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, effective immediately, sections 202.12(b) and 202.12(c)(3) of the Uniform Rules for the Supreme and County Courts, relating to preliminary conferences and electronic discovery, to read as follows:

§ 202.12 Preliminary Conference.

* * *

(b) The court shall notify all parties of the scheduled conference date, which shall be not more than 45 days from the date the request for judicial intervention is filed unless the court orders otherwise, and a form of a stipulation and order, prescribed by the Chief Administrator of the Courts, shall be made available which the parties may sign, agreeing to a timetable which shall provide for completion of disclosure within 12 months of the filing of the request for judicial intervention for a standard case, or within 15 months of such filing for a complex case. If all parties sign the form and return it to the court before the scheduled preliminary conference, such form shall be "so ordered" by the court, and, unless the court orders otherwise, the scheduled preliminary conference shall be cancelled. If such stipulation is not returned signed by all parties, the parties shall appear at the conference. Except where a party appears in the action pro se, an attorney thoroughly familiar with the action and authorized to act on behalf of the party shall appear at such conference. Where a case is reasonably likely to include electronic discovery counsel shall, prior to the preliminary conference, confer with regard to any anticipated electronic discovery issues. Further, counsel for all parties who appear at the preliminary conference must 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 e-discovery discussions.

(1) A non-exhaustive list of considerations for determining whether a case is reasonably likely to include electronic discovery is:

(i) Does potentially relevant electronically stored information ("ESI") exist;
(ii) Do any of the parties intend to seek or rely upon ESI;
(iii) Are there less costly or less burdensome alternatives to secure the necessary information without recourse to discovery of ESI;
(iv) Are the cost and burden of preserving and producing ESI proportionate to the amount in controversy; and
(v) What is the likelihood that discovery of ESI will aid in the resolution of the dispute.

* * *

(c) The matters to be considered at the preliminary conference shall include:

(1) Simplification and limitation of factual and legal issues, where appropriate;

(2) Establishment of a timetable for the completion of all disclosure proceedings, provided that all such procedures must be completed within the timeframes set forth in subdivision (b) of this section, unless otherwise shortened or extended by the court depending upon the circumstances of the case;

(3) Where the court deems appropriate, [~~establishment of the method and scope of any electronic discovery, including but not limited to (a) retention of electronic data and implementation of a data preservation plan, (b) scope of electronic data review, (c) identification of relevant data, (d) identification and redaction of privileged electronic data, (e) the scope, extent and form of production, (f) anticipated cost of data recovery and proposed initial allocation of such cost, (g) disclosure of the programs and manner in which the data is maintained, (h) identification of computer system(s) utilized, and (i) identification of the individual(s) responsible for data preservation;~~] it may establish the method and scope of any electronic discovery. In establishing the method and scope of electronic discovery, the court may consider the following non-exhaustive list, including but not limited to:

(i) identification of potentially relevant types or categories of 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 scope or method for searching and reviewing ESI; and

(x) the anticipated cost and burden of data recovery and proposed initial allocation of such cost.

Chief Administrative Judge of the Courts

Dated: September 23, 2013

AO/228/13