

SUPREME COURT NASSAU COUNTY

IAS PART 10 PART RULES & PROCEDURES AS OF JUNE 15, 2020 FOR COMMERCIAL DIVISION LITIGATION

Justice: **HON. JEROME C. MURPHY**
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All Commercial matters assigned to this Part are subject to the Rules of the Commercial Division, 22 NYCRR §202.70. Counsel and parties appearing as self-represented individuals are responsible to familiarize themselves with those Rules in their entirety. Listed are some of the more pertinent provisions of those Rules, and Part Rules, which are applicable to the Commercial Division matters assigned to this Part.

1. Preliminary Conferences. These Rules provide that the Preliminary Conference is to be held within 45 days of the assignment to the Commercial Division, or as soon as practicable thereafter. They also provide that the Preliminary Conference may not be adjourned, except for good cause, more than once or for more than 30 days.

Counsel, must be fully familiar with their case, and must also be prepared to discuss any motion, and the possible need for a stay of discovery pending a motion decision.

2. Purpose of the Preliminary Conference. The Preliminary Conference Order, requires essential information that includes the following:

a. Name, Law Firm, Address, Firm Telephone Number, Direct Telephone Number, e-mail address, and full names of all parties. All contact information is required so as to enable the parties to communicate with one another, and for the

court to communicate with the parties;

b. If sought, a proposed Confidentiality Agreement, is to be submitted to be So Ordered. A proposed Model Confidentiality Agreement promulgated by the Association of the Bar of the City of New York is found at Appendix B to Section 202.70 Rules of the Commercial Division of the Supreme Court.

If changes to the Model Form are required, the parties are to submit a signed Confidentiality Agreement with changes and a red line copy for the court's review and consideration.

c. Status of Pre-Answer Motions, if any

d. Description of the Case, including factual and legal issues raised by the Complaint, the amount demanded in the Complaint, and, if issue has been joined, salient facts in support of defenses, counterclaims, and third-party claims, amount demanded in counterclaims.

3. Discovery. The Commercial Division Rules remind the parties to be mindful of the need to conserve client resources, encourage proportionality in discovery, promote efficient resolution of matters, and increase the integrity of the judicial process. Litigants and counsel are directed to review the Rules regarding sanctions, including Rule 12 (failure to appear at a conference), 13(a) (adherence to the discovery schedules, and the need for counsel to be fully familiar with the case when appearing for conferences (24[d])).

(a) The Discovery Provisions further specify that pursuant to Rule 11-e specific responses pursuant to a request shall be served, or proper objections timely made pursuant to CPLR §3122(a).

(b) Interrogatories are limited to 25 in number, including subparts, unless otherwise provided in the Preliminary Conference Order, or other order, and are limited to the topics set forth in the Order.

(c) Provisions regarding the depositions taken by plaintiffs, defendants, or by third-party defendants are limited in time and number pursuant to Rule 11-d. The time limit or number of depositions may be altered by the court for good cause shown.

4. Disclosure Disputes . This Part adopts the provisions of 22 NYCRR§ 202.70(g)(14), in an effort to avoid unnecessary discovery motions. A party with a disclosure dispute shall write a letter to the Part, with a maximum of 3 single-spaced pages, outlining with specificity the issue(s) presented. The other side may submit a specific response of equal length, within 5 days of the date of the original letter. The Part will then schedule a conference, if necessary, with the goal of resolving or limiting the issues in dispute.

Rule 14-a provides for the parties to prepare a writing setting forth the resolutions to be signed by the presiding justice, or dictated into the record at the conclusion of the conference, the transcript of which shall be submitted to the court to be “so ordered”, or the court shall otherwise enter an order incorporating the resolutions reached.

5. Motions Generally. Rule 24 provides that a litigant cannot be precluded from making a motion without the prior approval of the court (*Barrett v. Toroyan*, 35 A.D.3d 278 [1st Dept. 2006], citing *Matter of Hochberg v. Davis*, 171 A.D.2d 192 [1st Dept. 1991], and *Costigan & Co. v. Costigan*, 304 A.D.2d 464 [1st Dept. 2003]).

Nevertheless, the court may, in an effort to limit or resolve issues, schedule a conference. The court may not deny the motion solely on the basis of the failure of a movant to participate, regardless of the merits, but may hold the motion in abeyance pending participation in a conference.

It is important to note, that in this Part, where reference is made in a motion, or order to show cause, to testimony at depositions or elsewhere, the party making such reference shall identify the exhibit, page and line number where the testimony is found. Similarly, where specific documents are cited, the exhibit, the page and location of the cited language is to be referenced.

6. Orders to Show Cause. Such motion shall be brought when there is a genuine urgency, or for an application for a provisional remedy, or for relief such as contempt. *The fact that a provisional remedy is sought shall be clearly noted on the face page of the Order to Show Cause. Consistent with the Court rules, a party seeking an Order to Show Cause shall provide a minimum of 24 hours notice to the other parties, and annex an Affidavit or Affirmation of Notice to the documents* (Rule 19).

7. Motions for Summary Judgment. Upon motion for summary judgment other than pursuant to CPLR §3213, movant shall annex to the motion a short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue of fact. Opposing papers shall contain a correspondingly numbered paragraph responding to each number paragraph in the moving party's statement, and, if necessary, additional paragraphs containing a statement of the material facts upon which the opponent believes that there exists a genuine issue requiring trial. Rule 19 discusses summary judgment.

8. Appearance on Return Date of Motions. All motions are on submission, *except* where the court has advised the parties, on the record or in writing, that oral argument will be heard on a day certain, and then an appearance is required.

9. Appearances Generally. Counsel or self-represented parties are to appear for conferences, or for required oral argument on motions when directed, in this Part's Courtroom, 3rd Floor, East Wing.

If, having appeared in this Part, counsel is required to leave for another matter, they are directed to advise the Part Clerk, and also advise the Part Clerk of a phone number at which they can be contacted.

10. Adjournment of Motions. Prior to actual submission, motions are initially under the control of the Part Clerk. Requests for adjournments must be on consent of the other parties, and the Part Clerk will accept the representation of *counsel* that he or she has the consent of the other parties. Self-represented parties seeking an adjournment may have a participating attorney make the request, or submit a stipulation signed by all parties. The court requires the filing, mailing, or faxing of a letter confirming the adjourned date, served upon all parties, on or before the return date of the motion. In the interest of justice, or to better control the Court's calendar, the court may on its own initiative adjourn a motion.

11. Adjournment of Conferences. An adjournment of a scheduled conference may be obtained upon request to the Part, upon consent of the other parties. Representations of counsel as to consent will be accepted, and must be confirmed in writing on or before the conference date. Self-represented parties may have a participating attorney make the request, or submit a stipulation signed

by all parties, also to be received on or before the scheduled date of the conference. In the interest of justice, or to better control the Court's calendar, the court may on its own initiative adjourn a conference.

12. **Impleader.** Is to be commenced within 20 days of last deposition of plaintiff, defendant, or representative of a party, or as the Court otherwise directs.

13. **Electronic Discovery and Privilege Logs.** The Commercial Rules seek to limit the cost and complexity of electronic discovery and related privilege logs. Counsel are directed to consider the relevant factors such as the necessity and alternatives to electronic discovery, and confer with one another before the Preliminary Conference regarding electronic discovery.

Rules concerning discovery of electronically stored information (ESI) are found in Appendix A to the Rules of the Commercial Division. See also the Commercial Division, Nassau County Guidelines for Discovery of ESI.

Privilege Logs require the parties to confer as to the preparation of privilege logs. This Part, consistent with Rule 11-b, directs that parties utilize the categorical designations as opposed to the document-by-document logging to reduce the time and complexity of log preparation. A requesting party may apply to the court for an exception to this requirement, but only upon good cause shown, and upon notice to the producing party, who may apply for allocation of costs and attorney's fees to the requesting party.

14. **Expert Discovery.** 22 NYCRR §202.70(g)(13)(c) provides for the parties to confer regarding the scheduling of expert disclosure, including identification of experts, exchange of expert reports, and timetable for scheduling expert depositions, which should be completed not less than 30 days prior to the completion of fact discovery.

15. **Note of Issue.** Upon Completion of a Certification Conference, the parties will be directed to file a Note of Issue and Certificate of Readiness. The court will grant a period of time, between 30 to 90 days from the filing of the Note of Issue to make dispositive motions.

16. **Alternative Dispute Resolution.** The Nassau County Supreme Court website explains some of the Court's ADR procedures, and this website also lists

the outside members who are on the Court's Mediation Panel.

17. Communications with Chambers. The court will not engage in *ex parte* communications with litigants or counsel on any substantive issues involved in the action. Correspondence, facsimile transmissions, and e-mails shall be served upon all other parties, and shall indicate the title of the action, the index number, and the office, e-mail or fax number of all parties.

18. Stays of Proceeding. In the absence of a court order, or a statute, a pending motion, request for mediation or arbitration, or filing of a notice of appeal shall not automatically stay discovery or other proceedings in the action. Service of a notice of motion or an order to show cause under CPLR sections 3211, 3212, or 3213 shall NOT stay disclosure pending the determination of that motion, unless otherwise ordered by the Court.

19. Courtesy Copies of Pleadings on Motions. In addition to e-filing pleadings, working copies of the motions, and opposition and reply papers, with attached exhibits, shall be provided to the court on or before the return date of the motion. Such documents shall be properly backed, contain exhibit tabs, and be received on or before the date upon which the motion is submitted.

Note: At this time, until the Covid-19 or other restrictions are lifted by the Office of Court Administration, courtesy copies are not to be sent to the Court, in order to limit the entry of non-employees to the Courthouse.

20. Document Sealing Procedures. Parties wishing to submit documents to the court which have been deemed confidential shall provide notice to the party who designated them as confidential, at least 5 business days before filing the documents at issue. The parties shall meet and confer within 3 days of such notification. If the parties agree that the documents demonstrate compelling circumstances for sealing, they may proceed by means of a stipulation setting forth the good cause reasons for sealing, to be considered by the court, and for the stipulation to be so-ordered. If a party seeks to have a document sealed or redacted, that party may proceed by Order to Show Cause giving proper reasons and demonstrating good cause for sealing, or redacting pursuant 22 NYCRR §216.1.

The mere fact that a document is subject to a confidentiality agreement is not

sufficient in and of itself to warrant sealing (*Mosallem v. Berenson*, 76 A.D.3d 345, 350 [1st Dept. 2010], *Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 502 [2d Dept. 2007]).

A sealing motion, must be accompanied by an unredacted version of the relevant documents, which *shall be sent to the court for comparison with the redacted forms of the documents contained in the motion*. While the parties are free to exchange documents sought to be sealed, no unsealed version of the documents shall be filed unless found to be not subject to sealing in an order on the sealing motion. At any time, the Court may require a motion concerning any request for sealing.

21. Admission Pro Hac Vice. Request for admission *pro hac vice*, including requests made by stipulation, shall be accompanied by an affirmation in support by a member of the Bar of the State of New York, an affirmation from the applicant, and a recent certificate of good standing of the applicant in another jurisdiction. The applicant must set forth his willingness to abide by the Disciplinary Rules of the State of New York, and agree to disclose any change in his status as a member in good standing of the bar of another jurisdiction.

22. Resolution of Motion or Disposition of Action. Counsel are directed to promptly advise the Court in writing if a motion is wholly or partially resolved, advising the court as to the remaining issues for consideration. In the event that a matter is fully resolved, counsel are to advise the court in writing, provide copies of a stipulation of settlement promptly upon receipt, and withdraw any pending motions.

23. Pre-Trials & Trials Procedures. For any Commercial Division case to be tried before Justice Jerome C. Murphy, either with or without a jury, the court requires that at least five (5) days prior to trial, and/or jury selection, whichever is sooner, all of the following are to be provided to the Court and all parties:

1. Any Memorandums of Law;
2. Any jury questions (or for a non-jury case, the issues to be decided);
3. Any jury charges (or for a non-jury case, the law to be considered by the court);
4. All marked pleadings;

5. Copies of EBTs to be used at trial; and
6. Any anticipated exhibits are to be pre-marked for identification; and where it is agreed upon by all counsel, these are to be marked into evidence.

As it relates to the above matters, these are all required whether the case is to be tried with or without a jury. This is all to be completed no later than five (5) days prior to the beginning of the trial and/or jury selection, whichever is sooner, and the Court, and all parties, are to receive a separate hard copy of each of the above items.

Additionally, unless otherwise directed by the Court, for non-jury trials and hearings, the Court is to be provided by one or more of the parties with a transcript of the trial or hearing.