



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

October 1, 2014

To: All Interested Persons

From: John W. McConnell

Re: Proposed new Model Compliance Conference Order Form for use in the Commercial Division.

=====

The Commercial Division Advisory Council has recommended adoption of a new Model Compliance Conference Order Form ("CC Form") for use in the Commercial Division (Exh. A). The new CC Form is intended to track the expanded Model Preliminary Conference Order Form ("PC Form") adopted effective June 2, 2014; it presumes that the parties have completed the PC Form and are returning to court a number of months later to report on their progress concerning discovery. As with the PC Form, the proposed new CC Form is intended to serve as a model form and its implementation would not be mandatory.

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than November 25, 2014.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

MEMORANDUM

TO: Board of Justices

FROM: Commercial Division Advisory Council Subcommittee on Best Practices for Judicial Case Management

RE: NEW MODEL COMPLIANCE CONFERENCE ORDER

DATE: September 12, 2014

The Commercial Division Advisory Council Subcommittee on the Best Practices for Judicial Case Management (“The Best Practices Subcommittee”) prepared a new Model Compliance Conference Order (“CC”) Form for the Board of Justices’ consideration.

The new CC Form tracks the adopted Preliminary Conference (“PC”) Order Form in that it presumes the parties have filled out the PC Form and are returning to Court a number of months later to report on their progress concerning discovery. As with the PC Form, the CC Form, if adopted, would be a “model” form in that its implementation would not be mandatory.

The new CC Form includes:

- A section for adding appearances by newly retained counsel.
- A reworking of the Description of the Case section which now includes (i) information concerning amended complaints and/or (ii) remaining causes of action after the issuance of a Court decision on a motion to dismiss; (iii) whether those changes alter the amount of damages requested; and (iv) Defendant’s legal theory and salient facts in support of defenses and amount, if any, demanded in counterclaim/cross claims.
- The Discovery Provisions section has been reworked to include questions asking (i) whether the deadlines outlined in the PC Form have been completed in a timely fashion; (ii) if not, have the parties met and conferred about the timing of the needed production; (iii) have the

parties decided on new dates, and if so, what are the new dates; and (iv) by what date will all depositions be completed.

- At the suggestion of a member of our Subcommittee, the time in which to file a third-party summons and complaint (The Impleader Section) has been extended from the 15 days stated in the PC Form to 30 days in the CC Form. The reason for this additional time is to allow counsel to discuss with their client the need and advisability for filing a third-party summons and complaint. This section also includes proposed new dates for third-party discovery.
- The Electronic Discovery section has been reworked to include the assumption that the parties have been meeting and conferring and progressing on electronic discovery. For the first time, the section includes a request concerning the anticipated date of completion of electronic discovery.
- Each section concerning End Date for Fact Disclosure, End Date for ALL Discovery, and Note of Issue Date includes questions concerning whether the dates proposed in the PC order will be met; and if not, when do the parties propose NEW dates for the event to occur. Unlike other sections, the Court will have to specifically agree to the parties' proposed new dates and, if the Court does not agree, the Court will insert the date by which the parties must complete the task.
- The Alternative Dispute Resolution section has also been revamped to include more pointed questions and to explain why settlement discussions and/or ADR have NOT been commenced.

The Commercial Division Advisory Council Best Practices Subcommittee respectfully requests that the new Model Compliance Conference Order Form, attached hereto, be considered for adoption by the Board of Justices.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Present: Hon. _____

Part: _____

Plaintiff(s)

Index No.: _____

- against -

RJI Filing Date: _____

**MODEL COMPLIANCE
CONFERENCE ORDER**

Defendant(s)

-----X

I. PRELIMINARY CONFERENCE: A Preliminary Conference was held in this case and the Court signed the Preliminary Conference Order on:

_____, 20_____

The purpose of this Compliance Conference is to assess the progress the parties have made and to determine what items are outstanding and what needs to be done to ensure that discovery is completed in a timely fashion.

II. APPEARANCES: The parties entered their appearances at the Preliminary Conference.

(a) Counsel for Plaintiff _____ **HAS** or _____ **HAS NOT** changed.

(b) Counsel for Defendant _____
_____ **HAS** or _____ **HAS NOT** changed.

Plaintiff _____
v. Defendant _____

Index No.: _____

**Model Compliance
Conference Order**

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If there are multiple defendants:

(c) Counsel for Defendant _____

_____ **HAS** or _____ **HAS NOT** changed.

Please use additional pages, if necessary.

If counsel has changed: was it done by CPLR 321(b)(1) **Consent** to Change Attorney _____ or by CPLR 321(b)(2) **Court Order** _____ or by CPLR 321(c) **Death, Removal or Disability of Attorney** _____.

If by **Court Order**, when did the Court sign the order: _____
and until what date did the Court order the matter stayed: _____

If counsel has either died, been removed or become disabled, please provide the Court with the nature of the occurrence and the date of the event:

FOR EACH NEW COUNSEL:

Please include (1) your name; (2) your firm's name; (3) your address; (4) your firm's telephone number; (5) your direct telephone number; (6) your e-mail address; and (7) the party you represent. You may (8) also include your cell phone number.

Please use additional pages, if necessary.

Please attach your business card(s) to this Compliance Conference Order and indicate on the card the name of the party you represent.

Plaintiff: _____
v. Defendant _____

Index No.: _____
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III. CONFIDENTIALITY AGREEMENT:

At the Preliminary Conference, the parties indicated whether they had or had not entered into a Confidentiality Agreement. The Preliminary Conference Order included an explanation regarding the need for Confidentiality Agreements. The Preliminary Conference Order also stated:

“The parties are directed to use the model confidentiality agreement promulgated in the part before which they are appearing. If the Trial Part does not have a specific form it uses, the parties are referred to the model confidentiality agreement found at:

<http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>

If the parties need to change *either* the Trial Part’s model confidentiality agreement or the one found at

<http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>, the parties are to submit a **signed Confidentiality Agreement** with the changes and a red line copy for the Court to review.”

The parties _____ **HAVE** or _____ **HAVE NOT** entered into a Confidentiality Agreement.

The Court _____ **HAS** or _____ **HAS NOT** so ordered the Confidentiality Agreement and, if the Court has so ordered it, on what date did the Court so order it: _____

If the parties **HAVE NOT** entered into a Confidentiality Agreement, please provide the Court with an explanation as to the reason(s) the parties decided not to enter into a Confidentiality Agreement.

Plaintiff _____
v. Defendant _____

Index Number: _____
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Conference Order**
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IV. DESCRIPTION OF THE CASE:

(a) Plaintiff

In the Preliminary Conference Order, pursuant to 22 NYCRR 202.12(c)(1), the Plaintiff was asked to provide a brief description of the factual and legal issues of the case. Defendant(s), if issue had been joined, was/were also required to provide a brief description of the case.

(i) If Plaintiff has filed an amended complaint, please inform the Court as to the changes to Plaintiff's factual and legal case since the Preliminary Conference Order:

and/or

(ii) If the Court has issued an order on a Motion to Dismiss, please inform the Court as to which causes of action remain in the case:

(iii) Because of the changes to the case, please indicate whether the amount of damages has changed:

Damages amount has changed: YES NO

Please indicate the new Damages Amount: \$ _____

Plaintiff _____
v. Defendant _____

Index Number: _____
**Model Compliance
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(b) Defendant(s)

(i) Since issue has been joined, please describe Defendant's _____, legal theory and salient facts in support of defenses, counterclaims and third-party claims.

Amount Demanded on the Counterclaim/Cross Claim: \$ _____

If there are multiple defendants:

(ii) If issue has been joined, please describe Defendant's _____, legal theory and salient facts in support of defenses, counterclaims and third-party claims.

Amount Demanded on the Counterclaim/Cross Claim: \$ _____

Please use additional sheets, if needed.

Plaintiff _____
v. Defendant _____

Index Number: _____
**Model Compliance
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V. DISCOVERY PROVISIONS:

It is hereby **ORDERED** that disclosure shall proceed pursuant to the Commercial Division Rules found at <http://www.nycourts.gov/rules/trialcourts/202.shtml#70>.

- (a) In the Preliminary Conference Order, the parties were to exchange **Interrogatories, Document Production and Other Disclosure** pursuant to CPLR 3108, 3120 and 3123 by a date certain. Please indicate the date by which Interrogatories, Document Production and Other Disclosure were (are) to be completed:

All documents produced by any and all parties MUST be Bates Stamped.

- (i) Have Interrogatories, Document Production and Other Disclosure been completed:

___ **YES** ___ **NO**

- (ii) If **NOT COMPLETED** at this time, please explain why:

- (b) If Interrogatories, Document Production and Other Disclosure have **NOT** been completed, please indicate:

- (i) Whether the parties have met and conferred about the timing of the needed production:

___ **YES** ___ **NO**

- (ii) Please inform the Court of the date by which the parties will be able to complete Interrogatories, Document Production, and Other Disclosure pursuant to CPLR 3108, 3120 and 3123:

Plaintiff _____
v. Defendant _____

Index Number: _____

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The Court _____ **ACCEPTS THE NEW END DATE FOR THE
COMPLETION OF INTERROGATORIES,
DOCUMENT PRODUCTION, AND OTHER
DISCLOSURE**

_____ **DOES NOT ACCEPT THE NEW END DATE
FOR THE COMPLETION OF
INTERROGATORIES, DOCUMENT
PRODUCTION, AND OTHER DISCLOSURE**

(The Court should place its initial on the appropriate line.)

If the New End Date for the completion of Interrogatories, Document
Production, and Other Disclosure is **NOT** agreed to by the Court, the Court
hereby sets the following date as the **NEW END DATE FOR THE
COMPLETION OF INTERROGATORIES, DOCUMENT
PRODUCTION, AND OTHER DISCLOSURE:**

_____ Court's Initial: _____

(c) DEPOSITIONS:

(i) The Preliminary Conference Order directed the Plaintiff(s) and
Defendant(s) to complete the parties' depositions by:
_____ and to complete non-parties'
depositions by _____.

(ii) If the dates for depositions to be completed have not yet passed,
please indicate whether you believe the deposition dates will be
adhered to:

_____ **YES** _____ **NO**

(iii) If depositions have **NOT BEEN COMPLETED** at this time, please
explain why:

Plaintiff _____
v. Defendant _____

Index Number: _____
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(iv) Please indicate if the parties have met and conferred about the timing of the depositions:

____ YES ____ NO

(v) Please inform the Court of the date by which Depositions will be completed:

- Plaintiff: _____
- Defendant: _____
- Non-Parties:

All depositions shall be completed on or before _____

The Court _____ **ACCEPTS THE NEW END DATE FOR THE COMPLETION OF DEPOSITIONS**

_____ **DOES NOT ACCEPT THE NEW END DATE FOR THE COMPLETION OF DEPOSITIONS**

(The Court should place its initial on the appropriate line.)

If the New End Date for the completion of Depositions is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW END DATE FOR THE COMPLETION OF DEPOSITIONS:**

_____ Court's Initial: _____

Plaintiff _____
v. Defendant _____

Index Number: _____
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(d) IMPLEADER:

Defendant shall serve his third-party summons and complaint no later than thirty (30) days after the end of the last deposition of a named plaintiff and defendant and/or the last deposition of a representative of a named party.

- (i) If Depositions have been completed, has/have the Defendant(s) served a third party summons and complaint. YES NO

If so, against whom and please provide the Court with an updated caption.

- (ii) If a third-party summons and complaint has been served, please indicate the schedule of discovery dates to be completed:

- (1) Interrogatories: _____
(2) Document Discovery: _____
(3) Depositions: _____

(e) ELECTRONIC DISCOVERY:

- (1) In the Preliminary Conference Order, the parties indicated that there would or would not be any Electronic Discovery in the case. Concerning Electronic Discovery, did the parties indicate that there would be Electronic Discovery:

YES NO NOT SURE**

Plaintiff _____
v. Defendant _____

Index Number: _____
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The Preliminary Conference Order added:

***If the parties are not sure about whether the case is reasonably likely to include electronically stored information (ESI), they should refer to the non-exhaustive list of considerations provided in [22 NYCRR 202.12 (b)(1)] (presently found at the nycourts.gov website).*

(2) **Meet and Confer:** It is presumed that pursuant to Uniform Commercial Division Rule 8(b) [22 NYCRR 202.70(g)(8)(b)], the parties met and conferred:

(i) Date on which parties had their **FIRST** meet and confer conference: _____

(ii) Did the parties reach an agreement concerning electronic discovery

_____ **YES** _____ **NO** _____ **PARTIALLY**

(iii) Since the **FIRST** meet and confer, have the parties had any further meet and confer conferences on Electronic Discovery:

_____ **YES** _____ **NO**

If **YES**, when: _____

(iv) Are you planning to set up additional meet and confer conferences:

_____ **YES** _____ **NO**

If **YES**, when: _____

(3) Directives concerning electronic discovery

In the Preliminary Conference Order, the Court listed the following topics to be updated and supplemented as new information becomes available:

- (i) **Preservation** [22 NYCRR 202.70(g)(8)(i)-(v)];
- (ii) **Production** [22 NYCRR 202.70(g)(8)(vi) and (ix)];
- (iii) **Privilege Logs and Redactions** [22 NYCRR 202.70(g)(8)(b)(vii)];
- (iv) **Claw-Back Provisions** [22 NYCRR 202.70(g)(8)(b)(viii)] for inadvertent production; and
- (v) **Costs** [22 NYCRR 202.70(g)(8)(b)(x)]

(4) Status of Electronic Discovery

- (i) What is the current status of Electronic Discovery Production:

- (ii) What are the problems and issues encountered by the parties concerning Electronic Discovery Production:

(5) Judicial Intervention

What, if anything, can the Court do to facilitate the successful completion of Electronic Discovery:

Plaintiff _____
v. Defendant _____

Index Number: _____

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(6) Additional Directives

(7) Anticipated Date of Completion of Electronic Discovery

Please set forth the anticipated date for the conclusion of Electronic Discovery and please explain the rationale for the date:

(h) END DATE FOR FACT DISCLOSURE:

In the Preliminary Conference Order, it was anticipated that all Fact Disclosure would be completed by:

If it is anticipated that the **END DATE FOR FACT DISCLOSURE**, as set forth in the Preliminary Conference Order, will **NOT** be met, please explain why:

If it is anticipated that the **END DATE FOR FACT DISCLOSURE**, as set forth in the Preliminary Conference Order, will **NOT** be met, what do the parties believe the **NEW END DATE FOR FACT DISCLOSURE** should be:

Plaintiff _____
v. Defendant _____

Index Number: _____

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The Court _____ **ACCEPTS THE NEW END DATE FOR
FACT DISCLOSURE**

_____ **DOES NOT ACCEPT THE NEW END DATE
FOR FACT DISCLOSURE**

(The Court should place its initial on the appropriate line.)

If the New End Date for Fact Disclosure is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW END DATE FOR FACT DISCLOSURE**:

_____ Court's Initial: _____

(i) EXPERT DISCOVERY (if any):

Pursuant to Commercial Division Rules 8 and 13(c), which mandate consultation with opposing counsel, the Court hereby **ORDERS** that if any party intends to introduce expert testimony at trial or in support of a motion for summary judgment, the parties, no later than thirty (30) days prior to the completion of fact discovery, shall confer on a schedule for expert disclosure – including the identification of experts, the agreement to exchange expert reports and the timetable for the deposition of testifying experts. Expert disclosure shall be completed no later than four (4) 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.

Do the parties anticipate **EXPERT DISCOVERY**

_____ **YES** _____ **NO**

The note of issue and certificate of readiness may not be filed until the completion of expert disclosure.

Plaintiff _____
v. Defendant _____

Index Number: _____
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(j) END DATE FOR ALL DISCOVERY:

In the Preliminary Conference Order, it was anticipated that the END DATE FOR ALL DISCOVERY would be:

If it is anticipated that the END DATE FOR ALL DISCOVERY, as set forth in the Preliminary Conference Order, will **NOT** be met, please explain why:

If it is anticipated that the END DATE FOR ALL DISCOVERY, as set forth in the Preliminary Conference Order, will **NOT** be met, when do the parties believe the **NEW END DATE FOR ALL DISCOVERY** should be:

The Court _____ **ACCEPTS THE NEW END DATE FOR ALL DISCOVERY**

_____ **DOES NOT ACCEPT THE NEW END DATE FOR ALL DISCOVERY**

(The Court should place its initial on the appropriate line.)

If the New END DATE FOR ALL DISCOVERY is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW END DATE FOR ALL DISCOVERY:**

Court's Initial _____

Plaintiff _____
v. Defendant _____

Index Number: _____

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VI. FINAL DIRECTIVES:

(a) NOTE OF ISSUE:

In the Preliminary Conference Order, it was anticipated that the NOTE OF ISSUE would be filed on:

If it is anticipated that the NOTE OF ISSUE DATE, as set forth in the Preliminary Conference Order, will **NOT** be met, please explain why:

If it is anticipated that the NOTE OF ISSUE DATE, as set forth in the Preliminary Conference Order, will **NOT** be met, when do the parties believe the **NEW NOTE OF ISSUE DATE** should be:

The Court _____ **ACCEPTS THE NEW NOTE OF ISSUE DATE**

_____ **DOES NOT ACCEPT THE NEW NOTE OF ISSUE DATE**

(The Court should place its initial on the appropriate line.)

If the **NEW NOTE OF ISSUE DATE** is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW NOTE OF ISSUE DATE**

_____ Court's Initial _____

A copy of the Preliminary Conference order and subsequent Compliance and Status Conference orders shall be served and filed with the Note of Issue.

Plaintiff _____
v. Defendant _____

Index Number: _____

**Model Compliance
Conference Order**

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(b) **DISPOSITIVE MOTION(S):**

All dispositive motion(s) shall be made on or before
_____ or within _____ days after the Note of
Issue is filed.

Such motions may be filed by Order to Show Cause or Notice of Motion.
The Court encourages the parties to confer and agree on the dates for the
opposition and reply papers to be exchanged and e-filed.

(c) **STATUS CONFERENCE:**

Parties or their representatives **with knowledge of the case and the
Preliminary Conference Order** shall appear for a Status Conference on

Parties or their representatives **with knowledge of the case and the
Preliminary Conference Order** shall also appear for all future
Status Conferences.

(d) **ADDITIONAL DIRECTIVES:**

Plaintiff _____
v. Defendant _____

Index Number: _____
**Model Compliance
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VII. ALTERNATIVE DISPUTE RESOLUTION:

The Judges of the Commercial Division encourage all parties to work towards a proper and just resolution of the issues in the case. The Judges of the Commercial Division believe that the parties are better served the earlier a proper and just resolution can be reached. Toward that end, the Judges asks the litigants in this case, on a continuous basis going forward, to consider any and all mechanisms to resolve the issues before them.

IN THE PRELIMINARY CONFERENCE ORDER THE PARTIES STATED:

- (a) That they would be using the following alternate dispute mechanisms in this case: (i) a settlement conference; (ii) participation in the Commercial Division’s Alternative Dispute Resolution Program (if applicable); and/or (iii) retention of a private mediator. Counsel for the parties stated they planned to use the following alternate dispute resolution mechanism for this case:

- (b) The parties stated that they believed they would be ready to commence the proposed alternative dispute mechanism on or before the following event (e.g., within sixty (60) days of the Preliminary Conference; thirty (30) days after document and interrogatory discovery was completed; when the depositions of the parties are completed on or before _____; or after the close of fact discovery and before the commencement of expert discovery).

Please indicate when (as stated in the Preliminary Conference Order) the alternate dispute resolution mechanism was expected to commence:

Plaintiff _____
v. Defendant _____

Index Number: _____

**Model Compliance
Conference Order**

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(c) Has the alternate dispute resolution mechanism

_____ Commenced _____ Not Commenced

(d) If not yet scheduled, when will it be scheduled to commence:

(e) **PLEASE EXPLAIN *WHY* SETTLEMENT DISCUSSIONS OR ADR
HAVE NOT COMMENCED:**

* * *

**THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED
EXCEPT WITH THE APPROVAL OF THE COURT.**

***THE PARTIES MUST BRING COPIES OF ALL DISCLOSURE
ORDERS TO ALL CONFERENCES.***

SO ORDERED:

DATE: _____

J.S.C.