

User's Guide to Recent Revisions in the Commercial Division Rules

[A complete list of the Rules of the Commercial Division can be found [here](#)]

I. INTRODUCTION

Since its formation in 1995, the Commercial Division has seen an increase in the number and complexity of cases being filed. In response to this change, New York's then Chief Judge created a Task Force on Commercial Litigation. In 2012, the Task Force issued a series of reform proposals aimed at better managing judicial resources, encouraging greater use of non-judicial personnel and alternative dispute resolution, and increasing engagement with the corporate and academic communities and the Bar. From these recommendations, new rules and amendments have been enacted during the 2014-16 period.

This guide contains a summary of some important new rules and amendments to existing rules that have been enacted recently. For a complete list of the rules of the Commercial Division of the Supreme Court, please follow the link found [here](#).

II. Rules Updates Released After the Original Publication of the User's Guide

The following rules updates were enacted subsequent to the [original publication of this user's guide](#) in January of 2015:

Section 202.70. Rules of the Commercial Division of the Supreme Court. (AMENDED)

Goal: To encourage litigants to seek court-assisted resolution of foreign arbitrations in New York, which has a dedicated International Arbitration Part, and redefine the types of cases that can be heard by the Commercial Division.

202.70(b)(12). For commercial cases where an arbitration agreement provides for the arbitration to be heard outside the United States, the monetary threshold established in section 202.70(a) shall not apply.

202.70(c). The Commercial Division will not hear disputes over home improvement contracts involving residential properties consisting of one to four residential units or individual units in any residential building, including cooperative or condominium units, even if the monetary threshold is met.

Preamble to the Rules of practice for the Commercial Division. (AMENDED)

Goal: To articulate the Commercial Division's policy of encouraging proportionality in discovery.

The Preamble to the Commercial Division Rules of Practice is amended as follows: The Commercial Division is mindful of the need to conserve client resources, encourage proportionality in discovery, promote efficient resolution of matters, and increase respect for the integrity of the judicial process.

Rule 3. Alternative Dispute Resolution; Settlement Conference Before a Justice Other Than the Justice Assigned to the Case. (AMENDED)

Goal: To provide a mechanism for parties to resolve their cases without incurring substantial litigation costs or running the risk of exposing a case weakness before the judge presiding.

(a) Counsel for all parties may stipulate to having a case determined by a summary jury trial pursuant to any applicable local rules or, in the absence of a controlling local rule, with permission of the court.

(b) Counsel for all parties may, at any time in the litigation, jointly request that the assigned justice grant a separate settlement conference before another justice. The request will be granted in the discretion of the assigned justice upon finding that such a separate settlement conference would be beneficial to the parties and the court and would further the interests of justice.

Rule 6. Requirement to Bookmark PDF Documents Submitted to the Commercial Division. (AMENDED)

Goal: To increase litigation efficiency by providing a mechanism for parties and judicial officers to navigate through voluminous PDF documents through use of links in tables of contents.

Each electronically-submitted memorandum of law and, where appropriate, each affidavit and affirmation, shall include electronic bookmarks providing a listing of the document's contents and allowing for navigation by the reader through the document.

Rule 11-d: Rule as to Time Limitations on Entity Depositions (AMENDED)

Goal: To set forth limitations on the newly available entity depositions, pursuant to newly promulgated Rule 11-f.

Each deposition of an entity is limited to 7 hours, regardless of whether one or more entity representatives are named. This time limitation may be enlarged by application for leave of court, which shall be freely granted.

Rule 11-e: Requirement for Specificity in Responses to Requests for Production (NEW RULE)

Goal: To promote efficiency in the discovery process by requiring increased specificity by parties responding and objecting to document requests.

The party responding to a document request must state with "reasonable particularity" the grounds for any objection to producing responsive documents. No later than one month prior to the close of fact discovery the responding party shall state, for each document request, whether the production is complete or whether there are no documents responsive to the request.

Rule 11-f: Rule as to Entity Depositions (NEW RULE)

Goal: To encourage businesses and government agencies to produce entity deponents who can efficiently answer questions relating to the issues in the litigation by promulgating a Commercial Division analogue to Rule 30(b)(6) of the Federal Rules of Civil Procedure.

The new rule allows for the issuance of a subpoena listing matters on which an entity representative shall be examined at a deposition. The matters on which the person is to be examined must be described with reasonable particularity. The named entity must designate a deponent(s) no later than ten days prior to the scheduled deposition. The designated individual shall testify as to the information known or reasonably available to the entity.

Rule 11-g & Appendix B: Proposed Form of Confidentiality Order (NEW RULE)

Goals: To provide a standardized form of confidentiality order to be used when the presiding justice so chooses. To establish a formal mechanism in electronically filed cases for filing sealed and/or redacted documents in order to ensure that those documents are preserved in the record on appeal.

(a) Where the Commercial Division justice presiding so elects, the parties shall submit to the court the proposed stipulation that appears in Appendix B to the Rules of the Commercial Division ("Proposed Form of Confidentiality Order").

(b) If the parties seek to deviate from the Proposed Form of Confidentiality Order they shall submit to the court a red-line of the proposed changes with a written explanation as to why the deviations are warranted.

(c) Pursuant to the Proposed Form of Confidentiality Order, in counties with electronic filing, a litigant seeking to file documents in redacted form or under seal shall make the filing on the NYSCEF system in redacted form. The party that produced the material sought to be filed under seal shall then make a motion to seal the filing within seven days of the redacted version being filed. If the party that produced the Confidential Information fails to move to seal within seven days of the redacted filing, the litigant making the filing shall take steps to replace the redacted filing with its corresponding unredacted version. In the event that the motion to seal is granted, the party making the filing shall file the document in accordance with the procedures that govern the filing of sealed documents on the NYSCEF system.

Rule 14-a: Rulings at Disclosure Conferences (NEW RULE)

Goal: To make the process of resolving disputes at informal conferences before non-judicial personnel more efficient by ensuring that the parties understand the precise language of the rulings.

(a) Prior to the conclusion of a disclosure conference, either **(1)** the parties shall set forth in writing the resolutions reached at the conference for the court to sign off on or **(2)** dictate into the record the resolutions that were reached and the transcript will be submitted to the court to be so ordered or incorporated into an order.

(b) With respect to telephone conferences, upon request of a party and if the court so directs, the parties shall agree upon and jointly submit to the court within one **(1)** business day of the telephone conference a stipulated proposed order, memorializing the resolution of their discovery dispute. If the parties are unable to agree upon an appropriate form of proposed order, they shall so advise the court so that the court can direct an alternative course of action.

Rule 32-a: Direct Testimony by Affidavit (NEW RULE)

Goal: To increase efficiency during non-jury trials by permitting the court to require that direct testimony of a party's witness be submitted in affidavit form.

The court may require that the direct testimony of a party's own witness in a non-jury trial or evidentiary hearing be submitted in affidavit form. The court may not require the submission of a direct testimony affidavit from a witness who is not under the control of the party offering the testimony. The submission of direct testimony by affidavit shall not affect any right to conduct cross-examination or re-direct examination of a witness.

Model Status Conference Form: (For optional use)

Goal: To provide litigants with a streamlined process to identify final discovery matters to be completed before the Note of Issue is filed.

This model status conference form lists various issues that a Commercial Division Judge can cover at a status conference held in the case.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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