

# COURT NOTICES

## AMENDMENT OF RULE

### Uniform Rules for the Supreme and County Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, sections 202.12(b) and 202.12(c)(3) of the Uniform Rules for the Supreme and County Courts, relating to preliminary conferences and electronic discovery, to read as follows:

Section 202.12 Preliminary Conference.

\* \* \*

(b) The court shall notify all parties of the scheduled conference date, which shall be not more than 45 days from the date the request for judicial intervention is filed unless the court orders otherwise, and a form of a stipulation and order, prescribed by the Chief Administrator of the Courts, shall be made available which the parties may sign, agreeing to a timetable which shall provide for completion of disclosure within 12 months of the filing of the request for judicial intervention for a standard case, or within 15 months of such filing for a complex case. If all parties sign the form and return it to the court before the scheduled preliminary conference, such form shall be “so ordered” by the court, and, unless the court orders otherwise, the scheduled preliminary conference shall be cancelled. If such stipulation is not returned signed by all parties, the parties shall appear at the conference. Except where a party appears in the action pro se, an attorney thoroughly familiar with the action and authorized to act on behalf of the party shall appear at such conference. Where a case is reasonably likely to include electronic discovery counsel shall, prior to the preliminary conference, confer with regard to any anticipated electronic discovery issues. Further, counsel for all parties who appear at the preliminary conference must 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 e-discovery discussions.

(1) *A non-exhaustive list of considerations for determining whether a case is reasonably likely to include electronic discovery is:*

(i) *Does potentially relevant electronically stored information (“ESI”) exist;*

(ii) *Do any of the parties intend to seek or rely upon ESI;*

(iii) *Are there less costly or less burdensome alternatives to secure the necessary information without recourse to discovery of ESI;*

(iv) *Are the cost and burden of preserving and producing ESI proportionate to the amount in controversy; and*

(v) *What is the likelihood that discovery of ESI will aid in the resolution of the dispute.*

\* \* \*

(c) The matters to be considered at the preliminary conference shall include:

(1) simplification and limitation of factual and legal issues, where appropriate;

(2) establishment of a timetable for the completion of all disclosure proceedings, provided that all such procedures must be completed within the timeframes set forth in subdivision (b) of this section, unless otherwise shortened or extended by the court depending upon the circumstances of the case;

(3) Where the court deems appropriate, [establishment of the method and scope of any electronic discovery, including but not limited to (a) retention of electronic data and implementation of a data preservation plan, (b) scope of electronic data review, (c) identification of relevant data, (d) identification and redaction of privileged electronic data, (e) the scope, extent and form of production, (f) anticipated cost of data recovery and proposed initial allocation of such cost, (g) disclosure of the programs and manner in which the data is maintained, (h) identification of computer system(s) utilized, and (i) identification of the individual(s) responsible for data preservation;] *it may establish the method and scope of any electronic discovery. In establishing the method and scope of electronic discovery, the court may consider the following non-exhaustive list, including but not limited to:*

(i) *identification of potentially relevant types or categories of 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; and*

(x) *the anticipated cost and burden of data recovery and proposed initial allocation of such cost.*

## AMENDMENT OF RULE

### Uniform Civil Rules for the Supreme Court and the County Court

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, Rule 8 of section 202.70(g) of the Uniform Civil Rules for the Supreme Court and the County Court (Rules of Practice for the Commercial Division), to read as follows:

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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)*; and (iii) the use of an alternate dispute resolution to resolve all or some issues in the litigation. Counsel shall make a good faith effort to reach agreement on these matter 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) [implementation of a data preservation

plan; (ii) identification of relevant data; (iii) the scope, extent and form of production; (iv) anticipated cost of data recovery and proposed initial allocation of such cost; (v) disclosure of the programs and manner in which the data is maintained; (vi) identification of computer system(s) utilized; (vii) identification of the individual(s) responsible for data preservation; (viii) confidentiality and privilege issues; and (ix)] *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.*

## AMENDMENT OF RULE

### Uniform Civil Rules for the Supreme Court and the County Court

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective immediately, Rule 13 of section 202.70(g) of the Uniform Civil Rules for the Supreme Court and the County Court (Rules of Practice for the Commercial Division), by adding a new section (c), relating to enhanced expert disclosure, to read as follows:

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Rule 13. Adherence to Discovery Schedule, *Expert Disclosure.*

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*(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.*