

PROTOCOL FOR PROCESSING APPLICATIONS PURSUANT TO CPL 245.70 (6)

All orders to show cause (and their supporting papers) seeking review pursuant to CPL 245.70 (6) and 22 NYCRR 731.15 shall either be presented in person at the Clerk's Office at 141 Livingston Street (15th Floor), Brooklyn, New York, or e-mailed in pdf format to the Clerk's office at AT2CLERK@nycourts.gov . No such applications shall be presented to, or accepted by, individual justices or their chambers, and only those applications which are presented to the Clerk's Office at 141 Livingston Street (15th Floor) or e-mailed will be determined on their merits. If the papers in support of the application are e-mailed, the movant shall supply one hard copy thereof by filing same with the Clerk's office on or before the day prior to the return date at 10 a.m. Counsel (or the party) should use the form order to show cause available on the Court's website, and must complete and file an *Informational Statement* (also on the Court's website).

The proposed order to show cause (hereinafter the OSC) and supporting documentation shall be reviewed by a member of the Court's legal staff to ensure that the statute has been complied with in that:

- (1) The protective order sought to be reviewed relates to the name, address, contact information or statements of a person,
- (2) The application was presented to the Court within two days of the ruling sought to be reviewed,
- (3) The proposed order to show cause contains a provision for service upon the adverse party OR that the underlying application was not served upon that party and the supporting application asserts that there is good cause for omitting service of the OSC upon that party and presents an argument in support of the assertion,
- (4) The OSC is supported by a sworn affirmation (or affidavit) which contains a statement, represented to be made in good faith that (a) the ruling affects substantial interests and (b) diligent efforts to reach an accommodation of the underlying discovery dispute with opposing counsel (or party) failed or that no accommodation was feasible, which statement is supported by an argument in support of these assertions, and
- (5) The OSC is accompanied by the supporting and opposing materials previously submitted to the trial court, and that court's determination; while additional materials may be submitted as authorized by the statute, the application must at a minimum be accompanied by the papers which were before the trial court and by the trial court's determination.

Once the administrative determination has been made that the papers are in compliance with the requirements of the statute and governing court rule, the OSC shall be presented to a Justice of the Court for review and, if appropriate, signature. That Justice will also determine the notice to be provided to the required parties or if there is good cause for not providing for service on a party, and fix an expeditious return date for the application. The return date shall not be set beyond four business days from the date that the OSC is signed, and adjournment requests will not be entertained absent extraordinary circumstances. Where the justice who executes the OSC has determined that service is not required, the return date shall be the date of execution of the OSC.

As with motions in this Court prosecuted by order to show cause in general, no provision for oral argument will be made in the OSC.

Proof of service of the application shall be filed on or before 10 a.m. on the day prior to the return date. Failure to timely file proof of service shall result in the dismissal of the application. Papers in opposition to the application shall be either: (a) physically filed with the Clerk's office on or before 10 a.m. on the day prior to the return date, or (b) e-mailed to the designated address on or before 10 a.m. on the day prior to the return date. In the event that the opposition papers are e-mailed, a hard copy thereof shall be filed with the Clerk's office on or before 10 a.m. on the return date.

The written order by which the application is decided shall be e-mailed to counsel (or the party) expeditiously.