



STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004  
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A. GAIL PRUDENTI  
Chief Administrative Judge

JOHN W. McCONNELL  
Counsel

## MEMORANDUM

December 3, 2013

TO: All Interested Persons

FROM: John W. McConnell

RE: Proposed new Preliminary Conference Form for use in the Commercial Division of the Supreme Court.

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The Commercial Division Advisory Council has recommended adoption of a new Preliminary Conference ("PC") Form for use in the Commercial Division of the Supreme Court (Exhibit A). An accompanying memorandum (Exh. B) identifies a number of noteworthy revisions to the PC Form, including: a more detailed section for listing the parties' appearances, a new section on confidentiality forms, an expanded section requiring a description of the case, and new detailed sections on electronic discovery and expert discovery. The proposed new PC Form is designed for use in e-filed cases.

Persons wishing to comment on this proposal should e-mail their submissions to [CommDivPCForm@nycourts.gov](mailto:CommDivPCForm@nycourts.gov) or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than February 3, 2014.**

**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. The issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the court system.**

**EXHIBIT A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff(s)

- against -

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant(s)

-----X

Present: Hon. \_\_\_\_\_

Part: \_\_\_\_\_

Index No.: \_\_\_\_\_

RJI Filing Date: \_\_\_\_\_

**PRELIMINARY  
CONFERENCE ORDER  
COMMERCIAL DIVISION**

- I. **APPEARANCES:** Please include (1) your name; (2) your firm's name and address; (3) your firm's telephone number; (4) your direct telephone number and (5) your e-mail address.

Plaintiff(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please use additional pages, if necessary.

Please attach your business card(s) to the last page of this PC order and indicate on the card the name of the party you represent.

Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

Index Number: \_\_\_\_\_  
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**II. CONFIDENTIALITY ORDER:**

The court recognizes that most cases in the Commercial Division involve facts that are highly sensitive. In such cases, the court, in order to proceed to proper discovery, orders the parties to enter into a Confidentiality Agreement which the court will "so order." The court recommends the City Bar Confidentiality Agreement found at: <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>.

If the parties need to change the City Bar Confidentiality Agreement, the parties are to submit a signed stipulation with the changes and a red line copy for the court to review.

The parties \_\_\_\_\_ HAVE or \_\_\_\_\_ HAVE NOT entered into a Confidentiality Agreement.

The Court \_\_\_\_\_ HAS or \_\_\_\_\_ HAS NOT so ordered the Confidentiality Agreement and, if the Court has so ordered it, on what date did the Court so order it: \_\_\_\_\_

**III. DESCRIPTION OF THE CASE:** Pursuant to 22 NYCRR 202.12(c)(1), please provide a brief description of the factual and legal issues raised in the pleadings of the case:

(a) Plaintiff's salient facts in support of claims/counterclaim defenses:

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Amount Demanded: \$ \_\_\_\_\_

Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

Index Number: \_\_\_\_\_  
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(b) If issue has been joined, Defendant \_\_\_\_\_'s, salient facts in support of defenses, counterclaims and third-party claims. If issue has *not* yet been joined, Defendant need not, at this time, answer this question.

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Amount Demanded on the Counterclaim/Cross Claim: \$ \_\_\_\_\_

*If there are multiple defendants:*

(c) If issue has been joined, Defendant, \_\_\_\_\_'s, salient facts in support of defenses, counterclaims and third party claims. If issue has *not* yet been joined, Defendant need not, at this time, answer this question.

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Amount Demanded on the Counterclaim/Cross Claim: \$ \_\_\_\_\_

Please use additional sheets, if needed.

Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

Index Number: \_\_\_\_\_  
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**IV.** It is hereby **ORDERED** that disclosure shall proceed pursuant to the Commercial Division Rules found at <http://www.nycourts.gov/rules/trialcourts/202.shtml#70>

**(1) BILL OF PARTICULARS (See CPLR 3130(1)):**

(a) Demand for a Bill of Particulars shall be served by \_\_\_\_\_  
on or before \_\_\_\_\_.

(b) Bill of Particulars shall be served by \_\_\_\_\_  
on or before \_\_\_\_\_.

Comment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(2) DOCUMENT PRODUCTION**

(a) Initial demands for discovery and inspection shall be served by all parties on or before \_\_\_\_\_.

(b) Responses to demands shall be served by all parties on or before \_\_\_\_\_.

Comment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(3) INTERROGATORIES**

(a) Interrogatories shall be served by all parties on or before \_\_\_\_\_

(b) Answer to interrogatories shall be served on or before \_\_\_\_\_

Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

Index Number: \_\_\_\_\_  
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Comment:

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**4. DEPOSITIONS:**

Defendant's deposition of plaintiff on or before \_\_\_\_\_

Plaintiff's deposition of defendant(s) on or before \_\_\_\_\_

If there are multiple parties, please use additional sheets. Please be sure to indicate the name of the case, the index number and question being answered. Please include the (1) name of the party to be deposed; (2) the name of the person who will be deposing the party; and (3) the date and time of the deposition.

Non-party's depositions on or before \_\_\_\_\_

**All depositions shall be completed on or before** \_\_\_\_\_

Comment:

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**5. OTHER DISCLOSURE:**

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Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

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**6. IMPLADER:**

Defendant shall serve his third-party summons and complaint no later than 15 days after the end of the last deposition of a named plaintiff and defendant and/or the last deposition of a representative of a named party.

**7. ELECTRONIC DISCOVERY**

(a) Will there be Electronic Discovery in the case:

\_\_\_ YES                      \_\_\_ NO                      \_\_\_ NOT SURE

(b) **Meet and Confer:** Pursuant to Uniform Commercial Division Rule 8(b) [22 NYCRR 202.70(g)(8)(b)] counsel certify that they have fulfilled their requirement to have met and conferred regarding certain matters relating to electronic discovery, before the Preliminary Conference. Counsel hereby certify to the extent they believe this case is reasonably likely to include electronic discovery, they are sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery or have brought someone to address these issues on their behalf.

(i) Date(s) parties had their meet and confer conference(s):  
\_\_\_\_\_

(ii) Did the parties reach an agreement concerning electronic discovery

\_\_\_ YES                      \_\_\_ NO                      \_\_\_ PARTIALLY

(c) **Other directives concerning electronic discovery.**

*The following topics are to be updated and supplemented as new information becomes available.*

Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

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(i) **Preservation** (22 NYCRR 202.12(c)(3)(a), (c) and (g):  
*Please identify for both the plaintiff and each of the defendant(s) the relevant custodians for the computer/servers*

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(ii) **Production** (22 NYCRR 202.12(c)(3)(e),(d)):  
*Please identify relevant search terms and the general cut-off date of the discovery*

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(iii) **Identification and Redaction of Privileged Electronic Data** (22 NYCRR 202.12(c)(3)(d)) **including Creating Privilege Logs:**

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(iv) **Claw Back Provisions for inadvertent production:**

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(v) **Costs:** Each party shall bear its own costs of production pursuant to *U.S. Bank Nat'l Assoc. v. Greenpoint Mtge. Funding Inc.* 94 A.D.3d 58 (1st Dep't 2012). In the event that cost shifting becomes an issue, the parties shall each write a letter to the Court of not more than three (3) pages outlining the problem prior to having the Court help resolve the problem.

Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

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**(d) Judicial Intervention**

The parties anticipate the need for judicial intervention regarding the following issues concerning the scope and methods of preserving electronically stored information:

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**8. END DATE OF FACT DISCLOSURE:**

Fact Disclosure shall be completed by \_\_\_\_\_

**9. EXPERT DISCOVERY (if any):**

Pursuant to the proposed Rule 13(c) and Commercial Division Rule 8, which mandates consultation with opposing counsel, the Court hereby ORDERS that if any party intends to introduce expert testimony at trial or in support of a motion for summary judgment, the parties, no later than thirty (30) days prior to the completion of fact discovery, shall confer on a schedule for expert disclosure – including the identification of experts, the agreement to exchange expert reports and the timetable for the deposition of testifying experts. Expert disclosure shall be completed no later than four (4) months after the completion of fact discovery.

In the event that a party objects to this procedure or timetable, the parties shall request a conference to discuss the objection with the Court.

*The note of issue and certificate of readiness may not be filed until the completion of expert disclosure.*

**10. END DATE OF ALL DISCOVERY:**

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Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

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**11. NOTE OF ISSUE:**

\_\_\_\_\_ shall file a note of issue/certificate of readiness on or before \_\_\_\_\_.

A copy of this P.C. order shall be served and filed with the note of issue.

**12. DISPOSITIVE MOTION(S):**

All dispositive motion(s) shall be made on or before \_\_\_\_\_

Such motions may be filed by Order to Show Cause or Notice of Motion. The Court encourages the parties to confer and agree on the dates for the opposition and reply papers to be exchanged and e-filed.

**13. COMPLIANCE CONFERENCE:**

Parties or their representatives with knowledge of the case and this Preliminary Conference order shall appear for a Compliance Conference on \_\_\_\_\_

Parties or their representatives with knowledge of the case and this Preliminary Conference order shall appear as well at all *subsequent* Status Conferences.

**14. ADDITIONAL DIRECTIVES:**

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Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

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**THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED  
EXCEPT WITH THE APPROVAL OF THE COURT.**

***THE PARTIES MUST BRING COPIES OF ALL DISCLOSURE  
ORDERS TO ALL CONFERENCES.***

**SO ORDERED:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
J.S.C.

Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

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ADDITIONAL PAGES

**EXHIBIT B**

## MEMORANDUM

TO: Board of Justices

FROM: Hon. Eileen Bransten and Roberta Kaplan, Co-Chairs of the Commercial Division Advisory Council, Subcommittee on Best Practices for Judicial Case Management

RE: New Preliminary Conference Order

DATE: November 25, 2013

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The Commercial Division Advisory Council Subcommittee on the Best Practices for Judicial Case Management in the Court System (“The Best Practices Subcommittee”) is tasked with addressing a number of issues, including “creating standard forms/procedures for optional use in Commercial Division litigation.” *See* The Chief Judge’s Task Force on Commercial Litigation in the 21st Century Report and Recommendations at 18.

In response to this directive, the Best Practices Subcommittee has prepared a new proposed Preliminary Conference (“PC”) Form. It is the first complete revision of the PC form in recent history. Unlike the old form that was filled out in triplicate, this form presumes that the parties are e-filing their case. The form, therefore, after signature by the Judge, will be uploaded into the e-filing system and available to the Judge at future court dates.

Some of the changes in the new PC form include:

- (1) a more detailed section for listing the appearances of the parties;
- (2) a new section concerning Confidentiality Forms;
- (3) an expanded section requiring a description of the case;
- (4) a new detailed section concerning e-discovery;
- (5) a new section concerning expert discovery; and

- (6) throughout the form, new language to better express what must be accomplished to complete discovery.

The Commercial Division Advisory Council reviewed the PC Order, and following the incorporation of a few revisions, voted unanimously to adopt the PC Order. This form is now forwarded for your review.