

**SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY**

**PRESENT: Hon. Jacqueline Silbermann  
Administrative Order**

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**ALL METRO HEALTH CARE SERVICES, INC.,  
et al.,**

**Plaintiffs,**

**- v -**

**INDEX NO. 601267/2008**

**GLENN EDWARDS, SCOTT R. MIXER,  
CHARLES L. RASSMUSSON and 1529 UNION  
STREET ASSOCIATES, LLC,**

**Defendants.**

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**Administrative Order:**

By letter dated September 10, 2008, counsel for plaintiff All Metro Health Care Services, Inc. and its subsidiaries (collectively, All Metro) requests that this action be transferred from I.A.S. Part 57 (Friedman, J.) to the Commercial Division pursuant to Uniform Rule 202.70. By letter dated September 15, 2008, counsel for defendant Glenn Edwards (Edwards) objects on the ground that the application is untimely.

Uniform Rule 202.70(e) provides that an application to transfer an action into the Commercial Division must be made by letter application within 10 days of the party's receipt of a copy of the Request for Judicial Intervention (RJI), thereby putting them on notice that the filing party has not requested that the case be assigned to the Commercial Division. The original RJI was served by Edwards' counsel on or about July 21, 2008 in connection with Edwards' motion to dismiss. Although Edwards' counsel checked the box for "Commercial--Contract," she did not include the statement justifying a Commercial Division designation required by Uniform Rule 202.70(d), and contends, in opposition to this application, that this was not an inadvertent mistake. Regardless, the RJI was modified by the messenger who filed the papers at the courthouse to designate the case as "Other Matters -- Contract," and the case was assigned to the Hon. Marcy Friedman on July 22, 2008. Edwards' counsel contends that she attempted to serve All Metro's counsel with the modified RJI, by e-mail, on July 22, 2008, but that the e-mail was returned undelivered due to the size of one of the attachments. All Metro's counsel confirms that he never received this e-mail, and did not learn that the case was not in the

Commercial Division until September 3, 2008 when the modified RJJ was obtained from the court's file while investigating why the case was not assigned to the Commercial Division.

However, where it is clear that the applicant who seeks a transfer is made aware that a non-commercial judge has been assigned to the case, they will not be allowed to seek a transfer unless the application is made with 10 days of being made aware of the judicial assignment. On August 15, 2008, at the request of defendant Scott R. Mixer (Mixer), Justice Friedman executed an order to show cause regarding out-of-state discovery. On August 18th, Mixer's counsel served that order on all counsel by Federal Express. Thus, plaintiffs' counsel had clear notice by August 20th, at the latest, that this case had not been assigned to a justice of the Commercial Division, and had until September 2, 2008 to seek a transfer. The 10-day time limit is strictly construed in order to prevent judge-shopping and the waste of judicial resources.

For these reasons, All Metro's application is deemed untimely, and is denied.

Dated: September 15, 2008

ENTER: \_\_\_\_\_, A.J.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION