

**I.A.S Part 35**  
**Commercial Division Part A Part Rules**  
**JUSTICE TIMOTHY J. DUFFICY**  
**Courtroom 43**

**APPEARANCES IN COMMERCIAL DIVISION PART A**

Counsel should be familiar with 22 NYCRR 202.70 - Rules of the Commercial Division of the Supreme Court.

Counsel may not stipulate to adjourn conferences without Court approval three (3) days prior to the appearance. Pursuant to 22 NYCRR 202.70, 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 be authorized to enter into case settlements. Counsel should also be prepared to discuss any motions that have been submitted and are outstanding. Attorneys of record are preferred; the use of “per diem” counsel is disfavored. Attorneys must appear with clients for settlement conferences.

Failure to comply with this rule may be regarded as a default and dealt with appropriately (see 22 NYCRR 202.70, Rule 12). Failure to appear shall be considered a default, and dealt with pursuant to 22 NYCRR 202.27.

**MANDATORY PRE CONFERENCE CONSULTATION BETWEEN THE PARTIES**

Pursuant to 22 NYCRR 202.70, 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 22 NYCRR 202.70, Rule 8(b), and; (3) the possible use of alternative dispute resolution (22 NYCRR 202.70, 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 forty-five (45) days of the assignment of the case to this Part (22 NYCRR 202.70, Rule 7). All Preliminary Conferences will be held on Tuesdays, 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 (22 NYCRR 202.70, 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 court attorney in courtroom 43.

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 (22 NYCRR 202.19 (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 (22 NYCRR 202.70, Rule 8(b) and Rule 11(a)). The Compliance Conference Order shall be issued by the Court following the conference. Strict compliance with Court Orders is expected. **Dates set by the Court are binding.**

## **DISCLOSURE DISPUTES**

Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure (22 NYCRR 202.7, 202.70, Rule 14). If counsel are unable to resolve any disclosure disputes in this fashion, the aggrieved party shall contact chambers by letter, to schedule a discovery conference with the Court, in a good faith effort to resolve the dispute.

If the dispute cannot be resolved, an order will be issued by the Court following the discovery

conference.

No telephone calls, telephone conferences or telephone deposition rulings are permitted.

No discovery motions shall be made absent Court approval.

## **ADVANCE NOTICE OF MOTIONS**

Not ONLY disclosure disputes, but any issues, including dispositive and substantive ones, must be addressed by an in-person conference, in accordance with 22 NYCRR 202.70, 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, NOT Chambers, at (718) 298-1728. Any party who files a motion and/or opposition thereto pursuant to NYSCEF-New York State Courts Electronic Filing system ("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. Writing must be BRIEF and clear. No more than ten (15) pages is required, double-spaced, no more than 2 or 3 paragraphs per page. The use of "alphabet soup" (ex. "DEF", "DGE") to represent party names is disfavored. Only those exhibits that are absolutely required should be submitted. Separate memoranda of law are not required. Avoid references to Court staff by name in motion papers- refer to "the Court."

(Guideline: [http://apps.americanbar.org/abastore/products/books/abstracts/5310356ch1\\_abs.pdf](http://apps.americanbar.org/abastore/products/books/abstracts/5310356ch1_abs.pdf)).

## **PRE-TRIAL SETTLEMENT CONFERENCE**

Counsel attending the conference must be fully familiar with and authorized to settle, stipulate, and dispose of the action(s), and accompanied by their clients. Attorneys of record are preferred. Per Diem attorneys are disfavored. Conferences are held in Courtroom 43.

## **SETTLEMENTS AND DISCONTINUANCES**

If an action is settled, discontinued or otherwise disposed of, counsel shall immediately inform the Clerk of Part 43, telephone (718) 298-1116, and submit to Commercial Division Part A either a copy of the stipulation or a letter directed to the Clerk of the Part.