Historical Note

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.

Section 202.69 Coordination of related actions pending in more than one judicial district.

(a) Application. This section shall apply when related actions are pending in the courts of the Unified Court System in more than one judicial district and it may be appropriate for these actions to be coordinated pursuant to the criteria and procedures set forth in this section. Coordination pursuant to this section shall apply to pretrial proceedings, including dispositive motions.

(b) Litigation Coordinating Panel.

(1) Composition. The Chief Administrator of the Courts, in consultation with the Presiding Justice of each Appellate Division, shall create a Litigation Coordinating Panel composed of one justice of the Supreme Court from each judicial department of the State.

(2) Procedure. The Panel shall determine, sua sponte or upon application of a party to an action, a justice before whom such an action is pending, or an administrative judge, whether the related actions should be coordinated before one or more individual justices. The Panel shall provide notice and an opportunity to be heard to all parties to the actions sought to be coordinated and shall inform the justices before whom such actions are pending of the initiation of proceedings before the Panel.

(3) Standards for Coordination. In determining whether to issue an administrative order of coordination, the Panel shall consider, among other things, the complexity of the actions; whether common questions of fact or law exist, and the importance of such questions to the determination of the issues; the risk that coordination may unreasonably delay the progress, increase the expense, or complicate the processing of any action or otherwise prejudice a party; the risk of duplicative or inconsistent rulings, orders or judgments; the convenience of the parties, witnesses and counsel; whether coordinated discovery would be advantageous; efficient utilization of judicial resources and the facilities and personnel of the court; the manageability of a coordinated litigation; whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; and the pendency of related matters in the Federal courts and in the courts of other states. The Panel may exclude particular actions from an otherwise applicable order of coordination when necessary to protect the rights of parties.

(4) Determination.

(i) The Panel shall issue a written decision on each application. If the Panel determines to direct coordination, it shall issue an administrative order identifying the actions that shall be coordinated. The order may address actions subsequently filed or not otherwise then before the Panel.

(ii) The order of the Panel shall specify the number of Coordinating Justices and the county or counties in which the coordinated proceedings shall take place. In making this decision, the Panel shall consider, among other things, the venues of origin of the cases to be coordinated; whether the actions arise out of an accident or events in a particular county; judicial caseloads in prospective venues; fairness to parties; the convenience of the parties and witnesses; the convenience of counsel; and whether the purposes of this section can best be advanced by coordination before more than one Coordinating Justice.

(c) Coordinating Justice.

(1) Designation. The Administrative Judge charged with supervision of the local jurisdiction within which coordinated proceedings are to take place shall select the Coordinating Justice or Justices, in consultation with the appropriate Deputy Chief Administrative Judge. In deciding whom to designate, the Administrative Judge shall consider, among other things, the existing caseload of each prospective appointee and the overall needs of the court in which that justice serves; the familiarity of that justice with the litigation at issue; the justice's managerial ability; and the previous experience of the justice with the field of law involved and with coordinated litigation. The Administrative Judge may designate a justice from another local jurisdiction as a Coordinating Justice with the

approval of the Administrative Judge thereof.

(2) Authority. The Coordinating Justice shall have authority to make any order consistent with this section and its purposes, including to remand to the court of origin any portion of a case not properly subject to coordination under the administrative order of the Panel; assign a master caption; create a central case file and docket; establish a service list; periodically issue case management orders after consultation with counsel; appoint and define the roles of steering committees and counsel of parties and liaison counsel, provided that the committees and counsel shall not deprive any party of substantive rights; issue protective orders pursuant to Article 31 of the Civil Practice Law and Rules; establish a document depository; direct the parties to prepare coordinated pleadings and deem service upon liaison counsel or steering committee service upon the respective parties; require service of uniform requests for disclosure and establish a uniform method for the conduct of physical and mental examination; rule upon all motions; require the parties to participate in settlement discussions and court-annexed alternative dispute resolution; and try any part of any coordinated case on consent of the parties to that action.

(3) Coordination with Federal or Other States' Actions. If actions related to those pending before a Coordinating Justice are proceeding in Federal courts or in the courts of other states, the Coordinating Justice shall consult with the presiding judge(s) in an effort to advance the purposes of this section. Where appropriate, the Coordinating Justice, while respecting the rights of parties under the Civil Practice Law and Rules, may require that discovery in the cases coordinated pursuant to this section proceed jointly or in coordination with discovery in the Federal or other states' actions.

(d) Termination of Coordination. The Coordinating Justice, sua sponteor upon motion by any party, may terminate coordination, in whole or in part, if the Justice determines that coordination has been completed or that the purposes of this section can be best advanced by termination of the coordination. Upon termination, the actions shall be remanded to their counties of origin for trial unless the parties to an action consent to trial of that action before the Coordinating Justice.

Historical Note

Sec. filed Jan. 28, 2002 eff. Jan. 24, 2002.

Section 202.70 Rules of the Commercial Division of the Supreme Court

(a) Monetary thresholds

Except as set forth in subdivision (b), the monetary thresholds of the Commercial Division, exclusive of punitive damages, interests, costs, disbursements and counsel fees claimed, are established as follows:

Albany County	$50,000
Eighth Judicial District	$100,000
Kings County	$150,000
Nassau County	$200,000
New York County	$500,000
Onondaga County	$50,000
Queens County	$100,000
Seventh Judicial District	$50,000
Suffolk County	$100,000
Westchester County	$100,000

(b) Commercial cases

Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or equitable or declaratory relief is sought:

(1) Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings

(e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

(2) Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units);

(3) Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only;

(4) Shareholder derivative actions -- without consideration of the monetary threshold;

(5) Commercial class actions -- without consideration of the monetary threshold;

(6) Business transactions involving or arising out of dealings with commercial banks and other financial institutions;

(7) Internal affairs of business organizations;

(8) Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters;

(9) Environmental insurance coverage;

(10) Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage);

(11) Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures -- without consideration of the monetary threshold; and

(12) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues -- without consideration of the monetary threshold.

(c) Non-commercial cases

The following will not be heard in the Commercial Division even if the monetary threshold is met:

(1) Suits to collect professional fees;

(2) Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;

(3) Residential real estate disputes, including landlord-tenant matters, and commercial real estate disputes involving the payment of rent only;

(4) Proceedings to enforce a judgment regardless of the nature of the underlying case;

(5) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; and

(6) Attorney malpractice actions except as otherwise provided in paragraph (b)(8).

(d) Assignment to the Commercial Division

Within 90 days following service of the complaint, any party may seek assignment of a case to the Commercial Division by filing a Request for Judicial Intervention (RJI) that attaches a completed Commercial Division RJI Addendum certifying that the case meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section. Except as provided in subdivision (e) below, failure to file an RJI pursuant to this subdivision precludes a party from seeking assignment of the case to the Commercial Division.

(e) Transfer into the Commercial Division

If an RJI is filed within the 90-day period following service of the complaint and the case is assigned to a noncommercial part because the filing party did not designate the case as "commercial" on the RJI, any other party may apply by letter application (with a copy to all parties) to the Administrative Judge, within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division. Further, notwithstanding the time periods set forth in subdivisions (d) and (e) of this section, for good cause shown for the delay a party may seek the transfer of a case to the Commercial Division by letter application (with a copy to all parties) to the Administrative Judge. In addition, a non-Commercial Division justice to whom a case is assigned may sua sponte request the Administrative Judge to transfer a case that meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section to the Commercial Division. The determinations of the Administrative Judge with respect to any letter applications or requests under this subdivision shall be final and subject to no further administrative review or appeal.

(f) Transfer from the Commercial Division

(1) In the discretion of the Commercial Division justice assigned, if a case does not fall within the jurisdiction of the Commercial Division as set forth in this section, it shall be transferred to a non-commercial part of the court.

(2) Any party aggrieved by a transfer of a case to a non-commercial part may seek review by letter application (with a copy to all parties) to the Administrative Judge within ten days of receipt of the designation of the case to a non-commercial part. The determination of the Administrative Judge shall be final and subject to no further administrative review or appeal.

(g) Rules of practice for the Commercial Division

Unless these rules of practice for the Commercial Division provide specifically to the contrary, the rules of Part 202 also shall apply to the Commercial Division, except that Rules 7 through 15 shall supersede section 202.12 (Preliminary Conference) and Rules 16 through 24 shall supersede section 202.8 (Motion Procedure).

Preamble. The Commercial Division understands that the businesses, individuals and attorneys who use this Court have expressed their frustration with adversaries who engage in dilatory tactics, fail to appear for hearings or depositions, unduly delay in producing relevant documents, or otherwise cause the other parties in a case to incur unnecessary costs. The Commercial Division will not tolerate such practices. The Commercial Division is mindful of the need to conserve client resources, promote efficient resolution of matters, and increase respect for the integrity of the judicial process. Litigants and counsel who appear in this Court are directed to review the Rules regarding sanctions, including the provisions in Rule 12 regarding failure to appear at a conference, Rule 13(a) regarding adherence to discovery schedules, and Rule 24(d) regarding the need for counsel to be fully familiar with the case when making appearances. Sanctions are also available in this Court under Rule 3126 of the Civil Practice Law and Rules and Part 130 of the Rules of the Chief Administrator of the Courts. The judges in the Commercial Division will impose appropriate sanctions and other remedies and orders as is warranted by the circumstances. Use of these enforcement mechanisms enables the Commercial Division to function efficiently and effectively, and with less wasted time and expense for the Court, parties and counsel. Nothing herein is intended to expand or alter the scope and/or remedies available under the above-cited sanction rules.

Rule 1. Appearance by Counsel with Knowledge and Authority.

(a) Counsel who appear in the Commercial Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. Counsel should also be prepared to discuss any motions that have been submitted and are outstanding. Failure to comply with this rule may be regarded as a default and dealt with appropriately. See Rule 12.

(b) Consistent with the requirements of Rule 8(b), counsel for all parties who appear at the preliminary conference shall be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery. Counsel may bring a client representative or outside expert to assist in such discussions.

(c) It is important that counsel be on time for all scheduled appearances.

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by submission of a copy of the stipulation or a letter directed to the clerk of the part along with notice to chambers via telephone or e-mail. This notification shall be made in addition to the filing of a stipulation with the County Clerk.

Rule 3. Alternative Dispute Resolution (ADR). At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation.

Rule 4. Electronic Submission of Papers.

(a) Papers and correspondence by fax. Papers and correspondence filed by fax should comply with the requirements of section 202.5-a except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. Correspondence sent by fax should not be followed by hard copy unless requested.

(b) Papers submitted in digital format. In cases not pending in the court's Filing by Electronic Means System, the court may permit counsel to communicate with the court and each other by e-mail. In the court's discretion, counsel may be requested to submit memoranda of law by e-mail or on a computer disk along with an original and courtesy copy.

Rule 5. (This rule shall apply only in the First and Second Judicial Departments) Information on Cases. Information on future court appearances can be found at the court system's future appearance site (www.nycourts.gov/ecourts). Decisions can be found on the Commercial Division home page of the Unified Court System's internet website: www.courts.state.ny.us/comdiv or in the New York Law Journal. The clerk of the part can also provide information about scheduling in the part (trials, conferences, and arguments on motions). Where circumstances require exceptional notice, it will be furnished directly by chambers.

Rule 6. Form of Papers. All papers submitted to the Commercial Division shall comply with CPLR 2101 and section 202.5(a). Papers shall be double-spaced and contain print no smaller than twelve-point, or 8½ x 11 inch paper, bearing margins no smaller than one inch. The print size of footnotes shall be no smaller than ten-point. Papers also shall comply with Part 130 of the Rules of the Chief Administrator.

Rule 7. Preliminary Conference; Request. A preliminary conference shall be held within 45 days of assignment of the case to a Commercial Division justice, or as soon thereafter as is practicable. Except for good cause shown, no preliminary conference shall be adjourned more than once or for more than 30 days. If a Request for Judicial Intervention is accompanied by a dispositive motion, the preliminary conference shall take place within 30 days following the decision of such motion (if not rendered moot) or at such earlier date as scheduled by the justice presiding. Notice of the preliminary conference date will be sent by the court at least five days prior thereto.

Rule 8. Consultation prior to Preliminary and Compliance Conferences.

(a) 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 and any other issues to be discussed at the conference, including the timing and scope of expert disclosure under Rule 13(c); (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.

(b) Prior to the preliminary conference, counsel shall confer with regard to anticipated electronic discovery issues. Such issues shall be addressed with the court at the preliminary conference and shall include but not be limited to (i) identification of potentially relevant types or categories of electronically stored information ("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; (x) the anticipated cost and burden of data recovery and proposed initial allocation of such costs; and (xi) designation of experts; and (xii) the need to vary the presumptive number or duration of depositions set forth in Rule 11-d.

Rule 9. Accelerated Adjudication Actions.

(a) This rule is applicable to all actions, except to class actions brought under Article 9 of the CPLR, in which the court by written consent of the parties is authorized to apply the accelerated adjudication procedures of the Commercial Division of the Supreme Court. One way for parties to express their consent to this accelerated adjudication process is by using specific language in a contract, such as: "Subject to the requirements for a case to be heard in the Commercial Division, the parties agree to submit to the exclusive jurisdiction of the Commercial Division, New York State Supreme Court, and to the application of the Court's accelerated procedures, in connection with any dispute, claim or controversy arising out of or relating to this agreement, or the breach, termination, enforcement or validity thereof."

(b) In any matter proceeding through the accelerated process, all pre-trial proceedings, including all discovery, pre-trial motions and mandatory mediation, shall be completed and the parties shall be ready for trial within nine (9) months from the date of filing of a Request of Judicial Intervention (RJI).

(c) In any accelerated action, the court shall deem the parties to have irrevocably waived:

(1) any objections based on lack of personal jurisdiction or the doctrine of forum non conveniens;

(2) the right to trial by jury;

(3) the right to recover punitive or exemplary damages;

(4) the right to any interlocutory appeal; and

(5) the right to discovery, except to such discovery as the parties might otherwise agree or as follows:

(i) There shall be no more than seven (7) interrogatories and five (5) requests to admit;

(ii) Absent a showing of good cause, there shall be no more than seven (7) discovery depositions per side with no deposition to exceed seven (7) hours in length. Such depositions can be done either in person at the location of the deponent, a party or their counsel or in real time by any electronic video device; and

(iii) Documents requested by the parties shall be limited to those relevant to a claim or defense in the action and shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain.

(d) In any accelerated action, electronic discovery shall proceed as follows unless the parties agree otherwise:

(i) the production of electronic documents shall normally be made in a searchable format that is usable by the party receiving the e-documents;

(ii) the description of custodians from whom electronic documents may be collected shall be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute; and

(iii) where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the court will either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final judgment.

Rule 10. Submission of Information. At the preliminary conference, counsel shall be prepared to furnish the court with the following: (i) a complete caption, including the index number; (ii) the name, address, telephone number, e-mail address and fax number of all counsel; (iii) the dates the action was commenced and issue joined; (iv) a statement as to what motions, if any, are anticipated; and (v) copies of any decisions previously rendered in the case.

Rule 11. Discovery

(a) The preliminary conference will result in the issuance by the court of a preliminary conference order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as (i) directions for submission to the alternative dispute resolution program; (ii) a schedule of limited-issue discovery in aid of early dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure.

(b) The order will also contain a comprehensive disclosure schedule, including dates for the service of third-party pleadings, discovery, motion practice, a compliance conference, if needed, a date for filing the note of issue, a date for a pre-trial conference and a trial date.

(c) The preliminary conference order may provide for such limitations of interrogatories and other discovery as may be necessary to the circumstances of the case. Additionally, the court should consider the appropriateness of altering prospectively the presumptive limitations on depositions set forth in Rule 11-d.

(d) The court will determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3214(b), pending the determination of any dispositive motion.

Rule 11-a. Interrogatories.

(a) Interrogatories are limited to 25 in number, including subparts, unless another limit is specified in the preliminary conference order. This limit applies to consolidated actions as well.

(b) Unless otherwise ordered by the court, interrogatories are limited to the following topics: name of witnesses with knowledge of information material and necessary to the subject matter of the action, computation of each category of damage alleged, and the existence, custodian, location and general description of material and necessary documents, including pertinent insurance agreements, and other physical evidence.

(c) During discovery, interrogatories other than those seeking information described in paragraph (b) above may only be served (1) if the parties consent, or (2) if ordered by the court for good cause shown.

(d) At the conclusion of other discovery, and at least 30 days prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served unless the Court has ordered otherwise.

Rule 11-b. Privilege Logs.

(a) Meet and Confer: General. Parties shall meet and confer at the outset of the case, and from time to time thereafter, to discuss the scope of the privilege review, the amount of information to be set out in the privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging requirement, and any other issues pertinent to privilege review, including the entry of an appropriate non-waiver order. To the extent that the collection process and parameters are disclosed to the other parties and those parties do not object, that fact may be relevant to the Court when addressing later discovery disputes.

(b) Categorical Approach or Document-By-Document Review.

(1) The preference in the Commercial Division is for the parties to use categorical designations, where appropriate, to reduce the time and costs associated with preparing privilege logs. The parties are expected to address such considerations in good faith as part of the meet and confer process (see paragraph (a) above) and to agree, where possible, to employ a categorical approach to privilege designations. The parties are encouraged to utilize any reasoned method of organizing the documents that will facilitate an orderly assessment as to the appropriateness of withholding documents in the specified category. For each category of documents that may be established, the producing party shall provide a certification, pursuant to 22 NYCRR § 130-1.1a, setting forth with specificity those facts supporting the privileged or protected status of the information included within the category. The certification shall also describe the steps taken to identify the documents so

categorized, including but not limited to whether each document was reviewed or some form of sampling was employed, and if the latter, how the sampling was conducted. The certification shall be signed by the Responsible Attorney, as defined below, or by the party, through an authorized and knowledgeable representative.

(2) In the event the requesting party refuses to permit a categorical approach, and instead insists on a document-by-document listing on the privilege log, then unless the Court deems it appropriate to issue a protective order pursuant to CPLR 3103 based upon the facts and circumstances before it, the requirements set forth in CPLR 3122 shall be followed. In that circumstance, however, the producing party, upon a showing of good cause, may apply to the court for the allocation of costs, including attorneys' fees, incurred with respect to preparing the document-by-document log. Upon good cause shown, the court may allocate the costs to the requesting party.

(3) To the extent that a party insists upon a document-by-document privilege log as contemplated by CPLR 3122, and absent an order to the contrary, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include the following: (i) an indication that the e-mails represent an uninterrupted dialogue; (ii) the beginning and ending dates and times (as noted on the e-mails) of the dialogue; (iii) the number of e-mails within the dialogue; and (iv) the names of all authors and recipients – together with sufficient identifying information about each person (e.g., name of employer, job title, role in the case) to allow for a considered assessment of privilege issues.

(c) Special Master. In complex matters likely to raise significant issues regarding privileged and protected material, parties are encouraged to hire a Special Master to help the parties efficiently generate privilege logs, with costs to be shared.

(d) Responsible Attorney. The attorney having supervisory responsibility over the privilege review shall be actively involved in establishing and monitoring the procedures used to collect and review documents to determine that reasonable, good faith efforts are undertaken to ensure that responsive, non-privileged documents are timely produced.

(e) Court Order. Agreements and protocols agreed upon by parties should be memorialized in a court order.

Rule 11-c. Discovery of Electronically Stored Information from Nonparties.

Parties and nonparties should adhere to the Commercial Division's Guidelines for Discovery of Electronically Stored Information ("ESI") from nonparties, which can be found in Appendix A to these Rules of the Commercial Division.

Rule 11-d. Limitations on Depositions.

(a) Unless otherwise stipulated to by the parties or ordered by the court:
(1) the number of depositions taken by plaintiffs, or by defendants, or by third-party defendants, shall be limited to 10; and
(2) depositions shall be limited to 7 hours per deponent.

(b) Notwithstanding subsection (a)(1) of this Rule, the propriety of and timing for depositions of non-parties shall be subject to any restrictions imposed by applicable law.

(c) For the purposes of subsection (a)(1) of this Rule, the deposition of an entity pursuant to CPLR 3106(d) shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf.

(d) For the purposes of this Rule, each deposition of an officer, director, principal or employee of an entity who is also a fact witness, as opposed to an entity representative pursuant to CPLR 3106(d), shall constitute a separate deposition.

(e) For good cause shown, the court may alter the limits on the number of depositions or the duration of an examination.

(f) Nothing in this Rule shall be construed to alter the right of any party to seek any relief that it deems appropriate under the CPLR or other applicable law.

Rule 11-e. Responses and Objections to Document Requests

(a) For each document request propounded, the responding party shall, in its Response and Objections served pursuant to CPLR 3122(a) (the "Responses"), either:

i. state that the production will be made as requested; or

ii. state with reasonable particularity the grounds for any objection to production.

(b) By a date agreed to by the parties or at such time set by the Court, the responding party shall serve the Responses contemplated by Rule 11-e(a)(ii), which shall set forth specifically: (i) whether the objection(s) interposed pertains to all or part of the request being challenged; (ii) whether any documents or categories of documents are being withheld, and if so, which of the stated objections forms the basis for the responding party's decision to withhold otherwise responsive documents or categories of documents; and (iii) the manner in which the responding party intends to limit the scope of its production.

(c) By agreement of the parties to a date no later than the date set for the commencement of depositions, or at such time set by the Court, a date certain shall be fixed for the completion of document production by the responding party.

(d) By agreement of the parties to a date no later than one (1) month prior to the close of fact discovery, or at such time set by the Court, the responding party shall state, for each individual request: (i) whether the production of documents in its possession, custody or control and that are responsive to the individual request, as propounded or modified, is complete; or (ii) that there are no documents in its possession, custody or control that are responsive to the individual request as propounded or modified.

(e) Nothing contained herein is intended to conflict with a party's obligation to supplement its disclosure obligations pursuant to CPLR 3101(h).

Rule 12. Non-Appearance at Conference. The failure of counsel to appear for a conference may result in a sanction authorized by section 130.2.1 of the Rules of the Chief Administrator or section 202.27, including dismissal, the striking of an answer, an inquest or direction for judgment, or other appropriate sanction.

Rule 13. Adherence to Discovery Schedule, Expert Disclosure.

(a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Such deadlines, however, may be modified upon the consent of all parties, provided that all discovery shall be completed by the discovery cutoff date set forth in the preliminary conference order. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party pursuant to CPLR 3126.

(b) If a party seeks documents as a condition precedent to a deposition and the documents are not produced by the date fixed, the party seeking disclosure may ask the court to preclude the non-producing party from introducing such demanded documents at trial.

(c) If any party intends to introduce expert testimony at trial, no later than thirty days prior to the completion of fact discovery, the parties shall confer on a schedule for expert disclosure -- including the identification of experts, exchange of reports, and depositions of testifying experts -- all of which shall be completed no later than

four 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.

Unless otherwise stipulated or ordered by the court, expert disclosure must be accompanied by a written report, prepared and signed by the witness, if either (1) the witness is retained or specially employed to provide expert testimony in the case, or (2) the witness is a party's employee whose duties regularly involve giving expert testimony. The report must contain:

(A) a complete statement of all opinions the witness will express and the basis and the reasons for them;

(B) the data or other information considered by the witness in forming the opinion(s);

(C) any exhibits that will be used to summarize or support the opinion(s);

(D) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(E) a list of all other cases at which the witness testified as an expert at trial or by deposition during the previous four years; and

(F) a statement of the compensation to be paid to the witness for the study and testimony in the case.

The note of issue and certificate of readiness may not be filed until the completion of expert disclosure. Expert disclosure provided after these dates without good cause will be precluded from use at trial.

Rule 14. Disclosure Disputes. If the court's Part Rules address discovery disputes, those Part Rules will govern discovery disputes in a pending case. If the court's Part Rules are silent with respect to discovery disputes, the following Rule will apply. Discovery disputes are preferred to be resolved through court conference as opposed to motion practice. Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure. See Section 202.7. If counsel are unable to resolve any disclosure dispute in this fashion, counsel for the moving party shall submit a letter to the court not exceeding three single-spaced pages outlining the nature of the dispute and requesting a telephone conference. Such a letter must include a representation that the party has conferred with opposing counsel in a good faith effort to resolve the issues raised in the letter or shall indicate good cause why no such consultation occurred. Not later than four business days after receiving such a letter, any affected opposing party or non-party shall submit a responsive letter not exceeding three single-spaced pages. After the submission of letters, the court will schedule a telephone or in-court conference with counsel. The court or the court's law clerks will attempt to address the matter through a telephone conference where possible. The failure of counsel to comply with this rule may result in a motion being held in abeyance until the court has an opportunity to conference the matter. If the parties need to make a record, they will still have the opportunity to submit a formal motion.

Rule 15. Adjournments of Conferences. Adjournments on consent are permitted with the approval of the court for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the preliminary conference order, unless otherwise directed by the court.

Rule 16. Motions in General.

(a) Form of Motion Papers. The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should use tabs when submitting papers containing exhibits. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated. CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

(b) Proposed Orders. When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, pro hac vice admissions, open commissions, etc. No proposed order should be submitted with motion

papers on a dispositive motion.

(c) Adjournment of Motions. Dispositive motions (made pursuant to CPLR 3211, 3212 or 3213) may be adjourned only with the court's consent. Non-dispositive motions may be adjourned on consent no more than three times for a total of no more than 60 days unless otherwise directed by the court.

Rule 17. Length of Papers. Unless otherwise permitted by the court: (i) briefs or memoranda of law shall be limited to 25 pages each; (ii) reply memoranda shall be no more than 15 pages and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits and affirmations shall be limited to 25 pages each.

Rule 18. Sur-Reply and Post-Submission Papers. Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule shall not respond in kind.

Rule 19. Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. See Rule 20. Absent advance permission, reply papers shall not be submitted on orders to show cause.

Rule 19-a. Motions for Summary Judgment; Statements of Material Facts.

(a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b). In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

Rule 20. Temporary Restraining Orders. 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. The applicant must give notice to the opposing parties sufficient to permit them an opportunity to appear and contest the application.

Rule 21. Courtesy Copies. Courtesy copies should not be submitted unless requested or as herein provided. However, courtesy copies of all motion papers and proposed orders shall be submitted in cases in the court's Filing by Electronic Means System.

Rule 22. Oral Argument. Any party may request oral argument on the face of its papers or in an accompanying letter. Except in cases before justices who require oral argument on all motions, the court will determine, on a case-by-case basis, whether oral argument will be heard and, if so, when counsel shall appear. Notice of the date selected by the court shall be given, if practicable, at least 14 days before the scheduled oral argument. At that time, counsel shall be prepared to argue the motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing.

Rule 23. 60-Day Rule. If 60 days have elapsed after a motion has been finally submitted or oral argument held, whichever was later, and no decision has been issued by the court, counsel for the movant shall send the court a letter alerting it to this fact with copies to all parties to the motion.

Rule 24. Advance Notice of Motions

(a) Nothing in this rule shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, in order to permit the court the opportunity to resolve issues before motion practice ensues, and to control its calendar in the context of the discovery and trial schedule, pre-motion conferences in accordance herewith must be held. The failure of counsel to comply with this rule may result in the motion being held in abeyance until the court has an opportunity to conference the matter.

(b) This rule shall not apply to disclosure disputes covered by Rule 14 nor to dispositive motions pursuant to CPLR 3211, 3212 or 3213 made at the time of the filing of the Request for Judicial Intervention or after discovery is complete. Nor shall the rule apply to motions to be relieved as counsel, for pro hac vice admission, for reargument or in limine.

(c) Prior to the making or filing of a motion, counsel for the moving party shall advise the Court in writing (no more than two pages) on notice to opposing counsel outlining the issue(s) in dispute and requesting a telephone conference. If a cross-motion is contemplated, a similar motion notice letter shall be forwarded to the court and counsel. Such correspondence shall not be considered by the court in reaching its decision on the merits of the motion.

(d) Upon review of the motion notice letter, the court will schedule a telephone or in-court conference with counsel. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(e) If the matter can be resolved during the conference, an order consistent with such resolution may be issued or counsel will be directed to forward a letter confirming the resolution to be "so ordered." At the discretion of the court, the conference may be held on the record.

(f) If the matter cannot be resolved, the parties shall set a briefing schedule for the motion which shall be approved by the court. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(g) On the face of all notices of motion and orders to show cause, there shall be a statement that there has been compliance with this rule.

(h) Where a motion must be made within a certain time pursuant to the CPLR, the submission of a motion notice letter, as provided in subdivision (a), within the prescribed time shall be deemed the timely making of the motion. This subdivision shall not be construed to extend any jurisdictional limitations period.

Rule 25. Trial Schedule. Counsel are expected to be ready to proceed either to select a jury or to begin presentation of proof on the scheduled trial date. Once a trial date is set, counsel shall immediately determine the availability of witnesses. If, for any reason, counsel are not prepared to proceed on the scheduled date, the court is to be notified within ten days of the date on which counsel are given the trial date or, in extraordinary circumstances, as soon as reasonably practicable. Failure of counsel to provide such notification will be deemed a waiver of any application to adjourn the trial because of the unavailability of a witness. Witnesses are to be scheduled so that trials proceed without interruption. Trials shall commence each court day promptly at such times as the court directs. Failure of counsel to attend the trial at the time scheduled without good cause shall constitute a waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel's absence. There shall be no adjournment of a trial except for good cause shown. With respect to trials scheduled more than 60 days in advance, section 125.1(g) of the Rules of the Chief Administrator shall apply and the actual engagement of trial counsel in another matter will not be recognized as an acceptable basis for an adjournment of the trial.

Rule 26. Estimated Length of Trial. 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.

Rule 27. Motions in Limine. The parties shall make all motions in limine no later than ten days prior to the scheduled pre-trial conference date, and the motions shall be returnable on the date of the pre-trial conference, unless otherwise directed by the court.

Rule 28. Pre-Marking of Exhibits. Counsel for the parties shall consult prior to the pre-trial conference and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. At the pre-trial conference date, each side shall then mark its exhibits into evidence as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the clerk of the part for guidance. The court will rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked.

Rule 29. Identification of Deposition Testimony. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read questions and answers that are irrelevant to the point for which the deposition testimony is offered. Each party shall prepare a list of deposition testimony to be offered by it as to which objection has not been made and, identified separately, a list of deposition testimony as to which objection has been made. At least ten days prior to trial or such other time as the court may set, each party shall submit its list to the court and other counsel, together with a copy of the portions of the deposition testimony as to which objection has been made. The court will rule upon the objections at the earliest possible time after consultation with counsel.

Rule 30. Settlement and Pretrial Conferences.

(a) Settlement Conference. At the time of certification of the matter as ready for trial or at any time after the discovery cut-off date, the court may schedule a settlement conference which shall be attended by counsel and the parties, who are expected to be fully prepared to discuss the settlement of the matter.

(b) Pre-trial Conference. Prior to the pretrial conference, counsel shall confer in a good faith effort to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. At the pre-trial conference, counsel shall be prepared to discuss all matters as to which there is disagreement between the parties, including those identified in Rules 27-29, and settlement of the matter. At or before the pre-trial conference, the court may require the parties to prepare a written stipulation of undisputed facts.

Rule 31. Pre-Trial Memoranda, Exhibit Book and Requests for Jury Instructions

(a) Counsel shall submit pre-trial memoranda at the pre-trial conference, or such other time as the court may set. Counsel shall comply with CPLR 2103(e). A single memorandum no longer than 25 pages shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference or at such other time as the court may set, counsel shall submit an indexed binder or notebook of trial exhibits for the court's use. A copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses shall be prepared and submitted. Plaintiff's exhibits shall be numerically tabbed and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions - Civil, a reference to the PJI number will suffice. Submissions should be by hard copy and disk or e-mail attachment in WordPerfect 12 format, as directed by the court.

Rule 32. Scheduling of witnesses. At the pre-trial conference or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility.

Rule 33. Preclusion. Failure to comply with Rules 28, 29, 31 and 32 may result in preclusion pursuant to CPLR 3126.

Rule 34. Staggered Court Appearances

Staggered court appearances are a mechanism to increase efficiency in the courts and to decrease lawyers' time waiting for a matter to be called by the courts. While this rule is intended to streamline the litigation process in the Commercial Division, it will be ineffectual without the cooperation and participation of litigants. Improving the process of litigating in the Commercial Division by instituting staggered court appearances of matters before the court, for example, requires not only the promulgation of rules such as this one, but also, and more importantly, the proactive and earnest adherence to such rules by parties and their counsel.

(a) Each court appearance before a Commercial Division Justice for oral argument on a motion shall be assigned a time slot. The length of the time slot allotted to each matter is solely in the discretion of the court.

(b) In order for the court to be able to address any and all matters of concern to the court and in order for the court to avoid the appearance of holding ex parte communications with one or more parties in the case, even those parties who believe that they are not directly involved in the matter before the court must appear at the appointed date and time assigned by the court unless specifically excused by the court. However, if an individual is appearing as a self-represented person, that individual must appear at each and every scheduled court appearance regardless of whether he or she anticipates being heard.

(c) Since the court is setting aside a specific time slot for the case to be heard and since there are occasions when the court's electronic or other notification system fails or occasions when a party fails to receive the court-generated notification, each attorney who receives notification of an appearance on a specific date and time is responsible for notifying all other parties by e-mail that the matter is scheduled to be heard on that assigned date and time. All parties are directed to exchange e-mail addresses with each other at the commencement of the case and to keep these e-mail addresses current, in order to facilitate notification by the person(s) receiving the court notification.

(d) Requests for adjournments or to appear telephonically must be e-filed and received in writing by the court by no later than 48 hours before the hearing.

APPENDIX A. GUIDELINES FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION ("ESI") FROM NONPARTIES.

Purpose

The purpose of these Guidelines for Discovery of ESI from Nonparties (the "Guidelines") is to:

Provide for the efficient discovery of ESI from nonparties in Commercial Division cases;

Encourage the early assessment and discussion of the potential costs and burdens to be imposed on nonparties in preserving, retrieving, reviewing and producing ESI given the nature of the litigation and the amount in controversy;

Identify the costs of nonparty ESI discovery that will require defrayal by the party requesting the discovery; and

Encourage the informal resolution of disputes between parties and nonparties regarding the production of ESI, without Court supervision or intervention whenever possible.

These Guidelines are not intended to modify governing case law or to replace any parts of the Rules of the Commercial Division of the Supreme Court (the "Commercial Division Rules"), the Uniform Civil Rules for the Supreme Court (the "Uniform Civil Rules"), the New York Civil Practice Law and Rules (the "CPLR"), or any other applicable rules or regulations pertaining to the New York State Unified Court System. These Guidelines should be construed in a manner that is consistent with governing case law and applicable sections and rules of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, and any other applicable rules and regulations. Parties seeking ESI discovery from nonparties in Commercial Division cases are recommended to cite to or

reference Rule 11-c of the Commercial Division Rules and these Guidelines in their requests for ESI discovery.

Definition of ESI

As used herein, “ESI” includes any electronically stored information stored in any medium from which such information can be obtained, either directly or after translation by the responding party into a reasonably usable form.

Guidelines

I. Subject to all applicable court rules regarding discovery, a party seeking ESI discovery from a nonparty and the nonparty receiving the request for ESI discovery are encouraged to engage in discussions regarding the ESI to be sought as early as permissible in an action.

II. Notwithstanding whether or when the legal duty to preserve ESI arises, which is governed by case law, a party seeking ESI discovery from a nonparty is encouraged to discuss with the nonparty any request that the nonparty implement a litigation hold.

III. A party seeking ESI discovery from a nonparty should reasonably limit its discovery requests, taking into consideration the following proportionality factors:

A. The importance of the issues at stake in the litigation;

B. The amount in controversy;

C. The expected importance of the requested ESI;

D. The availability of the ESI from another source, including a party;

E. The “accessibility” of the ESI, as defined in applicable case law; and

F. The expected burden and cost to the nonparty.

IV. The requesting party and the nonparty should seek to resolve disputes through informal mechanisms and should initiate motion practice only as a last resort. The requesting party and the nonparty should meet and confer concerning the scope of the ESI discovery, the timing and form of production, ways to reduce the cost and burden of the ESI discovery (including but not limited to: an agreement providing for the clawing-back of privileged ESI; and the use of advanced analytic software applications and other technologies that can screen for relevant and privileged ESI), and the requesting party’s defrayal of the nonparty’s reasonable production expenses. In connection with the meet and confer process, the requesting party and the nonparty should consider the proportionality factors set forth in paragraph III. In the event no agreement is reached through the meet and confer process, the requesting party and the nonparty are encouraged to seek resolution by availing themselves of the Court System’s resources, such as by requesting a telephonic conference with a law clerk or special referee or the appointment of an unpaid mediator in accordance with Rule 3 of the Commercial Division Rules.

V. The requesting party shall defray the nonparty’s reasonable production expenses in accordance with Rules 3111 and 3122(d) of the CPLR. Such reasonable production expenses may include the following:

A. Fees charged by outside counsel and e-discovery consultants;

B. The costs incurred in connection with the identification, preservation, collection, processing, hosting, use of advanced analytical software applications and other technologies, review for relevance and privilege, preparation of a privilege log (to the extent one is requested), and production;

C. The cost of disruption to the nonparty’s normal business operations to the extent such cost is quantifiable and warranted by the facts and circumstances; and

D. Other costs as may be identified by the nonparty.

Historical Note

Added 202.70 on Jan. 17, 2006

Amended (a) on Mar. 26, 2007

Amended (a) on Aug. 9, 2007

Amended (a) on Nov. 28, 2007

Amended (a) on Jan. 5, 2009

Amended (a) on Jun. 17, 2009

Amended (a) on Jul. 1, 2010

Amended (g) on Jul. 27, 2010

Amended (d) on May 25, 2011

Amended Rule 13 of section 202.70(g) on Sept 23, 2013
Amended Rule 8 of section 202.70(g) on Sept 23, 2013

Amended (a) on Jan 28, 2014

Added Rule 9 of section 202.70(g) on Apr 17, 2014

Added Rule 11-a of section 202.70(g) on Jun. 2, 2014

Amended (d)-(e) on Jul 1 2014, effective September 2, 2014

Added Rule 11-b of section 202.70(g) on Jul 8, 2014, effective September 2, 2014

Amended (a) on Jul 14, 2014, effective September 2, 2014

Amended Rule 8 on Jul 16, 2014, effective September 2, 2014

Added Rule 34 on Aug 6, 2014, effective September 2, 2014

Added Rule11-c & Appendix A on Aug 8, 2014, effective September 2, 2014

Amended Rules 8(b) & 11(c) and Added Rule 11-d on December 23, 2014, applicable to all cases filed in the Commercial Division on and after April 1, 2015

Added Preamble on Jan 6, 2015, effective April 1, 2015

Amended Rule14 on Jan 9, 2015, effective April 1, 2015

Added Rule11-e on Jan 22, 2015, effective April 1, 2015