

Host of Rule Changes Go Into Effect Today in the New York Commercial Division

William S. Gyves

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The rules governing practice in the Commercial Division of New York Supreme Court have undergone a number of important amendments, additions, clarifications and other modifications effective today.

Proportionality in Discovery. The preamble to the Rules of Practice for the Commercial Division is amended to emphasize the role of proportionality in the pursuit of discovery and the resolution of discovery disputes. The amendment is a response to continued complaints that the cost of discovery frequently is out of proportion to the amount in dispute in the complex commercial cases typically heard in the Commercial Division. The preamble now reads that the “Commercial Division is mindful” of the need to “encourage proportionality in discovery[.]” The Commercial Division previously had adopted proportionality as a guide in managing electronic discovery. This latest amendment is intended to emphasize the applicability of the proportionality standard in all discovery matters.

Entity Depositions. New Rule 11-f clarifies the procedures for obtaining the deposition of a corporation or other legal entity through its designated representatives. The new rule, which is modeled on Federal Rule of Civil Procedure 30(b)(6), provides that a deposition notice or subpoena may name as the deponent the corporate entity, as opposed to specific individuals associated with that entity. Notices or subpoenas so directed to a corporate entity “may enumerate the matters upon which the person is to be examined, and if so enumerated, the matters must be described with reasonable particularity.” The new rule departs from the federal rule analogue in one significant respect. Unlike federal practice, in the Commercial Division an entity designating particular officers, directors or employees to be deposed on its behalf in response to a notice or subpoena directed to the entity generally must identify those witnesses at least ten days prior to the scheduled deposition. A subpoena directed to a corporate entity that is not a party to the litigation must affirmatively advise that entity of its designation obligations under the new rule.

Durational Limitations on Entity Depositions. Rule 11-d is amended to clarify that the deposition of a corporation or other legal entity is presumptively limited to seven hours, regardless of the number of witnesses that entity may designate to testify on its behalf. The amendment provides that, with respect to Rule 11-d(a)(2)’s requirement that “depositions shall be limited to 7 hours per deponent,” the deposition of a corporate entity “shall be treated as a single deposition even though more than one person may be designated to testify on the entity’s behalf.” This seven-hour “cumulative presumptive durational limit,” however, may be enlarged either by agreement of the parties or with leave of court, “which shall be freely granted.”

Summary Jury Trials. Rule 3 is amended to provide for summary jury trials upon the consent of all parties.

Bookmarking of Briefs. Rule 6 is amended to require that each electronically-submitted memorandum of law, along with each affidavit and affirmation “where appropriate,” must include electronic bookmarking in order to facilitate easy navigation of the document by the court and adversaries.

Monetary Threshold. Section 202.70 of the Uniform Rules of the Supreme and County Courts is amended to reflect that, in order to be eligible to be heard in the Commercial Division, disputes relating to domestic arbitrations must meet the court’s monetary threshold unless the principal claim involves a request for equitable or declaratory relief. Section 202.70 is also amended to provide that regardless of the amount in controversy, the Commercial Division is off limits to disputes arising out of home improvement contracts involving residential properties consisting of one to four residential units or individual units in any residential building, including cooperative or condominium units.

Status Conferences. A new Model Status Conference Order Form has been promulgated. It is designed to be used in conjunction with two previously promulgated model forms relating to Preliminary Conferences and Compliance Conferences.

For more information on this advisory, please contact:

[William S. Gyves](#)

(212 808-7640

wgyves@kelleydrye.com