

**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 inquiries 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

