the motion calendar will be at 9:45 a.m. The second and final call will be held at 10:15 a.m.

13. An appearance by an attorney with knowledge of the case and authority to bind the party is required on all motions and conferences.

14. Upon the argument of a dispositive motion the Court will determine whether discovery shall proceed pending decision.

15. Motions for Summary Judgment. All summary judgment motions shall be accompanied by a Statement of Material Facts as set forth in the Uniform Rules, § 202.70(g), Rule 19-a.

16. Following argument and reservation of decision by the Court, no supplemental submissions will be accepted by letter or otherwise unless expressly authorized in advance. Uniform Rules, § 202.70(g), Rule 18.

17. Adjournment of Motions. Dispositive motions (made pursuant to CPLR 3211, 3212 or 3213) may be adjourned only with the court's consent. Non-dispositive motions may be adjourned by written stipulation no more than three times for a total of no more than 60 days unless otherwise directed by the court. Adjournments must be obtained at least two business days in advance of the return date except in the case of an emergency. Stipulations must be accompanied by a cover letter explaining the reason for the adjournment. Fax numbers for all counsel must be provided in the cover letter or the stipulation.

18. Disclosure Disputes. Parties must comply with Uniform Rules, § 202.70(g), Rule 14, regarding consultation among counsel prior to contacting the Court. If counsel are unable to resolve a dispute, the party seeking Court intervention shall send a letter to the Court, of no more than two pages, upon notice to all parties, describing the problem and the relief requested. Such letter may be answered within eight days by letter of no more than two pages, also on notice to all parties. The party requesting relief shall then contact Chambers to arrange a conference (preferably by telephone) to resolve such dispute. If no effort is made by counsel to schedule such conference, the Court will infer that the matter has been resolved and will take no action. The Court may order that a motion be made but no discovery motion will be entertained without prior compliance with this Rule.

19. The Kings County Commercial Division will strictly enforce Uniform Rules, § 202.70(g), Rules 6 and 17 relating to the form and length of papers submitted to the Court. Unless the Court has authorized a longer brief in advance, counsel are advised that briefs and affidavits in excess of 25 and 15 pages as specified in the Rules may be rejected.

**ORDERS TO SHOW CAUSE
TEMPORARY RESTRAINING ORDERS**

20. Orders to Show Cause are argued on the date indicated in the order unless otherwise adjourned with the consent of the court.

21. Where no affidavit of prejudice has been provided pursuant to Uniform Rules, § 202.70(g), Rule 20, notice of applications for Temporary Restraining Orders

contained in an Order to Show Cause must be given to opposing counsel, or parties if no attorney has previously appeared, at least six hours in advance of submission to the court and must contain a specific time and date of submission so as to afford an opportunity to appear. Proof of such notice (which may be by attorney's affirmation) must accompany the proposed Order.

22. Contested applications for TROs will not be heard after 4:00 p.m. absent extraordinarily compelling circumstances. [See Uniform Rules, § 202.70(g), Rule 20. Temporary Restraining Orders]

TRIALS

23. A firm trial date will be established at a final settlement conference to be held at the conclusion of discovery. The Court may direct the parties to appear at such conference.

24. At the final settlement conference a pre-trial conference will be scheduled in compliance with Uniform Rules, §202.70(g), Rules 25 to 33, to be held following the filing of a Note of Issue and approximately ten days in advance of the trial date. Trial counsel must appear. Pre-marked exhibits, pre-trial memoranda, requests to charge, witness lists, and in-limine applications duly served at least eight days in advance of the date of the pre-trial conference shall be provided at the pre-trial conference as required pursuant to Uniform Rules, § 202.70(g), Rules 25 to 33. Short and concise pretrial memoranda are preferred, containing a statement of the facts and issues of the case and the relevant principles of law with citations to controlling authority. Counsel must confer prior to appearance at the pre-trial conference so that exhibits that are not disputed can be identified and stipulated into evidence.

ALTERNATIVE DISPUTE RESOLUTION

25. In the interest of expediting prompt resolution of disputes at minimum expense to the litigants, a mediation program is available through the Kings County Commercial Division. Pursuant to Uniform Rules § 202.70(g)(3), the Court may direct counsel and the parties to participate in non-binding mediation. In Kings County, experienced former jurists, acting as JHO's, are available at no expense to the parties. Alternatively, Kings County has available a roster of trained practitioners willing to accept a referral from the Court for mediation, to whom you may be referred. Discovery continues pending mediation unless otherwise ordered by the Court.

**QUEENS COUNTY JUSTICES
AND LOCAL RULES**

Commercial Division - NY Supreme Court

Queens County

Chambers and Part Information - Justice Grays

Part 4 Information

Courtroom 66

Phone: 718-298-1214

Part Clerk: Ronald Fandrig

All motions are returnable in the Centralized Motion Part (CMP), Courtroom 25, Monday through Thursday at 2:15 pm, and Fridays at 11:00 am.

Chambers Mailing Address

New York State Supreme Court, Queens County

88-11 Sutphin Boulevard

Courtroom 66

Jamaica, NY 11435

Law Secretary: Nicole McGregor, Esq.

Secretary: Joann Lopresto

Phone: 718-298-1212

Web page updated: September 30, 2013

Commercial Division - NY Supreme Court

Queens County

Biography of Justice Marguerite A. Grays

Judicial Offices

Supreme Court Justice, Queens County, 2003 to 2016

Judge, Civil Court of the City of New York, Queens County, 2001 to 2002

Admission to the Bar

NYS, Appellate Division, Second Department, 1983

Education

J.D., Hofstra University School of Law

Web page updated: January 16, 2013

**Supreme Court, Queens County
PART RULES FOR ALL CASES**

**Justice Duane A. Hart
Part 18**

(1) Counsel, with knowledge of the case and with full authority to settle, enter into binding stipulations or try the case, must be present in Court to answer the motion calendar or trial calendar, where applicable. This applies as well to parties representing themselves in a *pro se* capacity.

Initial Motion Procedure

(2) ALL MOTIONS NOTICED TO BE HEARD ARE **RETURNABLE IN THE CENTRALIZED MOTION PART (CMP)**. All parties are required to comply with both the CMP Rules and the Part 18 Rules regarding “Motion Papers”. **The court may, in its discretion, consider motion papers submitted to the Part after motions have been marked “fully submitted” in CMP.**

(3) No motion relating to disclosure or a bill of particulars will be accepted without an affirmation of good faith as regulated by Uniform Rule 202.7.

(4) All initial motions filed and accepted in the CMP and assigned to Justice Hart shall be heard in Part 18 on a rescheduled date. That rescheduled date, which will be on a Wednesday at 9:30 A.M., is specified in the New York Law Journal publication of IAS assignments which appears in the Law Journal on the day after the original return date of the motion, or as soon as practicable thereafter.

(5) All stipulations and requests for adjournments filed in the clerk’s office for initial motions are granted only to the extent that the motion will be heard for all purposes in Part 18 on the rescheduled date in the Law Journal publication of the IAS assignment.

Motion Papers

(6) All motion papers submitted shall be in compliance with 22 NYCRR § 202.5, concerning papers filed with the court. In addition to the requirements of 22 NYCRR § 202.5, all pages are to be numbered and all paragraphs are to be numbered. **All exhibits are to be preceded by a numbered exhibit tab which protrudes from the stack of papers.** All submissions are to be securely fastened so as to prevent the papers from separating from each other and becoming lost. **FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION MAY RESULT IN REJECTION OF THE OFFENDING SUBMISSION.** The Motion Sequence Number must be on the first page of all submissions. Except in extraordinary cases, motions are to be limited to twenty pages.

Any party annexing a deposition transcript in excess of one hundred (100) pages as

an exhibit to a motion, shall submit such transcript on a disc, in lieu of paper, with the motion.

(7) For all **electronically filed** applications/responsive papers, including exhibits and memoranda of law, a hard copy must be submitted to the Part 18 Clerk in Courtroom 41 within three (3) business days of judicial assignment. Failure to comply with this requirement will result in the application being marked off, or, in the case of responsive papers, the application will be considered unopposed.

(8) Any party who files a motion and/or opposition thereto pursuant to the **NYS Courts Electronic Filing (“E-Filing”)** shall provide this Court with working copies of the documents filed electronically, which shall be submitted to the CMP Clerk on the first noticed return date of the motion. Each working copy shall include, firmly affixed thereto, a copy of the Confirmation Notice received from the NYSCEF site upon the electronic filing of such document (22 NYCRR § 202.5-b(d)(3)(ii)).

**FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION
MAY RESULT IN REJECTION/DENIAL OF THE OFFENDING SUBMISSION.**

Subsequent Motion Procedure

(For motions rescheduled after submission in CMP)

(9) Rescheduled motion day, Wednesday at 9:30 AM.

Unless otherwise directed by Justice Hart, all motions shall be heard in Part 18, Room 41, on the above specified day and time of the week and subject to the following procedures.

(10) The moving papers, with an affidavit of good faith where required by Uniform Rule 202.7, shall be filed with CMP by following its procedures and as required by law.

(11) The motion will be heard for all purposes in the Part on the rescheduled date. On that date, the motion will either be orally argued, conferenced by Justice Hart or his designee, or otherwise treated pursuant to the discretion of the Justice. (Rulings on applications will also be made at this time.) Courtesy copies of moving papers need not be provided.

(12) Mandatory appearance is required for counsel for all parties and *pro se* litigants on all dates, unless otherwise directed by Justice Hart or his designee. Adjournments may be sought only by application to Justice Hart in open court and not by consent of counsel. Service representatives and non-attorneys will not be permitted to make applications. A preliminary conference order may issue in full or partial disposition of the motion and/or cross motion.

(13) Orders to show cause must comply with Uniform Rule 202.7 (d) and be brought to the *Ex Parte* Support Office (Room 140) prior to judicial review, signature, and fixing of a return date. Appearance requirements for orders to show cause are the same as listed for all other motions.

(14) Prior notice to chambers are not required to bring a motion in IAS Part 18. Counsel shall not call Chambers to check on the status of any motion.

(15) A preliminary conference will only take place (1) after a written Request for a Preliminary Conference accompanied by an affirmation of good faith is filed with the clerk's office (Room 140) in compliance with Uniform Rule 202.56, 202.16 and 202.60), or upon a specific directive of Justice Hart.

Settlements and Discontinuances

(16) If an action is settled, discontinued or otherwise disposed of, counsel shall immediately inform the court by submission of a copy of the stipulation or a letter directed to the Clerk of the Part. All stipulations of discontinuances must be accompanied by proof of payment of the appropriate fee. (CPLR § 8020(d)(1)).

Compliance Conferences

For all Non-Commercial Division cases, compliance conferences shall be held on the date scheduled in the Preliminary Conference Stipulation and Order. Conferences shall be held before Justice Martin Ritholz in Room 313.

(17) For all Commercial Division cases, compliance conferences shall be held on the date scheduled in the Preliminary Conference Stipulation and Order. Conferences shall be held before Justice Hart in Courtroom 41. The call of the calendar will be held at **9:30 AM**.

Trials

Matters assigned to this Part will be tried, to the extent possible, in chronological order. Trial dates will be set as far in advance as practicable.

Inquiries

All inquiries as to the case or calendar status shall be made to the appropriate clerk's office. The only inquiries to be made directly to the Chambers or the Part should be those involving the immediate exercise of judicial discretion.

Commercial Division - NY Supreme Court

Queens County

Chambers and Part Information - Justice Kitzes

Part 17 Information

Courtroom and Chambers Location
88-11 Sutphin Boulevard - Room 116
Jamaica, NY 11435

Chambers Mailing Address

Supreme Court of the State of New York
Commercial Division
County of Queens

Justice Orin R. Kitzes
88-11 Sutphin Boulevard - Room 116
Jamaica, NY 11435

Law Secretary: Cassandra Johnson, Esq.

Secretary: Sheila Hannigan
Part Clerk: John Sullivan

Chambers: 718-298-1003
Courtroom: 718-298-1002
Fax: 917-522-8621

Web page updated: July 15, 2013

Part Rules for Justice Kitzes
Part 17

Preliminary Conference

A preliminary conference shall be scheduled (1) automatically by the court within 45 days after filing a request for Judicial Intervention, pursuant to 22 NYCRR 202.12(b), or (2) upon filing a written Request for a Preliminary Conference with the Clerk's Office (Room 140) in compliance with 22 NYCRR 202.12(a) or an appropriate notice is filed in malpractice or certiorari cases pursuant to 22 NYCRR 202.56 and 202.60.

All Preliminary Conferences will be held on THURSDAYS at 9:30 a.m at the Preliminary Conference Part, Room 307 of the Courthouse, and they are presided over by the court-appointed referee, unless otherwise directed by the court. Failure to appear at the scheduled preliminary conference may result in discovery being ordered ex-parte or any other appropriate sanction including preclusion or dismissal ordered. Contact the Preliminary Conference Part at (718) 298-1046, not chambers.

Compliance Conference

For all Non-Commercial Division cases, Compliance Conferences shall be held on the date scheduled in the Preliminary Conference Stipulation and Order. Conferences shall be held before Justice Ritholtz in Courtroom 313.

For all Commercial Division cases, Compliance Conferences shall be held on the date scheduled in the Preliminary Conference Stipulation and Order. Conferences shall be held before Justice Kitzes in Courtroom 116.

Pre-Trial Conference

Counsel attending the conference must be fully familiar with and authorized to settle, stipulate, and dispose of the action(s).

Motion Practice

The motion calendar will be called every WEDNESDAY at 9:30 a.m. promptly. A second call will follow immediately thereafter. No courtesy copies to chambers are required EXCEPT IN THE CASE OF E-FILED MOTIONS.

All motions and applications are to be submitted on papers only, except those relating to any phases of discovery and/or bills of particulars, including motions to strike or restore a case from trial calendar, which require personal appearance by counsel for all parties. If the application is an Order to Show Cause then all parties MUST appear (movant must submit Affidavit of Service to Part Clerk) on the return date. Counsel should be prepared to discuss and agree upon a discovery schedule.

Oral argument will be entertained only in the Court's discretion.

Use of calendar service is permitted both to submit papers and to request counsel adjournments, which will be limited to two. The first adjournment on consent will be allowed on papers, thereafter attorneys seeking a further adjournment must appear.

Do not call the Part or Chambers for adjournments as **NO ADJOURNMENTS WILL BE GRANTED ON THE TELEPHONE**. The Court will not consider papers sent to Chambers or to the Part after submission.

The members of the Bar should make every effort to notify their adversaries and co-counsel of all applications for adjournments in advance.

The Court requests that any attorney appearing on a case for any purpose must be familiar with the case, ready and authorized to resolve any and all issues.

Electronic Filing of Legal Papers

Electronic filing is available for filing legal papers with this Court. Parties interested in electronic filing should read the materials set forth at www.nycourts.gov/efile. The rules and User's Manual for electronic filing are available on this web site. Courtesy copies to chambers are required **IN THE CASE OF E-FILED MOTIONS**.

Inquiries

All inquiries as to case or calendar status are to be made to the appropriate Clerk's office.

IAS Motion Support Office (718) 298-1009

Ex Parte Support Office (718) 298-1018

Trial Term Office (718) 298-1021

Commercial Division - NY Supreme Court

Queens County

Biography of Justice Orin R. Kitzes

JUSTICE ORIN R. KITZES graduated from Brooklyn Law School in 1964 receiving his LLB degree. In 1967 he received a LLM degree from Brooklyn Law School.

After law school he practiced law in Manhattan specializing in commercial matters and civil litigation. In 1973 he was appointed Law Secretary to Hon. Israel Rubin and held this position with Justice Rubin in the Civil and Supreme Courts in Bronx and New York Counties.

In 1987 Justice Kitzes was appointed as a Housing Court Judge of the Civil Court assigned to New York County. In 1989 he was elected to the Civil Court, Queens County.

From 1993 to 1994 he was appointed by the Chief Administrative Judge as an Acting Supreme Court Justice. He was thereafter elected to the Supreme Court, Queens County in 1995 .

Justice Kitzes is one of two Justices designated to preside over the Commercial Division in Queens County, which opened in 2005.

Web page updated: April 22, 2013

I.A.S Part 26
Commercial Division Part D

JUSTICE MARTIN E. RITHOLTZ
Courtroom 313
(718) 298-1093

COMMERCIAL DIVISION PART D RULES

Counsel should be familiar with *22NYCRR202.70-Rules* of the Commercial Division of the Supreme Court.

Pursuant to *22NYCRR202.70, Rule 1(a)*, counsel who appear in the Commercial Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. Counsel should also be prepared to discuss any motions that have been submitted and are outstanding. Failure to comply with this rule may be regarded as a default and dealt with appropriately (*see 22NYCRR202.70, Rule 12*).

MANDATORY PRE CONFERENCE CONSULTATION BETWEEN THE PARTIES

Pursuant to *22NYCRR202.70, Rule 8(a)*, all parties shall consult prior to a Preliminary or Compliance Conference about (1) resolution of case; (2) discovery and other issues, including anticipated electronic discovery issues pursuant to *22NYCRR202.70, Rule 8(b)*, and; (3) the possible use of alternative dispute resolution (*22NYCRR202.70, Rule 3; Queens Supreme Court ADR Rules, dated 9/17/13*). Counsel shall make a good faith effort to reach an agreement on these matters in advance of the conference.

PRELIMINARY CONFERENCE

A Preliminary Conference shall be held within 45 days of the assignment of the case to this Part (*22NYCRR202.70, Rule 7*).

All Preliminary Conferences will be held on Tuesday, at 11:30 a.m. at the Preliminary Conference Part, Room Number 3002, of the courthouse, and they are presided over by the court-appointed referee, unless otherwise directed by the Court. Failure to appear at the scheduled preliminary conference may result in discovery being ordered ex-parte, or any other appropriate sanction, including preclusion, dismissal, or striking of an answer (*22NYCRR202.70, Rule 12*).

Any inquiry pertaining to preliminary conferences shall be made to the Preliminary Conference Part at (718) 298-1046.

COMPLIANCE CONFERENCES

Compliance Conferences shall be held on the date scheduled in the Preliminary Conference Stipulation and Order. Conferences shall be held before the Honorable Martin E. Ritholtz in courtroom 313 on Friday, at 9:30 a.m.

The Purpose of the Compliance Conference is to monitor the progress of discovery, explore potential settlement and set a deadline for the filing of a Note of Issue (*22NYCRR202.19 (b)(3)*). Where appropriate, the order will contain; (1) directions for submission to the alternative dispute resolution program; (2) a schedule for dispositive motions and ; (3) resolution of the following electronic discovery issues, inter alia, (i) identification of potentially relevant types or categories of electronically stored information (“ESI”) and the relevant time frame; (ii) disclosure of the applications and manner in which the ESI is maintained; (iii) identification of potentially relevant sources of ESI and whether the ESI is reasonably accessible; (iv) implementation of a preservation plan for potentially relevant ESI; (v) identification of the individual(s) responsible for preservation of ESI; (vi) the scope, extent, order, and form of production; (vii) identification, redaction, labeling, and logging of privileged or confidential ESI; (viii) claw-back or other provisions for privileged or protected ESI; (ix) the the scope or method for searching and reviewing ESI; (x) the anticipated cost and burden of data recovery and proposed initial allocation of such costs; and (xi) designation of experts (*NYCRR202.70, Rule 8(b) and Rule 11(a)*).

There will be no adjournments of Compliance Conferences whatsoever.

DISCLOSURE DISPUTES

Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure (*NYCRR202.7, 202.70, Rule 14*). If counsel are unable to resolve any disclosure disputes in this fashion, the aggrieved party shall contact chambers at (718) 298-1089, to schedule a telephone conference with the Court, in a good faith effort to resolve the dispute.

ADVANCE NOTICE OF MOTIONS

Not ONLY disclosure disputes, but any issues, including dispositive and substantive ones, must be addressed *by a telephone or in-person conference*, in accordance with 22NYCRR202.70, Rule 24(a), as a pre-motion conference, so as to afford the Court the opportunity to resolve these issues before motion practice ensues. If the matter cannot be resolved, the Court shall set forth a strict briefing schedule for the service of moving and opposing papers.

MOTIONS

ALL MOTIONS shall be made returnable in the Centralized Motion Part (CMP). Parties are required to comply with the CMP rules. All inquires regarding such motions shall be made to the Centralized Motion Part Office at (718) 298-1728.

Any party who files a motion and/or opposition thereto pursuant to the **NYS Courts Electronic Filing (“E-filing”)**, shall provide the Court with working copies of the documents filed electronically, which shall be submitted to the CMP Clerk on the first noticed return date of the motion.

PRE-TRIAL CONFERENCE

Counsel attending the conference must be fully familiar with and authorized to settle, stipulate, and dispose of the action(s).

SETTLEMENTS AND DISCONTINUANCES

If an action is settled, discontinued or otherwise disposed of, counsel shall immediately inform the Court by submission of a copy of the stipulation or a letter directed to the Clerk of the Part.

Judicial Directory

JUDGES OF THE TRIAL COURTS

Hon. Martin E. Ritholtz



Supreme Court, Queens County
88-11 Sutphin Boulevard
Jamaica, NY 11435
(718) 298-1089

Judicial Offices

Supreme Court Justice, Queens County, Elected, Second Department, Eleventh Judicial District, 2002 to 2015

Acting Justice, Supreme Court, Queens County, Appointed by Chief Administrative Judge Jonathan Lippman, 2000 to 2001

Judge, Civil Court of the City of New York, Queens County, Elected, Fifth Municipal District, 1996 to 2001

Other Professional Experience

Supreme Court, Queens County, Principal Law Clerk to Hon. Luther V. Dye, 1994 to 1995

Supreme Court, Queens County, Principal Law Clerk to Hon. Angelo Graci, 1990 to 1993

Supreme Court, Queens County, Principal Law Clerk to Hon. Eugene P. Bambrick, 1983 to 1989

Touro College, School of Law, Adjunct Professor of Law, 1984 to 1988

Supreme Court, Queens County, Principal Law Clerk to Hon. Martin Rodell, 1981 to 1982

Civil Court of the City of New York, Queens County, Law Assistant to Hon. Herbert A. Posner, 1978 to 1980

Ritholtz and Ritholtz, Esqs., Clerk, 1975 to 1978

S. Horowitz and Company, Tel Aviv, Israel, Clerk, 1974 to 1975

Justice Ministry, Jerusalem, Israel, Clerk, 1972 to 1974

Admission to the Bar

NYS, Appellate Division, Second Department, 1976

United States Supreme Court, 1980

United States District Court, Eastern and Southern Districts of New York, 1976

State of Israel, 1975

Education

LL.B., Hebrew University of Jerusalem School of Law, 1974

B.A., Columbia College, 1968

Publications

Editor, Queens Bar Bulletin, Queens County Bar Association, September, 1985 to Summer 1987

Professional & Civic Activities

Member of the Board of Directors, The Supreme Court Justices Association of the City of New York, 2004 to Present

Dean, Queens County Bar Association, Academy of Law, 1999 to Present

Chairman, Queens County Bar Association, Continuing Legal Education, 1988 to 1998

Vice President, Queens County, Board of Judges of the Civil Court of the City of New York, 1998 to 2001

Member of Nominating Committee, Queens County Bar Association, 1993 to 1995

Second Vice President, Association of Law Secretaries to the Justices of the Supreme and Surrogate's Courts, 1993 to 1995

Member of Alumni Representative Committee, Columbia College, 1986 to Present

President, Brandeis Bar Association, 1986 to 1986

Web page updated: November 25, 2014

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF QUEENS COMMERCIAL DIVISION

PREAMBLE

Queens Supreme Court encourages the use of alternative dispute resolution (“ADR”) methods to encourage the early resolution of matters and avoid protracted litigation. The Commercial Division has devised a program by which cases in the division may be referred by the assigned commercial judge, the Administrative Judge, or by consent of the parties to mediation. Mediation is a confidential and informal process where the parties meet with a Neutral third party to identify issues and explore options that may result in a mutually acceptable resolution. Unlike litigation, the Mediator does not make a determination, but instead assists the parties in creating their own resolution of the issues. While there is no obligation to settle the case through mediation, many cases often result in a written stipulation between the parties. However, if the parties are not able to resolve their dispute through mediation, the matter will proceed before the assigned Justice.

All parties whose cases are sent to the mediation program may choose to use the services of a private ADR of their own choosing as an alternative to the mediation program. If the parties consent to the use of the court’s mediation program, they may later terminate the process and choose to submit to an alternative ADR program.

The following Rules shall govern all cases sent to the ADR program of the Commercial Division by the Justices assigned to the Commercial Division, the Administrative Judge, or referred upon the consent of the parties.

Rule 1. The Program: The Commercial Division of the Supreme Court of the State of New York, County of Queens, operates the Alternative Dispute Resolution Program (“the Program”). The Program shall apply to cases referred by the Justices assigned to the Commercial Division, the Administrative Judge of Queens Supreme Court, Civil Term, and commercial cases referred by the consent of the parties to the extent that the Program can accommodate them. These Rules shall govern all cases so referred.

Rule 2. Administration of the Program: The Program shall be supervised by the Principal Law Clerk for the Administrative Judge of Queens Supreme Court, Civil Term, who shall act as the Program Administrator. The conduct of ADR proceedings shall be coordinated by the Program Administrator.

Rule 3. The Panel: The Administrative Judge shall establish and maintain a roster of Mediators (“the

Roster”) who shall serve and be compensated in accordance with the Rules unless the parties stipulate otherwise.

- (1) In order to be eligible to serve as a Mediator and be included on the Roster, one must:
 - (a) have been admitted to practice law as an attorney in New York State, and;
 - (b) be in full compliance with the requirements of Part 146 of the Rules of the Chief Administrator. All training must be from an OCA-sponsored or OCA-recognized training program, and;
 - (c) have any other mediation training or experience deemed appropriate by the Administrative Judge. Applicants to the panel lacking sufficient experience in mediating actual cases in commercial matters will be required to participate in at least one commercial mediation session with an experienced member of the Program’s Roster of Mediators.
 - (d) Mediators shall provide the first three-hour mediation free of charge. Mediators shall not charge for time preparing for the first initial session.
 - (e) After the first free session, the parties shall compensate the mediator at a rate of \$300 per hour, unless the parties and the mediator otherwise agree in writing. The mediator’s fees and expenses shall be borne equally between the parties unless otherwise agreed to in writing.
 - (f) Every member of the Roster, and any other person who serves as a Mediator pursuant to these Rules, shall comply with the Code of Ethical Standards for Mediators of the Commercial Division. Continuing presence on the Roster is subject to review by the Administrative Judge. Mediators may be removed from the Roster at the discretion of the Administrative Judge in consultation with the Unified Court System Office of the ADR Programs.
 - (g) The Roster will be available through the Program Administrator, located in the Administrative Judge’s office in Queens Supreme Court or on the Commercial Division website (at <http://www.nycourts.gov>).

Rule 4. Procedure for Submission to the Program:

- (a) Cases shall be referred to ADR as soon after commencement as practicable. Cases may be sent to the Program by the Commercial Division Justices, the Administrative Judge or by consent of the parties in writing. The assigned Justice shall issue an Order of Reference requiring that the case proceed to

ADR in accordance with these Rules. A case not deemed appropriate for referral initially may be later referred to the Program in the discretion of the assigned Commercial Division Justice. Unless otherwise stipulated by the parties, all cases referred to the Program shall be mediated.

- (b) The Justice shall submit the Order of Reference to the Program Administrator. Upon receipt of the Order of Reference, the Program Administrator will randomly assign a Mediator chosen from the Roster.
- (c) Upon assigning a Mediator, the Program Administrator will forward the Order to the parties and advise the parties of the name and contact information of the Mediator. The Program Administrator will also send the ADR Initiation Form to the parties, which requires the names and contact information for all parties and/or their counsel, as well as that of the Mediator, and contains additional provisions for confidentiality and immunity for the Mediator.
- (d) Within five (5) business days of receiving the Order, the parties must sign the ADR Initiation Form and return it to the Program Administrator. The parties must also consent to the appointment of the assigned Mediator. If either party does not consent to the assigned Mediator, that party must submit in writing a letter to the Program Administrator explaining the reason for the lack of consent. The Program Administrator will then randomly assign another Mediator to the mediation. If the parties stipulate to a private ADR proceeding, the parties must make arrangements for the proceeding. If a private ADR is chosen, the parties must report to the Program Administrator the name of the Mediator, contact information if not a member of the Roster and the date when the proceeding will be held.
- (e) It is the responsibility of the parties to contact the Mediator to make the necessary arrangements for the mediation within 5 days of the receipt of the ADR Initiation form.
- (f) **The initial mediation session must be conducted within forty-five (45) days from the date the Order of Reference was signed.** If there is a conflict with the scheduled date of the mediation, the parties and the Mediator shall agree on a convenient date for the initial session without contacting or involving the Program Administration. However, the new date must be within the above time frame. The parties and Mediator may also contact each other to resolve any preliminary matters without the intervention of the Program Administrator. In the event of extraordinary circumstances, the Mediator shall contact the Program Administrator, who will intervene only if necessary to expedite the process.

- (g) At least ten (10) days before the initial ADR session, the Mediator may request the parties provide to the Mediator a copy of the pleadings and a memorandum of not more than ten pages (unless otherwise agreed by the parties and the Mediator) setting forth that party's opinions as to the facts and the issues that are not in dispute, contentions as to liability and damages, and suggestions as to how the matter might be resolved. Except as otherwise agreed, this memorandum shall not be served by the parties on their adversary or be filed in court, shall be read only by the Mediator, and shall be destroyed by the Mediator immediately upon completion of the ADR proceeding. At no time should the parties provide the memorandum to the Program Administrator or the assigned Commercial Division Justice.
- (h) Unless the Mediator permits otherwise, every party and counsel must attend the initial ADR session in person. In the case of a corporation, partnership or other business entity, the party may be represented by an official who possesses full knowledge of the facts and issues and authority to resolve the matter. In addition, any participating attorney must be present at every session and also have full knowledge and authority to settle the matter.
- (i) At the conclusion of the initial ADR session, any party or the Mediator may opt to terminate the ADR proceeding. In such an instance, the Mediator shall immediately inform the Program Administrator of the termination. If termination is by one party's request, the Mediator must notify the Program Administrator but shall not indicate the identity of that party who chose to terminate the proceeding.
- (j) Within ten (10) days after the ADR proceeding has concluded, the Mediator shall complete the ADR Disposition Form indicating resolution or lack thereof and submit the Form, along with any written agreement, to the Program Administrator. If the parties entered into a written stipulation of settlement, the parties shall submit a stipulation of discontinuance to the assigned Commercial Division Justice and file the same with the County Clerk. If the parties do not resolve the matter, it will be returned to the assigned Justice. However, the Mediator must complete the ADR Disposition Form regardless of the result of the ADR proceeding.
- (k) The Program Administrator shall report to the assigned Commercial Division Justice at the conclusion of the proceeding whether the proceeding resulted in a resolution of the case in whole or in part.
- (l) If a party or counsel to a party fails to appear at an ADR session or otherwise comply with these Rules, the Mediator shall advise the Program Administrator in writing and specify the nature of the noncompliance. The

Program Administrator shall then report to the assigned Justice any violation of these Rules as indicated by a Mediator and provide a copy to the parties. The assigned Justice may hold a hearing to impose sanctions or take such other action as is necessary to ensure compliance with and respect for the court's Order and these Rules.

Rule 5. Confidentiality:

- (a) The mediation session(s) shall be confidential. All documents prepared by the parties or their counsel and any notes or other writing prepared by the Mediator in connection with the proceeding - as well as any communications made by the parties or their counsel for, during or in connection with the mediation shall be kept confidential by the Mediator and the parties and shall not be summarized, described, reported or submitted to the court by the Mediator or the parties. No party to the mediation shall, during the time the action is referred to mediation, or in any other legal proceeding, seek to compel production of documents, notes or the writings prepared for or generated in connection with the mediation, or seek to compel the testimony of any party concerning the substance of the mediation process. Any settlement, in whole or in part, reached during the mediation shall be effective only upon execution of a written stipulation signed by all parties affected or their duly authorized agents. Such an agreement shall be kept confidential unless the parties agree otherwise, except that any party thereto may thereafter commence an action for breach of this agreement. Documents and information otherwise discoverable under the Civil Practice Law and Rules shall not be shielded from disclosure merely because the documents and information are submitted or referred to in the mediation.
- (b) No party to an action referred to the Program shall subpoena or otherwise seek to compel the Mediator to testify in any legal proceeding concerning the content of the mediation. In the event that a party to an action that had or has been referred to the Program attempts to compel such testimony, that party shall hold the Mediator harmless against any resulting expenses, including reasonable legal fees incurred by the Mediator or reasonable sums lost by the Mediator in representing himself or herself in connection therewith. However, notwithstanding the foregoing and the provisions of Rule 5(a), a party or the Program Administrator may report to an appropriate disciplinary body any unprofessional conduct engaged in by the Mediator and the Mediator may do the same with respect to any such conduct engaged in by counsel to a party.
- (c) Notwithstanding the foregoing and, to the extent necessary, (I) the parties

may include confidential information in a written settlement agreement; (ii) the Mediator and the parties may communicate with the Program Administrator about administrative details of the proceeding; and (iii) the Mediator may make general reference to the fact of the services rendered by him or her in any action required to collect an unpaid authorized fee for services performed under these Rules.

Rule 6. Immunity of the Mediator: Any person designated to serve as a Mediator shall be immune from suit based upon any actions engaged in or omissions made while serving in that capacity, to the extent permitted by applicable law.

Rule 7. Stay of Proceedings:

- (a) Unless otherwise directed by the assigned Justice, referral to the ADR program will not stay the court proceedings in any respect.
- (b) Parties committed to the ADR process who conclude that additional time is required to fully explore the issues pertaining to their case may request a stay of proceedings. Regardless of whether a stay is granted by the assigned Justice, if informal exchange of information concerning the case will promote the effectiveness of the ADR process and the parties so agree, the Mediator shall make reasonable directives for such exchange consistent with any pre-existing disclosure order of the court and in compliance with the deadlines set forth herein.
- (c) If the matter has not been entirely resolved within the 45-day period as provided in these rules but the parties and the Mediator believe that it would be beneficial if the mediation were to continue, the process may continue but shall be completed within 90 days from the date of the Order of Reference. If further time is needed, the parties must seek specific authorization from the assigned Justice to permit the process to continue beyond 90 days.

Rule 8. Conflicts of Interest: In order to avoid conflicts of interest, any person assigned to serve as a Mediator shall, as a condition to confirmation in that role, conduct a review of his or her prior activities and those of any firm of which he or she is a member or employee. The Mediator shall disqualify himself or herself if the Mediator would not be able to participate as a Mediator fairly, objectively, impartially and in accordance with the highest professional standards. The Mediator shall also avoid any appearance of a conflict of interest. In the event that any potentially disqualifying facts should be discovered, the Mediators shall fully inform the parties and the Program Administrator of all relevant details. Unless all parties after full disclosure consent in writing to the service of that Mediator, the Mediator shall decline the appointment and another Mediator shall promptly be randomly assigned by the Program Administrator. Any such conflicts review shall include a check with regard to all parents, subsidiaries or affiliates of corporate parties.

Rule 9. Further ADR: After completion of the mediation, upon request of a party or upon the court's own initiative, the court may in its discretion issue an order directing a second referral to the Program. Any such referral shall be entertained and ordered as early as practicable, and such case shall proceed in accordance with these Rules.

Dated: September 17, 2013

PROGRAM ADMINISTRATOR

Maria L. Bradley, Esq.
88-11 Sutphin Blvd., Room 511
Jamaica, New York 11435
Tel: 718-298-1100
Fax: 718-298-1099
Email: mbradley@nycourts.gov

