

New York Commercial Division Rule Changes Go Into Effect July 1, 2016

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We previously advised on proposed amendments to New York State's Commercial Division Rules regarding [Memorialization of Rulings in Disclosure Conferences](#) and [Selection of a "Settlement Judge."](#) Both proposed amendments have now been adopted.

On May 26, 2016, the Commercial Division of the Supreme Court amended Rule 22 NYCRR 202.70(g) by adding a new Rule 3(b), which allows counsel to jointly request the court to appoint a justice, other than the justice assigned to hear the case, to conduct a settlement conference for the parties. As previously reported, this new rule follows the federal practice employed by district court judges that assign a magistrate judge to hear settlement conferences. It allows Commercial Division litigants to have candid settlement discussions with a "settlement judge" without being concerned about telegraphing its weaknesses to the judge assigned to hear the case. The new rule also assists trial judges whose preference is not to get involved in settlement discussions, and represents a further effort to make the Commercial Division more attractive to litigants with business disputes.

Likewise, on June 2, 2016, 22 NYCRR 202.70(g) was amended to add a new Rule 14-a, which requires, at the request of a party, that oral rulings during disclosure conferences be memorialized in a writing to be submitted to the Court for approval or by being dictated into the record. As previously reported, the goal of this new rule is to avoid future disputes about the scope of "oral" rulings at disclosure conferences that are often made in the first instance by nonjudicial members of the Court's staff.

Notably, the new rule clarifies the requirements for rulings during telephone conferences. Whereas the proposed amendment simply said that the memorialization requirements "shall not apply to telephone conferences", the adopted rule now specifies that, at the request of a party and if directed by the Court, parties shall submit a stipulated proposed order to the Court within one (1) business day of the telephone conference that memorializes the resolution of the discovery dispute.

The adopted rule on Disclosure Conferences is [here](#) and the new rule on Settlement Judge is [here](#). For more information on this advisory, please contact:

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