

Amended: February 1, 2012

**INDIVIDUAL PRACTICES OF JUDGE P. KEVIN CASTEL**

**United States Courthouse  
500 Pearl Street  
New York, New York 10007  
web site: [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov)**

Unless otherwise ordered, matters before Judge Castel shall be conducted in accordance with the following practices:

**1. Communications with Chambers**

**A. Letters.** Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters may be sent to chambers via fax, (212) 805-7949, provided they do not exceed five pages in length. If a fax is transmitted to chambers, it should not also be mailed or delivered to chambers. Letters should not be filed on ECF.

**B. Telephone Calls.** For docketing, scheduling and calendar matters, call the Courtroom Deputy, Florence Nacanthaer, at (212) 805-0131 between 8:30 A.M. and 5:00 P.M. Telephone calls to chambers are permitted only in emergency situations requiring immediate attention, (212) 805-0262.

**C. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, the request (in a civil case) must attach a proposed Revised Case Management Plan and Scheduling Order (reflecting dates which are business days). If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance. Requests for adjournments should be transmitted to chambers and not filed on ECF.

**D. ECF.** Counsel for all parties, are required to register as ECF users in accordance with the Procedures for Electronic Case Filing and file a Notice of Appearance in each case.

**2. Motions**

**A.**

**1. Pre-Motion Conferences in Civil Cases.** For motions other than discovery motions in a civil case, a pre-motion conference with the court is required, except for motions described in Sub-paragraph A(2). To arrange a pre-motion conference, the moving party shall submit a letter not to exceed five pages in length setting forth in detail the basis for the anticipated motion and other parties may respond in a letter not to exceed five pages within three business days. The transmittal of a pre-motion letter for a proposed motion under Rule 12(b), stays the time to answer or move until further order of the Court. For

discovery motions, follow Local Civil Rule 37.2 Southern District, unless a different procedure has been ordered by the Court

**2. No Pre-Motion Conference Required.** Sub-paragraph A(1) above does not apply to any of the motions described in Rule 6(b), Federal Rules of Civil Procedure, Rules 4(a)(4)(A), Federal Rules of Appellate Procedure, or section 1447 of title 28 nor does it apply to motions brought on by order to show cause, motions by incarcerated pro se litigants, motions for a default judgment, motions for appointment of lead counsel under the PSLRA, motions for admission pro hac vice and motions for reconsideration or reargument. A pre-motion conference is not required before making such motions.

**B. Courtesy Copies.**

In both ECF and non-ECF cases, courtesy copies of all pleadings (e.g. complaint and answer) and all motions shall be submitted to chambers as soon as practical after filing, in accordance with the SDNY policies regarding mail deliveries. Courtesy copies should be marked as such on the first page.

**C. Memoranda of Law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

**D. Filing of Motion Papers.** Motion papers shall be filed promptly after service.

**E. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving, opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

**F. Summary Judgment.** The Local Rule 56.1(a)(2) Statement by the party opposing summary judgment shall set forth verbatim the text of each paragraph of the Local Rule 56.1(a)(1) Statement immediately preceding its response thereto.

**3. Procedures for All Civil Cases, except those designated as a “Complex Case” under the Standing Order of November 1, 2011 of Chief Judge Preska.** The following applies to all civil cases, except those designated as a “Complex Case” under the Standing Order of November 1, 2011 of Chief Judge Preska (if the case is so designated, it will appear on the docket sheet):

A. The parties will confer and prepare a proposed Case Management Plan and Scheduling Order and bring it with them to the Initial Pretrial Conference.

B. Unless otherwise ordered by the Court, within 30 days following completion of fact and expert discovery in a civil case, the parties shall submit to the Court for its approval a Joint Pretrial Order, that includes the information required by Federal Rule of Civil Procedure 26(a)(3), and the following:

i. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.

ii. A brief summary by each party of the claims and defenses that the party has asserted which remain to be tried, without recital of evidentiary matter, but including citations to all statutes relied on. Any claim or defense not so identified is deemed withdrawn.

iii. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

iv. A page and line designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

v. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

vi. A statement confirming that trial counsel have met and conferred face-to-face with a view towards reaching stipulations of fact and setting forth the content of any stipulation.

vii. A statement of the damages claimed and any relief sought, including the manner and method used to calculate the claimed damages and a breakdown of its elements.

**B. Filings Prior to Trial in Civil Cases.** Unless otherwise ordered by the Court, the parties shall file with the Joint Pretrial Order:

i. In jury cases, proposed voir dire questions, verdict form and requests to charge;

ii. In non-jury cases, proposed findings of fact and conclusions of law;

iii. The parties are required to meet and confer regarding items i. or ii. and make a joint submission in areas where agreement is reached and separate submissions in areas where no agreement is reached. Unless otherwise agreed upon by the parties, the party with the burden of proof should prepare the initial draft in sufficient time for the other side to respond; only the final result of this meet and conferral process should be submitted to the Court. When feasible, items i. and ii. should be submitted, in addition to hard copy, on a 3.5" diskette or CD-Rom in Microsoft Word version Office 2000 or WordPerfect version 9 or higher format;

iv. Motions in limine addressing any evidentiary or other issues that should be resolved prior to empanelling a jury.

4. **Procedures for Cases designated as a “Complex Case” under the Standing Order of November 1, 2011 of Chief Judge Preska.** An entry will appear on the docket if an action has been designated under the Standing Order of Chief Judge Preska filed as In re: Pilot Project Regarding Case Management Technique for Complex Civil Cases in the Southern District of New York, 11 Misc. 388 (November 1, 2011)(the “Standing Order”). If it has been so designated, counsel for the parties are expected to review the Report of the Judicial Improvements Committee (the “Report”) which is an attachment of the Standing Order and consider the matters therein. Prior to the Initial Pretrial Conference, the parties should confer on a case management plan and proposed scheduling order and should, as a starting point, utilize the “Civil Case Management Plan For Complex Cases” available on the Court’s website under the undersigned’s name. For good cause shown, the parties may request that the Court exempt the case from the Pilot Project.

**Justice Barbara R. Kapnick**  
New York State Supreme Court  
Commercial Division  
60 Centre Street, Courtroom 208  
New York, NY 10007  
Part Clerk/Courtroom Phone: 646.386.3275  
Chambers Phone: 646.386.3226  
Fax: 212.401.9154

**PRACTICES IN PART 39**

**GENERAL**

1. These Practices supplement the Rules of the Commercial Division of the Supreme Court, 22 NYCRR 202.70.<sup>1</sup>
2. Counsel and litigants (represented or self-represented) are advised that Justice Kapnick and her Law Clerks will not engage in *ex parte* communications.
3. The Part Clerk is unable to accept deliveries between 1:00 and 2:00 p.m. or after 4:30 p.m.
4. Counsel must notify the Court, as soon as practicable, **by conference call or letter**, of any settlement or resolution of active cases or pending motions, so as to avoid the unnecessary use of Court resources on matters that are resolved or will imminently be resolved. \*In this regard, note the requirements of 22 NYCRR 202.70, Rule 2.

**ADJOURNMENTS**

1. All adjournments of Part 39 appearances (conferences, motions,<sup>2</sup> trials) require prior court approval. *Ex parte* applications for adjournments will **not** be considered.
2. Requests to **adjourn a conference**, in the first instance, shall be directed to the Part Clerk at 646.386.3275. Conferences will only be adjourned by **conference call with all parties or**

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<sup>1</sup> All parties or their counsel must familiarize themselves with the Commercial Division Rules, available at:  
<http://www.nycourts.gov/rules/trialcourts/202.shtml#70>.

<sup>2</sup> Parties must first determine whether the motion they seek to adjourn is scheduled for oral argument in Part 39 or is in the Submissions Part in Room 130.

**by stipulation.** If adjourning by stipulation, parties must first consult with the Part Clerk before selecting a new date for the conference. Applications to adjourn a conference shall be made **at least 24 hours** in advance of the scheduled conference.

3. To **adjourn a motion that is scheduled for oral argument,** all parties must contact **Chambers** at 646.386.3226 on a **conference call with all parties** on the line. Applications for adjournment shall be made **at least 48 hours** in advance of the scheduled oral argument.
4. To **adjourn a motion that is in the Submissions Part** (Room 130):
  - a. If the parties wish to adjourn the motion for less than sixty (60) days the parties may adjourn by stipulation without an order from the Court. The stipulation must be electronically filed and filed in the Submissions Part on the return date of the motion.
  - b. If the parties wish to adjourn the motion for more than sixty (60) days from the original return date, then the parties must submit a stipulation of adjournment to the Court for approval.
    - i. Parties must deliver the proposed stipulation to the Court by electronic filing and facsimile.
    - ii. If approved, the So-Ordered version will be electronically filed, so that the parties may retrieve the signed order from the electronic filing system and present it to the Submissions Part on the return date.
5. To **adjourn a hearing or trial,** all parties must contact **Chambers** at 646.386.3226 on a **conference call with all parties** on the line. Applications for adjournments shall be made **at least 48 hours** in advance of the scheduled hearing or trial.
6. All Court approved stipulations to adjourn must be electronically filed by the parties and delivered to the Court by facsimile.

#### **ALTERNATIVE DISPUTE RESOLUTION**

1. If, at any point, the parties decide that they could benefit from the Commercial Division ADR program, they should write a

joint letter to the Court asking to be referred to ADR. In that letter, they should state whether they prefer that discovery be stayed or continue during the mediation process.

2. The Court may also choose to order parties to the Commercial Division ADR program without the parties' request or consent.
3. For more information regarding the ADR program please visit: [http://www.nycourts.gov/courts/comdiv/ADR\\_overview.shtml](http://www.nycourts.gov/courts/comdiv/ADR_overview.shtml).

### **CONFERENCES**

1. In-person discovery and pre-trial conferences are generally held on Wednesday mornings, or as otherwise scheduled by the Court. \*In this regard, note the requirements of 22 NYCRR 202.70, Rule 1(a) and (b), which provides as follows:

Rule 1. Appearance by Counsel with Knowledge and Authority.

(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 Rule 12.

(b) Consistent with the requirements of Rule 8(b), counsel for all parties who appear at the preliminary conference shall be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery. Counsel may bring a client representative or outside expert to assist in such discussions.

2. Conference calls are scheduled by the Court as needed. Parties wishing to schedule a conference call with the Court should do so by contacting Chambers at 646.386.3226 to arrange a mutually convenient time and date.

**CONFIDENTIALITY ORDER/SEALING DOCUMENTS**

1. Any order regarding the confidential exchange of information shall be based on the Proposed Stipulation and Order for the Production and Exchange of Confidential Information, prepared by the New York City Bar Association for use in the Commercial Division, available at the Bar Association's website at: <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf> (the "Model Form").
2. If the parties believe there is good cause to depart from the Model Form, they must submit their proposed stipulation and order, along with a red-lined version, indicating any departures from the Model Form.
3. Applications to seal documents shall include the nature of the document, reason for the sealing request and "good cause" therefor (22 NYCRR 216.1). The Court will consider the application to seal documents only by order to show cause or notice of motion.

**ELECTRONIC FILING**

1. All cases in Part 39 are required to be electronically filed through the New York State Courts E-Filing (NYSCEF) system. Attorneys are expected to familiarize themselves with NYSCEF procedures, which are available at the NYSCEF website, <https://iapps.courts.state.ny.us/nyscef/Login>. For more information on e-filing rules, parties may also visit: <http://www.nycourts.gov/courts/ljd/supctmanh/e-filing.shtml>.
2. Please note: Although all submissions to the Court are required to be electronically filed, please read these practices carefully to determine whether a specific submission must also be delivered by hard copy or facsimile.

**E-Track**

1. "eTrack" is a case tracking service that enables parties to track active Civil Supreme Court cases and to receive notice of scheduled appearances.
2. All parties or their counsel **must** be registered for the eTrack service for all Part 39 cases. To register or log-in please visit: <http://iapps.courts.state.ny.us/webcivil/etrackLogin>.



**FILING OF MOTION PAPERS**

1. When moving by **Notice of Motion**: In addition to electronically filing motion papers, counsel must submit only one hard copy set of all papers (a/k/a "Working Copies") to the Submissions Part in Room 130.
2. When moving by **Order to Show Cause**: In addition to electronically filing motion papers, counsel must submit one set of Working Copies to the Part Clerk in Part 39, 60 Centre St, Room 208, in accordance with the instructions in the signed Order to Show Cause.
3. **All** Working Copies of electronically filed documents, **must** be labeled with the corresponding **motion sequence number** on the front of every submission.
4. **All** Working Copies of electronically filed documents, **must** be bound and tabbed with exhibit tabs. \*Oral argument may be adjourned or delayed if the Court is not in receipt of properly bound and tabbed hard copies.
5. Memoranda of law **must** include a Table of Contents and Table of Authorities.

**FILING OF NON-MOTION PAPERS**

1. All correspondence to the Court by letter **must** be copied to all parties or their counsel. The Court will not consider any letter correspondence that does not indicate it has been copied to all parties.
  - a. Letters to the Court **shall not exceed three (3) pages in length** (excluding exhibits) absent prior Court approval.
2. All non-motion papers, including, but not limited to, proposed orders, stipulations and letters, but excluding pleadings and discovery demands and responses, must be e-filed **and** also delivered by either facsimile **or** filed in hard copy with the Clerk in Part 39, 60 Centre Street, Room 208.

**MOTION PRACTICE**

1. Orders to Show Cause with requests for temporary restraining orders, including requests for a temporary stay of an action, will generally not be heard *ex parte*. See 22 NYCRR 202.7(f); 22 NYCRR 202.70, Rule 20.

2. Commercial Division Rule 24 applies to a party wishing to make a *dispositive* motion after the RJI has been filed and before the Note of Issue has been filed, excluding motions filed at the time of the filing of the RJI.
3. Discovery disputes will, in the first instance, be dealt with in accordance with Commercial Division Rule 14. Motions regarding discovery disputes should only be made after Rule 14 has been complied with and at the direction of the Court.
4. Page limits specified in Commercial Division Rule 17 will be strictly enforced, unless permission to expand the page limits is granted in advance of the filing of the papers. Such permission will not be granted absent a showing of good cause.
5. Requests for *pro hac vice* admissions should be made by stipulation, if possible, or by motion.
6. Requests for Commissions should be made by stipulation, if possible, or by motion.

**TRIALS/EVIDENTIARY HEARINGS**

1. Counsel shall provide a list of exhibits that may be used at trial. Counsel shall pre-mark all the exhibits prior to trial. The exhibit list must state for each exhibit if that exhibit is agreed to or disputed by the parties as admissible evidence. Exhibits that are agreed to by the parties as admissible evidence will be entered into evidence without objection upon introduction at trial. Court exhibits must be labeled with roman numerals, plaintiff exhibits must be numbered and defendant exhibits must be lettered.
2. The parties shall provide the Court with one copy of exhibit books or any other documents to be offered into evidence.
3. Pre-trial memoranda of law, pre-trial orders and motions in limine are to be submitted at least seven (7) calendar days prior to the date of trial, unless otherwise advised by the Court.
4. All requests to set up audiovisual equipment in the Courtroom shall be directed to the Part Clerk in Part 39 at 646.386.3275.