

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 section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), relating to the preamble of the rules, effective December 1, 2015, to read as follows:

(g) Rules of practice for the Commercial Division

* * *

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, *encourage proportionality in discovery*, 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.

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 section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), relating to the preamble of the rules, effective December 1, 2015, to read as follows:

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. *Additionally, counsel for all parties may stipulate to having the 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.*

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

Rule 6 of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), relating to form of papers, effective December 1, 2015, to read as follows:

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. *Each electronically-submitted memorandum of law and, where appropriate, affidavit and affirmation shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.*

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 (1) amend Rule 11-d of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), relating to limitations on depositions, and (2) adopt Rule 11-f of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), relating to deposition of entities and identification of matters, effective December 1, 2015, to read as follows:

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 *through one or more representatives* [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 the purposes of subsection (a)(2) of this Rule, the deposition of an entity shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf. Notwithstanding the foregoing, the cumulative presumptive durational limit may be enlarged by agreement of the parties or upon application for leave of Court, which shall be freely granted.*

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

(g)[(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-f. Depositions of Entities; Identification of Matters.

(a) A notice or subpoena may name as a deponent a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(b) Notices and subpoenas directed to an entity may enumerate the matters upon which the person is to be examined, and if so enumerated, the matters must be described with reasonable particularity.

(c) If the notice or subpoena to an entity does not identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then no later than ten days prior to the scheduled deposition:

(1) the named entity must designate one or more officers, directors, members or employees, or other individual(s) who consent to testify on its behalf;

(2) such designation must include the identity, description or title of such individual(s); and

(3) if the named entity designates more than one individual, it must set out the matters on which each individual will testify.

(d) If the notice or subpoena to an entity does identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then:

(1) pursuant to CPLR 3106(d), the named entity shall produce the individual so designated unless it shall have, no later than ten days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified. If timely notification has been so given, such other individual shall instead be produced;

(2) pursuant to CPLR 3106(d), a notice or subpoena that names a particular officer, director, member, or employee of the entity shall include in the notice or subpoena served upon such entity the identity, description or title of such individual; and

(3) if the named entity, pursuant to subsection (d)(1) of this Rule, cross-designates more than one individual, it must set out the matters on which each individual will testify.

(e) A subpoena must advise a nonparty entity of its duty to make the designations discussed in this Rule.

(f) The individual(s) designated must testify about information known or reasonably available to the entity.

(g) Deposition testimony given pursuant to this Rule shall be usable against the entity on whose behalf the testimony is given to the same extent provided in CPLR 3117(2) and the applicable rules of evidence.

(h) This Rule does not preclude a deposition by any other procedure allowed by the CPLR.