NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on Amending 22 NYCRR § 202.12 Concerning Preliminary Conferences

Date: August 21, 2023

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the New York State Bar Association (NYSBA) and the New York City Bar Association (City Bar) (Exhibit A – Joint Letter), to amend Section 202.12 of the Uniform Rules to "require attorneys to discuss discovery issues, insurance coverage and ADR with their clients and their adversaries before the preliminary conference" (Exhibit B –Joint Report on Rule 202.12, p. 1). The goal of the rule amendment is to make the preliminary conference process more efficient. If an agreement can be reached prior to the preliminary conference in compliance with the amended rule, then the preliminary conference can be handled by a so-ordered stipulation. Where an agreement is not reached, the Joint Report concludes that the attorneys would, nevertheless, come to a preliminary conference better prepared to discuss such issues if the proposed amendments were adopted. Efficiency and clarity are also promoted through explicitly empowering the Court to require written submissions in advance of a preliminary conference that would present the parties' views on any disagreements.

The Joint Report notes that a common complaint about preliminary conferences is that they are "inefficient, *pro forma* conferences, often attended by junior or contract lawyers not familiar with the details of the case." (Ex. B, p. 2.) Instead of eliminating preliminary conferences, the proposed rule attempts to make these conferences more meaningful through an expanded mandatory meet-and-confer process. The Joint Report states that the enhanced attorney

preparation and collaboration before a preliminary conference and the active judicial intervention at such conferences (fostered by the rule amendment) will focus and streamline litigation overall. The proposed rule amendment also encourages the use of virtual preliminary conferences. The proposed revisions to the rule are reproduced in Exhibit C.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than October 31, 2023.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

Sherry Levin Wallach, Esq.
President
New York State Bar Association
One Elk Street
Albany, NY 12207
slw@laswest.org
(914) 286-3407

May 22, 2023

Hon. Joseph A. Zayas
Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

Re: Proposal for Amendments to Preliminary Conference Rule
and Request for Publication for Public Comment

Dear Chief Administrative Judge Zayas:

We respectfully present the enclosed report entitled "Proposed Amendments to Uniform Rule 202.12 on Preliminary Conferences to Promote Efficiency in Litigation" on behalf of the New York State Bar Association and the New York City Bar Association, and we respectfully request it be published for public comment. This joint report was adopted by the Executive Committee of the New York State Bar Association on January 19, 2023, by means of the NYSBA Committee on Civil Practice Law and Rules, and by the President of the New York City Bar Association on November 22, 2022, by means of the NYCB Council on Judicial Administration, the Litigation Committee, and the Committee on State Courts of Superior Jurisdiction.

This Joint Report supports proposed amendments to Rule 202.12 of the Uniform Rules for the Supreme Court and the County Court. Specifically, the proposed amendments would require attorneys to meet and confer on discovery issues, insurance coverage, ADR, and a schedule for preparing the case for trial with their clients and their adversaries before the preliminary conference. Should the attorneys reach agreement in accordance with the proposed rule, then the preliminary conference can be handled by a so-ordered stipulation. If a stipulation cannot be concluded, attorneys would be required to come to the conference prepared to discuss these subjects, and the court may request the litigants to present their views in advance. The proposed amendments will encourage early and active judicial intervention to both supervise the preliminary conference and to assist litigants to focus on the principal factual and legal issues in dispute, consider alternative dispute resolution, and other preliminary matters.

We remain available to meet with you or a designee to discuss this report and the recommendations contained therein. Please do not hesitate to contact us if we can provide additional information or be of assistance.

Sincerely yours,

Sherry Levin Wallach
President, New York State Bar Association

Susan J. Kohlmann
President, New York City Bar Association

cc: Hon. Rowan D. Wilson
Hon. Dianne T. Renwick
Hon. Hector D. LaSalle
Hon. Elizabeth A. Garry
Hon. Gerald J. Whalen
Anthony Perri, Esq.

EXHIBIT B

February 6, 2023

JOINT REPORT AND RECOMMENDATION OF THE NEW YORK STATE BAR ASSOCIATION AND THE NEW YORK CITY BAR ASSOCIATION

PROPOSED AMENDMENTS TO UNIFORM RULE 202.12 ON PRELIMINARY CONFERENCES TO PROMOTE EFFICIENCY IN LITIGATION

This Joint Report supports a proposal to amend the rule for preliminary conferences, Uniform Rule 202.12, referred to here as the "Proposed Rule." The proposal grew out of Chief Judge DiFiore's Excellence Initiative,[1] which encouraged courts and the bar to promote efficiency in the conduct of litigation, and the Chief Judge's Presumptive ADR Initiative, intended to encourage parties to engage in ADR at the commencement of litigation.[2] The Committee on Civil Practice Law and Rules of the New York State Bar Association reviewed and proposed changes to the initial proposal of the New York City Bar of August 2020. The proposal was approved by the President of the New York City Bar on November 22, 2022, and by the NYSBA Executive Committee on January 19, 2023.

GENERAL BACKGROUND

The Proposed Rule builds on recent amendments to CPLR 3101(f) and the Uniform Rules. Uniform Rule 202.12 was last amended in 2013, when provisions on e-discovery drafted by an E-Discovery Working Group of the Office of Court Administration. A central reform added to Rule 202.12(b) was a requirement that counsel discuss the scope of e-discovery with their clients and to come to a preliminary conference "sufficiently versed . . . to discuss competently all issues relating to electronic discovery." Uniform Rule 202.11, a new rule effective on February 1, 2021, was part of the NYCB's August 2020 proposal. It draws on Commercial Division Rule 8(a) and sets forth those subjects counsel should address prior to preliminary and compliance conferences. CPLR 3101(f), adopted by the Legislature effective January 1, 2022, requires disclosure of insurance coverage information.[3]

The Proposed Rule, coupled with these amendments, would require attorneys to discuss discovery issues, insurance coverage and ADR with their clients and their adversaries before the preliminary conference. The approach should enhance case management by making the preliminary conference process more efficient and comprehensive. If the attorneys meet and

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[1] D.M. Clark, *DiFiore is First Judge to Receive Columbia Business School Honor*, N.Y.L.J., Aug. 6, 2019, at 1, col. 3 ("DiFiore will be presented with the [Deming Cup award] for her work on the Excellence Initiative.")

[2] C. Lanzetta, *Be Prepared: 'Presumptive ADR' Is Coming*, N.Y.L.J., Aug. 2, 2019; *see* D.M. Clark, *New York Courts to Begin Presumptive Mediation for Civil Cases Later this Year*, N.Y.L.J., May 16, 2019.

[3] Additional initial disclosures comparable to Rule 26(a) of the Federal Rules of Civil Procedure have been considered, but the Committees' consensus view is that such a substantive change to discovery rules should be done by amendment to the CPLR, as was done by CPRL 3101(f).

confer as contemplated by the Proposed Rule, the preliminary conference can be handled by a so-ordered stipulation. If a stipulation cannot be concluded, attorneys would be required to come to the conference prepared to discuss these subjects (as the current rule does for e-discovery issues).

A common complaint about preliminary conferences is that they are inefficient, *pro forma* conferences, often attended by junior or contract lawyers not familiar with the details of the case, and some lawyers have suggested the practice could be eliminated by e-filing a bare-bones stipulation. The Second Judicial District is experimenting with this approach.[4] The Proposed Rule takes a different tack, one the Committees believe will be more fruitful. Under the Proposed Rule, the principal attorneys for litigants will be required to meet and confer, and to confirm in their proposed Preliminary Conference Order that they have done so. The conference itself should be more efficient because of the attorneys' preparation, and where it is found unnecessary, the attorneys will have prepared a Preliminary Conference Order based on their conferences, rather than a schedule concluded at a *pro forma* conference by junior or contract lawyers. Further, the Proposed Rule encourages active judicial participation at the conference and, if the parties come prepared, an informed discussion of how to streamline the case and reduce the attendant costs.

WHAT WOULD THIS RULE DO?

The Committees believe that the Proposed Rule would make preliminary conferences more efficient and productive by (i) requiring attorneys to exchange information and confer with each other about organizing the case and developing a stipulated Preliminary Conference Order for the Court and (ii) encouraging early and active judicial intervention to supervise the preliminary conference and to assist litigants to focus on the principal factual and legal issues in dispute, consider alternative dispute resolution, and other preliminary matters.

Coupled with the insurance amendment to CPLR 3101(f) and the new meet and confer requirements of Uniform Rule 202.11, the preliminary conference procedure would require (i) preliminary disclosure of insurance information, and (ii) a meet and confer for attorneys to discuss discovery issues, ADR, and electronic discovery issues (as required by the current Uniform Rule 202.12(b), shifted to a new ¶ (c) in the Proposed Rule). The rule also encourages use of video-conferencing technology to permit virtual preliminary conferences. In any case where counsel believes a preliminary conference is important, or where the court concludes that a preliminary conference should be held, the Proposed Rule provides for a preliminary conference.

The Proposed Rule removes paragraph (e) of the current rule, on the grounds that the provision is impractical, and is potentially in conflict with the special preference rule of CPLR 3403. The Committees' research did not reveal a single case in which this provision, in its current form, was cited. This draft also proposes to incorporate in paragraph (h) a method for parties to seek an additional conference as appropriate to avoid the need to wait a scheduled compliance conference.

[4] Hon. Lawrence Knipel, Admin. Judge for Civil Matters, *Notice of Revised Pre-Note Procedures* (March 4, 2020) ("Kings Civil Term is planning to eliminate Intake/Preliminary Conferences, and instead issue a Uniform PC Order ").

Respectfully submitted,

Council on Judicial Administration[5]
Association of the Bar
of the City of New York
Fran Hoffinger
Chair

Working Group:
Monica Connell
Council on Judicial Administration
Kevin J. Farrelly
State Courts of Superior Jurisdiction Committee
Benjamin F. Heidlage
Litigation Committee
Steven M. Kayman
Council on Judicial Administration
Richard J. Schager, Jr., Chair
Council on Judicial Administration

Committee on Civil
Practice Law and Rules
of the New York State
Bar Association
Hon. Lucy Billings
Thomas Wiegand
Co-chairs

Working Group:
Paul Aloe
Sharon S. Gerstman
Souren Israelyan
Domenick Napoletano
Richard J. Schager, Jr., Chair
Thomas Wiegand, Ex Officio

[5] The views expressed in this memorandum do not reflect the views of the Office of the Attorney General or of the firms of members of the drafting subcommittee.

Approved by the NYSBA Executive Committee on January 19, 2023
Approved by the NYCB President on November 22, 2022

New York City Bar Association[1]
New York State Bar Association

JOINT PROPOSAL OF PROPOSED AMENDMENTS TO PRELIMINARY CONFERENCE RULES OF SECTION 202.12 OF THE UNIFORM RULES.[2]

Uniform Rule 202.10

Section 202.10 Appearance at Conferences.[3]

(a) Any party may request to appear at a conference by electronic means. Where feasible and appropriate, the court is encouraged to grant such requests.

(b) Adjournments of conferences shall be granted upon a showing of good cause. An adjournment of a conference will not change any date in any court order, including but not limited to the preliminary conference order, unless otherwise directed by the court.

Uniform Rule 202.11

Section 202.11 Consultation prior to Preliminary and Compliance Conference.

Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery, including discovery of electronically stored information, and any other issues to be discussed at the conference, (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.[4]

Uniform Rule 202.12

Section 202.12 Preliminary conference.

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[1] An earlier version of this Report and the accompanying draft of proposed amendments to Uniform Rule 202.12 were approved by the President of the New York City Bar Association in August 2020 (the "2020 City Bar Proposal").

[2] Amending language proposed to be added is **Underlined and in Bold Face**. Language proposed to be removed is shown as ~~stricken through~~.

[3] Uniform Rule 202.10 is included in this CPLR Committee proposal for context. Amendments were made in 2020 effective February 1, 2021. No further amendments are proposed.

[4] Uniform Rule 202.11 also is included in this CPLR Committee proposal for context. The language was inserted in 202.11 (previously blank and reserved) on December 29, 2020, effective February 1, 2021. The Rule adopts most of language initially proposed for Rule 202.12 of the 2020 City Bar proposal, which has been removed from this Joint Proposal. It is derived from Commercial Division Rule 8(a), Unif. R. 202.70(g).

Preamble.

The parties, with the court's assistance, are encouraged to consider as early as possible how best to achieve the most efficient, expeditious and cost-effective resolution of every case. A preliminary conference will frequently be a useful and even critical tool for furthering these goals. A preliminary conference should be held before the assigned judge, soon after commencement of the case and after the parties have conferred. An in-person conference should not be held, however, if such conference will be non-substantive or involve only the submission of a stipulated order (for example, because of the nature of the case or the caseload of the particular court or the assigned judge, or otherwise). In such cases, stipulations should be submitted in accordance with subdivision (b) below and counsel should not be required to appear. Further, pursuant to Rule 202.10, the court may also in its discretion, address preliminary conference matters, in whole or in part, telephonically or by remote technology with the attorneys for all parties.

When preliminary conferences are held, the court shall engage the parties in a discussion of the merits of the case aimed at determining how best to resolve the dispute as expeditiously and efficiently as possible. Among other topics, the court and the parties may consider at the preliminary conference:

- **the principal factual and legal issues in dispute;**
- **the timing of presumptive mediation and the appropriateness of other forms of alternative dispute resolution for the dispute;**
- **the timetable for the proceedings, including the appropriateness of sequencing motion practice, discovery or other aspects of the case, to address threshold dispositive issues while discovery on other issues is held in abeyance;**
- **other matters as set forth in subdivision (c); and**
- **the date for a subsequent conference to follow-up on the matters discussed at the preliminary conference.**

(a) A party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses**,** ~~and~~ telephone

numbers **and email addresses** of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention together with the request for a preliminary conference. The request shall be served on all other parties and filed with the clerk for transmittal to the assigned judge. The court shall order **a date for** a preliminary conference in any action upon **such request and subject to the following.** ~~compliance with the requirements of this subdivision.~~

(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~~ **promptly email to all parties** 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. **The form of stipulation shall contain a certification by attorneys for the parties that they have met and conferred on the items set forth Rules 202.11 and 202.12(c).** If all parties sign the form and return it to the court ~~before the scheduled preliminary conference~~ **within 30 days**, such form **may** ~~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 the parties, ~~the parties shall appear at the conference~~ **the court will schedule a conference to be held virtually before non-judicial personnel, for the purpose of completing the form stipulation.** 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.[5]

(1) **If the parties agree during the virtual conference, the form stipulation may be "so ordered" by the court. Where the parties cannot agree, or where issues arise that need judicial intervention, the court may schedule a conference before the assigned judge or before the judge in charge of the Preliminary Conference Part.**

[5] The remaining provisions of the current Rule 202.12(b) deal with electronic discovery. Under this Joint Proposal they appear in subdivision (c) below and are largely unchanged.

At the discretion of the court, the conference may be held through remote audio-visual means or in person.

(3) At the preliminary conference the parties shall be prepared to discuss the items set forth in Rules 202.11 and 202.12(c) and such other items as the court may direct.

(c) Where a case is reasonably likely to include electronic discovery**, attorneys**[6] **for all parties** shall~~, prior to the preliminary conference, confer with regard to any anticipated electronic discovery issues~~ **meet and confer on the subject of electronic discovery. If the parties are unable to reach a stipulation governing electronic discovery, the Court may direct a conference on the subject.** ~~Further, counsel for all parties who appear at the preliminary conference.~~ **The parties or attorneys appearing at such conference** must be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery**, *and*** ~~; counsel~~ **attorneys** 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:

(1)~~(i)~~ Does potentially relevant electronically stored information ("ESI") exist;

(2)~~(ii)~~ Do any of the parties intend to seek or rely upon ESI;

(3)~~(iii)~~ Are there less costly or less burdensome alternatives to secure the necessary information without recourse to discovery of ESI;

(4)~~(iv) Are t~~**T**he cost and burden of preserving and producing ESI **and whether such costs and burdens are proportional**[7] ~~proportionate~~ to the amount in controversy; and

(5)~~(v)~~ What is the likelihood that discovery of ESI will aid in the resolution of the dispute.

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[6] "Counsel" is changed to "attorneys" for internal consistency.

[7] This phrase is inserted as a clarifying edit to the present 202.12(b)(1)(iv), which requests the parties to consider whether the amount of e-discovery sought is proportional to the amount in dispute in the litigation. It does not address allocation of those cost, which is covered by the present 202.12(c)(3)(x), not changed by this proposal except for renumbering as ¶ (e)(3)(x). The term "proportional" is substituted for "proportionate" to conform with the term as added to Rule 26(b) of the Federal Rules of Civil Procedure in 2015.

(d) **The court may, in its discretion, either in advance of the preliminary conference or in response to the filing of the stipulation and order contemplated by subdivision (b), require the parties to provide to the court their positions on each of the items in Rules 202.11 and 202.12(c) and such other matters as the court deems necessary or appropriate.**

(e) ~~(c)~~ The matters which may ~~to~~ be considered at **a** ~~the~~ preliminary conference **or at the first conference before the Court if the Preliminary Conference has been cancelled under 202.12(b)**~~, shall~~ include:

(1) **the positions of the litigants on the matters described in Rules 202.11 and 202.12 (c), particularly alternative methods for resolving the dispute,** simplification and limitation of factual and legal issues, where appropriate**, expedited disposition of the action, and effective controls to prevent protracted litigation due to lack of judicial management**;

(2) **the terms, provisions and schedule included in the stipulation described above submitted by the attorneys for the litigants, and the** 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, 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.

(4) addition of other necessary parties;

(5) settlement of the action;

(6) removal to a lower court pursuant to CPLR 325, where appropriate; and

(7) any other matters that the court may deem relevant.

(f)~~(d)~~ At the conclusion of the conference, the court shall make a written order including its directions to the parties as well as stipulations of **the parties' attorneys** ~~counsel~~. Alternatively, in the court's discretion, all directions of the court and stipulations of **the attorneys]** ~~counsel~~ may be recorded by a reporter. Where the latter procedure is followed, the parties shall procure and share equally the cost of a transcript thereof unless the court in its discretion otherwise provides. The transcript, corrected if necessary on motion or by stipulation of the parties approved by the court, shall have the force and effect of an order of the court. The transcript shall be filed by the plaintiff with the clerk of the court.

~~(e) The granting or continuation of a special preference shall be conditional upon full compliance by the party who has requested any such preference with the foregoing order or transcript. When a note of issue and certificate of readiness are filed pursuant to section 202.21 of this Part, in an action to which this section is applicable, the filing~~

~~party, in addition to complying with all other applicable rules of the court, shall file with the note of issue and certificate of readiness an affirmation or affidavit, with proof of service on all parties who have appeared, showing specific compliance with the preliminary conference order or transcript.~~

(g)~~(f)~~ In the discretion of the court, failure by a party to comply with the order or transcript resulting from the preliminary conference, or with the so- ordered stipulation provided for in subdivision (b) of this section, or the making of unnecessary or frivolous motions by a party, shall result in the imposition upon such party of costs or such other sanctions as are authorized by law.

(h)~~(g)~~ A party may **request the Court** ~~move~~ to advance the date of a preliminary conference upon a showing of **appropriate** ~~special~~ circumstances. **During the course of the case, any party may request such additional conferences are as appropriate. The Court will give the attorneys notice of the conference at least one week before any conference unless there are special circumstances requiring an earlier conference.**

~~(h) Motions in actions to which this section is applicable made after the preliminary conference has been scheduled, may be denied unless there is shown good cause why such relief is warranted before the preliminary conference is held.~~

~~(i) No action or proceeding to which this section is applicable shall be deemed ready for trial unless there is compliance with the provisions of this section and any order issued pursuant thereto.~~

(i)~~(j)~~ The court, in its discretion, at any time may order such conferences as the court may deem helpful or necessary in any matter before the court.

(j)~~(k)~~ The provisions of this section shall apply to preliminary conferences required in matrimonial actions and actions based upon a separation agreement, in medical malpractice actions, and in real property tax assessment review proceedings within the City of New York, only to the extent that these provisions are not inconsistent with the provisions of sections 202.16, 202.56 and 202.60 of this Part, respectively.

(k)~~(l)~~ The provisions of this section shall apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR 3407 only to

the extent that the provisions of this section are not inconsistent with the provisions of CPLR 3407. In an action governed by CPLR 3407 the request for a preliminary conference may be filed at any time after commencement of the action, and shall be accompanied by the physician's affidavit required by that provision.

Historical Note
Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Nov. 19, 1992; Dec. 14, 1992; Feb. 12, 1996; Aug. 4, 1998; Jan. 6, 1999 eff. Dec. 21, 1998. Amended (a).

Amended (c) [now (c) & (d)] on Mar. 20, 2009

Amended (l) [now (p)] on Apr. 13, 2009

Amended (b) on Jul. 27, 2010

Amended sections 202.12(b) and 202.12(c)(3) [now (b) & (e)] on Sept 23, 2013

EXHIBIT C

Uniform Rule 202.12 Preliminary Conference

Additions are shown in **green bold underline**. Deletions are shown in ~~red strike through~~.

Section 202.12 Preliminary Conference

Preamble.

The parties, with the court's assistance, are encouraged to consider as early as possible how best to achieve the most efficient, expeditious and cost-effective resolution of every case. A preliminary conference will frequently be a useful and even critical tool for furthering these goals. A preliminary conference should be held before the assigned judge, soon after commencement of the case and after the parties have conferred. An in-person conference should not be held, however, if such conference will be non-substantive or involve only the submission of a stipulated order (for example, because of the nature of the case or the caseload of the particular court or the assigned judge, or otherwise). In such cases, stipulations should be submitted in accordance with subdivision (b) below and counsel should not be required to appear. Further, pursuant to Rule 202.10, the court may also in its discretion, address preliminary conference matters, in whole or in part, telephonically or by remote technology with the attorneys for all parties.

When preliminary conferences are held, the court shall engage the parties in a discussion of the merits of the case aimed at determining how best to resolve the dispute as expeditiously and efficiently as possible. Among other topics, the court and the parties may consider at the preliminary conference:

- **the principal factual and legal issues in dispute;**
- **the timing of presumptive mediation and the appropriateness of other forms of alternative dispute resolution for the dispute;**
- **the timetable for the proceedings, including the appropriateness of sequencing motion practice, discovery or other aspects of the case, to address threshold dispositive issues while discovery on other issues is held in abeyance;**
- **other matters as set forth in subdivision (c); and**

- **the date for a subsequent conference to follow-up on the matters discussed at the preliminary conference.**

(a) A party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses**,** ~~and~~ telephone numbers **and email addresses** of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention together with the request for a preliminary conference. The request shall be served on all other parties and filed with the clerk for transmittal to the assigned judge. The court shall order a **date for** a preliminary conference in any action upon **such request and subject to the following.** ~~compliance with the requirements of this subdivision.~~

(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~~ **promptly email to all parties** 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. **The form of stipulation shall contain a certification by attorneys for the parties that they have met and conferred on the items set forth in Rules 202.11 and 202.12(c).** If all parties sign the form and return it to the court ~~before the scheduled preliminary conference~~ **within 30 days**, such form **may** ~~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 the parties, ~~the parties shall appear at the conference~~ **the court will schedule a conference to be held virtually before nonjudicial personnel, for the purpose of completing the form stipulation.** 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.

(1) If the parties agree during the virtual conference, the form stipulation may be "so ordered" by the court. Where the parties cannot agree, or where issues arise that need judicial intervention, the court may schedule a conference before the assigned judge or before the judge in charge of the Preliminary Conference Part. At the discretion of the court, the conference may be held through remote audiovisual means or in person.

(2) At the preliminary conference the parties shall be prepared to discuss the items set forth in Rules 202.11 and 202.12(c) and such other items as the court may direct.

(c) Where a case is reasonably likely to include electronic discovery**, attorneys for all parties** ~~counsel~~ shall, ~~prior to the preliminary conference, confer with regard to any anticipated electronic discovery issues~~ **meet and confer on the subject of electronic discovery. If the parties are unable to reach a stipulation governing electronic discovery, the Court may direct a conference on the subject.** ~~Further, counsel for all parties who appear at the preliminary conference.~~ **The parties or attorneys appearing at such conference** must be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery**,** ~~;~~ **and** ~~; counsel~~ **attorneys** 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:

(1) ~~(i)~~Does potentially relevant electronically stored information ("ESI") exist;

(2) ~~(ii)~~Do any of the parties intend to seek or rely upon ESI;

(3) ~~(iii)~~Are there less costly or less burdensome alternatives to secure the necessary information without recourse to discovery of ESI;

(4) ~~(iv) Are t~~**T**he cost and burden of preserving and producing ESI **and whether such costs and burdens are proportional** ~~proportionate~~ to the amount in controversy; and

(5) ~~(v)~~ What is the likelihood that discovery of ESI will aid in the resolution of the dispute.

(d) The court may, in its discretion, either in advance of the preliminary conference or in response to the filing of the stipulation and order contemplated by subdivision

(b), require the parties to provide to the court their positions on each of the items in Rules 202.11 and 202.12(c) and such other matters as the court deems necessary or appropriate.

(e) ~~(c)~~ The matters **which may** ~~to~~ be considered at **a** ~~the~~ preliminary conference **or at the first conference before the Court if the Preliminary Conference has been cancelled under 202.12(b),** shall include:

(1) **the positions of the litigants on the matters described in Rules 202.11 and 202.12 (c), particularly alternative methods for resolving the dispute,** simplification and limitation of factual and legal issues, where appropriate**, expedited disposition of the action, and effective controls to prevent protracted litigation due to lack of judicial management**;

(2) **the terms, provisions and schedule included in the stipulation described above submitted by the attorneys for the litigants, and the** 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, 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.

(4) addition of other necessary parties;

(5) settlement of the action;

(6) removal to a lower court pursuant to CPLR 325, where appropriate; and

(7) any other matters that the court may deem relevant.

(f) ~~(d)~~ At the conclusion of the conference, the court shall make a written order including its directions to the parties as well as stipulations of **the parties' attorneys** ~~counsel~~. Alternatively, in the court's discretion, all directions of the court and stipulations of **the attorneys** ~~counsel~~ may be recorded by a reporter. Where the latter procedure is followed, the parties shall procure and share equally the cost of a transcript thereof unless the court in its discretion otherwise provides. The transcript, corrected if necessary on motion or by stipulation of the parties approved by the court, shall have the force and effect of an order of the court. The transcript shall be filed by the plaintiff with the clerk of the court.

~~**e)** The granting or continuation of a special preference shall be conditional upon full compliance by the party who has requested any such preference with the foregoing order or transcript. When a note of issue and certificate of readiness are filed pursuant to section 202.21 of this Part, in an action to which this section is applicable, the filing party, in addition to complying with all other applicable rules of the court, shall file with the note of issue and certificate of readiness an affirmation or affidavit, with proof of service on all parties who have appeared, showing specific compliance with the preliminary conference order or transcript.~~

(g) ~~(f)~~ In the discretion of the court, failure by a party to comply with the order or transcript resulting from the preliminary conference, or with the so- ordered stipulation provided for in

subdivision (b) of this section, or the making of unnecessary or frivolous motions by a party, shall result in the imposition upon such party of costs or such other sanctions as are authorized by law.

(h) ~~(g)~~ A party may **request the Court** ~~move~~ to advance the date of a preliminary conference upon a showing of **appropriate** ~~special~~ circumstances. **During the course of the case, any party may request such additional conferences as appropriate. The Court will give the attorneys notice of the conference at least one week before any conference unless there are special circumstances requiring an earlier conference.**

~~(h) Motions in actions to which this section is applicable made after the preliminary conference has been scheduled, may be denied unless there is shown good cause why such relief is warranted before the preliminary conference is held.~~

~~(i) No action or proceeding to which this section is applicable shall be deemed ready for trial unless there is compliance with the provisions of this section and any order issued pursuant thereto.~~

(i) ~~(j)~~ The court, in its discretion, at any time may order such conferences as the court may deem helpful or necessary in any matter before the court.

(j) ~~(k)~~ The provisions of this section shall apply to preliminary conferences required in matrimonial actions and actions based upon a separation agreement, in medical malpractice actions, and in real property tax assessment review proceedings within the City of New York, only to the extent that these provisions are not inconsistent with the provisions of sections 202.16, 202.56 and 202.60 of this Part, respectively.

(k) ~~(l)~~ The provisions of this section shall apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR 3407 only to the extent that the provisions of this section are not inconsistent with the provisions of CPLR 3407. In an action governed by CPLR 3407 the request for a preliminary conference may be

filed at any time after commencement of the action, and shall be accompanied by the physician's affidavit required by that provision.