

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. Thereafter, the Chief Judge formed a Commercial Division Advisory Council which has made various recommendations with respect to practice in the Commercial Division. From these recommendations, many new rules and amendments have been enacted.

For a complete list of the rules of the Commercial Division of the Supreme Court, please follow the link found [here](#). To learn about proposed rule revisions, click [here](#).

II. Rules Updates Released After December 1, 2016 Publication of the User's Guide

This guide contains a summary of important new rules and amendments to existing rules that have been enacted since our [first](#) and [second](#) User's Guides were published:

Rule 20. Temporary Restraining Orders. (AMENDED, effective date of July 1, 2017)

Goal: To provide the opposing party with meaningful notice of a requested temporary restraining order ("TRO") by providing copies of the underlying papers supporting the TRO before they are presented to the assigned Justice.

Unless the moving party can demonstrate that there will be significant prejudice by reason of giving notice, a temporary restraining order will not be issued *ex parte*. The applicant must give notice, including copies of all supporting papers, to the opposing parties sufficient to permit them an opportunity to appear and contest the application.

Rule 26. Length of Trial. (AMENDED, effective date of July 1, 2017)

Goal: To make clear the power of the court to set trial time limitations.

At least ten days prior to trial or such other time as the court may set, the parties, after considering the expected testimony of and, if necessary, consulting with their witnesses, shall furnish the court with a realistic estimate of the length of the trial. If requested by the Court, the estimate shall also contain a request by each party for the total number of hours which each party believes will be necessary for its direct examination, cross-examination, redirect examination, and argument during the trial. The court may rule on the total number of trial hours which the court will permit for each party. The court in its discretion may extend the total number of trial hours.

Rule 30(c). Consultation Regarding Expert Testimony. (NEW RULE, effective date of May 1, 2017)

Goal: To make clear the court's power to require counsel to consult in good faith on expert testimony in advance of trial of Commercial Division matters.

The court may direct that prior to the pre-trial conference, counsel for the parties consult in good faith to identify those aspects of their respective experts' anticipated testimony that are not in dispute. The court may further direct that any agreements reached in this regard shall be reduced to a written stipulation.

Section 202.70(d)(2). Commercial Division Sample Choice of Forum Clause. (AMENDED, effective date of July 1, 2017)

Goal: To provide contracting parties a convenient and streamlined tool to assist them in creating appropriate party-specific language, in a pre-dispute context, in selecting the Commercial Division as their forum.

Subject to meeting the jurisdictional requirements of subdivisions (a), (b), and (c) of this section and filing an RJI in compliance with subsection (d)(1) above, the parties to a contract may consent to the exclusive jurisdiction of the Commercial Division of the Supreme Court by including such consent in their contract. A sample choice of forum provision can be found at Appendix C to these Rules of the Commercial Division. Alternatively, subject to meeting the jurisdictional and procedural requirements applicable to the Commercial Division and the federal courts, the parties to a contract may consent to the exclusive jurisdiction of either the Commercial Division of the Supreme Court or the federal courts in New York State by including such consent in their contract. An alternative sample choice of forum provision to that effect can also be found at Appendix C to these Rules of the Commercial Division.

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