

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), Rule 11-g, and add a new Appendix E, effective July 1, 2018, to read as follows (new matter underlined; deleted matter ~~stricken~~):

Rule 11-g. Proposed Form of Confidentiality Order.

The following procedure shall apply in those parts of the Commercial Division where the justice presiding so elects:

(a) For all commercial cases that warrant the entry of a confidentiality order, the parties shall submit to the Court for signature the proposed stipulation and order that appears in Appendix B to these Rules of the Commercial Division.

(b) In the event the parties wish to deviate from the form set forth in Appendix B, they shall submit to the Court a red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(c) In the event the parties wish to incorporate a privilege claw-back provision into either (i) the confidentiality order to be utilized in their commercial case, or (ii) another form of order utilized by the Justice presiding over the matter, they shall utilize the text set forth in Appendix E to these Rules of the Commercial Division. In the event the parties wish to deviate from the language in Appendix E, they shall submit to the Court a red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

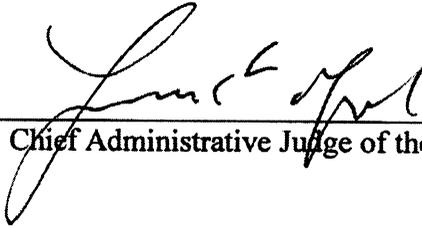
~~(e)~~(d) Nothing in this rule shall preclude a party from seeking any form of relief otherwise permitted under the Civil Practice Law and Rules.

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APPENDIX E.
COMMERCIAL DIVISION PRIVILEGE CLAWBACK PROVISION (Rule 11-g[c])

In connection with their review of electronically stored information and hard copy documents for production (the "Documents Reviewed") the Parties agree as follows:

- a. to implement and adhere to reasonable procedures to ensure Documents Reviewed that are protected from disclosure pursuant to CPLR 3101(c), 3101(d)(2) and 4503 ("Protected Information") are identified and withheld from production.
- b. if Protected Information is inadvertently produced, the Producing Party shall take reasonable steps to correct the error, including a request to the Receiving Party for its return.
- c. upon request by the Producing Party for the return of Protected Information inadvertently produced the Receiving Party shall promptly return the Protected Information and destroy all copies thereof. Furthermore, the Receiving Party shall not challenge either the adequacy of the Producing Party's document review procedure or its efforts to rectify the error, and the Receiving Party shall not assert that its return of the inadvertently produced Protected Information has caused it to suffer prejudice.



Chief Administrative Judge of the Courts

Dated: March 19, 2018

AO/150/18