

Proposed Amendment of Commercial Division Rules Regarding Memorialization of Rulings in Disclosure Conferences

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Litigants in New York's Commercial Division may soon be able to require written memorialization of rulings at discovery conferences if the most recent rule recommended by the Commercial Division's Advisory Council is adopted. The latest proposed addition to the Commercial Division rules states:

"The following procedures shall govern all disclosure conferences conducted by nonjudicial personnel:

(a) At the request of any party:

(i) prior to the conclusion of the conference, the parties shall prepare a writing setting forth the resolutions reached and submit the writing to the Court for approval and signature by the presiding justice; or

(ii) prior to the conclusion of the conference, all resolutions shall be dictated into the record, and either the transcript shall be submitted to the court to be "ordered," or the court shall otherwise enter an order incorporating the resolutions reached.

(b) The foregoing procedures shall not apply to telephone conferences."

Like many recent amendments to the Commercial Division's discovery rules, the goal of this proposal is to make adjudication of complex commercial disputes in the Commercial Division more efficient and more attractive to the business community. In making this particular proposal, the Advisory Committee appears to recognize that litigants are often required to have a conference with a nonjudicial member of the Court's staff prior to being permitted to engage in formal motion practice over a discovery dispute. These conferences can result in "oral rulings" by nonjudicial personnel that may not always be memorialized in writing. This can lead to disputes, and possible subsequent motion practice, between the parties over the scope and precise nature of the prior ruling. The requirement to reduce directives at discovery conferences to a writing at the request of a party is meant to solve the possible confusion and inefficiency caused by this practice.

The proposed rule is available [here](#). Comments to the proposed rule are due by March 14, 2016 and may be emailed to rulecomments@nycourts.gov.

For more information on this advisory, or on any of the recent proposed amendments to the

Commercial Division's rules please contact:

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