COMMERCIAL DIVISION RULES

Section 202.70 Rules of the Commercial Division
&
Appendix A

Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts

Uniform Rules for N.Y.S. Trial Courts

PART 202. Uniform Civil Rules For The Supreme Court And The County Court

Section 202.1 Application of Part; Waiver; Additional Rules; Application of CPLR; Definitions.

(a) Application. This Part shall be applicable to civil actions and proceedings in the Supreme Court and the County Court.

(b) Waiver. For good cause shown, and in the interests of justice, the court in an action or proceeding may waive compliance with any of the rules in this Part, other than sections 202.2 and 202.3, unless prohibited from doing so by statute or by a rule of the Chief Judge.

(c) Additional rules. Local court rules, not inconsistent with law or with these rules, shall comply with Part 9

of the Rules of the Chief Judge (22 NYCRR Part 9).

(d) Application of CPLR. The provisions of this Part shall be construed consistent with the Civil Practice Law and Rules (CPLR), and matters not covered by these provisions shall be governed by the CPLR.

(e) Definitions.

(1) "Chief Administrator of the Courts" in this Part also includes a designee of the Chief Administrator.

(2) The term "clerk" shall mean the chief clerk or other appropriate clerk of the trial court unless the context otherwise requires.

(3) Unless otherwise defined in this Part, or the context otherwise requires, all terms used in this Part shall have the same meaning as they have in the CPLR.

Historical Note

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

Section 202.2 Terms and Parts of Court.

(a) Terms of Court. A term of court is a four-week session of court, and there shall be 13 terms of court in a year, unless otherwise provided in the annual schedule of terms established by the Chief Administrator of the Courts, which also shall specify the dates of such terms.

(b) Parts of Court. A part of court is a designated unit of the court in which specified business of the court is to be conducted by a judge or quasi- judicial officer. There shall be such parts of court as may be authorized from time to time by the Chief Administrator of the Courts.

Historical Note

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

Section 202.3 Individual Assignment System; Structure.

(a) General. There shall be established for all civil actions and proceedings heard in the Supreme Court and County Court an individual assignment system which provides for the continuous supervision of each action and proceeding by a single judge. Except as otherwise may be authorized by the Chief Administrator or by these rules, every action and proceeding shall be assigned and heard pursuant to the individual assignment system.

(b) Assignments. Actions and proceedings shall be assigned to the judges of the court upon the filing with the court of a request for judicial intervention pursuant to section 202.6 of this Part. Assignments shall be made by the clerk of the court pursuant to a method of random selection authorized by the Chief Administrator. The judge thereby assigned shall be known as the "assigned judge" with respect to that matter and, except as otherwise provided in subdivision (c) of this section, shall conduct all further proceedings therein.

(c) Exceptions.

(1) Where the requirements of matters already assigned to a judge are such as to limit the ability of that judge to handle additional cases, the Chief Administrator may authorize that new assignments to that judge be suspended until the judge is able to handle additional cases.

(2) The Chief Administrator may authorize the establishment in any court of special categories of actions and proceedings, including but not limited to matrimonial actions, medical malpractice actions, tax assessment review proceedings, condemnation actions and actions requiring protracted consideration, for assignment to judges specially assigned to hear such actions or proceedings. Where more than one judge

is specially assigned to hear a particular category of action or proceeding, the assignment of such actions or proceedings to the judges so assigned shall be at random.

(3) The Chief Administrator may authorize the assignment of one or more special reserve trial judges. Such judges may be assigned matters for trial in exceptional circumstances where the needs of the courts require such assignment.

(4) Matters requiring immediate disposition may be assigned to a judge designated to hear such matters when the assigned judge is not available.

(5) The Chief Administrator may authorize the transfer of any action or proceeding and any matter relating to an action or proceeding from one judge to another in accordance with the needs of the court.

(6) The Chief Administrator may authorize the establishment in any court or county or judicial district of a dual track system of assignment. Under such system each action and proceeding shall be supervised continuously by the individually assigned judge until the note of issue and certificate of readiness have been filed and the pretrial conference, if one is ordered, has been held. The action or proceeding then may be assigned to another judge for trial in a manner prescribed by the Chief Administrator.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Feb. 16, 1988 eff. April 1, 1988. Added (c)(6).

Section 202.4 County Court Judge; Ex Parte Applications in Supreme Court Actions; Applications for Settlement of Supreme Court Actions.

Ex parte applications in actions or proceedings in the Supreme Court, and applications for the settlement of actions or proceedings pending in the Supreme Court, where judicial approval is necessary, may be heard and determined by a judge of the County Court in the county where venue is laid, during periods when no Supreme Court term is in session in the county.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed March 25, 1987 eff. March 13, 1987.

Section 202.5 Papers filed in court.

(a) Index Number; Form; Label. The party filing the first paper in an action, upon payment of the proper fee, shall obtain from the County Clerk an index number, which shall be affixed to the paper. The party causing the first paper to be filed shall communicate in writing the County Clerk's index number forthwith to all other parties to the action. Thereafter such number shall appear on the outside cover and first page to the right of the caption of every paper tendered for filing in the action. Each such cover and first page also shall contain an indication of the county of venue and a brief description of the nature of the paper and, where the case has been assigned to an individual judge, shall contain the name of the assigned judge to the right of the caption. In addition to complying with the provisions of CPLR 2101, every paper filed in court shall have annexed thereto appropriate proof of service on all parties where required, and every paper, other than an exhibit or printed form, shall contain writing on one side only, and if typewritten, shall have at least double space between each line, except for quotations and the names and addresses of attorneys appearing in the action, and shall have at least one-inch margins. Papers that are stapled or bound securely shall not be rejected for filing simply because they are not bound with a backer of any kind.

(b) Submission of Papers to Judge. All papers for signature or consideration of the court shall be presented to the clerk of the trial court in the appropriate courtroom or clerk's office, except that where the

clerk is unavailable or the judge so directs, papers may be submitted to the judge and a copy filed with the

clerk at the first available opportunity. All papers for any judge that are filed in the clerk's office shall be promptly delivered to the judge by the clerk. The papers shall be clearly addressed to the judge for whom they are intended and prominently show the nature of the papers, the title and index number of the action in which they are filed, the judge's name and the name of the attorney or party submitting them.

(c) Papers filed to commence an action or special proceeding. For purposes of CPLR 304. governing the method of commencing actions and special Proceedings. the term "clerk of the court" shall mean the county clerk. Each county clerk, and each chief clerk of the Supreme Court. shall post prominently in the public areas of his or her office notice that filing of papers in order to commence an action or special proceeding must be with the county clerk. Should the county clerk, as provided by CPLR 304, designate a person or persons other than himself or herself to accept delivery of the papers required to be filed in order to commence an action or special proceeding, the posted notice shall so specify.

(d)(1) In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator's rule or order of the court:
(i) The paper does not have an index number;
(ii) The summons, complaint, petition, or judgment sought to be filed with the County Clerk contains an "et al" or otherwise does not contain a full caption;
(iii) The paper sought to be filed with the County Clerk is filed in the wrong court;
(iv) The paper is not signed in accordance with section 130-1.1-a of the Rules of the Chief Administrator; or
(v) The paper sought to be filed: (A) is in an action subject to electronic filing pursuant to Rules of the Chief Administrator, (B) is not being filed electronically, and (C) does not include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of such Rules.

The County Clerk shall require the payment of any applicable statutory fees, or an order of the Court waiving payment of such fees, before accepting a paper for filing.

(2) A County Clerk or chief clerk shall signify a refusal to accept a paper by use of a stamp on the paper indicating the date of the refusal and by providing on the paper the reason for the refusal.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; May 9, 1994 eff. May 16, 1994. Amended (a).

Added (c) on Feb. 20, 2004

Added (d) on Jan. 12, 2010

Amended (d)(1) on Apr. 26, 2010

Section 202.5a Filing by Facsimile Transmission.

(a) Application.

(1) There is hereby established a pilot program in which papers may be filed by facsimile transmission with the Supreme Court and, as is provided in section 206.5-a of this Title, with the Court of Claims. In the Supreme Court, the program shall be limited to commercial claims and tax certiorari, conservatorship, and mental hygiene proceedings in Monroe, Westchester, New York and Suffolk Counties.

(2) "Facsimile transmission" for purposes of these rules shall mean any method of transmission of documents to a facsimile machine at a remote location which can automatically produce a tangible copy of

such document.

(b) Procedure.

(1) Papers in any civil actions or proceedings designated pursuant to this section, including those commencing an action or proceeding, may be filed with the appropriate court clerk by facsimile transmission at a facsimile telephone number provided by the court for that purpose. The cover page of each facsimile transmission shall be in a form prescribed by the Chief Administrator and shall state the nature of the paper being filed; the name, address and telephone number of the filing party or party's attorney; the facsimile telephone number that may receive a return facsimile transmission, and the number of total pages, including the cover page, being filed. The papers, including exhibits, shall comply with the requirements of CPLR 2101(a) and section 202.5 of this Part and shall be signed as required by law. Whenever a paper is filed that requires the payment of a filing fee, a separate credit card or debit card authorization sheet shall be included and shall contain the credit or debit card number or other information of the party or attorney permitting such card to be debited by the clerk for payment of the filing fee. The card authorization sheet shall be kept separately by the clerk and shall not be a part of the public record. The clerk shall not be required to accept papers more than 50 pages in length, including exhibits but excluding the cover page and the card authorization sheet.

(2) Papers may be transmitted at any time of the day or night to the appropriate facsimile telephone number and will be deemed filed upon receipt of the facsimile transmission, provided, however, that where payment of a fee is required, the papers will not be deemed filed unless accompanied by a completed credit card or debit card authorization sheet. The clerk shall date-stamp the papers with the date that they were received. Where the papers initiate an action, the clerk also shall mark the papers with the index number. No later than the following business day, the clerk shall transmit a copy of the first page of each paper, containing the date of filing and, where appropriate, the index number, to the filing party or attorney, either by facsimile or first class mail. If any page of the papers filed with the clerk was missing or illegible, a telephonic, facsimile, or postal notification transmitted by the clerk to the party or attorney shall so state, and the party or attorney shall forward the new or corrected page to the clerk for inclusion in the papers.

(c) Technical failures. The appropriate clerk shall deem the UCS fax server to be subject to a technical failure on a given day if the server is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. The clerk shall provide notice of all such technical failures by means of the UCS fax server which persons may telephone in order to learn the current status of the Service which appears to be down. When filing by fax is hindered by a technical failure of the UCS fax server, with the exception of deadlines that by law cannot be extended, the time for filing of any paper that is delayed due to technical failure shall be extended for one day for each day in which such technical failure occurs, unless otherwise ordered by the court.

Historical Note

Sec. filed Oct. 13, 1999; amd. filed Jan. 6, 2003 eff. Jan. 2, 2003. Amended (a)(1).

202.5-b. Electronic Filing in Supreme Court; Consensual Program.

(a) Application.

(1) On consent, documents may be filed and served by electronic means in Supreme Court in such civil actions and in such counties as shall be authorized by order of the Chief Administrator of the Courts and only to the extent and in the manner provided in this section.

(2) Definitions. For purposes of this section:

(i) “electronic means” shall mean any method of transmission of information between computers or other

machines, other than facsimile machines, designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression;

(ii) “NYSCEF” shall mean the New York State Courts Electronic Filing System and the “NYSCEF site” shall mean the New York State Courts Electronic Filing System website located at www.nycourts.gov/efile;

(iii) “e-filing”, “electronic filing” and “electronically filing” shall mean the filing and service of documents in a civil action by electronic means through the NYSCEF site;

(iv) an “authorized e-filing user” shall mean a person who has registered to use e-filing pursuant to subdivision (c) of this section;

(v) an “action” shall include a special proceeding and an “e-filed action” shall mean an action in which documents are electronically filed and served in accordance with this section;

(vi) “hard copy” shall mean information set forth in paper form;

(vii) “working copy” shall mean a hard copy that is an exact copy of a document that has been electronically filed in accordance with this section;

(viii) “party” or “parties” shall mean the party or parties to an action or counsel thereto; and

(ix) “Resource Center” shall mean the NYSCEF Resource Center, the e-filing help center available at 646-386-3033 or efile@courts.state.ny.us and through the NYSCEF site.

(b) E-filing in Actions in Supreme Court. Except as otherwise provided in section 202.5-bb of these rules, the following shall apply to all actions in Supreme Court:

(1) Commencing an action by electronic means. A party may commence any action in the Supreme Court in any county (provided that e-filing has been authorized in that county and in the class of actions to which that action belongs pursuant to paragraph (1) of subdivision (a) of this section) by electronically filing the initiating documents with the County Clerk through the NYSCEF site. When so authorized, a petition to commence a proceeding for review of a small claims assessment pursuant to Real Property Tax Law § 730 may be e-filed, including as follows: the petition, in the form prescribed by the Chief Administrator in accordance with such section, shall be completed and signed in hard copy as provided in that section and shall be e-filed by transmission to the NYSCEF site, in conformity with procedures established by the site, of a text file containing all of the information set forth in the completed and executed hard copy petition (exclusive of the signature(s)). Upon receipt of such transmission, the site shall generate and record the completed petition in proper form in portable document format.

(2) E-filing in an action after commencement.

(i) Consent of the parties required. After commencement of an action wherein e-filing is authorized, documents may be electronically filed and served, but only by, and electronic service shall be made only upon, a party or parties who have consented thereto. A party's failure to consent to participation in electronic filing and service shall not bar any other party to the action from filing documents electronically with the County Clerk and the court or serving documents upon any other party who has consented to participation. A party who has not consented to participation shall file documents with the court and the County Clerk, and serve and be served with documents, in hard copy. When an e-filing party serves a document in hard copy on a non-participating party, the document served shall bear full signatures of all signatories and proof of such service shall be filed electronically.

(ii) Consent to e-filing; how obtained. A consent to e-filing in an action shall state that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in this

section. A party who has commenced an action electronically shall serve upon the other parties together

with the initiating documents a notice regarding availability of e-filing in a form approved by the Chief Administrator. A party who seeks to use e-filing in a pending action shall serve said notice upon all other parties. Whenever such a notice is served, proof of service thereof shall be transmitted to the court. Service of such a notice shall constitute consent to e-filing in the action by the party causing such service to be made. A party served with such a notice shall promptly file with the court and serve on all parties of record either a consent or a declination of consent. An authorized e-filing user may file a consent electronically in the manner provided at the NYSCEF site. Consent may also be obtained by stipulation. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action.

(iii) Documents previously filed with the court; termination or modification of e-filing procedures. When an action becomes subject to e-filing, the court may direct that documents previously filed in the action in hard copy be filed electronically by the parties. The court may at any time order discontinuation of e-filing in such action or modification of e-filing procedures therein in order to prevent prejudice and promote substantial justice.

(c) Authorized E-filing Users, Passwords and Registration.

(1) Registration required. Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision.

(2) Registering as an authorized e-filing user.

(i) Who may register. An attorney admitted to practice in the State of New York, or a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action or actions (hereinafter "filing agent") may register as an authorized e-filing user of the NYSCEF site. An attorney admitted pro hac vice in an action, a party to an action who is not represented by an attorney, or a person who has been authorized in writing by an owner or owners of real property to submit a petition as provided in section 730 of the Real Property Tax Law and who has been licensed to engage in such business as required by the jurisdiction in which the business is operated (hereinafter "small claims assessment review filing agent") may also register as an authorized e-filing user, but solely for purposes of such action or, in the case of a small claims assessment review filing agent, solely for those proceedings under section 730 of the Real Property Tax Law in which he or she has been authorized to submit a petition.

(ii) How to register. Registration shall be on a form prescribed by the Chief Administrator. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user. An authorized e-filing user shall notify the Resource Center immediately of any change in the information provided on his or her registration form.

(3) Identification and password. Upon registration, an authorized e-filing user shall be issued a confidential User Identification Designation (“User ID”) and a password by the Unified Court System (“UCS”). An authorized e-filing user shall maintain his or her User ID and password as confidential, except as provided in paragraph (4) of this subdivision. Upon learning of the compromise of the confidentiality of either the User ID or the password, an authorized e-filing user shall immediately notify the Resource Center. At its initiative or upon request, the UCS may at any time issue a new User ID or password to any authorized e-filing user.

(4) User ID and password; use by authorized person. An authorized e-filing user may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but, in such event, the authorized e-filing user shall retain full responsibility for any document filed.

(d) Electronic Filing of Documents.

(1) Electronic Filing of Documents. (i) Electronic filing required; format of e-filed documents; statement of authorization. In any action subject to e-filing, all documents required to be filed with the court by a party

that has consented to such e-filing shall be filed and served electronically, except as provided in this section. Documents shall be e-filed in text-searchable portable document format (PDF-A) and shall otherwise comply with the technical requirements set forth at the NYSCEF site. A filing agent (other than one employed by a governmental entity) shall e-file a statement of authorization from counsel of record in an action, in a form approved by the Chief Administrator, prior to or together with the first e-filing in that action by the agent on behalf of that counsel. (ii) Emergency exception; other hard copy filings. Documents that are required to be filed and served electronically in accordance with this section or paragraph (1) of subdivision (c) of section 202.5-bb of these rules may nevertheless be filed and served in hard copy where required by statute or court order, where the document is an application that may by statute be presented without notice, or provided the document is accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) a deadline for filing and service fixed by statute, rule or order of the court will expire on the day the document is being filed and served or on the following business day; and (ii) the attorney, party or filing agent therefor is unable to file and serve such document electronically because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by this paragraph, and the filer shall file those documents with the NYSCEF site within three business days thereafter. (iii) Form of notice required on hard copy filing. Where an action is subject to e-filing and a party or attorney seeks to file a document therein in hard copy, such document shall include, on a separate page firmly affixed thereto, a notice of hard copy submission, in a form approved by the Chief Administrator, that the party or attorney: (A) is authorized to and does withhold consent to e-filing, (B) is exempt from having to e-file, or (C) is authorized or required to file such document in hard copy pursuant to an exception provided in these Rules or other provision of law.

(2) Payment of Fees. Whenever documents are filed electronically that require the payment of a filing fee, the person who files the documents shall provide therewith, in payment of the fee: (i) such credit card information as shall be required at the NYSCEF site to permit a card to be charged by the County Clerk; or (ii) the form or information required by the County Clerk to permit him or her to debit an account maintained with the County Clerk by an attorney or law firm appearing for a party to the action; or (iii) such information as shall be required at the NYSCEF site to permit an automated clearing house debit to be made; or (iv) any other form of payment authorized by the Chief Administrator. Notwithstanding the foregoing, where permitted by the County Clerk, an authorized e-filing user who electronically files documents that require the payment of a filing fee may cause such fee to be paid thereafter at the office of the County Clerk.

(3) Filing and receipt of documents; notification.

(i) When documents are filed. Documents may be transmitted at any time of the day or night to the NYSCEF site. A document is filed when its electronic transmission or, in the case of a petition that is e-filed by submission of a text file as provided in subdivision (b)(1) of this section, the electronic transmission of the text file is recorded at that site, provided, however, that where payment of a fee is required upon the filing of a document, the document is not filed until transmission of the document and the information or form or information as required in (i), (ii) or (iii) of paragraph (2) of this subdivision has been recorded at the NYSCEF site; or, if no transmission of that information or form or information is recorded, where permitted by the County Clerk, until payment is presented to the County Clerk.

(ii) Notification. No later than the close of business on the business day following the electronic filing of a document, a notification, in a form prescribed by the Chief Administrator, shall be transmitted electronically by the NYSCEF site to the person filing such document and all other parties participating in e-filing. When documents initiating an action are filed electronically, the County Clerk shall assign an index number or filing number to the action and that number shall be transmitted to the person filing such documents as part of the notification. If, where permitted, payment is submitted after the initiating documents have been

transmitted electronically, the County Clerk shall assign the number upon presentation of that payment.

(4) Official record; maintenance of files; working copies. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the County Clerk. The County Clerk or his or her designee may scan and e-file documents that were filed in hard copy in an action subject to e-filing or maintain those documents in hard copy form. All documents maintained by the County Clerk as the official electronic record shall also be filed in the NYSCEF system. Where a document that was filed in hard copy is thereafter e-filed, the filing date recorded in NYSCEF shall be the date of hard copy filing. The court may require the parties to provide working copies of documents filed electronically. In such event, each working copy shall include, firmly affixed thereto, a copy of a confirmation notice in a form prescribed by the Chief Administrator.

(5) Decisions, orders and judgments. Unless the court directs otherwise, any document that requires a judge's signature shall be transmitted electronically and in hard copy to the court. Unless the Chief Administrator authorizes use of electronic signatures, decisions, orders and judgments signed by a judge shall be signed in hard copy. All signed decisions, orders and judgments shall be converted into electronic form and transmitted to the NYSCEF site by the appropriate clerk.

(6) Exhibits and other documents in hard copy. Notwithstanding any other provision of this section, and subject to such guidelines as may be established by the Chief Administrative Judge, the County Clerk or his or her designee may require or permit a party to file in hard copy, in accordance with procedures set by the County Clerk or designee, an exhibit or other document which it is impractical or inconvenient to file electronically.

(e) Signatures.

(1) Signing of a document. An electronically filed document shall be considered to have been signed by, and shall be binding upon, the person identified as a signatory, if:

(i) it bears the physical signature of such person and is scanned into an electronic format that reproduces such signature; or

(ii) the signatory has electronically affixed the digital image of his or her signature to the document; or

(iii) it is electronically filed under the User ID and password of that person; or

(iv) in a tax certiorari action in which the parties have stipulated to this procedure, it is an initiating document that is electronically filed without the signature of the signatory in a form provided above in this subparagraph, provided that, prior to filing, the document is signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings, including appeals, in the case in which it is filed);

(v) in a small claims assessment review proceeding, it is a petition recorded by the NYSCEF site upon the filing of a text file as provided in subdivision (b)(1) of this section, provided that prior to filing, the document was signed in full in hard copy (which hard copy must be preserved until the conclusion of all proceedings in the matter, including article 78 review and any appeals, and must be made available during the proceeding upon request of the respondent or the court); or

(vi) it otherwise bears the electronic signature of the signatory in a format conforming to such standards and requirements as may hereafter be established by the Chief Administrator.

(2) Compliance with Part 130. A document shall be considered to have been signed by an attorney or party in compliance with section 130-1.1-a of the Rules of the Chief Administrator (22 NYCRR §130-1.1-a) if it has been signed by such attorney or party as provided in paragraph (1) of this subdivision and it bears the signatory's name.

(3) Certification of Signature. A judge, party or attorney may add his or her signature to a stipulation or

other filed document by signing and filing, or causing to be filed, a Certification of Signature for such document in a form prescribed by the Chief Administrator.

(f) Service of Documents.

(1) Service of initiating documents in an action. Initiating documents may be served in hard copy pursuant to Article 3 of the CPLR, or, in tax certiorari cases, pursuant to the Real Property Tax Law, and shall bear full signatures as required thereby, or by electronic means if the party served agrees to accept such service. In the case of a proceeding to review a small claims assessment where the petition has been e-filed by the submission of a text file as provided in subdivision (b)(1) of this section, a hard copy of the petition, fully completed and signed as set forth in that subdivision, shall be mailed, and shall be served upon the assessing unit or tax commission, as provided in Section 730 of the Real Property Tax Law, unless otherwise stipulated. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(2) Service of interlocutory documents in an e-filed action.

(i) E-mail address for service. Each party in an action subject to electronic filing that has consented thereto shall identify on an appropriate form an e-mail address at which service of interlocutory documents on that party may be made through notification transmitted by the NYSCEF site (hereinafter the "e-mail service address"). Each filing user shall promptly notify the Resource Center in the event of a change in his or her e-mail service address.

(ii) How service is made. Where parties to an action have consented to e-filing, a party causes service of an interlocutory document to be made upon another party participating in e-filing by filing the document electronically. Upon receipt of an interlocutory document, the NYSCEF site shall automatically transmit electronic notification to all e-mail service addresses in such action. Such notification shall provide the title of the document received, the date received, and the names of those appearing on the list of e-mail service addresses to whom that notification is being sent. Each party receiving the notification shall be responsible for accessing the NYSCEF site to obtain a copy of the document received. Except as provided otherwise in subdivision (h) (3) of this section, the electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified therein; however, such service will not be effective if the filing party learns that the notification did not reach the address of the person to be served. Proof of such service will be recorded on the NYSCEF site. A party may, however, utilize other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of that service shall be filed electronically.

(g) Addition of Parties or Proposed Intervenors in a Pending E-Filed Action. A party to be added in an action subject to e-filing shall be served with initiating documents in hard copy together with the notice regarding availability of e-filing specified in paragraph (2)(ii) of subdivision (b) of this section, to which response shall be made as set forth in that paragraph. A proposed intervenor or other non-party who seeks relief from the court in an action subject to efiling, if consenting to e-filing, shall promptly file and serve a consent. If an added party or intervenor does not consent to e-filing, subsequent documents shall be served by and on that party or intervenor in hard copy but the action shall continue as an e-filed one as to all consenting parties.

(h) Entry of Orders and Judgments and Notice of Entry.

(1) Entry; date of entry. In an action subject to e-filing, the County Clerk or his or her designee shall file orders and judgments of the court electronically, which shall constitute entry of the order or judgment. The date of entry shall be the date on which transmission of the order or judgment is recorded at the NYSCEF site. Notwithstanding the foregoing, if the County Clerk receives an order or judgment and places a filing stamp and date thereon reflecting that the date of receipt is the date of filing but does not e-file the

document until a later day, the Clerk shall record at the NYSCEF site as the date of entry the date shown

on the filing stamp.

(2) Notice requesting entry of judgment. The County Clerk may require that a party seeking entry of judgment electronically serve upon the County Clerk, in a form specified by the County Clerk, a request for entry of judgment.

(3) Notification; service of notice of entry by parties. Upon entry of an order or judgment, the NYSCEF site shall transmit to the e-mail service addresses a notification of receipt of such entry, which shall not constitute service of notice of entry by any party. A party shall serve notice of entry of an order or judgment on another party by serving a copy of the order or judgment and written notice of its entry. A party may serve such documents electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service thereof by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR 2103 (b) (1) to (6). If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent.

(i) Technical Failures. The NYSCEF site shall be considered to be subject to a technical failure on a given day if the site is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon of that day. Notice of all such technical failures shall be provided on the site. When e-filing is hindered by a technical failure, a party may file with the appropriate clerk and serve in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any document that is delayed due to technical failure of the site shall be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court. In the event an attorney or party shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of this section, and the filer shall file those documents with the NYSCEF site within three business days after restoration of normal operations at that site.

(j) Electronic Filing of Discovery Materials. In any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation, which shall be e-filed, authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court.

(k) Copyright, Confidentiality and Other Proprietary Rights.

(1) Submissions pursuant to e-filing procedures shall have the same copyright, confidentiality and proprietary rights as paper documents.

(2) In an action subject to e-filing, any person may apply for an order prohibiting or restricting the electronic filing in the action of specifically identified materials on the grounds that such materials are subject to copyright or other proprietary rights, or trade secret or other privacy interests, and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. Unless otherwise permitted by the court, a motion for such an order shall be filed not less than ten days before the materials to which the motion pertains are due to be produced or filed with the court.

Historical Note

Sec. filed Oct. 13, 1999; amds. filed: Oct. 23, 2000; Jan. 6, 2003 eff. Jan. 2, 2003. Amended (a)-(e), (h), (k).

Amended on Apr. 26, 2010

Amended on May 18, 2011

Amended on June 18, 2012

Amended on April 15, 2013

Amended on May 24,2013

202.5-bb. Electronic Filing in Supreme Court; Mandatory Program.

(a) Application.

There is hereby established a pilot program in which all documents filed and served in Supreme Court shall be filed and served by electronic means in such classes of actions and such counties as shall be specified by order of the Chief Administrator in accordance with chapter 367 of the laws of 1999, as amended.

Except to the extent that this section shall otherwise require, the provisions of section 202.5-b of these rules shall govern this pilot program.

(b) Commencement of Actions Under this Section.

(1) Mandatory commencement in general. Except as otherwise provided in this section, every action authorized by subdivision (a) of this section shall be commenced by electronically filing the initiating documents with the County Clerk through the NYSCEF site.

(2) Emergency exception. Notwithstanding paragraph (1) of this subdivision, an action otherwise required to be commenced electronically may or shall be commenced by the filing of initiating documents in hard copy where permitted or required by statute or court order, and may be so commenced provided such documents are accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) the statute of limitations will expire on the day the documents are being filed or on the following business day; and (ii) the attorney, party or filing agent therefor is unable to electronically file such documents because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file initiating documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of these rules, and the filer shall file those documents with the NYSCEF site within three business days thereafter. For purposes of this section, such an action shall be deemed to have been commenced electronically.

(3) Service of initiating documents. Personal service of initiating documents upon a party in an action that must be commenced electronically in accordance with this section shall be made as provided in Article 3 of the Civil Practice Law and Rules, or the Real Property Tax Law, or by electronic means if the party served agrees to accept such service. Such service shall be accompanied by a notice, in a form approved by the Chief Administrator, advising the recipient that the action is subject to electronic filing pursuant to this section. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(c) Filing and Service of Documents After Commencement in Actions Under this Section.

(1) All documents to be filed and served electronically. Except as otherwise provided in this section, filing and service of all documents in an action that has been commenced electronically in accordance with this section shall be by electronic means.

(2) Addition of parties after commencement of action. Notwithstanding any other provision of this section,

a party to be added in an action that has been commenced electronically in accordance with this section shall be served with initiating documents in hard copy together with the notice specified in paragraph (3) of subdivision (b) of this section. A proposed intervenor or other non-party who seeks relief from the court in such an action shall make his or her application for such relief by electronic means as provided by the NYSCEF system.

(3) Emergency exception; other hard copy filings. Notwithstanding paragraph (1) of this subdivision, where documents are required to be filed and served electronically in accordance with such paragraph (1), such documents may nonetheless be filed and served in hard copy where permitted by paragraph (1) of subdivision (d) of section 202.5-b of these rules. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b, and the filer shall, as required, file those documents with the NYSCEF site within three business days thereafter.

(d) County Clerk and Clerk of Court Not to Accept Hard Copies of Documents for Filing Where Electronic Filing Is Required. As provided in section 202.5(d)(1) of these Rules, a County Clerk and a Chief Clerk of Supreme Court, as appropriate, shall refuse to accept for filing hard copies of documents sought to be filed in actions where such documents are required to be filed electronically.

(e) Exemption From the Requirement of Electronic Filing.

Notwithstanding the foregoing, an attorney or a representative of a property owner designated as such as provided in Real Property Tax Law § 730 (“small claims assessment filing agent”), or a party who is not represented by an attorney in an action that is required to be commenced electronically, or a person who is a proposed intervenor or other non-party who seeks relief from the court in such an action, may claim exemption from having to file and serve documents electronically in accordance with this section by filing with the County Clerk and the clerk of the court in which the action is or will be pending a form, to be prescribed by the Chief Administrator, on which:

(1) if an attorney or small claims assessment filing agent, he or she certifies, in good faith that he or she:

(i) lacks the computer hardware and/or connection to the Internet and/or scanner or other device by which documents may be converted to an electronic format; or

(ii) lacks the requisite knowledge in the operation of such computers and/or scanners necessary to comply with this section (for purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney’s law firm, office or business who is subject to such attorney’s direction, shall be imputed to the attorney); or

(2) he or she indicates that he or she is not represented by an attorney and wishes to be exempt from having to file and serve documents electronically in accordance with this section.

Nothing in this section shall prevent a judge from exempting an attorney from having to file and serve documents electronically in accordance with this section upon a showing of good cause therefor.

Where an attorney, party, proposed intervenor or other non-party who seeks relief from the court in an action that is subject to this section is exempt from having to file and serve documents electronically in accordance with this section, he or she shall serve and file documents in hard copy, provided that each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of these rules. The County Clerk or the court, with the approval of the Chief Administrative Judge, may require a person who is exempt from having to file and serve documents electronically to submit an additional, unbound hard copy of documents being presented in hard copy to the court. Notwithstanding the foregoing, all other attorneys, parties and others seeking relief from the court in such action shall continue to be required to file and serve documents electronically, except that, whenever they serve documents upon a person or party who is exempt from having to file and serve documents electronically in

accordance with this section, they shall serve such documents in hard copy, bearing full signatures, and shall file electronically proof of such service.

Added on Apr. 26, 2010

Amended on Oct. 5, 2010

Amended on May 18, 2011

Amended on Jan 09, 2012

Amended on Apr. 10, 2012

Amended on May 24,2013

Section 202.6 Request for judicial intervention.

(a) At any time after service of process, a party may file a request for judicial intervention. Except as provided in subdivision (b) of this section, in an action not yet assigned to a judge, the court shall not accept for filing a notice of motion, order to show cause, application for ex parte order, notice of petition, note of issue, notice of medical, dental or podiatric malpractice action, statement of net worth pursuant to section 236 of the Domestic Relations Law or request for a preliminary conference pursuant to section 202.12(a) of this Part, unless such notice or application is accompanied by a request for judicial intervention. Where an application for poor person relief is made, payment of the fee for filing the request for judicial intervention accompanying the application shall be required only upon denial of the application. A request for judicial intervention must be submitted, in duplicate, on a form authorized by the Chief Administrator of the Courts, with proof of service on the other parties to the action (but proof of service is not required where the application is ex parte).

(b) A request for judicial intervention shall be filed, without fee, for any application to a court not filed in an action or proceeding, as well as for a petition for the sale or finance of religious/not-for-profit property, an application for change of name, a habeas corpus proceeding where the movant is institutionalized, an application under CPLR 3102(e) for court assistance in obtaining disclosure in an action pending in another state, a retention proceeding authorized by article 9 of the Mental Hygiene Law, a proceeding authorized by article 10 of the Mental Hygiene Law, an appeal to a county court of a civil case brought in a court of limited jurisdiction, an application to vacate a judgement on account of bankruptcy, an application for a default judgment in a consumer credit matter pursuant to section 202.27-a of this Part, a motion for an order authorizing emergency surgery, or within the City of New York, an uncontested action for a judgment for annulment, divorce or separation commenced pursuant to article 9, 10 or 11 of the Domestic Relations Law.

(c) In the counties within the City of New York, when a request for judicial intervention is filed, the clerk shall require submission of a copy of the receipt of purchase of the index number provided by the County Clerk, or a written statement of the County Clerk that an index number was purchased in the action. Unless otherwise authorized by the Chief Administrator, the filing of a request for judicial intervention pursuant to this section shall cause the assignment of the action to a judge pursuant to section 202.3 of this Part. The clerk may require that a self-addressed and stamped envelope accompany the request for judicial intervention.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Sept. 11, 1989; Jan. 6, 1999; Jan. 8, 2001 eff. Dec. 27, 2000. Amended (b).

Amended (b) on Jan 10, 2012

Amended 202.6(b) Sept. 15, 2014, eff. Oct. 1, 2014

Section 202.7 Calendaring of motions; uniform notice of motion form; affirmation of good faith.

(a) There shall be compliance with the procedures prescribed in the CPLR for the bringing of motions. In addition, except as provided in subdivision (d) of this section, no motion shall be filed with the court unless there have been served and filed with the motion papers (1) a notice of motion, and (2) with respect to a motion relating to disclosure or to a bill of particulars, an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion.

(b) The notice of motion shall read substantially as follows:

_____ COURT OF THE STATE OF NEW YORK

COUNTY OF_____

_____ x

A.B.,

Plaintiff,

-against-

C.D.,

Defendant

Notice of Motion

Index No.

_____

Name of Assigned Judge

_____

Oral argument is requested ☐

(check box if applicable)

_____ x

Upon the affidavit of_____, sworn to on _____, 19 _____, and upon (list supporting papers if any), the . . . will move this court (in Room _____) at the _____ Courthouse, _____ New York, on the _____day of _____, 20 _____ , at _____ (a.m.) (p.m.) for an order (briefly indicate relief requested).

The above-entitled action is for (briefly state nature of action, *e.g.*, personal injury, medical malpractice, divorce, etc.).

This is a motion for or related to interim maintenance or child support ☐. (check box if applicable)

An affirmation that a good faith effort has been made to resolve the issues raised in this motion is annexed hereto.

(required only where the motion relates to disclosure or to a bill of particulars)

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion. ☐ (check box if applicable)

Dated:

(print name)

_____

Attorney [1] (or attorney in charge of

case if law firm) for moving party.

Address:

Telephone number:

(print name)

TO:

_____

Attorney [1] for (other party)
Address:
Telephone number:

(print name)

_____

Attorney [1] for (other party)

Address:
Telephone number:

(c) The affirmation of the good faith effort to resolve the issues raised by the motion shall indicate the time, place and nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral with counsel for opposing parties was held.

(d) An order to show cause or an application for ex parte relief need not contain the notice of motion set forth in this section, but shall contain the affirmation of good faith set forth in this section if such affirmation otherwise is required by this section.

(e) Ex parte motions submitted to a judge outside of the county where the underlying action is venued or will be venued shall be referred to the appropriate court in the county of venue unless the judge determines that the urgency of the motion requires immediate determination.

(f) Any application for temporary injunctive relief, including but not limited to a motion for a stay or a temporary restraining order, shall contain, in addition to the other information required by this section, an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application. This subdivision shall not be applicable to orders to show cause or motions in special proceedings brought under Article 7 of the Real Property Actions and Proceedings Law, nor to orders to show cause or motions requesting an order of protection under section 240 of the Domestic Relations Law, unless otherwise ordered by the court.

[1]If any party is appearing *pro se*, the name, address and telephone number of such party shall be stated.

Historical Note
Sec. filed Jan. 9, 1986; amd. filed Feb. 16, 1988 eff. April 1, 1988.

Added (f) on Oct. 1, 2006

Amended (f) on Feb. 13, 2007

Amended (f) on Jun. 11, 2007

Section 202.8 Motion procedure.

(a) All motions shall be returnable before the assigned judge, and all papers shall be filed with the court on or before the return date.

(b) Special Procedure for Unassigned Cases. If a case has not been assigned to a judge, the motion shall be made returnable before the court, and a copy of the moving papers, together with a request for judicial intervention, shall be filed with the court, with proof of service upon all other parties, where required by section 202.6 of this Part, within five days of service upon the other parties. The moving party shall give written notice of the index number to all other parties immediately after filing of the papers. Copies of all responding papers shall be submitted to the court, with proof of service and with the index number set forth in the papers, on or before the return date. The case shall be assigned to a judge as soon as practicable after the filing of the request for judicial intervention pursuant to section 202.6 of this Part, but in no event later than the return date. After assignment to the judge, the court shall provide for appropriate notice to the parties of the name of the assigned judge. Motion papers noticed to be heard in a county other than the county where the venue of the action has been placed by the plaintiff shall be assigned to a judge in accordance with procedures established by the Chief Administrator.

(c) The moving party shall serve copies of all affidavits and briefs upon all other parties at the time of service of the notice of motion. The answering party shall serve copies of all affidavits and briefs as required by CPLR 2214. Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law.

(d) Motion papers received by the clerk of the court on or before the return date shall be deemed submitted as of the return date. The assigned judge, in his or her discretion or at the request of a party, thereafter may determine that any motion be orally argued and may fix a time for oral argument. A party requesting oral argument shall set forth such request in its notice of motion or in its order to show cause or on the first page of the answering papers, as the case may be. Where all parties to a motion request oral argument, oral argument shall be granted unless the court shall determine it to be unnecessary. Where a motion is brought on by order to show cause, the court may set forth in the order that oral argument is required on the return date of the motion.

(e)

(1) Stipulations of adjournment of the return date made by the parties shall be in writing and shall be submitted to the assigned judge. Such stipulation shall be effective unless the court otherwise directs. No more than three stipulated adjournments for an aggregate period of 60 days shall be submitted without prior permission of the court.

(2) Absent agreement by the parties, a request by any party for an adjournment shall be submitted in writing, upon notice to the other party, to the assigned judge on or before the return date. The court will notify the requesting party whether the adjournment has been granted.

(f) Where the motion relates to disclosure or to a bill of particulars, and a preliminary conference has not been held, the court shall notify all parties of a scheduled date to appear for a preliminary conference, which shall be not more than 45 days from the return date of the motion 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, and for a resolution of any other issues raised by the motion. If all parties sign the form and return it to the court before the return date of the motion, such form shall be "so ordered" by the court, and the motion shall be deemed withdrawn. If such stipulation is not returned by all parties, the conference shall be held on the assigned date. Issues raised by the motion and not resolved

at the conference shall be determined by the court.

(g) Unless the circumstances require settlement of an order, a judge shall incorporate into the decision an order effecting the relief specified in the decision.

(h) Reports of Pending Motions in the Supreme Court

(1) To assist in preparing the quarterly report of pending civil matters required by section 4.1 of the Rules of the Chief Judge, the Chief Administrator of the Court or his or her designee shall provide to a justice of the Supreme Court, upon request, an automated open motion report of all motions pending before the justice which appear undecided 60 days after final submission. This open motion report may be used by the justice to assist in the preparation of his or her official quarterly report.

(2) Since motions are decided on a daily basis and further submissions may be received on a pending motion, the only report that shall be considered current is the official quarterly report submitted by the particular justice.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Dec. 14, 1992 eff. Jan. 1, 1993. Amended (a)-(e); added (f)-(g).

Added (h) on Jan. 17, 2006

Amended (h) on Mar. 24, 2006

Amended (h) on Oct. 1, 2006

Amended (h) on Nov. 7, 2007

Section 202.9 Special proceedings.

Special proceedings shall be commenced and heard in the same manner as motions that have not yet been assigned to a judge as set forth in section 202.8 of this Part, except that they shall be governed by the time requirements of the CPLR relating to special proceedings.

Historical Note

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

Section 202.9(a) Special proceedings authorized by subsection (d) of section 9-518 of the Uniform Commercial Code.

(a) This section shall govern a special proceeding authorized by subsection (d) of section 9-518 of the Uniform Commercial Code for the redaction or expungement of a falsely-filed or amended financing statement. Except as otherwise provided in such subsection and in this section, such a special proceeding shall be subject to the provisions of article four of the CPLR and of section 202.9 of these rules.

(b) The following shall apply to a special proceeding governed by this section:

(1) Venue. Such a special proceeding shall be commenced in the Supreme Court in:
(i) Albany County; or

(ii) the County of the petitioner's residence; or

(iii) any County within a Judicial District in which any property covered by the financing statement is located.

(2) No fee required. Notwithstanding any provision of Article eighty of the CPLR, no fee shall be collected pursuant to such Article in such a special proceeding.

(3) Petitioner. In order to commence such a special proceeding, the petitioner must be:
(i) either (A) an employee of the State or of a political subdivision thereof, or (B) an attorney who represents or has represented the respondent in a criminal court; and
(ii) a person identified as a debtor in a financing statement filed pursuant to Subpart one of Part five of Article nine of the Uniform Commercial Code; and

(iii) bringing such special proceeding against the respondent to invalidate the false filing or amendment of such financing statement.

(4) Form and content of petition. A petition in such a special proceeding shall substantially conform to the model petition set forth in Appendix A of this section and shall allege that:

(i) the financing statement referred to in paragraph (3)(i) of this subdivision was falsely filed or amended to retaliate for the performance of the petitioner's official duties in his or her capacity as a public employee (or, if the petitioner is an attorney referred to in paragraph (3)(i)(B) of this subdivision, to retaliate for the performance of the petitioner's duties in his or her capacity as an attorney for the respondent in a criminal court); and

(ii) such financing statement does not relate to an interest in a consumer-goods transaction, a commercial transaction, or any other actual transaction between the petitioner and the respondent; and

(iii) the collateral covered in the financing statement is the property of the petitioner; and

(iv) prompt redaction or invalidation of such financing statement is necessary to avert or mitigate prejudice to the petitioner.

The petition shall demand the expungement or redaction of such financing statement or, as appropriate, any amendment thereof, in the office in which the financing statement is filed; and may demand any additional relief authorized under section 9-625 of the Uniform Commercial Code.

(5) Use of Referee. The court may order a referee to hear and determine such a special proceeding.

(6) Judgment.

(i) Where the court (or a referee ordered by the court) makes a written finding that the allegations of the petition are established, it shall deliver a judgment, which shall include such finding and shall direct the expungement or redaction of the financing statement found therein to be falsely filed or amended in the public office in which it was filed; and may grant any additional relief sought that is authorized under section 9-625 of the Uniform Commercial Code. Where the court also finds that the respondent has engaged in a repeated pattern of falsely filing financing statements under Subpart one of Part five of Article nine of the Uniform Commercial Code, the court may enjoin the respondent from filing or amending any further financing statement without court leave; and, in such case, where respondent is incarcerated at the time such injunction issues, the court shall cause a copy thereof to be transmitted to the head of the correctional facility in which respondent is incarcerated.

(ii) In form, the judgment in such a special proceeding shall substantially conform to the model judgment set forth in Appendix B of this section.

Appendix A & B

Historical Note
Added on April 9, 2014 .

Section 202.10 Appearance at Conferences.

Any party may request to appear at a conference by telephonic or other electronic means. Where feasible and appropriate, the court is encouraged to grant such requests.

Historical Note
Added on May 24, 2013.

Section 202.11 [Reserved]

Section 202.12 Preliminary conference.

(a) A party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses and telephone numbers of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention together with the request for a preliminary conference. The request shall be served on all other parties and filed with the clerk for transmittal to the assigned judge. The court shall order a preliminary conference in any action upon compliance with the requirements of this subdivision.

(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, 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.

(4) addition of other necessary parties;

(5) settlement of the action;

(6) removal to a lower court pursuant to CPLR 325, where appropriate; and

(7) any other matters that the court may deem relevant.

(d) At the conclusion of the conference, the court shall make a written order including its directions to the parties as well as stipulations of counsel. Alternatively, in the court's discretion, all directions of the court and stipulations of counsel may be recorded by a reporter. Where the latter procedure is followed, the parties shall procure and share equally the cost of a transcript thereof unless the court in its discretion otherwise provides. The transcript, corrected if necessary on motion or by stipulation of the parties approved by the court, shall have the force and effect of an order of the court. The transcript shall be filed by the plaintiff with the clerk of the court.

(e) The granting or continuation of a special preference shall be conditional upon full compliance by the party who has requested any such preference with the foregoing order or transcript. When a note of issue and certificate of readiness are filed pursuant to section 202.21 of this Part, in an action to which this section is applicable, the filing party, in addition to complying with all other applicable rules of the court, shall file with the note of issue and certificate of readiness an affirmation or affidavit, with proof of service on all parties who have appeared, showing specific compliance with the preliminary conference order or transcript.

(f) In the discretion of the court, failure by a party to comply with the order or transcript resulting from the preliminary conference, or with the so- ordered stipulation provided for in subdivision (b) of this section, or the making of unnecessary or frivolous motions by a party, shall result in the imposition upon such party of costs or such other sanctions as are authorized by law.

(g) A party may move to advance the date of a preliminary conference upon a showing of special circumstances.

(h) Motions in actions to which this section is applicable made after the preliminary conference has been scheduled, may be denied unless there is shown good cause why such relief is warranted before the preliminary conference is held.

(i) No action or proceeding to which this section is applicable shall be deemed ready for trial unless there is compliance with the provisions of this section and any order issued pursuant thereto.

(j) The court, in its discretion, at any time may order such conferences as the court may deem helpful or

necessary in any matter before the court.

(k) The provisions of this section shall apply to preliminary conferences required in matrimonial actions and actions based upon a separation agreement, in medical malpractice actions, and in real property tax assessment review proceedings within the City of New York, only to the extent that these provisions are not inconsistent with the provisions of sections 202.16, 202.56 and 202.60 of this Part, respectively.

(l) The provisions of this section shall apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR 3407 only to the extent that the provisions of this section are not inconsistent with the provisions of CPLR 3407. In an action governed by CPLR 3407 the request for a preliminary conference may be filed at any time after commencement of the action, and shall be accompanied by the physician's affidavit required by that provision.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Nov. 19, 1992; Dec. 14, 1992; Feb. 12, 1996; Aug. 4, 1998; Jan. 6, 1999 eff. Dec. 21, 1998. Amended (a).

Amended (c) on Mar. 20, 2009

Amended (l) on Apr. 13, 2009

Amended (b) on Jul. 27, 2010

Amended sections 202.12(b) and 202.12(c)(3) on Sept 23, 2013

§202.12-a Residential Mortgage Foreclosure Actions; Settlement Conference

(a) Applicability. This section shall be applicable to residential mortgage foreclosure actions involving a home loan secured by a mortgage on a one- to four-family dwelling or condominium, in which the defendant is a resident of the property subject to foreclosure.

(b) Request for judicial intervention.

(1) At the time that proof of service of the summons and complaint is filed with the county clerk, plaintiff shall file with the county clerk a specialized request for judicial intervention (RJI), on a form prescribed by the Chief Administrator of the Courts, applicable to residential mortgage foreclosure actions covered by this section. The RJI shall contain the name, address, telephone number and e-mail address, if available, of the defendant in the action, and the name of the mortgage servicer, and shall request that a settlement conference be scheduled. If the mortgage servicer involved in the case and listed on the RJI is changed at any time following the filing of the RJI, plaintiff shall file with the court and serve on all the parties a notice setting forth the name and contact information of the new or substituted mortgage servicer.

(2) Upon the filing of the RJI, the court shall send either a copy of the RJI, or the defendant's name, address and telephone number (if available), to a housing counseling agency or agencies on a list designated by the Division of Housing and Community Renewal for the judicial district in which the defendant resides, for the purpose of that agency making the homeowner aware of housing counseling and foreclosure prevention services and options available to the parties.

(3) In such county or counties as the Chief Administrator shall direct, in the event that a plaintiff fails to file proof of service of the summons and complaint in a residential mortgage foreclosure action with the county clerk within one hundred twenty days after the commencement of the action, or fails to file the RJI at the time of the filing of proof of service, the county clerk shall provide the Chief Administrative Judge with the case name, index number, property address, and contact information of parties and counsel in the action. The Chief Administrator may take such further action as she deems fit with respect to such

case or cases, including but not limited to (a) placing a case on a delinquency calendar; (b) providing case

information to a housing counseling agency or agencies; and (c) ordering a status conference.

(c) Settlement conference.

(1) The court shall promptly send to the parties a Notice scheduling a settlement conference to be held within 60 days after the date of the filing of the RJI. The Notice shall be mailed to all parties or their attorneys, which must include mailing to the address of the property subject to the mortgage. The Notice shall be on a form prescribed by the Chief Administrator, and it shall set forth the purpose of the conference, the requirements of CPLR Rule 3408, instructions to the parties on how to prepare for the conference, and what information and documents to bring to the conference. The Notice shall further provide that the defendant contact the court by telephone, no later than seven days before the conference is scheduled, to advise whether the defendant will be able to attend the scheduled conference.

(2) The conference shall include settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to. The court may also use the conference for whatever other purposes the court deems appropriate. Where appropriate, the court may permit a representative of the plaintiff to attend the conference telephonically or by video-conference.

(3) If the parties appear by counsel, such counsel must be fully authorized to dispose of the case. If the defendant appears at the conference without counsel, the court shall treat the defendant as having made a motion to proceed as a poor person and shall determine whether permission to so appear shall be granted pursuant to the standards set forth in CPLR 1101. If the court appoints defendant counsel pursuant to CPLR 1102(a), it shall adjourn the conference to a date certain for appearance of counsel and settlement discussions, and otherwise shall proceed with the conference.

(4) The parties shall engage in settlement discussions in good faith to reach a mutually agreeable resolution, including a loan modification if possible. The court shall ensure that each party fulfills its obligation to negotiate in good faith and shall see that conferences not be unduly delayed or subject to willful dilatory tactics so that the rights of both parties may be adjudicated in a timely manner.

(5) Documents.
(i) Plaintiff should bring the following documents to the conference: current payoff and reinstatement documents; mortgage and note; payment history; workout forms or packet; copies of any recent paperwork regarding reinstatement, settlement offers or loan modification proposals; and an itemization of the amounts needed to cure and pay off the loan. The Chief Administrator may require that the parties bring additional documents to the settlement conference.
(ii) Defendants should bring the following documents to the conference: current income documentation, including pay stubs and benefits information; list of monthly expenses; recent mortgage statements, property tax statements, and income tax returns; loan resolution proposals; and any information from previous workout attempts.

(6) The court may schedule such other conferences as may be necessary to help resolve the action.

(7) Motions shall be held in abeyance while settlement conferences are being held pursuant to this section. A party may not charge, impose or otherwise require payment from the other party for any cost, including but not limited to attorneys' fees, for appearance at or participation in the settlement conference.

(8) Plaintiff must file a notice of discontinuance and vacatur of the lis pendens within 150 days after any settlement agreement or loan modification is fully executed.

(d) Training. The Chief Administrator shall establish requirements for education and training of all judges and nonjudicial personnel assigned to conduct foreclosure conferences pursuant to this section.

(e) Reports. The Chief Administrator shall submit a report no later than the first day of November of each year to the Governor, and to the legislative leaders set forth in section 10-a(2) of chapter 507 of the Laws of 2009, on the adequacy and effectiveness of the settlement conferences, which shall include number of adjournments, defaults, discontinuances, dismissals, conferences held and the number of defendants appearing with and without counsel.

(f) The Chief Administrator of the Courts may continue to require counsel to file affidavits or affirmations confirming the scope of inquiry and the accuracy of papers filed in residential mortgage foreclosure actions addressing both owner-occupied and (notwithstanding section [a]

supra) non-owner-occupied residential properties.

Added 202.12a on Sept. 24, 2008

Amended 202.12a effective Feb. 13, 2010

Added (f) on Dec. 17, 2010

Amended (c)(5)(i) on Mar. 9, 2012

Amended (b)(3) on Nov 28, 2012

Amended (b)(1) on Nov 22, 2013

Section 202.13 Removal of actions without consent to courts of limited jurisdiction.

Actions may be removed to courts of limited jurisdiction without consent pursuant to the provisions of CPLR 325(d) as follows:

(a) from the Supreme Court in counties within the First, Second, Eleventh and Twelfth Judicial Districts to the Civil Court of the City of New York;

(b) from the Supreme Court in counties within the Ninth Judicial District to county and city courts within such counties;

(c) from the Supreme Court in counties within the Tenth Judicial District to county courts within such counties;

(d) from the Supreme Court in counties within the Third Judicial Department to county and city courts within such counties;

(e) from the Supreme Court in counties within the Fourth Judicial Department to county and city courts within such counties;

(f) from the County Court of Broome County to the City Court of Binghamton;

(g) from the County Court of Albany County to the City Court of Albany;

(h) from the Supreme Court and County Court of Nassau County to the District Court of Nassau County and to the city courts within such county; and

(i) from the Supreme Court and County Court of Suffolk County to the District Court of Suffolk County.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: March 25, 1987; March 30, 1988; Feb. 13, 1989; April 30, 1999; July 26, 1999 eff. July 21, 1999. Amended (h).

Section 202.14 Special masters.

The Chief Administrator of the Courts may authorize the creation of a program for the appointment of attorneys as special masters in designated courts to preside over conferences and hear and report on applications to the court. Special masters shall serve without compensation.

Historical Note

Sec. filed Feb. 16, 1988 eff. April 1, 1988.

Section 202.15 Videotape recording of civil depositions.

(a) When Permitted. Depositions authorized under the provisions of the Civil Practice Law and Rules or other law may be taken, as permitted by section 3113(b) of the Civil Practice Law and Rules, by means of simultaneous audio and visual electronic recording, provided such recording is made in conformity with this section.

(b) Other Rules Applicable. Except as otherwise provided in this section, or where the nature of videotaped recording makes compliance impossible or unnecessary, all rules generally applicable to examinations before trial shall apply to videotaped recording of depositions.

(c) Notice of Taking Deposition. Every notice or subpoena for the taking of a videotaped deposition shall state that it is to be videotaped and the name and address of the videotape operator and of the operator's employer, if any. The operator may be an employee of the attorney taking the deposition. Where an application for an order to take a videotaped deposition is made, the application and order shall contain the same information.

(d) Conduct of the Examination.

(1) The deposition shall begin by one of the attorneys or the operator stating on camera:

(i) the operator's name and address;

(ii) the name and address of the operator's employer;

(iii) the date, the time and place of the deposition; and

(iv) the party on whose behalf the deposition is being taken.

The officer before whom the deposition is taken shall be a person authorized by statute and shall identify himself or herself and swear the witness on camera. If the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced by the operator.

(2) Every videotaped deposition shall be timed by means of a time-date generator which shall permanently record hours, minutes and seconds. Each time the videotape is stopped and resumed, such times shall be orally announced on the tape.

(3) More than one camera may be used, either in sequence or simultaneously.

(4) At the conclusion of the deposition, a statement shall be made on camera that the recording is completed. As soon as practicable thereafter, the videotape shall be shown to the witness for examination, unless such showing and examination are waived by the witness and the parties.

(5) Technical data, such as recording speeds and other information needed to replay or copy the tape, shall be included on copies of the videotaped deposition.

(e) Copies and Transcription. The parties may make audio copies of the deposition and thereafter may

purchase additional audio and audio-visual copies. A party may arrange to have a stenographic transcription made of the deposition at his or her own expense.

(f) Certification. The officer before whom the videotape deposition is taken shall cause to be attached to the original videotape recording a certification that the witness was fully sworn or affirmed by the officer and that the videotape recording is a true record of the testimony given by the witness. If the witness has not waived the right to a showing and examination of the videotape deposition, the witness shall also sign the certification in accordance with the provisions of section 3116 of the Civil Practice Law and Rules.

(g) Filing and Objections.

(1) If no objections have been made by any of the parties during the course of the deposition, the videotape deposition may be filed by the proponent with the clerk of the trial court and shall be filed upon the request of any party.

(2) If objections have been made by any of the parties during the course of the deposition, the videotape deposition, with the certification, shall be submitted to the court upon the request of any of the parties within 10 days after its recording, or within such other period as the parties may stipulate, or as soon thereafter as the objections may be heard by the court, for the purpose of obtaining rulings on the objections. An audio copy of the sound track may be submitted in lieu of the videotape for this purpose, as the court may prefer. The court may view such portions of the videotape recording as it deems pertinent to the objections made, or may listen to an audiotape recording. The court, in its discretion, may also require submission of a stenographic transcript of the portion of the deposition to which objection is made, and may read such transcript in lieu of reviewing the videotape or audio copy.

(3)

(i) The court shall rule on the objections prior to the date set for trial and shall return the recording to the proponent of the videotape with notice to the parties of its rulings and of its instructions as to editing. The editing shall reflect the rulings of the court and shall remove all references to the objections. The proponent, after causing the videotape to be edited in accordance with the court's instructions, may cause both the original videotape recording and the deleted version of the recording, clearly identified, to be filed with the clerk of the trial court, and shall do so at the request of any party. Before such filing, the proponent shall permit the other party to view the edited videotape.

(ii) The court may, in respect to objectionable material, instead of ordering its deletion, permit such material to be clearly marked so that the audio recording may be suppressed by the operator during the objectionable portion when the videotape is presented at the trial. In such case the proponent may cause both the original videotape recording and a marked version of that recording, each clearly identified, to be filed with the clerk of the trial court, and shall do so at the request of any party.

(h) Custody of Tape. When the tape is filed with the clerk of the court, the clerk shall give an appropriate receipt for the tape and shall provide secure and adequate facilities for the storage of videotape recordings.

(i) Use at Trial. The use of videotape recordings of depositions at the trial shall be governed by the provisions of the Civil Practice Law and Rules and all other relevant statutes, court rules and decisional law relating to depositions and relating to the admissibility of evidence. The proponent of the videotaped deposition shall have the responsibility of providing whatever equipment and personnel may be necessary for presenting such videotape deposition.

(j) Applicability to Audio Taping of Depositions. Except where clearly inapplicable because of the lack of a video portion, these rules are equally applicable to the taking of depositions by audio recording alone. However, in the case of the taking of a deposition upon notice by audio recording alone, any party, at least five days before the date noticed for taking the deposition, may apply to the court for an order establishing

additional or alternate procedures for the taking of such audio deposition, and upon the making of the application, the deposition may be taken only in accordance with the court order.

(k) Cost. The cost of videotaping or audio recording shall be borne by the party who served the notice for the videotaped or audio recording of the deposition, and such cost shall be a taxable disbursement in the action unless the court in its discretion orders otherwise in the interest of justice.

(l) Transcription for Appeal. On appeal, visual and audio depositions shall be transcribed in the same manner as other testimony and transcripts filed in the appellate court. The visual and audio depositions shall remain part of the original record in the case and shall be transmitted therewith. In lieu of the transcribed deposition and, on leave of the appellate court, a party may request a viewing of portions of the visual deposition by the appellate court but, in such case, a transcript of pertinent portions of the deposition shall be filed as required by the court.

Historical Note

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

Section 202.16 Matrimonial actions; calendar control of financial disclosure in actions and proceedings involving alimony, maintenance, child support and equitable distribution; motions for alimony, counsel fees pendente lite,and child support; special rules.

(a) Applicability.

This section shall be applicable to all contested actions and proceedings in the Supreme Court in which statements of net worth are required by section 236 of the Domestic Relations Law to be filed and in which a judicial determination may be made with respect to alimony, counsel fees, pendente lite, maintenance, custody and visitation, child support, or the equitable distribution of property, including those referred to Family Court by the Supreme Court pursuant to section 464 of the Family Court Act.

(b) Form of Statements of Net Worth.

Sworn statements of net worth, except as provided in subdivision (k) of this section, exchanged and filed with the court pursuant to section 236 of the Domestic Relations Law, shall be in substantial compliance with the Statement of Net Worth form contained in Chapter III, Subchapter A of Subtitle D (Forms) of this Title.

(c) Retainer Agreements

(1) A signed copy of the attorney's retainer agreement with the client shall accompany the statement of net worth filed with the court, and the court shall examine the agreement to assure that it conforms to Appellate Division attorney conduct and disciplinary rules. Where substitution of counsel occurs after the filing with the court of the net worth statement, a signed copy of the attorney's retainer agreement shall be filed with the court within 10 days of its execution.

(2) An attorney seeking to obtain an interest in any property of his or her client to secure payment of the attorney's fee shall make application to the court for approval of said interest on notice to the client and to his or her adversary. The application may be granted only after the court reviews the finances of the parties and an application for attorney's fees.

(d) Request for Judicial Intervention.

A request for judicial intervention shall be filed with the court by the plaintiff no later than 45 days from the date of service of the summons and complaint or summons with notice upon the defendant, unless both

parties file a notice of no necessity with the court, in which event the request for judicial intervention may

be filed no later than 120 days from the date of service of the summons and complaint or summons with notice upon the defendant. Notwithstanding section 202.6(a) of this Part, the court shall accept a request for judicial intervention that is not accompanied by other papers to be filed in court.

(e) Certification.

Every paper served on another party or filed or submitted to the court in a matrimonial action shall be signed as provided in section 130-1.1a of this Title.

(f) Preliminary Conference.

(1) In all actions or proceedings to which this section of the rules is applicable, a preliminary conference shall be ordered by the court to be held within 45 days after the action has been assigned. Such order shall set the time and date for the conference and shall specify the papers that shall be exchanged between the parties. These papers must be exchanged no later than 10 days prior to the preliminary conference, unless the court directs otherwise. These papers shall include:

(i) statements of net worth, which also shall be filed with the court no later than 10 days prior to the preliminary conference;

(ii) all paycheck stubs for the current calendar year and the last paycheck stub for the immediately preceding calendar year;

(iii) all filed State and Federal income tax returns for the previous three years, including both personal returns and returns filed on behalf of any partnership or closely held corporation of which the party is a partner or shareholder;

(iv) all W-2 wage and tax statements, 1099 forms, and K-1 forms for any year in the past three years in which the party did not file State and Federal income tax returns;

(v) all statements of accounts received during the past three years from each financial institution in which the party has maintained any account in which cash or securities are held;

(vi) the statements immediately preceding and following the date of commencement of the matrimonial action pertaining to:

(a) any policy of life insurance having a cash or dividend surrender value; and

(b) any deferred compensation plan of any type or nature in which the party has an interest including, but not limited to, Individual Retirement Accounts, pensions, profit- sharing plans, Keogh plans, 401(k) plans and other retirement plans.

Both parties personally must be present in court at the time of the conference, and the judge personally shall address the parties at some time during the conference.

(2) The matters to be considered at the conference may include, among other things:

(i) applications for pendente lite relief, including interim counsel fees;

(ii) compliance with the requirement of compulsory financial disclosure, including the exchange and filing of a supplemental statement of net worth indicating material changes in any previously exchanged and filed statement of net worth;

(iii) simplification and limitation of the issues;

(iv) the establishment of a timetable for the completion of all disclosure proceedings, provided that all such procedures must be completed and the note of issue filed within six months from the commencement of

the conference, unless otherwise shortened or extended by the court depending upon the circumstances

of the case;

(v) the completion of a preliminary conference order substantially in the form contained in Appendix "G " to these rules, with attachments; and

(vi) any other matters which the court shall deem appropriate.

(3) At the close of the conference, the court shall direct the parties to stipulate, in writing or on the record, as to all resolved issues, which the court then shall "so order," and as to all issues with respect to fault, custody and finance that remain unresolved. Any issues with respect to fault, custody and finance that are not specifically described in writing or on the record at that time may not be raised in the action unless good cause is shown. The court shall fix a schedule for discovery as to all unresolved issues and, in a noncomplex case, shall schedule a date for trial not later than six months from the date of the conference. The court may appoint an attorney for the infant children, or may direct the parties to file with the court, within 30 days of the conference, a list of suitable attorneys for children for selection by the court. The court also may direct that a list of expert witnesses be filed with the court within 30 days of the conference from which the court may select a neutral expert to assist the court. The court shall schedule a compliance conference unless the court dispenses with the conference based upon a stipulation of compliance filed by the parties. Unless the court excuses their presence, the parties personally must be present in court at the time of the compliance conference. If the parties are present in court, the judge personally shall address them at some time during the conference.

(g) Expert Witnesses.

(1) Responses to demands for expert information pursuant to CPLR section 3101(d) shall be served within 20 days following service of such demands.

(2) Each expert witness whom a party expects to call at the trial shall file with the court a written report, which shall be exchanged and filed with the court no later than 60 days before the date set for trial, and reply reports, if any, shall be exchanged and filed no later than 30 days before such date. Failure to file with the court a report in conformance with these requirements may, in the court's discretion, preclude the use of the expert. Except for good cause shown, the reports exchanged between the parties shall be the only reports admissable at trial. Late retention of experts and consequent late submission of reports shall be permitted only upon a showing of good cause as authorized by CPLR 3101(d)(1)(i). In the discretion of the court, written reports may be used to substitute for direct testimony at the trial, but the reports shall be submitted by the expert under oath, and the expert shall be present and available for cross- examination. In the discretion of the court, in a proper case, parties may be bound by the expert's report in their direct case.

(h) Statement of Proposed Disposition.

(1) Each party shall exchange a statement setting forth the following:

(i) the assets claimed to be marital property;

(ii) the assets claimed to be separate property;

(iii) an allocation of debts or liabilities to specific marital or separate assets, where appropriate;

(iv) the amount requested for maintenance, indicating and elaborating upon the statutory factors forming the basis for the maintenance request;

(v) the proposal for equitable distribution, where appropriate, indicating and elaborating upon the statutory factors forming the basis for the proposed distribution;

(vi) the proposal for a distributive award, if requested, including a showing of the need for a distributive award;

(vii) the proposed plan for child support, indicating and elaborating upon the statutory factors upon which the proposal is based; and

(viii) the proposed plan for custody and visitation of any children involved in the proceeding, setting forth the reasons therefor.

(2) A copy of any written agreement entered into by the parties relating to financial arrangements or custody or visitation shall be annexed to the statement referred to in paragraph (1) of this subdivision.

(3) The statement referred to in paragraph (1) of this subdivision, with proof of service upon the other party, shall, with the note of issue, be filed with the court. The other party, if he or she has not already done so, shall file with the court a statement complying with paragraph (1) of this subdivision within 20 days of such service.

(i) Filing of Note of Issue.

No action or proceeding to which this section is applicable shall be deemed ready for trial unless there is compliance with this section by the party filing the note of issue and certificate of readiness.

(j) Referral to Family Court.

In all actions or proceedings to which this section is applicable referred to the Family Court by the Supreme Court pursuant to section 464 of the Family Court Act, all statements, including supplemental statements, exchanged and filed by the parties pursuant to this section shall be transmitted to the Family Court with the order of referral.

(k) Motions for Alimony, Maintenance, Counsel Fees Pendente Lite and Child support (other than under section 237(c) or 238 of the Domestic Relations Law).

Unless, on application made to the court, the requirements of this subdivision be waived for good cause shown, or unless otherwise expressly provided by any provision of the CPLR or other statute, the following requirements shall govern motions for alimony, maintenance, counsel fees (other than a motion made pursuant to section 237(c) or 238 of the Domestic Relations Law for counsel fees for services rendered by an attorney to secure the enforcement of a previously granted order or decree) or child support or any modification of an award thereof:

(1) Such motion shall be made before or at the preliminary conference, if practicable.

(2) No motion shall be heard unless the moving papers include a statement of net worth in the official form prescribed by subdivision (b) of this section.

(3) No motion for counsel fees and expenses shall be heard unless the moving papers also include the affidavit of the movant's attorney stating the moneys, if any, received on account of such attorney's fee from the movant or any other person on behalf of the movant, the hourly amount charged by the attorney, the amounts paid, or to be paid, to counsel and any experts, and any additional costs, disbursements or expenses, and the moneys such attorney has been promised by, or the agreement made with, the movant or other persons on behalf of the movant, concerning or in payment of the fee. Fees and expenses of experts shall include appraisal, accounting, actuarial, investigative and other fees and expenses to enable a spouse to carry on or defend a matrimonial action or proceeding in the Supreme Court.

(4) The party opposing any motion shall be deemed to have admitted, for the purpose of the motion but not otherwise, such facts set forth in the moving party's statement of net worth as are not controverted in:

(i) a statement of net worth, in the official form prescribed by this section, completed and sworn to by the opposing party, and made a part of the answering papers; or

(ii) other sworn statements or affidavits with respect to any fact which is not feasible to controvert in the

opposing party's statement of net worth.

(5) The failure to comply with the provisions of this subdivision shall be good cause, in the discretion of the judge presiding, either:

(i) to draw an inference favorable to the adverse party with respect to any disputed fact or issue affected by such failure; or

(ii) to deny the motion without prejudice to renewal upon compliance with the provisions of this section.

(6) The notice of motion submitted with any motion for or related to interim maintenance or child support shall contain a notation indicating the nature of the motion. Any such motion shall be determined within 30 days after the motion is submitted for decision.

(7) Upon any application for an award of counsel fees or fees and expenses of experts made prior to the conclusion of the trial of the action, the court shall set forth in specific detail, in writing or on the record, the factors it considered and the reasons for its decision.

(l) Hearings or trials pertaining to temporary or permanent custody or visitation shall proceed from day to day conclusion. With respect to other issues before the court, to the extent feasible, trial should proceed from day to day to conclusion.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: March 25, 1987; Feb. 16, 1988; Nov. 30, 1993; July 5, 1994; Feb. 12, 1996; March 25, 1996; Feb. 5, 1997; Oct. 9, 1997; Jan. 8, 1998; July 26, 2000; June 14, 2001
eff. June 11, 2001 . Amended (f)(1).

Amended (c)(1) and (c)(2) on Aug. 16, 2004 .

Amended (k)(3) & (k)(7) on Oct. 5, 2010
Amended (f)(3) on Oct. 5, 2010

Amended (f)(2) on Apr. 1, 2010

Section 202.16a Matrimonial Actions; Automatic Orders

(a) Applicability. This section shall be applicable to all matrimonial actions and proceedings in the Supreme Court authorized by section 236(2) of the Domestic Relations Law.

(b) Service. The plaintiff in a matrimonial action shall cause to be served upon the defendant, simultaneous with the service of the summons, a copy ofthe automatic orders set forth in this section in a notice that substantially conforms to the notice contained in Appendix F. The notice shall state legibly on its face that automatic orders have been entered against the parties named in the summons or in the summons and complaint pursuant to this rule, and that failure to comply with these orders may be deemed a contempt of court The automatic orders shall be binding upon the plaintiff immediately upon riling of the summons, or summons and complaint, and upon the defendant immediately upon service ofthe automatic orders with the summons. These orders shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties.

(c) Automatic Orders. Upon service of the summons in every matrimonial action, it is hereby ordered that:

(1) Neither part shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual

household expenses or for reasonable attorney's fees in connection with this action.

(2) Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court, except that any party who is already in pay status may continue to receive such payments thereunder.

(3) Neither party shall incur unreasonable debts hereafter, including but not limited to further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) Neither party shall change the beneficiaries of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

(6) These automatic orders shall remain in full force and effect during the pendency of the action unless terminated, modified or amended bv further order of the court or upon written agreement between the parties.

(7) The failure to obey these automatic orders may be deemed a contempt of court.

Historical Note

Added 202.16a on Sep. 1, 2009 .

Amended (c)(2) on Jul. 1, 2010, effective nunc pro tunc as of Sep. 1, 2009 .

Amended (1)(b), (1)(c), and added (1)(c)(6) & (1)(c)(7) on Dec. 4, 2012

Notice of Automatic Orders (D.R.L. 236)

Section 202.17 Exchange of medical reports in personal injury and wrongful death actions.

Except where the court otherwise directs, in all actions in which recovery is sought for personal injuries, disability or death, physical examinations and the exchange of medical information shall be governed by the provisions hereinafter set forth:

(a) At any time after joinder of issue and service of a bill of particulars, the party to be examined or any other party may serve on all other parties a notice fixing the time and place of examination. Unless otherwise stipulated, the examination shall be held not less than 30 nor more than 60 days after service of the notice. If served by any party other than the party to be examined, the notice shall name the examining medical provider or providers. If the notice is served by the party to be examined, the examining parties shall, within five days of receipt thereof, submit to the party to be examined the name of the medical providers who will conduct the examination. Any party may move to modify or vacate the notice fixing the time and place of examination or the notice naming the examining medical providers, within 10 days of the receipt thereof, on the grounds that the time or place fixed or the medical provider named is objectionable, or that the nature of the action is such that the interests of justice will not be

served by an examination, exchange of medical reports or delivery of authorizations.

(b) At least 20 days before the date of such examination, or on such other date as the court may direct, the party to be examined shall serve upon and deliver to all other parties the following, which may be used by the examining medical provider:

(1) copies of the medical reports of those medical providers who have previously treated or examined the party seeking recovery. These shall include a recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those x-ray and technicians' reports which will be offered at the trial, including a description of the injuries, a diagnosis and a prognosis. Medical reports may consist of completed medical provider, workers' compensation, or insurance forms that provide the information required by this paragraph;

(2) duly executed and acknowledged written authorizations permitting all parties to obtain and make copies of all hospital records and such other records, including x-ray and technicians' reports, as may be referred to and identified in the reports of those medical providers who have treated or examined the party seeking recovery.

(c) Copies of the reports of the medical providers making examinations pursuant to this section shall be served on all other parties within 45 days after completion of the examination. These shall comply with the requirements of paragraph (b)(1) of this section.

(d) In actions where the cause of death is in issue, each party shall serve upon all other parties copies of the reports of all treating and examining medical providers whose testimony will be offered at the trial, complying with the requirements of paragraph (b)(1) of this section, and the party seeking to recover shall deliver to all other parties authorizations to examine and obtain copies of all hospital records, autopsy or post-mortem reports, and such other records as provided in paragraph (b)(2) of this section. Copies of these reports and the required authorizations shall be served and delivered with the bill of particulars by the party seeking to recover. All other parties shall serve copies of the reports of their medical providers within 45 days thereafter. In any case where the interests of justice will not be promoted by service of such reports and delivery of such authorizations, an order dispensing with either or both may be obtained.

(e) Parties relying solely on hospital records may so certify in lieu of serving medical providers' reports.

(f) No case otherwise eligible to be noticed for trial may be noticed unless there has been compliance with this rule, or an order dispensing with compliance or extending the time therefor has been obtained; or, where the party to be examined was served a notice as provided in subdivision (a) of this section, and the party so served has not responded thereto.

(g) In the event that the party examined intends at the trial to offer evidence of further or additional injuries or conditions, nonexistent or not known to exist at the time of service of the original medical reports, such party shall, within 30 days after the discovery thereof, and not later than 30 days before trial, serve upon all parties a supplemental medical report complying with the requirements of paragraph (b)(1) of this section, and shall specify a time, not more than 10 days thereafter, and a place at which a further examination may be had. Further authorizations to examine and make copies of additional hospital records, other records, x-ray or other technicians' reports as provided in paragraph (b)(2) of this section must also be delivered with the medical reports. Copies of the reports of the examining medical providers, complying with the requirements of subdivision (c) of this section, shall be served within 10 days after completion of such further examination. If any party desires at the trial to offer the testimony of additional treating or examining medical providers, other than whose medical reports have been previously exchanged, the medical reports of such medical providers, complying with the requirements of paragraph (b)(1) of this section, shall be served upon all parties at least 30 days before trial.

(h) Unless an order to the contrary is made, or unless the judge presiding at the trial in the interests of

justice and upon a showing of good cause shall hold otherwise, the party seeking to recover damages shall be precluded at the trial from offering in evidence any part of the hospital records and all other records, including autopsy or post-mortem records, x-ray reports or reports of other technicians, not made available pursuant to this rule, and no party shall be permitted to offer any evidence of injuries or conditions not set forth or put in issue in the respective medical reports previously exchanged, nor will the court hear the testimony of any treating or examining medical providers whose medical reports have not been served as provided by this rule.

(i) Orders transferring cases pending in other courts which are subject to the provisions of this section, whether or not such cases are consolidated with cases pending in the court to which transferred, shall contain such provisions as are required to bring the transferred cases into compliance with this rule.

(j) Any party may move to compel compliance or to be relieved from compliance with this rule or any provision thereof, but motions directed to the sufficiency of medical reports must be made within 20 days of receipt of such reports. All motions under this rule may be made on affidavits of attorneys, shall be made on notice, and shall be granted or denied on such terms as to costs, calendar position and dates of compliance with any provision of this rule as the court in its discretion shall direct.

(k) Where an examination is conducted on consent prior to the institution of an action, the party to be examined shall deliver the documents specified in paragraphs (b)(1) and (2) of this section, and the report of the examining medical provider shall be delivered as provided in subdivision (c) of this section. In that event, examination after institution of the action may be waived. The waiver, which shall recite that medical reports have been exchanged and that all parties waive further physical examination, shall be filed with the note of issue. This shall not be a bar, however, to proceeding under subdivision (g) of this section in a proper case.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed May 4, 1998 eff. April 17, 1998.

Section 202.18 Testimony of court-appointed expert witness in matrimonial action or proceeding.

In any action or proceeding tried without a jury to which section 237 of the Domestic Relations Law applies, the court may appoint a psychiatrist, psychologist, social worker or other appropriate expert to give testimony with respect to custody or visitation, and may appoint an accountant, appraiser, actuary or other appropriate expert to give testimony with respect to equitable distribution or a distributive award. In the First and Second Judicial Departments, appointments shall be made as appropriate from a panel of mental health professionals pursuant to 22 NYCRR Parts 623 and 680. The cost of such expert witness shall be paid by a party or parties as the court shall direct.

Historical Note

Sec. filed April 3, 1989 eff. March 20, 1989.

Amended on Nov. 18, 2008

Section 202.19 Differentiated case management.

(a) Applicability. This section shall apply to such categories of cases designated by the Chief Administrator of the Courts as being subject to differentiated case management, and shall be implemented in such counties, courts or parts of courts as designated by the Chief Administrator. The provisions of section 202.12 of this Part, relating to the preliminary conference, and section 202.26 of this Part, relating to the pretrial conference, shall apply to the extent not inconsistent with this section.

(b) Preliminary Conference.

(1) In all actions and proceedings to which this section of the rules is applicable, a preliminary conference shall be ordered by the court to be held within 45 days after the request for judicial intervention is filed.

(2) At the preliminary conference, the court shall designate the track to which the case shall be assigned in accordance with the following:

(i) Expedited--discovery to be completed within eight months;

(ii) Standard--discovery to be completed within 12 months; and

(iii) Complex--discovery to be completed within 15 months.

The timeframes must be complied with unless otherwise shortened or extended by the court depending upon the circumstances of the case.

(3) No later than 60 days before the date fixed for completion of discovery, a compliance conference shall be held to monitor the progress of discovery, explore potential settlement, and set a deadline for the filing of the note of issue.

(c) Pretrial Conference.

(1) A pretrial conference shall be held within 180 days of the filing of the Note of Issue.

(2) At the pretrial conference, the court shall fix a date for the commencement of trial, which shall be no later than eight weeks after the date of the conference.

Historical Note

Sec. filed April 30, 1999; amd. filed Oct. 13, 1999 eff. Oct. 7, 1999.

Section 202.20 [Reserved]

Section 202.21 Note of issue and certificate of readiness.

(a) General. No action or special proceeding shall be deemed ready for trial or inquest unless there is first filed a note of issue accompanied by a certificate of readiness, with proof of service on all parties entitled to notice, in the form prescribed by this section. Filing of a note of issue and certificate of readiness is not required for an application for court approval of the settlement of the claim of an infant, incompetent or conservatee. The note of issue shall include the County Clerk's index number; the name of the judge to whom the action is assigned; the name, office address and telephone number of each attorney who has appeared; the name, address and telephone number of any party who has appeared pro se; and the name of any insurance carrier acting on behalf of any party. Within 10 days after service, the original note of issue, and the certificate of readiness where required, with proof of service where service is required, shall be filed in duplicate with the County Clerk together with payment of the calendar fee prescribed by CPLR 8020 or a copy of an order permitting the party filing the note of issue to proceed as a poor person, and a duplicate original with proof of service shall be filed with the clerk of the trial court. The County Clerk shall forward one of the duplicate originals of the note of issue to the clerk of the trial court stamped "Fee Paid" or "Poor Person Order."

(b) Forms. The note of issue and certificate of readiness shall read substantially as follows:

NOTE OF ISSUE

Calendar No. (if any)_____ For use of clerk

Index No_____

_____Court,_____County

Name of assigned judge_____

Notice for trial

Trial by jury demanded _____

_____ of all issues

_____ of issues specified below

_____ or attached hereto

Trial without jury _____

Filed by attorney for_____

Date summons served_____

Date service completed_____

Date issue joined_____

Nature of action or special proceeding

Tort

Motor vehicle negligence _____

_____

Medical malpractice _____

Other tort

Contract

Contested matrimonia _____

Uncontested matrimonial _____

Tax certiorar _____

Condemnation

Tax Centiorari _____

Special preference claimed

under _____

on the ground that _____

_____

Condemnation

Other (not itemized above) (specify) _____

_____

Indicate if this action is brought as a class action _____

Attorney(s) for Plaintiff(s)

Office and P.O. Address:

Phone No.

Attorney(s) for Defendant(s)
Office and P.O. Address:

Phone No. Amount demanded $ _____
Other relief _____

Insurance carrier(s), if known:

NOTE: The clerk will not accept this note of issue unless accompanied by a certificate of readiness.

CERTIFICATE OF READINESS FOR TRIAL

(Items 1-7 must be checked)

	Complete	Waived	Not required
1. All pleadings served.			
2. Bill of particulars served.			
3. Physical examinations completed.			
4. Medical reports exchanged.			
5. Appraisal reports exchanged.			
6. Compliance with section 202.16 of the Rules of the Chief Administrator (22 NYCRR 202.16) in matrimonial actions.			
7. Discovery proceedings now known to be necessary completed.			
8. There are no outstanding requests for discovery.			
9. There has been a reasonable opportunity to complete the foregoing proceedings.			
10. There has been compliance with any order issued pursuant to section 202.12 of the Rules of the Chief Administrator (22 NYCRR 202.12).			
11. If a medical malpractice action, there has been compliance with any order issued pursuant to section 202.56 of the Rules of the Chief Administrator (22 NYCRR 202.56).			
12. The case is ready for trial.			

Dated:_____

(Signature)_____

Attorney(s) for:_____

Office and P.O. address:_____

(c) Jury Trials. A trial by jury may be demanded as provided by CPLR 4102. Where a jury trial has been demanded, the action or special proceeding shall be scheduled for jury trial upon payment of the fee prescribed by CPLR 8020 by the party first filing the demand. If no demand for a jury trial is made, it shall

constitute a waiver by all parties and the action or special proceeding shall be scheduled for nonjury trial.

(d) Pretrial Proceedings. Where a party is prevented from filing a note of issue and certificate of readiness because a pretrial proceeding has not been completed for any reason beyond the control of the party, the court, upon motion supported by affidavit, may permit the party to file a note of issue upon such conditions as the court deems appropriate. Where unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings.

(e) Vacating Note of Issue. Within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. However, the 20-day time limitation to make such motion shall not apply to tax assessment review proceedings. After such period, except in a tax assessment review proceeding, no such motion shall be allowed except for good cause shown. At any time, the court on its own motion may vacate a note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. If the motion to vacate a note of issue is granted, a copy of the order vacating the note of issue shall be served upon the clerk of the trial court.

(f) Reinstatement of Note of Issue. Motions to reinstate notes of issue vacated pursuant to this section shall be supported by a proper and sufficient certificate of readiness and by an affidavit by a person having first-hand knowledge showing that there is merit to the action, satisfactorily showing the reasons for the acts or omissions which led to the note of issue being vacated, stating meritorious reasons for its reinstatement and showing that the case is presently ready for trial.

(g) Limited Specification of Damages Demanded in Certain Actions. This subdivision shall apply only in counties where the Chief Administrator of the Courts has established arbitration programs pursuant to Part 28 of the Rules of the Chief Judge of the State of New York pertaining to the arbitration of certain actions (22 NYCRR Part 28). In a medical malpractice action or an action against a municipality seeking a sum of money only, where the party filing the note of issue is prohibited by the provisions of CPLR 3017(c) from stating in the pleadings the amount of damages sought in the action, the party shall indicate on the note of issue whether the amount of damages exceeds $6,000, exclusive of costs and interest. If it does not, the party shall also indicate if it exceeds $2,000, exclusive of costs and interest.

(h) Change in Title of Action. In the event of a change in title of an action by reason of a substitution of any party, no new note of issue will be required. Notice of such substitution and change in title shall be given to the assigned judge and to the clerk within 10 days of the date of an order or stipulation effecting the party substitution or title change.

(i) Additional Requirements with Respect to Uncontested Matrimonial Actions.

(1) Uncontested matrimonial actions, proceedings for dissolution of marriages and applications of declaratory judgments shall be assigned to judges or special parts of court as the Chief Administrator shall authorize.

(2) There shall be a Unified Court System Uncontested Divorce Packet which shall contain the official forms for use in uncontested matrimonial actions. The Packet shall be available in the office of the Clerk of the Supreme Court in each county, and the forms shall be filed with the appropriate clerk in accordance with the instructions in the Packet. These forms shall be accepted by the Court for obtaining an uncontested divorce, and no other forms shall be necessary. The Court, in its discretion, may accept other forms that comply with the requirements of law.

(3) The proposed judgments shall be numbered in the order in which they are received and submitted in sequence to the judge or referee.

(4) Unless the court otherwise directs, the proof required by statute must be in writing, by affidavits, which shall include a sufficient factual statement to establish jurisdiction, as well as all elements of the cause of action warranting the relief sought.

(5) If the judge or referee believes that the papers are insufficient, the complaint shall either be dismissed for failure of proof or a hearing shall be directed to determine whether sufficient evidence exists to support the cause of action.

(6) Whether upon written proof or at the conclusion of a hearing, the judge or referee shall render a decision and sign the findings of fact, conclusions of law and the judgment, unless for reasons stated on the record decision is reserved.

(7) Where a hearing has been held, no transcript of testimony shall be required as a condition precedent to the signing of the judgment, unless the judge or referee presiding shall so direct.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Sept. 17, 1991; July 20, 1994; Aug. 20, 1996; Jan. 8, 1998; May 29, 1998 eff. May 26, 1998. Amended (i).

Section 202.22 Calendars.

(a) A judge to whom cases are assigned under the individual assignment system may establish such calendars of cases as the judge shall deem necessary or desirable for proper case management. These calendars may include:

(1) Preliminary Conference Calendar. A preliminary conference calendar is for the calendaring for conference of cases in which a note of issue and certificate of readiness have not yet been filed.

(2) Motion Calendar. A motion calendar is for the hearing of motions.

(3) General Calendar. A general calendar is for actions in which a note of issue and a certificate of readiness have been filed but which have not as yet been transferred to a pretrial conference calendar or a calendar containing cases that are ready for trial.

(4) Pretrial Conference Calendar. A pretrial conference calendar is for actions awaiting conference after the note of issue and certificate of readiness have been filed.

(5) Reserve Calendar. A reserve calendar is for actions that have had a pretrial conference or where such conference was dispensed with by the court, but where the actions have not yet been transferred to a ready calendar.

(6) Ready Calendar. A ready calendar is for actions in which a trial is imminent.

(7) Military Calendar. A military calendar is for cases where a party to an action or a witness necessary upon the trial is in military service, and is not presently available for trial, and a deposition cannot be taken, or, if taken, would not provide adequate evidence.

(8) Continuous Calendars. In any court not continuously in session, the calendars at the close of one term shall be used to open the following term and actions on the calendars shall retain their positions.

(b) Calendar Progression. With due regard to the requirements of statutory preferences and of section 202.24 of this Part, when actions are advanced from one calendar to another they shall progress from the head of one calendar to the foot of the next calendar and otherwise progress in order insofar as

practicable unless otherwise determined by the court.

(c) Call of Calendars. Judges to whom actions and proceedings are assigned pursuant to the individual assignment system may schedule calls of any calendars they have established at such times as they deem appropriate.

(d) Readiness for Trial. When an action has been announced "ready" but a trial is not immediately available, counsel may arrange with the judge to be summoned by telephone, provided they agree to hold themselves available and to appear on one hour's notice, or at such other time as the court may order, at the time assigned for trial.

Historical Note

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

Section 202.23 [Reserved]

Section 202.24 Special Preferences.

(a) Applications. Any party claiming a preference under CPLR 3403 may apply to the court in the manner prescribed by that rule.

(b) Special Requirements in Personal Injury and Wrongful Death Action. A party seeking a preference pursuant to CPLR 3403(a)(3) in an action for damages for personal injuries or for causing death shall serve and file in support of the demand or application, whether in the note of issue or subsequent thereto, a copy of:

(1) the summons;

(2) the complaint, answer and bill of particulars, conforming to CPLR 3043 and 3044;

(3) each report required by this Part to be served by the parties relating to medical information;

(4) a statement that the venue of the action was properly laid; and

(5) all other papers material to the application.

(c) Counterclaims and Cross-Claims. A counterclaim or cross-claim which is not entitled to a preference shall not itself defeat the plaintiff's right to a preference under this section.

(d) Result of Preference Being Granted. If a preference is granted, the case shall be placed ahead of all nonpreferred cases pending as of that date, unless the court otherwise orders.

Historical Note

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

Section 202.25 Objections to Applications for Special Preference.

(a) Within 20 days of the filing of the note of issue, if the notice of motion for a special preference is filed therewith, or within 10 days of the service of a notice of motion to obtain a preference, if served and filed subsequent to service and filing of the note of issue, any other party may serve upon all other parties, and file with the court affidavits and other relevant papers, with proof of service, in opposition to granting the preference. In the event opposing papers are filed, the party applying for the preference may, within five days thereafter, serve and file in like manner papers in rebuttal.

(b) In any action which has been accorded a preference in trial upon a motion, the court shall not be

precluded, on its own motion at any time thereafter, from ordering that the action is not entitled to a preference under these rules.

(c) Notwithstanding the failure of any party to oppose the application, no preference shall be granted by default unless the court finds that the action is entitled to a preference.

Historical Note

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

Section 202.26 Pretrial Conference.

(a) After the filing of a note of issue and certificate of readiness in any action, the judge shall order a pretrial conference, unless the judge dispenses with such a conference in any particular case.

(b) To the extent practicable, pretrial conferences shall be held not less than 15 nor more than 45 days before trial is anticipated.

(c) The judge shall consider at the conference with the parties or their counsel the following:

(1) simplification and limitation of the issues;

(2) obtaining admission of fact and of documents to avoid unnecessary proof;

(3) disposition of the action, including scheduling the action for trial;

(4) amendment of pleadings or bill of particulars;

(5) limitation of number of expert witnesses; and

(6) insurance coverage, where relevant.

The judge also may consider with the parties any other matters deemed relevant.

(d) In actions brought under the simplified procedure sections of the CPLR, the court shall address those matters referred to in CPLR 3036(5).

(e) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations, or accompanied by a person empowered to act on behalf of the party represented, will be permitted to appear at a pretrial conference. Where appropriate, the court may order parties, representatives of parties, representatives of insurance carriers or persons having an interest in any settlement, including those holding liens on any settlement or verdict, to also attend in person or telephonically at the settlement conference. Plaintiff shall submit marked copies of the pleadings. A verified bill of particulars and a doctor's report or hospital record, or both, as to the nature and extent of injuries claimed, if any, shall be submitted by the plaintiff and by any defendant who counterclaims. The judge may require additional data, or may waive any requirement for submission of documents on suitable alternate proof of damages. Failure to comply with this subdivision may be deemed a default under CPLR 3404. Absence of an attorney's file shall not be an acceptable excuse for failing to comply with this subdivision.

(f) If any action is settled or discontinued by stipulation at a pretrial conference, complete minutes of such stipulation shall be made at the direction of the court. Such transcribed stipulation shall be enforceable as though made in open court.

(g)

(1) At the pretrial conference, if it appears that the action falls within the monetary jurisdiction of a court of limited jurisdiction, there is nothing to justify its being retained in the court in which it is then pending, and it would be reached for trial more quickly in a lower court, the judge shall order the case transferred to the

appropriate lower court, specifying the paragraph of CPLR 325 under which the action is taken.

(2) With respect to transfers to the New York City Civil Court pursuant to CPLR 325, if, at the pretrial conference, the conditions in paragraph (1) of this subdivision are met except that the case will not be reached for trial more quickly in the lower court, the judge, in his or her discretion, may order the case so transferred if it will be reached for trial in the lower court within 30 days of the conference. In determining whether the action will be reached for trial in the lower court within 30 days, the judge shall consult with the administrative judge of his or her court, who shall advise, after due inquiry, whether calendar conditions and clerical considerations will permit the trial of actions in the lower court within the 30-day timeframe. If the action is not transferred to a lower court, it shall be tried in the superior court in its proper calendar progression.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Aug. 4, 1998 eff. Sept. 14, 1998. Amended (g).

Amended (e) on Oct. 1, 2006

Section 202.27 Defaults.

At any scheduled call of a calendar or at any conference, if all parties do not appear and proceed or announce their readiness to proceed immediately or subject to the engagement of counsel, the judge may note the default on the record and enter an order as follows:

(a) If the plaintiff appears but the defendant does not, the judge may grant judgment by default or order an inquest;

(b) If the defendant appears but the plaintiff does not, the judge may dismiss the action and may order a severance of counterclaims or cross-claims;

(c) If no party appears, the judge may make such order as appears just.

Historical Note

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

Section 202.27-a Proof of Default Judgment in Consumer Credit Matters (Uniform Civil Rules for the Supreme Court and the County Court)

(a) Definitions.

(1) For purposes of this section a consumer credit transaction means a revolving or open-end credit transaction wherein credit is extended by a financial institution, which is in the business of extending credit, to an individual primarily for personal, family or household purposes, the terms of which include periodic payment provisions, late charges and interest accrual. A consumer credit transaction does not include debt incurred in connection with, among others, medical services, student loans, auto loans or retail installment contracts.

(2) Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. Charged-off consumer debt means a consumer debt that has been removed from an original creditor's books as an asset and treated as a loss or expense.

(3) Debt buyer means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney for collection litigation.

(4) Credit agreement means a copy of a contract or other document governing the account provided to the defendant evidencing the defendant's agreement to the debt, the amount due on the account, the name of the original creditor, the account number, and the name and address of the defendant. The charge-off statement or the monthly statement recording the most recent purchase transaction, payment or balance transfer shall be deemed sufficient evidence of a credit agreement.

(b) Applicability. Together with any other affidavits required under New York law, the following affidavits shall be required as part of a default judgment application arising from a consumer credit transaction where such application is made to the clerk under CPLR 3215(a).

(1) In original creditor actions, the affidavit set forth in subsection (c), effective October 1, 2014.

(2) In debt buyer actions involving debt purchased from an original creditor on or after October 1, 2014, the affidavits set forth in subsection (d).

(3) Except as set forth in paragraph four of this subsection, the affidavits set forth in subsection (d) shall not be required in debt buyer actions involving debt purchased from an original creditor before October 1, 2014. The plaintiff shall be required to affirm in its affidavit of facts that the debt was purchased from the original creditor before October 1, 2014 and attach proof of that fact.

(4) Effective July 1, 2015, the affidavits set forth in subsection (d) shall be required in all debt buyer actions notwithstanding that the debt was purchased from an original creditor before October 1, 2014.

(5) In all original creditor and debt buyer actions, the affidavit of non-expiration of statute of limitations set forth in subsection (e), effective October 1, 2014.

(c) Where the plaintiff is the original creditor, the plaintiff must submit the AFFIDAVIT OF FACTS BY ORIGINAL CREDITOR.

(d) Where the plaintiff is a debt buyer, the plaintiff must submit the AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF, the AFFIDAVIT OF FACTS AND SALE OF ACCOUNT BY ORIGINAL CREDITOR and, if applicable, the AFFIDAVIT OF PURCHASE AND SALE OF ACCOUNT BY DEBT SELLER for each debt seller who owned the debt prior to the plaintiff.

(e) In all applications for a default judgment arising from a consumer credit transaction, the plaintiff must submit the AFFIRMATION OF NON-EXPIRATION OF STATUTE OF LIMITATIONS executed by counsel.

(f) The affidavits required by this section may not be combined. Affidavits may be augmented to provide explanatory details, and supplemental affidavits may be filed for the same purpose.

(g) The affidavits required by this section shall be supported by exhibits, including a copy of the credit agreement as defined in this section, the bill of sale or written assignment of the account where applicable, and relevant business records of the Original Creditor that set forth the name of the defendant; the last four digits of the account number; the date and amount of the charge-off balance; the date and amount of the last payment, if any; the amounts of any post-charge-off interest and post-charge-off fees and charges, less any post-charge-off credits or payments made by or on behalf the defendant; and the balance due at the time of sale.

(h) If a verified complaint has been served, it may be used as the plaintiff's affidavit of facts where it satisfies the elements of the AFFIDAVIT OF FACTS AND PURCHASE OF ACCOUNT BY DEBT BUYER PLAINTIFF.

(i) The County Clerk or clerk of the court shall refuse to accept for filing a default judgment application that does not comply with the requirements of this section.

(j) Nothing in this section is intended to impair a plaintiff's ability to make a default judgment application to

the court as authorized under CPLR 3215(b).

Historical Note

Added Sept. 15, 2014, eff. Oct. 1, 2014

Section 202.27-b Additional Mailing of Notice on an Action Arising from a Consumer Credit Transaction (Uniform Civil Rules for the Supreme Court and the County Court)

(a) Additional mailing of notice on an action arising from a consumer credit transaction.

(1) At the time of filing with the clerk the proof of service of the summons and complaint in an action arising from a consumer credit transaction, or at any time thereafter, the plaintiff shall submit to the clerk a stamped unsealed envelope addressed to the defendant together with a written notice, in both English and Spanish, containing the following language:

SUPREME/DISTRICT/CITY COURT. COUNTY/CITY OF _____

COUNTY OF _____ INDEX NO. _____

Plaintiff _____ Defendant _____

ATTENTION: A lawsuit has been filed against you claiming that you owe money for an unpaid consumer debt. You should respond to the lawsuit as soon as possible by filing an “answer.” You may wish to contact an attorney. If you do not respond to the lawsuit, the court may enter a money judgment against you. Once entered, a judgment is good and can be used against you for twenty years, and your personal property and money, including a portion of your paycheck and/or bank account, may be taken from you. Also, a judgment will affect your credit score and can affect your ability to rent a home, find a job, or take out a loan. You cannot be arrested or sent to jail for owing a debt. Additional information can be found on the court system's website at: www.nycourts.gov

PRECAUCIÓN: Se ha presentado una demanda en su contra reclamando que usted debe dinero por una deuda al consumidor no saldada. Usted debe, tan pronto como le sea posible, responder a la demanda presentando una "contestación." Quizás usted quiera comunicarse con un abogado. Si usted no presenta una contestación, el tribunal puede emitir un fallo monetario en contra suya. Una vez emitido, ese fallo es válido y puede ser utilizado contra usted por un período de veinte años, y contra su propiedad personal y su dinero, incluyendo una porción de su salario y/o su cuenta bancaria, los cuales pueden ser embargados. Además, un fallo monetario afecta su crédito y puede afectar su capacidad de alquilar una casa, encontrar trabajo o solicitar un préstamo para comprar un automóvil. Usted no puede ser arrestado ni apresado por adeudar dinero. Puede obtener información adicional en el sitio web del sistema: www.nycourts.gov.

The face of the envelope shall be addressed to the defendant at the address at which process was served, and shall contain the defendant's name, address (including apartment number) and zip code. The face of the envelope also shall contain, in the form of a return address, the appropriate address of the clerk's office to which the defendant should be directed. These addresses are:

[INSERT APPROPRIATE COURT ADDRESS OR ADDRESSES]

(2) The clerk promptly shall mail to the defendant the envelope containing the additional notice set forth in paragraph (1). No default judgment based on defendant's failure to answer shall be entered unless there has been compliance with this subdivision and at least 20 days have elapsed from the date of mailing by the clerk. No default judgment based on defendant’s failure to answer shall be entered if the additional

notice is returned to the court as undeliverable, unless the address at which process was served matches

the address of the defendant on a Certified Abstract of Driving Record issued from the New York State Department of Motor Vehicles. Receipt of the additional notice by the defendant does not confer jurisdiction on the court in the absence of proper service of process.

Historical Note

Added Sept. 15, 2014, eff. Oct. 1, 2014

Section 202.28 Discontinuance of Civil Actions and Notice to the Court.

(a) In any discontinued action, the attorney for the defendant shall file a stipulation or statement of discontinuance with the county clerk within 20 days of such discontinuance. If the action has been noticed for judicial activity within 20 days of such discontinuance, the stipulation or statement shall be filed before the date scheduled for such activity.

(b) If an action is discontinued under paragraph (a), or wholly or partially settled by stipulation pursuant to CPLR 2104, or a motion has become wholly or partially moot, or a party has died or become a debtor in bankruptcy, the parties promptly shall notify the assigned judge in writing of such an event.

Historical Note

Sec. filed Jan. 9, 1986; repealed, new filed April 26, 1993 eff. April 14, 1993.

Amended on May 20,2013

Section 202.29 to 202.30 [Reserved]

Section 202.31 Identification of Trial Counsel.

Unless the court otherwise provides, where the attorney of record for any party arranges for another attorney to conduct the trial, the trial counsel must be identified in writing to the court and all parties no later than 15 days after the pretrial conference or, if there is no pretrial conference, at least 10 days before trial. The notice must be signed by both the attorney of record and the trial counsel.

Historical Note

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

Section 202.32 Engagement of Counsel.

No adjournment shall be granted on the ground of engagement of counsel except in accordance with Part 125 of the Rules of the Chief Administrator of the Courts (22 NYCRR Part 125).

Historical Note

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

Section 202.33 Conduct of the Voir Dire.

(a) Trial Judge. All references to the trial judge in this section shall include any judge designated by the administrative judge in those instances where the case processing system or other logistical considerations do not permit the trial judge to perform the acts set forth in this section.

(b) Pre-Voir Dire Settlement Conference. Where the court has directed that jury selection begin, the trial judge shall meet prior to the actual commencement of jury selection with counsel who will be conducting

the voir dire and shall attempt to bring about a disposition of the action.

(c) Method of Jury Selection. The trial judge shall direct the method of jury selection that shall be used for the voir dire from among the methods specified in subdivision (f) of this section.

(d) Time Limitations. The trial judge shall establish time limitations for the questioning of prospective jurors during the voir dire. At the discretion of the judge, the limits established may consist of a general period for the completion of the questioning, a period after which attorneys shall report back to the judge on the progress of the voir dire, and/or specific time periods for the questioning of Panels of jurors or individual jurors.

(e) Presence of Judge at the Voir Dire. In order to ensure an efficient and dignified selection process, the trial judge shall preside at the commencement of the voir dire and open the voir dire proceeding. The trial judge shall determine whether supervision of the voir dire should continue after the voir dire has commenced and, in his or her discretion, preside over part of or all of the remainder of the voir dire.

(f) Methods of Jury Selection. Counsel shall select prospective jurors in accordance with the general principles applicable to jury selection set forth in subdivision (g) of this section and using the method designated by the judge pursuant to subdivision (c) of this section. The methods that may be selected are:

(1) "White's method," as set forth in subdivision (g) of this section;

(2) "struck method," as set forth in subdivision (g) of this section;

(3) "strike and replace method," in districts where the specifics of that method have been submitted to the Chief Administrator by the Administrative Judge and approved by the Chief Administrator for that district. The strike and replace method shall be approved only in those districts where the Chief Administrator, in his or her discretion, has determined that experience with the method in the district has resulted in an efficient and orderly selection process; or

(4) other methods that may be submitted to the Chief Administrator for use on an experimental basis by the appropriate Administrative Judge and approved by the Chief Administrator.

(g) Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

APPENDIX E

Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

A. General principles applicable to jury selection.Selection of jurors pursuant to any of the methods authorized by section 202.33(e) of the Rules of the Chief Administrator shall be governed by the following:

(1) If for any reason jury selection cannot proceed immediately, counsel shall return promptly to the courtroom of the assigned trial judge or the Trial Assignment Part or any other designated location for further instructions.

(2) Generally, a total of eight jurors, including two alternates, shall be selected. The court may permit a greater number of alternates if a lengthy trial is expected or for any appropriate reason. Counsel may consent to the use of "nondesignated" alternate jurors, in which event no distinction shall be made during jury selection between jurors and alternates, but the number of peremptory challenges in such cases shall consist of the sum of the peremptory challenges that would have been available to challenge both jurors and designated alternates.

(3) All prospective jurors shall complete a background questionnaire supplied by the court in a form

approved by the Chief Administrator. Prior to the commencement of jury selection, completed

questionnaires shall be made available to counsel. Upon completion of jury selection, or upon removal of a prospective juror, the questionnaires shall be either returned to the respective jurors or collected and discarded by court staff in a manner that ensures juror privacy. With Court approval, which shall take into consideration concern for juror privacy, the parties may supplement the questionnaire to address concerns unique to a specific case.

(4) During the voir dire each attorney may state generally the contentions of his or her client, and identify the parties, attorneys and the witnesses likely to be called. However, counsel may not read from any of the pleadings in the action or inform potential jurors of the amount of money at issue.

(5) Counsel shall exercise peremptory challenges outside of the presence of the Panel of prospective jurors.

(6) Counsel shall avoid discussing legal concepts such as burden of proof, which are the province of the court.

(7) If an unusual delay or a lengthy trial is anticipated, counsel may so advise prospective jurors.

(8) If counsel objects to anything said or done by any other counsel during the selection process, the objecting counsel shall unobtrusively request that all counsel step outside of the juror's presence, and counsel shall make a determined effort to resolve the problem. Should that effort fail, counsel shall immediately bring the problem to the attention of the assigned trial judge, the Trial Assignment Part judge or any other designated judge.

(9) After jury selection is completed, counsel shall advise the clerk of the assigned Trial Part or of the Trial Assignment Part or other designated part. If counsel anticipates the need during trial of special equipment (if available) or special assistance, such as an interpreter, counsel shall so inform the clerk at that time.

B. "White's Method"

(1) Prior to the identification of the prospective jurors to be seated in the jury box, counsel shall ask questions generally to all of the jurors in the room to determine whether any prospective juror in the room has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(2) After general questions have been asked to the group of prospective jurors, jury selection shall continue in rounds, with each round to consist of the following: (1) seating prospective jurors in the jury box; (2) questioning of seated prospective jurors; and (3) removal of seated prospective jurors upon exercise of challenges. Jurors removed for cause shall immediately be replaced during each round. The first round shall begin initially with the seating of six prospective jurors (where undesignated alternates are used, additional prospective jurors equal to the number of alternate jurors shall be seated as well).

(3) In each round, the questioning of the seated prospective jurors shall be conducted first by counsel for the plaintiff, followed by counsel for the remaining parties in the order in which their names appear in the caption. Counsel may be permitted to ask follow-up questions. Within each round, challenges for cause shall be exercised by any party prior to the exercise of peremptory challenges and as soon as the reason therefor becomes apparent. Upon replacement of a prospective juror removed for cause, questioning shall revert to the plaintiff.

(4) Following questioning and the exercise of challenges for cause, peremptory challenges shall be exercised one at a time and alternately as follows: In the first round, in caption order, each attorney shall exercise one peremptory challenge by removing a prospective juror's name from a "board" passed back and forth between or among counsel. An attorney alternatively may waive the making of a peremptory

challenge. An attorney may exercise a second, single peremptory challenge within the round only after all

other attorneys have either exercised or waived their first peremptory challenges. The board shall continue to circulate among the attorneys until no other peremptory challenges are exercised. An attorney who waives a challenge may not thereafter exercise a peremptory challenge within the round, but may exercise remaining peremptory challenges in subsequent rounds. The counsel last able to exercise a peremptory challenge in a round is not confined to the exercise of a single challenge but may then exercise one or more peremptory challenges.

(5) In subsequent rounds, the first exercise of peremptory challenges shall alternate from side to side. Where a side consists of multiple parties, commencement of the exercise of peremptory challenges in subsequent rounds shall rotate among the parties within the side. In each such round, before the board is to be passed to the other side, the board must be passed to all remaining parties within the side, in caption order, starting from the first party in the rotation for that round.

(6) At the end of each round, those seated jurors who remain unchallenged shall be sworn and removed from the room. The challenged jurors shall be replaced, and a new round shall commence.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Designated alternate jurors shall be selected in the same manner as described above, with the order of exercise of peremptory challenges continuing as the next round following the last completed round of challenges to regular jurors. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

C. "Struck Method"

(1) Unless otherwise ordered by the Court, selection of jurors shall be made from an initial Panel of 25 prospective jurors, who shall be seated randomly and who shall maintain the order of seating throughout the voir dire. If fewer prospective jurors are needed due to the use of designated alternate jurors or for any other reason, the size of the Panel may be decreased.

(2) Counsel first shall ask questions generally to the prospective jurors as a group to determine whether any prospective juror has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires further elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(3) After the general questioning has been completed, in an action with one plaintiff and one defendant, counsel for the plaintiff initially shall question the prospective jurors, followed by questioning by defendant's counsel. Counsel may be permitted to ask follow-up questions. In cases with multiple parties, questioning shall be undertaken by counsel in the order in which the parties' names appear in the caption. A challenge for cause may be made by counsel to any party as soon as the reason therefor becomes apparent. At the end of the period, all challenges for cause to any prospective juror on the Panel must have been exercised by respective counsel.

(4) After challenges for cause are exercised, the number of prospective jurors remaining shall be counted. If that number is less than the total number of jurors to be selected (including alternates, where non-designated alternates are being used) plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised by the parties (such sum shall be referred to as the "jury Panel number"), additional prospective jurors shall be added until the number of prospective jurors not subject to challenge for cause equals or exceeds the jury Panel number. Counsel for each party then shall question each replacement juror pursuant to the procedure set forth in paragraph (3).

(5) After all prospective jurors in the Panel have been questioned, and all challenges for cause have been made, counsel for each party, one at a time beginning with counsel for the plaintiff, shall then exercise

allowable peremptory challenges by alternately striking a single juror's name from a list or ballot passed

back and forth between or among counsel until all challenges are exhausted or waived. In cases with multiple plaintiffs and/or defendants, peremptory challenges shall be exercised by counsel in the order in which the parties' names appear in the caption, unless following that order would, in the opinion of the court, unduly favor a side. In that event, the court, after consulting with the parties, shall specify the order in which the peremptory challenges shall be exercised in a manner that shall balance the interests of the parties. An attorney who waives a challenge may not thereafter exercise a peremptory challenge. Any Batson or other objections shall be resolved by the court before any of the struck jurors are dismissed.

(6) After all peremptory challenges have been made, the trial jurors (including alternates when non-designated alternates are used) then shall be selected in the order in which they have been seated from those prospective jurors remaining on the Panel.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Counsel shall select designated alternates in the same manner set forth in these rules, but with an initial Panel of not more than 10 prospective alternates unless otherwise directed by the court. The jury Panel number for designated alternate jurors shall be equal to the number of alternates plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised by the parties. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

Historical Note

Sec. filed Dec. 7, 1995 eff. Jan. 1, 1996.

Section 202.34 [Reserved]

Section 202.35 Submission of papers for trial.

(a) Upon the trial of an action, the following papers, if not yet submitted, shall be submitted to the court by the party who has filed the note of issue:

(1) copies of all pleadings marked as required by CPLR 4012; and

(2) a copy of the bill of particulars, if any.

(b) Upon the trial of an action, a copy of any statutory provision in effect at the time the cause of action arose shall be submitted to the court by the party who intends to rely upon such statute.

(c) If so ordered, the parties shall submit to the court, before the commencement of trial, trial memoranda which shall be exchanged among counsel.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Feb. 16, 1988 eff. April 1, 1988.

Section 202.36 Absence of attorney during trial.

All trial counsel shall remain in attendance at all stages of the trial until the jury retires to deliberate, unless excused by the judge presiding. The court may permit counsel to leave, provided that counsel remain in telephone contact with the court. Any counsel not present during the jury deliberation, further requests to charge, or report of the jury verdict shall be deemed to stipulate that the court may proceed in his or her absence and to waive any irregularity in proceedings taken in his or her absence.

Historical Note

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

Section 202.37 to 202.39 [Reserved]

Section 202.40 Jury trial of less than all issues; procedure.

Unless otherwise ordered by the court, whenever a trial by jury is demanded on less than all issues of fact in an action, and such issues as to which a trial by jury is demanded have been specified in the note of issue or in the jury demand, as the case may be, served and filed pursuant to section 202.21 of this Part, the court without a jury first shall try all issues of fact as to which a trial by jury is not demanded. If the determination of these issues by the court does not dispose of the action, a jury shall be emPanelled to try the issues as to which a trial by jury is demanded.

Historical Note

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

Section 202.41 [Reserved]

Section 202.42 Bifurcated trials.

(a) Judges are encouraged to order a bifurcated trial of the issues of liability and damages in any action for personal injury where it appears that bifurcation may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action.

(b) Where a bifurcated trial is ordered, the issues of liability and damages shall be severed and the issue of liability shall be tried first, unless the court orders otherwise.

(c) During the voir dire conducted prior to the liability phase of the trial, if the damage phase of the trial is to be conducted before the same jury, counsel may question the prospective jurors with respect to the issue of damages in the same manner as if the trial were not bifurcated.

(d) In opening to the jury on the liability phase of the trial, counsel may not discuss the question of damages. However, if the verdict of the jury shall be in favor of the plaintiff on the liability issue or in favor of the defendant on any counterclaim on the liability issue, all parties shall then be afforded an opportunity to address the jury on the question of damages before proof in that regard is presented to the jury.

(e) In the event of a plaintiff's verdict on the issue of liability or a defendant's verdict on the issue of liability on a counterclaim, the damage phase of the trial shall be conducted immediately thereafter before the same judge and jury, unless the judge presiding over the trial, for reasons stated in the record, finds such procedures to be impracticable.

Historical Note

Sec. filed Jan. 9, 1986; amd. filed Feb. 23, 1987 eff. Feb. 9, 1987. Amended (a).

Section 202.43 References of triable issues and proceedings to judicial hearing officers or referees.

(a) No application to refer an action or special proceeding to a judicial hearing officer or referee will be entertained unless a note of issue, where required, has been filed and the index number is set forth in the

moving papers and the proposed order.

(b) The proposed order of reference shall be presented in duplicate, and a signed original order shall be delivered to the referee. If such order is not presented for signature within 20 days after the court directs a reference, the application shall be deemed abandoned.

(c) The proposed order of reference, and the actual order of reference, shall indicate whether the reference is one to hear and determine or to hear and report.

(d) Every order of reference which does not set forth a date certain for commencement of the trial or hearing shall contain the following provision:

and it is further ORDERED that if trial of the issue or action hereby referred is not begun within 60 days from the date of this order, or before such later date as the referee or judicial hearing officer may fix upon good cause shown, this order shall be cancelled and revoked, shall be remitted by the referee or judicial hearing officer to the court from which it was issued, and the matter hereby referred shall immediately be returned to the court for trial.

(e) The term "referee" in this section shall include, but not be limited to, commissioners of appraisal, and shall not include receivers or referees in incompetency proceedings or mortgage foreclosure proceedings.

Historical Note

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

Section 202.44 Motion to confirm or reject judicial hearing officer's report or referee's report.

(a) When a judicial hearing officer or referee appointed to hear and report has duly filed his or her report, together with the transcript of testimony taken and all papers and exhibits before him or her in the proceedings, if any, and has duly given notice to each party of the filing of the report, the plaintiff shall move on notice to confirm or reject all or part of the report within 15 days after notice of such filing was given. If plaintiff fails to make the motion, the defendant shall so move within 30 days after notice of such filing was given.

(b) If no party moves as specified above, the court, on its own motion, shall issue its determination. Costs of such motion, including reasonable attorneys' fees, shall be borne by the parties pro rata, except a party who did not request any relief. However, the Attorney General of New York, or State, Federal or local governmental agencies or officers thereof, shall not be liable for costs. This subdivision shall not apply to a reference to a special referee or a judicial hearing officer or to a reference to a referee in an uncontested matrimonial action.

(c) The term "referee" in this section shall be used as defined in section 202.43(e) of this Part.

Historical Note

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

Section 202.45 Rescheduling after jury disagreement, mistrial or order for new trial.

An action in which there has been an inability by a jury to reach a verdict, a mistrial or a new trial granted by the trial justice or an appellate court shall be rescheduled for trial. Where a new trial is granted by an appellate court, a notice to reschedule shall be filed with the appropriate clerk.

Historical Note

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

Section 202.46 Damages, inquest after default; proof.

(a) In an inquest to ascertain damages upon a default, pursuant to CPLR 3215, if the defaulting party fails to appear in person or by representative, the party entitled to judgment, whether a plaintiff, third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim, may be permitted to submit, in addition to the proof required by CPLR 3215(e), properly executed affidavits as proof of damages.

(b) In any action where it is necessary to take an inquest before the court, the party seeking damages may submit the proof required by oral testimony of witnesses in open court or by written statements of the witnesses, in narrative or question-and-answer form, signed and sworn to.

Historical Note

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

Section 202.47 Transcript of judgment; receipt stub.

Whenever a County Clerk issues a transcript of judgment, which shall be in the form prescribed by law, such clerk shall at the same time issue a stub. Such stub shall be 3 5/8 x 8 1/2 inches and shall have imprinted thereon the name and address of the issuing County Clerk. The stub shall also contain such other information as shall be required to identify it with the transcript with which it was issued, so that it may be readily identified upon its return to the issuing County Clerk, with the name of, and the date of receipt by, the receiving clerk endorsed thereon.

Historical Note

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

Section 202.48 Submission of orders, judgments and decrees for signature.

(a) Proposed orders or judgments, with proof of service on all parties where the order is directed to be settled or submitted on notice, must be submitted for signature, unless otherwise directed by the court, within 60 days after the signing and filing of the decision directing that the order be settled or submitted.

(b) Failure to submit the order or judgment timely shall be deemed an abandonment of the motion or action, unless for good cause shown.

(c)

(1) When settlement of an order or judgment is directed by the court, a copy of the proposed order or judgment with notice of settlement, returnable at the office of the clerk of the court in which the order or judgment was granted, or before the judge if the court has so directed or if the clerk is unavailable, shall be served on all parties either:

(i) by personal service not less than five days before the date of settlement; or

(ii) by mail not less than 10 days before the date of settlement.

(2) Proposed counter-orders or judgments shall be made returnable on the same date and at the same place, and shall be served on all parties by personal service, not less than two days, or by mail, not less than seven days, before the date of settlement. Any proposed counter-order or judgment shall be submitted with a copy clearly marked to delineate each proposed change to the order or judgment to which objection is made.

Historical Note

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

Amended (c)(2) on Jun. 11, 2007

Section 202.49 [Reserved]

Section 202.50 Proposed judgments in matrimonial actions; forms.

(a) Form of Judgments. Findings and conclusions shall be in a separate paper from the judgment, which papers shall be labelled "FINDINGS OF FACT AND CONCLUSIONS OF LAW" and "JUDGMENT," respectively.

(b) Approved Forms.

(1) Contested Actions. The paragraphs contained in Chapter III, Subchapter B of Subtitle D (Forms) of this Title, modified or deleted as may be necessary to conform to the law and facts in a particular action, shall be used in the preparation of " FINDINGS OF FACT AND CONCLUSIONS OF LAW," "JUDGMENT," or "REFEREE'S REPORT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW." Parenthesized portions indicate alternative provisions.

(2) Uncontested Actions. Parties in uncontested matrimonial actions shall use the forms in the Unified Court System Uncontested Divorce Packet as set forth in section 202.21(i)(2) of this Part, unless the court permits otherwise pursuant to that section.

(c) Judgments submitted to the court shall be accompanied by a complete form UCS 111 (Child Support Summary Form).

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: March 25, 1987; Feb. 16, 1988; Nov. 20, 1992; July 20, 1994; Jan. 5, 1998; May 29, 1998; Oct. 15, 2001 eff. Oct. 10, 2001. Amended (c).

Section 202.51 Proof required in dissolution proceedings.

In all actions in which the accounts of a receiver appointed in an action for the dissolution of a corporation are presented for settlement or to be passed upon by the court, a notice or a copy of an advertisement requiring the creditors to present their claims to a referee must be mailed, with the postage thereon prepaid, to each creditor whose name appears on the books of the corporation, at least 20 days before the date specified in such notice or advertisement. Proof of such mailing shall be required on the application for a final decree passing the accounts of the receiver unless proof is furnished that personal service of such notice or copy of advertisement has been made upon the creditors.

Historical Note

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

Section 202.52 Deposit of funds by receivers and assignees.

(a) Every receiver or assignee who, as such, receives any funds shall promptly deposit them in a checking account or in an interest-bearing account, as determined by the court, in a bank or trust company designated by the court. Such account shall be in his or her name as receiver or assignee and shall show the name of the case. The depository shall furnish monthly statements to the receiver or assignee and to the attorney for the receiver or the assignee.

(b) No funds shall be withdrawn from a receiver's or assignee's account, and no check thereon shall be

honored, unless directed by court order or the check is countersigned by the receiver's or assignee's surety.

(c) The order appointing a receiver or assignee shall incorporate subdivisions (a) and (b) of this section.

(d) All checks by a receiver or assignee for the withdrawal of moneys shall be numbered consecutively. On the stub of each check shall be noted the number, the date, the payee's name and the purpose for which the check is drawn. Checkbooks, stubs, cancelled checks and bank statements of such bank accounts shall be maintained at the office of the receiver or assignee, or his or her attorney, and shall be available for inspection by creditors or parties during business hours.

(e) Receivers shall file with the court an accounting at least once each year. An application by a receiver for final settlement of his or her account, or by an assignee for leave to sell assets, shall include a County Clerk's certificate stating the date that the bond of the applicant was filed, that it is still on file and that no order has been entered cancelling the bond or discharging the surety thereon.

Historical Note

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

Section 202.53 Trust accountings; procedure.

(a) Applications by trustees for interlocutory or final judgments or final orders in trust accountings or to terminate trusts shall be by notice of petition or order to show cause after the account has been filed in the County Clerk's office.

(b) In all actions involving an accounting of a testamentary trustee or a trustee under a deed, notice must be given to the State Tax Commission before the accounts of such trustees may be approved.

(c) Where all parties file a written consent to the entry of a judgment or order, it may be presented at a motion part for consideration by the court.

Historical Note

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

Section 202.54 Proceedings relating to appointments of guardians with respect to patients in facilities defined in the Mental Hygiene Law.

Where a patient in a facility defined in the Mental Hygiene Law is the subject of a proceeding for the appointment of a guardian, pursuant to the Mental Hygiene Law or Article 17-A of the Surrogate's Court Procedure Act, or for any substitute for or successor to such person:

(a) A copy of the notice of application for the appointment shall be served on the director of the Mental Hygiene Legal Service in the department in which the facility is located. The director shall submit to the court for its consideration such papers as the director may deem appropriate.

(b) Within 10 days after the order determining the application is signed, a copy shall be served on the director.

(c) Within 10 days after qualification of the guardian, proof of qualification shall be served on the director.

(d) A notice of an application for a judicial accounting by the guardian shall be served on the director.

(e) With respect to a patient in a facility located in a judicial department other than the department where the proceeding is initiated, copies of the application, order or proof of qualification shall be served upon

the directors in both departments.

(f) Whenever the patient, or a person on behalf of the patient, or the director requests a court hearing, at least five days notice, if notice is given personally or by delivery at the home of the person receiving notice, or eight days notice, if notice is given by mail, excluding Sundays and holidays, of the date and place of the hearing, shall be given to the patient and any person requesting the hearing.

Historical Note

Sec. filed July 3, 1990; amd. filed Sept. 22, 1993 eff. Sept. 3, 1993.

Section 202.55 Procedure for perfection of civil appeals to the County Court.

(a) Within 20 days after the papers described in section 1704 of the Uniform Justice Court Act or section 1704 of the Uniform City Court Act have been filed with the County Court, appellants shall notice the appeal for the next term or special term of County Court by filing with the clerk of the County Court, not less than 14 days prior to the date for which the appeal has been noticed, a notice of argument and a brief or statement of contentions with proof of service of a copy of each upon respondent. Respondent's papers shall be filed with the judge of the County Court within 12 days after service of appellant's brief or statement of contentions, with proof of service of a copy upon appellant.

(b) If appellant does not comply herewith, the County Court may, upon respondent's motion or upon its own motion, dismiss the appeal.

(c) Upon motion, the County Court judge hearing the appeal may for good cause shown extend the time to a subsequent term or special term, in which case the appellant must notice the appeal for such subsequent term. Unless otherwise ordered by the court, appeals may be submitted without oral argument. Motions for reargument may be made after decision is rendered, and must be made within 30 days after service upon the moving party of a copy of the order entered on the decision, with written notice of its entry.

Historical Note

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

Section 202.56 Medical, dental and podiatric malpractice actions; special rules.

(a) Notice of Medical, Dental or Podiatric Malpractice Action.

(1) Within 60 days after joinder of issued by all defendants named in the complaint in an action for medical, dental or podiatric malpractice, or after the time for a defaulting party to appear, answer or move with respect to a pleading has expired, the plaintiff shall obtain an index number and file a notice of such medical, dental or podiatric malpractice action with the appropriate clerk of the county of venue, together with:

(i) proof of service of the notice upon all other parties to the action;

(ii) proof that, if demanded, authorizations to obtain medical, dental and hospital records have been served upon the defendants in the action;

(iii) copies of the summons, notice of appearance and all pleadings, including the certificate of merit if required by CPLR 3012-a;

(iv) a copy of the bill of particulars, if one has been served;

(v) a copy of any arbitration demand, election of arbitration or concession of liability served pursuant to

CPLR 3045; and

(vi) if requested and available, all information required by CPLR 3101(d)(1)(i).The notice shall be served simultaneously upon all such parties. If the bill of particulars, papers served pursuant to CPLR 3045, and information required by CPLR 3101(d)(1)(i) are not available, but later become available, they shall be filed with the court simultaneously when served on other parties. The notice shall be in substantially the following form:

Notice of Medical, Dental or Podiatric Malpractice Action

Malpractice
Calendar No.
(if any)_____ _____

Reserved for Clerk's use

Index No._____

Name of Assigned Judge _____

SUPREME COURT
_____ County

_____

_____
Plaintiff(s)

VS.

_____
Defendant(s)

Please take notice that the above action for medical, dental or podiatric malpractice was commenced by service of summons on_____, that issue was joined therein on _____, and that the action has not been dismissed, settled or otherwise terminated.

1. State full name, address and age of each plaintiff.
2. State full name and address of each defendant.
3. State alleged medical specialty of each individual defendant, if known.
4. Indicate whether claim is for

_____ medical malpractice
_____ dental malpractice
_____ podiatric malpractice

5. State date and place claim arose.
6. State substance of claim.
7. (Following items must be checked)

(a)Proof is attached that authorizations to obtain medical, dental, podiatric and hospital records have been served upon the defendants in the action _____
or
demand has not been made for such authorizations. _____

(b)Copies of the summons, notice of appearance, all pleadings, certificate of merit, if required, and the bill of particulars if one

has been served, are attached. _____

(c)A copy of any demand for arbitration, election of arbitration or concession of liability is attached _____

or

demand has not been made for arbitration. _____

(d)All information required by CPLR 3101(d)(1)(i) is attached _____

or

a request for such information has not been made _____

or

such information is not available. _____

8. State name, addresses and telephone numbers of counsel for all parties.

_____

(PRINT NAME)

Attorney for Plaintiff

Address

Telephone number

Dated:

Instructions:

1. Attach additional 8 1/2 x 11 rider sheets if necessary.

2. Attach proof of service of this notice upon all other parties to the action.

(2) The filing of the notice of medical, dental or podiatric malpractice action in an action to which a judge has not been assigned shall be accompanied by a request for judicial intervention, pursuant to section 202.6 of this Part, and shall cause the assignment of the action to a judge.

(3) Such notice shall be filed after the expiration of 60 days only by leave of the court on motion and for good cause shown. The court shall impose such conditions as may be just, including the assessment of costs.

(b) Medical, Dental and Podiatric Malpractice Preliminary Conference.

(1) The judge, assigned to the medical, dental or podiatric malpractice action, as soon as practicable after the filing of the notice of medical, dental or podiatric malpractice action, shall order and conduct a preliminary conference and shall take whatever action is warranted to expedite the final disposition of the case, including but not limited to:

(i) directing any party to utilize or comply forthwith with any pretrial disclosure procedure authorized by the Civil Practice Law and Rules;

(ii) fixing the date and time for such procedures, provided that all such procedures must be completed within 12 months of the filing of the notice of medical, dental or podiatric malpractice action unless otherwise ordered by the court;

(iii) establishing a timetable for offers and depositions pursuant to CPLR 3101(d)(1)(ii);

(iv) directing the filing of a note of issue and a certificate of readiness when the action otherwise is ready for trial provided that the filing of the note of issue and certificate of readiness, to the extent feasible, be no later than 18 months after the notice of medical, dental or podiatric malpractice action is filed;

(v) fixing a date for trial;

(vi) signing any order required;

(vii) discussing and encouraging settlement, including use of the arbitration procedures set forth in CPLR 3045;

(viii) limiting issues and recording stipulations of counsel; and

(ix) scheduling and conducting any additional conferences as may be appropriate.

(2) A party failing to comply with a directive of the court authorized by the provisions of this subdivision shall be subject to appropriate sanctions, including costs, imposition of appropriate attorney's fees, dismissal of an action, claim, cross-claim, counterclaim or defense, or rendering a judgment by default. A certificate of readiness and a note of issue may not be filed until a preliminary conference has been held pursuant to this subdivision.

(3) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations or commitments, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

(c) Settlement conferences.

(1) The court shall hold a settlement conference in accordance with CPLR 3409 within 45 days after the filing of the note of issue and certificate of readiness or, if a party moves to vacate the note of issue and certificate of readiness and that motion is denied, within 45 days after denial of the motion.

(2) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to dispose of the case, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

(3) Where appropriate, the court may order parties, representatives of parties, representatives of insurance carriers or other persons having an interest in any settlement to attend the settlement conference in person, by telephone, or by other electronic media.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Sept. 5, 1986; Oct. 24, 1988; Sept. 17, 1991 eff. Oct. 1, 1991. Amended section title, (b); repealed (c)-(g).

Added (c) on May 25, 2011

Section 202.57 Judicial review of orders of the State Division of Human Rights; procedure.

(a) Any complainant, respondent or other person aggrieved by any order of the State Commissioner of Human Rights or the State Division of Human Rights may obtain judicial review of such order by commencing a special proceeding, within 60 days after service of the order, in the Supreme Court in the county where the alleged discriminatory practice which is the subject of the order occurred or where any person required by the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be commenced by the filing of a notice of petition and petition naming as respondents the State Division of Human Rights and all other parties appearing in the proceeding before the State Division of Human Rights.

(b) Except as set forth in subdivision (c) of this section, and unless otherwise ordered by the court, the State Division of Human Rights shall have 20 days after service of the notice of petition and petition to file with the court the written transcript of the record of all prior proceedings upon which its order was made.

(c) Where the petition seeks review of an order issued after a public hearing held pursuant to section 297(4)(a) of the Executive Law:

(1) the petition shall have annexed to it a copy of such order;

(2) the Supreme Court, upon the filing of the petition, shall make an order directing that the proceeding be transferred for disposition to the Appellate Division in the judicial department embracing the county in which the proceeding was commenced; and

(3) the time and manner of the filing of the written transcript of the record of all prior proceedings shall be determined by the Appellate Division to which the proceeding is transferred.

Historical Note

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

Section 202.58 Small claims tax assessment review proceedings; small claims sidewalk assessment review proceedings; special rules.

(a) Establishment.

(1) There is hereby established in the Supreme Court of the State of New York in each county a program to hear special proceedings for small claims tax assessment review pursuant to title 1-A of Article 7 of the Real Property Tax Law; provided, however, that insofar as Hamilton County may lack required personnel and facilities, Fulton and Hamilton Counties shall be deemed one county for the purposes of this rule.

(2) There also is established in the Supreme Court in each county within the City of New York a program to hear special proceedings for small claims sidewalk assessment review pursuant to section 19-152.3 of the Administrative Code of the City of New York.

(b) Commencement of Small Claims Tax Assessment Review Proceeding.

(1) A special proceeding pursuant to title 1-A of Article 7 of the Real Property Tax shall be commenced by a petition in a form in substantial compliance with the forms prescribed by the Chief Administrator of the Courts. Forms shall be available at no cost at each County Clerk's office.

(2) Except as otherwise provided hereafter, three copies of the petition shall be filed with the County Clerk in the county in which the property is located within 30 days after the final completion and filing of the assessment roll containing the assessment at issue, except that in the City of New York, the petition shall be filed before the 25th day of October following the time when the determination sought to be reviewed was made. The petition may be filed with the County Clerk by ordinary mail if mailed within the 30-day time period, or in the City of New York, if mailed prior to the 25th day of October, as evidenced by the postmark. In counties in which electronic filing is authorized by the Chief Administrator, the petition may or shall be filed electronically through the New York State Courts Electronic Filing System ("NYSCEF") within the deadline set forth above. A filing fee of $25 shall be paid at the time of filing, which may be in the form of a check payable to the County Clerk.

(3) Within 10 days of filing the petition with the County Clerk, the petitioner shall send by mail, a copy of the petition to:

(i) the clerk of the assessing unit named in the petition or, if there is no such clerk, to the officer who performs the customary duties of the clerk, except that in the City of New York the petition shall be mailed to the president of the New York City Tax Commission or to a designee of the president;

(ii) except in the cities of Buffalo, New York, Rochester, Syracuse and Yonkers, to the clerk of any school district within which any part of the real property on which the assessment to be reviewed is located or, if

there is no clerk of the school district or such name and address cannot be obtained, to a trustee of the school district;

(iii) the treasurer of any county in which any part of the real property is located; and

(iv) the clerk of a village which has enacted a local law, in accordance with the provisions of subdivision 3 of section 1402 of the Real Property Tax Law, providing that the village shall cease to be an assessing unit and that village taxes shall be levied on a copy of the part of the town or county assessment roll.

(4) The County Clerk shall assign a small claims assessment review filing number to each petition and, in proceedings commenced by filing in hard copy, shall retain one copy and shall forward two copies within two days of filing to the clerk designated by the appropriate administrative judge to process assessment review petitions.

(c) Commencement of Small Claims Sidewalk Assessment Review Proceeding.

(1) A special proceeding pursuant to section 19-152.3 of the Administrative Code of the City of New York shall be commenced by a petition in a form prescribed by the Department of Transportation of the City of New York in consultation with the Office of Court Administration. Forms shall be available at no cost at each County Clerk's office within the City of New York.

(2) Three copies of the petition shall be filed with the County Clerk in the county in which the property is located, provided that at least 30 days have elapsed from the presentation of the notice of claim to the Office of the Comptroller pursuant to section 19-152.2 of the Administrative Code. The petition may be filed with the County Clerk by ordinary mail. A filing fee of $25 shall be paid at the time of filing, which may be in the form of a check payable to the County Clerk.

(3) Within seven days of filing the petition with the County Clerk, the petitioner personally shall deliver or send by certified mail, return receipt requested, a copy of the petition to the Commissioner of Transportation of the City of New York or the commissioner's designee.

(4) The County Clerk shall assign a sidewalk assessment review filing number to each petition, shall retain one copy and shall forward two copies within two days of filing to the clerk designated by the appropriate administrative judge to process sidewalk assessment review petitions.

(d) Selection of Hearing Officer Panels.

(1) The Chief Administrator of the Courts shall establish Panels of small claims hearing officers found qualified to hear small claims tax assessment review proceedings pursuant to title 1-A of Article 7 of the Real Property Tax Law and Panels of small claims hearing officers found qualified to hear small claims sidewalk assessment review proceedings pursuant to section 19-152.3(d) of the Administrative Code of the City of New York.

(2) The administrative judge of the county in which the Panel will serve, or the deputy chief administrative judge for the courts within the City of New York, if the Panel is to serve in New York City, shall invite applicants to apply by publishing an announcement in the appropriate law journals, papers of general circulation or trade journals, and by communicating directly with such groups as may produce qualified candidates.

(3) The announcements and communications shall set forth the nature of the position, the qualifications for selection as contained in section 731 of the Real Property Tax Law, or section 19-152.3(d) of the Administrative Code of the City of New York, and the compensation.

(4) The administrative judge shall screen each applicant in conformance with the requirements set forth in section 731 of the Real Property Tax Law or section 19-152.3(d) of the Administrative Code of the City of

New York, for qualifications, character and ability to handle the hearing officer responsibilities, and shall

forward the names of recommended nominees, with a summary of their qualifications, to the Chief Administrator for appointment.

(5) Hearing officers shall serve at the pleasure of the Chief Administrator, and their appointments may be rescinded by the chief administrator at any time.

(6) The Chief Administrator may provide for such orientation courses, training courses and continuing education courses for persons applying to be hearing officers and for persons serving on hearing officer Panels as the Chief Administrator may deem necessary and desirable.

(e) Assignment of Hearing Officers.

(1) The assessment review clerk of the county in which the Panel will serve shall draw names of hearing officers at random from the Panel and shall assign to each hearing officer at least the first three, but no more than six, petitions filed with the County Clerk pursuant to these rules; provided, however, where necessary to ensure the fair and expeditious administration of justice, the Chief Administrator may authorize the assignment of related petitions and the assignment of more than six petitions to a single hearing officer.

(2) No person who has served as a hearing officer shall be eligible to serve again until all other hearing officers on the Panel have had an opportunity to serve.

(3) A hearing officer shall disqualify himself or herself from hearing a matter where a conflict exists as defined by the Public Officers Law or, with respect to small claims tax assessment review hearing officers, by subdivision 2 of section 731 of the Real Property Tax Law. Where a hearing officer disqualifies himself or herself, such hearing officer shall notify the chief administrator or designee and the matter shall be reassigned to another hearing officer.

(4) The hearing officer shall determine, after contacting the parties, the date, time and place for the hearing, which shall be held within 45 days with respect to a small claims tax assessment review proceeding, and within 30 days with respect to a small claims sidewalk assessment review proceeding, after the filing of the petition, or as soon thereafter as is practicable, and which shall be held, where practicable, at a location within the county where the real property is located. The hearing officer shall schedule hearings in the evening at the request of any party, unless special circumstances require otherwise. Written notice of the date, time and place of the hearing shall be sent by mail by the hearing officer to the parties or their attorneys, if represented, at least 10 working days prior to the date of the hearing, except that in an electronically filed proceeding, such notice may be sent by e-mail to parties participating in e-filing; provided, however, failure to receive such notice in such period shall not bar the holding of a hearing.

(5) Adjournments shall not be granted by the hearing officer except upon good cause shown.

(6) All parties are required to appear at the hearing. Failure to appear shall result in the petition being dismissed or in the petition being determined upon inquest by the hearing officer based upon the available evidence submitted.

(f) Decision and Order.

(1) The decision and order of the hearing officer shall be rendered expeditiously and, in a small claims tax assessment review proceeding, the notice required by section 733(4) of the Real Property Tax Law shall be attached to the petition form.

(2) Costs.

(i) In a small claims tax assessment review proceeding, if the assessment is reduced by an amount equal

to or greater than half the reduction sought, the hearing officer shall award the petitioner costs against the

respondent assessing unit in the amount of $25. If the assessment is reduced by an amount less than half of the reduction sought, the hearing officer may award the petitioner costs against the respondent assessing unit in an amount not to exceed $25.

(ii) In a small claims sidewalk assessment review proceeding, if the hearing officer grants the petition in full or in part, the hearing officer shall award the petitioner costs against the respondent in the amount of $25. In any other case, the hearing officer, in his or her discretion, may award the petitioner costs in the amount of $25, if he or she deems it appropriate.

(3) The hearing officer in a small claims tax assessment review proceeding shall transmit one copy of the decision and order, by ordinary mail, or may, in an electronically filed proceeding, transmit instead a copy via NYSCEF, to the petitioner, the clerk of the assessing unit and the assessment review clerk of the court. The hearing officer in a small claims sidewalk assessment review proceeding shall transmit one copy of the decision and order, by ordinary mail, to the petitioner, the Commissioner of Transportation of the City of New York or the commissioner's designee, and the assessment review clerk of the court.

(4) The assessment review clerk shall file the petition and the attached decision and order with the County Clerk. In an electronically filed proceeding, the decision and order shall be posted with the NYSCEF site, which shall constitute filing with the County Clerk.

(5) The assessment review clerk shall make additional copies of the decision and order, as necessary, and, in the case of a small claims tax assessment review proceeding, shall transmit a copy to the clerk of each tax district relying on the assessment that is named in the petition and to the treasurer of any county in which any part of the real property is located. In the case of a small claims sidewalk assessment review proceeding, where the order grants the petition in full or in part, the assessment review clerk shall mail a copy of the decision and order to the Collector of the City of New York.

(g) Advertising by Hearing Officers. No person who is appointed a hearing officer shall, in any public advertisement published or distributed to advance such person's business or professional interests, refer to his or her status as a hearing officer. No hearing officer shall use letterhead or business cards bearing the title of hearing officer except in direct connection with such person's official duties as hearing officer.

(h)

(1) Proceedings pursuant to Title 1-A of Article 7 of the Real Property Tax Law may be heard and determined by a judicial hearing officer. The judicial hearing officer shall be designated and assigned by the appropriate administrative judge to hear such proceedings as determined by that judge or by the assessment review clerk, and the hearing shall be conducted in accordance with this section.

(2) Judicial hearing officers appointed to hear proceedings pursuant to this section shall receive compensation as provided in section 122.8 of the rules of the Chief Administrator, or such other compensation as the Chief Administrator may direct. A location in which a hearing is held pursuant to this section shall be deemed a "facility designated for court appearances" within the meaning of section 122.8.

(i) Collateral Proceedings. All applications for judicial relief shall be made in the Supreme Court in the county where the real property subject to review is located. If a judicial hearing officer has heard and determined a proceeding under the section, any application for judicial relief may not be heard by a judicial hearing officer, except upon consent of the parties.

Historical Note

Sec. filed June 17, 1987; amds. filed: June 23, 1989; Jan. 30, 1990; May 4, 1992; Nov. 12, 1992 eff. Nov. 5, 1992.

Amended (h)(2) on Apr. 1, 2010

Amended (b)(2), (b)(4), (e)(4), (f)(3), & (f)(4) on May 24,2013

Section 202.59 Tax assessment review proceedings in counties outside the City of New York; special rules.

(a) Applicability. This section shall apply to every tax assessment review proceeding brought pursuant to title 1 of Article 7 of the Real Property Tax Law in counties outside the City of New York.

(b) Statement of Income and Expenses. Before the note of issue and certificate of readiness may be filed, the petitioner shall have served on the respondent, in triplicate, a statement that the property is not income- producing, or a copy of a verified or certified statement of the income and expenses on the property for each tax year under review. For the purposes of this section, a cooperative or condominium apartment building shall be considered income-producing property; an owner-occupied business property shall be considered income-producing as determined by the amount reasonably allocable for rent, but the petitioner is not required to make an estimate of rental income.

(c) Audit. Within 60 days after the service of the statement of income and expenses, the respondent, for the purpose of substantiating petitioner's statement of income and expenses, may request in writing an audit of the petitioner's books and records for the tax years under review. If requested, the audit must be completed within 120 days after the request has been made unless the court, upon good cause shown, extends the time for the audit. Failure of the respondent to request or complete the audit within the time limits shall be deemed a waiver of such privilege. If an audit is requested and the petitioner fails to furnish its books and records within a reasonable time after receipt of the request, or otherwise unreasonably impedes or delays the audit, the court, on motion of the respondent, may dismiss the petition or petitions or make such other order as the interest of justice requires.

(d) Filing Note of Issue and Certificate of Readiness; Additional Requirements.

(1) A note of issue and certificate of readiness shall not be filed unless all disclosure proceedings have been completed and the statement of income and expenses has been served and filed.

(2) A separate note of issue shall be filed for each property for each tax year.

(e) Pretrial Conference.

(1) At any time after filing of the note of issue and certificate of readiness, any party to a tax assessment review proceeding may demand, by application served on all other parties and filed with the court, together with proof of such service, a pretrial conference, or the court on its own motion may direct a pretrial conference at a time and date to be fixed by the court. At the pretrial conference, the judge shall take whatever action is warranted to expedite final disposition of the proceedings, including, but not limited to:

(i) directing the parties to obtain appraisals and sales reports, and to exchange and file appraisal reports and sales reports by dates certain before the trial, provided that if the court dispenses with a pretrial conference, such exchange and filings shall be accomplished at least 10 days before trial;

(ii) fixing a date for trial, or by which the parties must be ready for trial;

(iii) signing any order required;

(iv) conducting conferences for the purpose of facilitating settlement; and

(v) limiting issues and recording stipulations of counsel.

(2) Failure to comply with any order or directive of the court authorized by this subdivision shall be subject to the appropriate sanctions.

(f) Consolidation or Joint Trial. Consolidation or joint trial of real property tax assessment review

proceedings in the discretion of the court shall be conditioned upon service having been made of the verified or certified income and expense statement, or a statement that the property is not income-producing, for each of the tax years under review.

(g) Exchange and Filing of Appraisal Reports.

(1) The exchange and filing of appraisal reports shall be accomplished by the following procedure:

(i) The respective parties shall file with the clerk of the trial court one copy, or in the event that there are two or more adversaries, a copy for each adversary, of all appraisal reports intended to be used at the trial.

(ii) When the clerk shall have received all such reports, the clerk forthwith shall distribute simultaneously to each of the other parties a copy of the reports filed.

(iii) Where multiple parties or more than one parcel is involved, each appraisal report need be served only upon the taxing authority and the party or parties contesting the value of the property which is the subject of the report. Each party shall provide an appraisal report copy for the court.

(2) The appraisal reports shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal reports also may contain photographs of the property under review and of any comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs.

(3) Where an appraiser appraises more than one parcel in any proceeding, those parts of the separate appraisal reports for each parcel that would be repetitious may be included in one general appraisal report to which reference may be made in the separate appraisal reports. Such general appraisal reports shall be served and filed as provided in paragraph (1) of this subdivision.

(4) Appraisal reports shall comply with any official form for appraisal reports that may be prescribed by the Chief Administrator of the Courts.

(h) Use of Appraisal Reports at Trial. Upon the trial, expert witnesses shall be limited in their proof of appraised value to details set forth in their respective appraisal reports. Any party who fails to serve an appraisal report as required by this section shall be precluded from offering any expert testimony on value; provided, however, upon the application of any party on such notice as the court shall direct, the court may, upon good cause shown, relieve a party of a default in the service of a report, extend the time for exchanging reports, or allow an amended or supplemental report to be served upon such conditions as the court may direct. After the trial of the issues has begun, any such application must be made to the trial judge and shall be entertained only in unusual and extraordinary circumstances.

Historical Note

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

Section 202.60 Tax assessment review proceedings in counties within the City of New York; special rules.

(a) Applicability. This section shall apply to every tax assessment review proceeding brought pursuant to title 1 of Article 7 of the real Property Tax Law in a county within the City of New York.

(b) Preliminary Conference.

(1) Any party to a tax assessment review proceeding may demand, by application served on all other parties and filed with the court, together with proof of such service, a preliminary conference, or the court on its own motion may direct a preliminary conference. The court, in its notice to the parties setting the date for the conference, shall direct the petitioner to serve upon the respondent by a date certain before the date of the conference, the completed statement of income and expenses required by this section, together with any ancillary papers or documents that may be necessary. No note of issue may be filed until a preliminary conference has been held.

(2) The judge presiding at the preliminary conference shall take whatever action is warranted to expedite final disposition of the case, including but not limited to:

(i) directing any party to utilize or comply by a date certain with any pretrial disclosure or bill of particulars procedure authorized by the Civil Practice Law and Rules;

(ii) directing the parties to obtain appraisals and sales reports, and to exchange and file appraisal reports and sales reports by dates certain before the trial;

(iii) directing the filing of a note of issue and certificate of readiness;

(iv) fixing a date for trial, or by which the parties must be ready for trial;

(v) signing any order required;

(vi) conducting conferences for the purpose of facilitating settlement; and

(vii) limiting issues and recording stipulations of counsel.

(3) Failure to comply with any order or directive of the court authorized by this subdivision shall be subject to appropriate sanctions.

(4) Where parties are represented by counsel, only attorneys fully familiar with the action and authorized to make binding stipulations or commitments, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

(c) Statement of Income and Expenses. Before the note of issue and certificate of readiness may be filed, the petitioner shall have served on the respondent, in triplicate, a statement that the property is not income- producing or a copy of a verified or certified statement of the income and expenses of the property for each tax year under review. If the property is income-producing, the petitioner must serve the statement of income and expenses on forms provided by the Tax Certiorari Division of the Office of the Corporation Counsel of the City of New York. The petitioner shall complete all items listed on such form. A copy of such completed form shall also be filed with the note of issue and certificate of readiness. For the purposes of this section, a cooperative or condominium apartment building shall be considered income-producing property; an owner-occupied business property shall be considered income-producing as determined by the amount reasonably allocable for rent, but the petitioner is not required to make an estimate of rental income.

(d) Audit. Within 60 days after the first preliminary conference, the respondent, for the purpose of substantiating petitioner's completed statement of income and expenses, as required by subdivision (c) of this section, may request in writing an audit of the petitioner's books and records for the tax years under review. If requested, the audit must be completed within 120 days after the request has been made unless the court, upon good cause shown, extends the time for the audit. Failure of the respondent to request or complete the audit within the time limits shall be deemed a waiver of such privilege. If an audit is requested and the petitioner fails to furnish its books and records within a reasonable time after receipt of the request, or otherwise unreasonably impedes or delays the audit, the court, on motion of the

respondent, may dismiss the petition or petitions or make such other order as the interest of justice

requires.

(e) Filing Note of Issue and Certificate of Readiness; Additional Requirements.

(1) A note of issue and certificate of readiness shall not be filed unless all disclosure proceedings have been completed and the statement of income and expenses has been served and filed. A note of issue and certificate of readiness may not be filed in any action where a preliminary conference was requested or was directed by the court until the conference has been held and there has been compliance with any orders or directives of the court or stipulations of counsel made at such conference.

(2) A separate note of issue shall be filed for each property for each tax year.

(f) Consolidation or Joint Trial. Consolidation or joint trial of real property tax assessment review proceedings in the discretion of the court shall be conditioned upon service having been made of the verified or certified income and expense statement, or a statement that the property is not income-producing, for each of the tax years under review.

(g) Exchange and Filing of Appraisal Reports.

(1) Upon the filing of the note of issue and certificate of readiness, the court, if it has not previously so directed, shall direct that appraisal reports and sales reports be obtained and that appraisal reports and sales reports be exchanged and filed by a date certain a specified time before the date scheduled for trial.

(2) The exchange and filing of appraisal reports shall be accomplished by the following procedure:

(i) the respective parties shall file with the clerk of the trial court one copy, or in the event that there are two or more adversaries, a copy for each adversary, of all appraisal reports intended to be used at the trial.

(ii) When the clerk shall have received all such reports, the clerk forthwith shall distribute simultaneously to each of the other parties a copy of the reports filed.

(iii) Where multiple parties or more than one parcel is involved, each appraisal report need be served only upon the taxing authority and the party or parties contesting the value of the property which is the subject of the report. Each party shall provide an appraisal report copy for the court.

(3) The appraisal reports shall contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are to be relied on, they shall be set forth with sufficient particularity as to permit the transaction to be readily identified, and the report shall contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal reports also shall contain photographs of the property under review and of any comparable property that specifically is relied upon by the appraiser, unless the court otherwise directs.

(4) Where an appraiser appraises more than one parcel in any proceeding, those parts of the separate appraisal reports for each parcel that would be repetitious may be included in one general appraisal report to which reference may be made in the separate appraisal reports. Such general appraisal reports shall be served and filed as provided in paragraph (1) of this subdivision.

(5) Appraisal reports shall comply with any official form for appraisal reports that may be prescribed by the Chief Administrator of the Courts.

(h) Use of Appraisal Reports at Trial. Upon the trial, expert witnesses shall be limited in their proof of appraised value to details set forth in their respective appraisal reports. Any party who fails to serve an appraisal report as required by this section shall be precluded from offering any expert testimony on value; provided, however, upon the application of any party on such notice as the court shall direct, the court

may, upon good cause shown, relieve a party of a default in the service of a report, extend the time for exchanging reports, or allow an amended or supplemental report to be served upon such conditions as the court may direct. After the trial of the issues has begun, any such application must be made to the trial judge and shall be entertained only in unusual and extraordinary circumstances.

Historical Note

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

Section 202.61 Exchange of appraisal reports in eminent domain proceedings.

(a)

(1) In all proceedings for the determination of the value of property taken pursuant to eminent domain, the exchange of appraisal reports shall be accomplished in the same manner as provided for the exchange of such reports by section 202.59(g) and 202.60(g) of this Part, except that such reports shall be filed no later than nine months after service of the claim, demand or notice of appearance required by section 503 of the Eminent Domain Procedure Law unless otherwise extended by the court. A note of issue may not be filed until such reports have been filed.

(2) If a party intends to offer at trial expert evidence in rebuttal to any report, an expert's report shall be filed within 60 days after receipt of the document sought to be rebutted.

(3) Upon application of any party upon such notice as the court in which the proceeding is pending shall direct, the court may, upon good cause shown, relieve a party of a default in filing a report, extend the time for filing reports, or allow an amended or supplemental report to be filed upon such conditions as the court may direct.

(b) In proceedings where more than one parcel is involved, the appraisal reports shall be distributed only to the taking authority and to the claimant or claimants who are owners of parcels which are the subject of the appraisal report. In the event that a party defaults in filing an appraisal report within the time limitation prescribed, the clerk shall return the filed copies of each party's appraisal report, with notice to the party in default.

(c) The contents and form of each appraisal report, including any rebuttal, amended or supplementary report, shall conform to the requirements of sections 202.59(g) and 202.60(g) of this Part.

(d) All appraisals of fixtures submitted on behalf of the claimants and the condemnor for which claim is made shall be filed and distributed as provided by these rules with respect to appraisal reports and shall set forth the appraisal value of each item in the same numerical order as in the inventory annexed to the claim.

(1) Where the condemnor puts in issue the existence of any item in the inventory, the appraisal submitted on its behalf shall so state.

(2) Where the condemnor puts in issue the description of any item in the inventory, the appraisal submitted on behalf of the condemnor shall state its appraiser's description of such item and his or her estimate of value.

(3) Where the condemnor puts in issue the compensability of any item in the inventory, the appraisal report submitted by the condemnor shall so state and shall state the ground therefor, as well as its appraiser's estimate of the value of such item for consideration in the event that the court should determine that it is compensable.

(e) Upon trial, all parties shall be limited in their affirmative proof of value to matters set forth in their

respective appraisal reports. Any party who fails to file an appraisal report as required by this section shall be precluded from offering any appraisal testimony on value.

Historical Note

Sec. filed Jan. 9, 1986 ; amd. filed April 3, 1989 eff. April 1, 1989.

Section 202.62 Payment of eminent domain award to other than the named awardee.

On all applications for payment of awards in eminent domain proceedings by parties other than the party named in the decree, the applicant shall give notice of its motion to all parties with an interest in the award.

Historical Note

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

Section 202.63 Assignment for benefit of creditors.

(a) Records and Papers.

(1) In assignments for the benefit of creditors, the clerk shall keep a register and docket. The clerk shall enter in the register in full every final order according to date; the docket shall contain a brief note of each day's proceedings under the respective title.

(2) Every petition, order, decree or other paper shall have endorsed on the outside the nature of such paper, the date of filing, and the name, number and page of the book in which the proceedings are entered by the clerk.

(3) The papers in each proceeding shall be kept in a separate file, as required by section 18 of the Debtor and Creditor Law. No paper shall be removed from the files of the court except by order of the court.

(4) Except as otherwise provided by law, every notice or citation, subpoena, and all process shall issue out of the court under seal and be attested by the clerk.

(b) Appearances.

(1) Any person interested in an assignment for the benefit of creditors may appear either in person or by attorney. If in person, his or her address and telephone number, and if by attorney, the name, address and telephone number, shall be endorsed on every appearance filed by such attorney. The name of such person or attorney shall be entered in the docket.

(2) The assignee's attorney shall file a written notice of appearance as soon as possible, but not later than 10 days after being retained.

(3) When an assignee is removed, voluntarily or involuntarily, and another person has been appointed as assignee, a certified copy of the order shall be filed with the clerk of the county where the original assignment was recorded. The clerk shall make an entry on the record of the original assignment to show the appointment of the substituted assignee, and the copy of the order of substitution shall be attached to the original assignment.

(c) Duties of the Assignor and Assignee.

(1) The assignor shall deliver all books, records and documents to the assignee immediately upon filing the assignment, but the assignee shall make them available to the assignor to prepare the schedules.

(2) The assignee's attorney shall require the person in charge of the assignor's business to submit to

examination under oath and shall complete such examinations within 30 days, unless extended by the

court for good cause.

(3) The assignee shall promptly require the assignor, if an individual, or its officers and persons in charge of its finances, if a corporation, to pay to the assignee all trust funds withheld for accounting to any governmental authorities, together with any preferential payments paid to them or to others by the assignor.

(4)

(i) Upon the filing of an assignment, the court, upon application, may stay any prospective sale or transfer to enforce a lien against property in the custody of the court, whether by a secured creditor, a judgment creditor, a lienor or otherwise.

(ii) With respect to property not in the custody of the court, possession having been acquired by the secured creditor, judgment creditor or lienor, the assignee may, upon notice to the adverse party, apply to the court where such assignment proceedings are pending to enjoin any prospective sale and to permit the assignee to conduct the sale, whether private or a public auction, upon such terms and conditions as in its discretion will not prejudice the interest of the secured party and yet preserve the interest of the assigned estate by affording the assignee an opportunity to liquidate the assets under the most favorable terms and conditions.

(5) Every assignee shall keep full, exact and regular books of account of all receipts, payments and expenditures of monies.

(6) In making sales at auction of personal property, the assignee shall give at least 10 days' notice of the time and place of sale and of the Articles to be sold, by advertisement in one or more newspapers. Such sale shall be held within 15 days after the entry of the order authorizing the same, unless in the meantime an order of the court has been obtained granting an extension of the time for such sale; and he or she shall give notice of the sale at auction of any real estate at least 20 days before such sale. Upon such sale, the assignee shall sell by printed catalogue, in parcels, and shall file a copy of such catalogue, with the prices obtained for the goods sold, within 20 days after the date of such sale.

(7)

(i) Notwithstanding subdivision (f) of this section, upon receipt of an offer for all or a substantial part of the assets, an assignee may for good cause shown make application to the court for leave to sell at a private sale in lieu of a public auction sale. A hearing thereon shall be scheduled for the purpose of considering that offer or any higher or better offers that may be submitted upon such notice and advertising as the court may deem appropriate.

(ii) Upon application by an assignee or a creditor, setting forth that a part or the whole of the estate is perishable, the nature and location of such perishable property, and that there will be a loss if the same is not sold immediately, the judge presiding, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold with or without notice to creditors.

(8) Upon an application made for a notice of filing of his or her account and for a hearing thereon, the assignee shall file with his or her petition his or her account with the vouchers.

(d) Accounting and Schedules.

(1) The assignee must file an account in all cases.

(2) Failure to file an interim accounting in a pending proceeding within six months after the filing of an assignment may cause a forfeiture of commissions and fees of the assignee and his or her attorney and shall constitute grounds for their removal.

(3) Where more than one sheet of paper is necessary to contain the schedule of liabilities and inventory of

assets required to be filed by the assignor or assignee, each page shall be signed by the person or persons verifying the same. Contingent liabilities shall appear on a separate sheet of paper. The sheets on which such schedule and inventory are written shall be securely fastened before the filing thereof and shall be endorsed with the full name of the assignor and assignee; and when filed by an attorney, the name and address of such attorney shall also be endorsed thereon. Such schedule and inventory shall fully and fairly state the nominal and actual value of the assets and the cause of differences between such values. A separate affidavit will be required explaining such stated cause of difference. If it is deemed necessary, affidavits of disinterested experts as to the claimed values must be furnished; and if such schedule and inventory are filed by the assignee, they must be accompanied by affidavits made by such assignee and by some disinterested expert showing, in detail, the nature and value of the property assigned. The name, residence, occupation and place of business of the assignor, and the name and place of residence of the assignee must be annexed to the schedule and inventory or incorporated in the affidavit verifying the same. There shall be a recapitulation at the end of such schedule and inventory, as follows:

Debts and liabilities amount to ..... $

Fair value of assets ..... $

Assets realized on liquidation ..... $

(4) Application to amend the schedule shall be made by verified petition in which the amendment sought to be made shall appear in full, and such amendment shall be verified in the same manner as the original schedule.

(5) The account of the assignee shall be in the nature of a debit and credit statement; he or she shall debit himself or herself with the assets as shown in the schedule, as filed, and credit himself or herself with any decrease and expenses.

(6) The statement of expenditures shall be full and complete and the vouchers for all payments shall be attached to the account.

(7) The affirmative on the accounting shall be with the assignee; the objections to the account may be presented to the court or designated referee in writing or be brought out on a cross-examination. In the latter case, they must be specifically taken and entered in the minutes.

(8) The testimony taken and all exhibits marked in evidence shall be filed with the report of the referee.

(9) It shall be the duty of the assignee to close up the estate as expeditiously as possible; and, unless good cause for greater delay can be shown and authorized by an order of the court obtained prior to the expiration of the permissible time, the assignee's account shall be filed within 15 months from the date of the execution of the assignment deed.

(10) The court may order notice to creditors by publication to present their claims as provided in section 5 of the Debtor and Creditor Law.

(e) Court-Appointed Referee.

(1) The court may appoint a referee to take and state any contested account or to hear and report on any issue of fact raised in an application to the court by any interested party.

(2) Notice of the time and place of the hearing before a referee appointed to take and state an assignee's account or to hear and report on a referred issue of fact shall be given by mail, with the postage thereon prepaid, at least 20 days before the date specified in said notice, to the assignor, the assignee's surety and to each creditor whose name appears on the books of the assignor or on the schedule, or who has

presented his or her claim or address to the assignee, and to each attorney who has appeared for any

person interested in the assigned estate.

(3) A notice or a copy of an advertisement, requiring the creditors to present their claims, with the vouchers therefor duly verified to the referee, must be mailed to each creditor whose name appears on the books of the assignor or on the schedule, with the postage thereon prepaid, at least 10 days before the date specified in such notice or advertisement. Proof of such mailing shall be required on the application for a final decree approving the account of the assignee unless proof is furnished that personal service of such notice or a copy of such advertisement has been made upon the creditor.

(4) The report of the referee shall show all the jurisdictional facts necessary to confer power on the court, such as the proper execution and acknowledgment of the assignment, its recording, the filing of the schedule and bond, the publication and mailing of notice to creditors to present claims, the filing of the assignee's account, the issuance and service of notice of application for settlement of the account, and, where any items in the account of the assignee are disallowed, the same shall be fully set out in the report, together with the reason therefor.

(5) The report of the referee after a hearing of a disputed claim under the statute shall be filed with the clerk of the court and a copy served on each party to the proceeding. The court shall, on application of any party, or on its own motion, confirm or disaffirm the referee's report; such report shall then be reviewed only by appeal to the Appellate Division.

(f) Discharge of Assignee.

(1) No discharge shall be granted an assignee who has not advertised for claims pursuant to section 5 of the Debtor and Creditor Law and the applicable provisions of this section.

(2) No discharge shall be granted an assignee and his or her sureties in any case, whether or not the creditors have been paid, or have released, or have entered into composition, except in a regular proceeding for an accounting under the applicable provisions of the Debtor and Creditor Law, commenced by petition, and after due and timely notice thereof to all persons interested in the estate.

(3) Provisional and Final Bond. The affidavit upon which application is made for leave to file a provisional bond must show fully and fairly the nature and extent of the property assigned, and good and sufficient reason must be shown why the schedule and inventory cannot be filed. It must appear satisfactorily to the court that a necessity exists for filing of such provisional bond; and the affidavits filed shall be deemed a schedule and inventory of the assigned property until such time as the regular schedule and inventory of the assigned property shall be filed. Upon the filing of the schedule and inventory, the amount of the bond shall be determined finally. Should the provisional bond already filed be deemed sufficient, an order may be granted making such bond, as approved, the final bond.

(4) Upon all applications made to the court by assignees under general assignments for the benefit of creditors for the filing of a provisional bond, or for permission to sell the property of the assignor, the applicant shall present proof by affidavit whether any petition in bankruptcy has been filed by or against the assignor.

(5) The final bond shall be joint and several in form and must be accompanied by the affidavit prescribed by CPLR 2502, and also by the affidavit of each surety, setting forth his business, where it is carried on, and the amount in which he or she is required to justify over and above his debts and liabilities.

(g) Justification of Sureties. The court may in its discretion require any surety to appear and justify. If the penalty of the bond be $20,000 or over, it may be executed by two sureties each justifying in that sum, or by more than two sureties, the amount of whose justification, united, is double the penalty of the bond.

(h) Application to Continue Business of Assignor. An application for authority to continue the business of

an assignor must be made upon duly verified petition and upon notice given to, or order to show cause

served upon, the assignor, the assignee's surety and all creditors, secured, general or otherwise, of the assigned estate. If more than one application for such authority is subsequently made, the petition must set forth, by a statement of receipts, disbursements and expenses, the result of the continuance of such business for or during the period for which the same was previously authorized.

(i) Involuntary Petition in Bankruptcy of the Assigned Estate. Where an order for relief pursuant to section 503 of Title 11 of the United States Code has been entered, the assignee shall file with the clerk a certified copy of such petition in bankruptcy, together with proof by affidavit on the part of the assignee showing that he has turned over all assets of the assigned estate to the trustee or receiver in bankruptcy.

(j) Assignee's Commissions and Attorney's Fees. Assignee's allowances and attorney fees are to be fixed by the court upon a motion to settle and approve the assignee's account or upon the confirmation of the referee's report regarding the account. No allowances, fees or commissions shall be paid out until so fixed and directed by the court.

(k) Service of Notice by Mail. When any notice is served by mail on the creditors of the insolvent debtor pursuant to the provisions of the applicable statute or this section, every envelope containing such notice shall have upon it a direction to the postmaster at the place to which it is sent, to return the same to the sender whose name and address shall appear thereon, unless called for or delivered.

Historical Note

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

Section 202.64 Election Law proceedings.

(a) All applications to the Supreme Court, or to a judge thereof, pursuant to the Election Law, shall be made at the special part designated for such proceedings, and where there is no special part, before the judge to whom the proceeding is assigned. As far as practicable, the application shall be brought in the county in which it arose.

(b) The judge may hear and determine the proceeding or assign it to a referee for hearing or decision, and such proceedings shall have preference over all other business of the part to which it is assigned or before the judge to whom it is assigned.

(c) The final order in an election proceeding shall state the determination and the facts upon which it was made.

Historical Note

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

Section 202.65 Registration of title to real property; sales of real estate under court direction.

(a) Petitions for Registration. Petitions for the registration of titles to land made pursuant to Article 12 of the Real Property Law shall be made to the Supreme Court in the county where the land or portion thereof affected by the petition is situated. Where a particular part has been designated for this purpose as a title part under the provisions of section 371 of such law, all petitions to register titles to land under the law must be returnable at the said title part. If there is no such part, petitions shall be returnable before the judge is assigned. Such title part or assigned judge is hereinafter denominated as the appropriate part or judge in this section.

(b) Application for Final Order and Judgment of Registration. After the time provided in the notice of hearing shall have expired, or within such further time as may have been allowed by the court, if there

have been no appearances or answers to the petition, the petitioner may apply to the appropriate part or judge for a final order and judgment of registration, as provided for in the law. In all applications for such final order and judgment of registration, the applicant or petitioner must present to the court proof by affidavit that all the provisions of the law entitling the petitioner to such final order and judgment of registration have been complied with.

(c) Application for Jury Trial. Where an answer is interposed which raises an issue of fact which in an action relating to the title to real property would be triable by a jury, either or any party to the registration proceeding who is entitled to have such issue determined may apply to the appropriate part or judge within 20 days after the issue has been joined to have the issues framed to be tried by a jury, as provided by CPLR 4102(b). The trial of such issues shall be had and the subsequent proceedings in relation thereto shall be such as are prescribed by the CPLR. After such issues are disposed of, either or any party to the registration proceeding may apply to the appropriate part or judge, upon eight days' notice to all who have appeared in the registration proceeding, for a final order and judgment of registration, and on such application the court shall try all other issues in the proceeding not disposed of by the jury, or may refer any such issues undisposed of to be tried by an official examiner of title as referee. Where all issues have been disposed of, any party, upon eight days' notice to all who have appeared in the proceeding, may apply for the final order and judgment of registration at the appropriate part or before the appropriate assigned judge.

(d) Applications; Notice Requirements. All applications to the court after a certificate of registration of title has been issued under the provisions of the law must be made at the appropriate part or before the appropriate assigned judge hereinbefore designated upon 20 days's notice to all persons interested in the said application. All applications to the court under sections 404-a and 422 of the Real Property Law shall be made to the appropriate part or judge upon eight days' notice to all persons in interest, as provided by that section. All applications made to the court under section 428 of the Real Property Law shall also be made to the appropriate part or judge, upon eight days' notice to the city or county treasurer and all other parties who have appeared in the proceeding to recover for loss or damage or deprivation of real property out of the assurance fund provided for by law.

(e) Sales of Real Estate. All sales of real estate or an interest therein, made pursuant to a judgment, decree or order, or by an officer of the court under its direction, shall be made pursuant to section 231 of the Real Property Actions and Proceedings Law, after notice as prescribed in that section. An auctioneer selected for this purpose must be an attorney, or a licensed real estate broker, or a salesman licensed for at least five years. The auctioneer's fee for conducting the sale shall be as prescribed by law.

Historical Note

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

Section 202.66 Workers' compensation settlements.

(a) Applications for approval of compromises of third-party actions pursuant to subdivision 5 of section 29 of the Workers' Compensation Law must include all papers described therein, and a proposed order providing that the appropriate insuring body file an affidavit within a specified time consenting to or opposing the application. A copy of all such application papers shall be served on the insurance carrier that is liable for the payment of claims under the Workers' Compensation Law.

(b) If, prior to the return of the application, the court directs that the parties place their stipulation on the record, the transcript shall be filed as part of the papers. In such cases, the matter shall be marked settled subject to written consent of the insuring body, or the entry of an order pursuant to subdivision 5 of section 29 of the Workers' Compensation Law.

(c) On the return of the application, the court may hear the matter forthwith or schedule the matter for later

hearing if affidavits in opposition to the compromise show that the amount is grossly inadequate in view of the injuries involved, the potential monetary recovery against the third party and the possible exposure of the insuring body to future claims by the plaintiff- petitioner arising out of the same accident.

(d) Nothing in this section shall preclude the insuring body from consenting to a reduction of its lien.

Historical Note

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

Section 202.67 Infants' and incapacitated persons' claims and proceedings.

(a) The settlement of an action or claim by an infant or judicially declared incapacitated person (including an incompetent or conservatee) shall comply with CPLR 1207 and 1208 and, in the case of an infant, with section 474 of the Judiciary Law. The proposed order in such cases may provide for deduction of the following disbursements from the settlement:

(1) motor vehicle reports;

(2) police reports;

(3) photographs;

(4) deposition stenographic expenses;

(5) service of summons and complaint and of subpoenas;

(6) expert's fees, including analysis of materials; and

(7) other items approved by court order.

The order shall not provide for attorney's fees in excess of one third of the amount remaining after deduction of the above disbursements unless otherwise specifically authorized by the court.

(b) The petition or affidavit in support of the application also shall set forth the total amount of the charge incurred for each doctor and hospital in the treatment and care of the infant, or incapacitated person and the amount remaining unpaid to each doctor and hospital for such treatment and care. If an order be made approving the application, the order shall provide that all such charges for doctors and hospitals shall be paid from the proceeds, if any, received by the parent, guardian, or other person, in settlement of any action or claim for the loss of the infant's, or incapacitated person's services; provided, however, that if there be any bona fide dispute as to such charges, the judge presiding, in the order, may make such provision with respect to them as justice requires. With respect to an incapacitated person, the judge presiding may provide for the posting of a bond as required by the Mental Hygiene Law.

(c) If the net amount obtained for the infant, or incapacitated person in any approved settlement does not exceed the amount set forth in CPLR 1206(b), the court may permit it to be paid pursuant to CPLR 1206(b). The court may order in any case that the money be deposited or invested pursuant to CPLR 1206(c) or held for the use and benefit of the infant, or incapacitated person as provided in CPLR 1206(d) and CPLR 1210(d).

(d) The affidavit of the attorney for a plaintiff, in addition to complying with CPLR 1208, must show compliance with the requirements for filing a retainer statement and recite the number assigned by the Office of Court Administration, or show that such requirements do not apply.

(e) Applications for approval of an infant's or incapacitated person's compromise shall be made returnable before the judge who presided over the compromise or, where the agreement was reached out-of-court,

before the appropriate assigned judge.

(f) A petition for the expenditure of the funds of an infant shall comply with CPLR Article 12, and also shall set forth:

(1) a full explanation of the purpose of the withdrawal;

(2) a sworn statement of the reasonable cost of the proposed expenditure;

(3) the infant's age;

(4) the date and amounts of the infant's and parents' recovery;

(5) the balance from such recovery;

(6) the nature of the infant's injuries and present condition;

(7) a statement that the family of the infant is financially unable to afford the proposed expenditures;

(8) a statement as to previous orders authorizing such expenditures; and

(9) any other facts material to the application.

(g) No authorization will be granted to withdraw such funds, except for unusual circumstances, where the parents are financially able to support the infant and to provide for the infant's necessaries, treatment and education.

(h) Expenditures of the funds of an incapacitated person shall comply with the provisions of the Mental Hygiene Law.

(i) The required notice of the filing of a final account by an incapacitated person's guardian and of a petition for settlement thereof shall show the amounts requested for additional services of the guardian and for legal services. Prior to approving such allowances, the court shall require written proof of the nature and extent of such services. Where notice is given to the attorney for the Veteran's Administration, if the attorney for the Veteran's Administration does not appear after notice, the court shall be advised whether the Veteran's Administration attorney has examined the account and whether he objects to it or to any proposed commission or fee.

Historical Note

Sec. filed Jan. 9, 1986; amds. filed: Feb. 16, 1988; Sept. 22, 1993 eff. Sept. 3, 1993. Amended (a)-(c), (e), (h)-(i).

Section 202.68 Proceedings involving custody of an Indian child.

In any proceeding in which the custody of a child is to be determined, the court, when it has reason to believe that the child is an Indian child within the meaning of the Indian Child Welfare Act of 1978 (92 St. 3069), shall require the verification of the child’s status in accordance with that Act and, proceed further, as appropriate, in accordance with the provisions of that Act.

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).

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.

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.

(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 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. Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure. See section 202.7. Except as provided in Rule 24 hereof, if counsel are unable to resolve any disclosure dispute in this fashion, the aggrieved party shall contact the court to arrange a conference as soon as practicable to avoid exceeding the discovery cutoff date. Counsel should request a conference by telephone if that would be more convenient and efficient than an appearance in court.

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

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