

The Commercial Division
of The State of New York

KINGS COUNTY COMMERCIAL DIVISION RULES

GENERAL

- 1. The following rules are intended to supplement the Statewide Standards and Rules for the Commercial Division, which are applicable in Kings County. Counsel are expected to comply with all Statewide Rules as well as those promulgated herein.**

- 2. Attention is drawn to the recent modification of the monetary threshold by Administrative Order dated March 26, 2007. Effective March 26, 2007, the monetary threshold for cases in the Kings County Commercial Division has been raised from \$50,000 to \$75,000.**

- 3. Any party requesting a preliminary conference must annex a copy of the pleadings to the RJL when the request is filed with the court.**

- 4. Other than as expressly provided in the Rules of the Commercial Division, the Court will not accept or entertain letter applications for substantive relief. Unless directed by the Court, no communications are to be FAXED to Chambers other than stipulations of adjournment in compliance with these Rules and PC Orders prepared in conformity with Rule 7 herein.**

- 5. 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 Systems.**

CONFERENCES

- 6. Preliminary Conferences. All preliminary and compliance conferences will be held on Wednesdays at 9:45 a.m. unless otherwise directed by the Court. The conference calendar will be called after the first call of the motion calendar.**

- 7. Online Preliminary Conference Orders. Preliminary Conference Orders may be entered on consent of the Court and all parties by printing and filling out the Preliminary Conference Form posted on the Kings County Commercial Division website. Following a conference call with the Court, the PC Order, executed by all parties, must be faxed to Chambers two days prior to the date scheduled for the PC conference. Failure to timely comply with the procedural constraints herein**

will require an appearance on the scheduled date.

8. Prior to appearing for a preliminary conference, counsel should confer with clients so that schedules can be set for discovery.

9. **Adjournment of Preliminary Conference.** Adjournment of a preliminary conference may be requested by submission of a written stipulation at least two business days prior to the scheduled date. Stipulations must be accompanied by a cover letter explaining the reason for the adjournment. The adjournment of a conference is at the discretion of the Court and may be permitted for good cause shown. No preliminary conference shall be adjourned more than once or for more than 30 days. Fax numbers for all counsel must be provided in the cover letter or the stipulation. Any requests for further adjournments will be entertained only under the most compelling circumstances and must be made via a telephone conference call with the Court in which all parties participate.

10. Adjournments of any other conferences are permitted for good cause with the approval of the Court on written stipulation of all parties submitted at least two business days prior to the scheduled date of the conference.

Stipulations may be faxed to the Judges' Chambers. Fax numbers may be found on the Kings County Commercial Division website under the Judges' Part and Chambers Information.

MOTIONS

11. The Court will entertain motions, as scheduled in the New York Law Journal and on E-Courts, on Wednesdays unless otherwise directed by the Court. Information on future court appearances is available on E-Courts (www.nycourts.gov/ecourts). All motions require appearances and oral argument. All responsive papers must be filed with the Motion Support Office or the Clerk of the Part at least two days before the scheduled date of the motion.

12. The first call of the motion calendar will be at 9:45 a.m. The second and final call will be held at 10:15 a.m.

13. An appearance by an attorney with knowledge of the case and authority to bind the party is required on all motions and conferences.

14. Upon the argument of a dispositive motion the Court will determine whether discovery shall proceed pending decision.

15. Motions for Summary Judgment. All summary judgment motions shall be accompanied by a Statement of Material Facts as set forth in the Uniform Rules, § 202.70(g), Rule 19-a.

16. Following argument and reservation of decision by the Court, no supplemental submissions will be accepted by letter or otherwise unless expressly authorized in advance. Uniform Rules, § 202.70(g), Rule 18.

17. 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 by written stipulation no more than three times for a total of no more than 60 days unless otherwise directed by the court. Adjournments must be obtained at least two business days in advance of the return date except in the case of an emergency. Stipulations must be accompanied by a cover letter explaining the reason for the adjournment. Fax numbers for all counsel must be provided in the cover letter or the stipulation.

18. Disclosure Disputes. Parties must comply with Uniform Rules, § 202.70(g), Rule 14, regarding consultation among counsel prior to contacting the Court. If counsel are unable to resolve a dispute, the party seeking Court intervention shall send a letter to the Court, of no more than two pages, upon notice to all parties, describing the problem and the relief requested. Such letter may be answered within eight days by letter of no more than two pages, also on notice to all parties. The party requesting relief shall then contact Chambers to arrange a conference (preferably by telephone) to resolve such dispute. If no effort is made by counsel to schedule such conference, the Court will infer that the matter has been resolved and will take no action. The Court may order that a motion be made but no discovery motion will be entertained without prior compliance with this Rule.

19. The Kings County Commercial Division will strictly enforce Uniform Rules, § 202.70(g), Rules 6 and 17 relating to the form and length of papers submitted to the Court. Unless the Court has authorized a longer brief in advance, counsel are advised that briefs and affidavits in excess of 25 and 15 pages as specified in the Rules may be rejected.

ORDERS TO SHOW CAUSE

TEMPORARY RESTRAINING ORDERS

20. Orders to Show Cause are argued on the date indicated in the order unless otherwise adjourned with the consent of the court.

21. Where no affidavit of prejudice has been provided pursuant to Uniform Rules, § 202.70(g), Rule 20, notice of applications for Temporary Restraining Orders

contained in an Order to Show Cause must be given to opposing counsel, or parties if no attorney has previously appeared, at least six hours in advance of submission to the court and must contain a specific time and date of submission so as to afford an opportunity to appear. Proof of such notice (which may be by attorney's affirmation) must accompany the proposed Order.

22. Contested applications for TROs will not be heard after 4:00 p.m. absent extraordinarily compelling circumstances. [See Uniform Rules, § 202.70(g), Rule 20. Temporary Restraining Orders]

TRIALS

23. A firm trial date will be established at a final settlement conference to be held at the conclusion of discovery. The Court may direct the parties to appear at such conference.

24. At the final settlement conference a pre-trial conference will be scheduled in compliance with Uniform Rules, §202.70(g), Rules 25 to 33, to be held following the filing of a Note of Issue and approximately ten days in advance of the trial date. Trial counsel must appear. Pre-marked exhibits, pre-trial memoranda, requests to charge, witness lists, and in-limine applications duly served at least eight days in advance of the date of the pre-trial conference shall be provided at the pre-trial conference as required pursuant to Uniform Rules, § 202.70(g), Rules 25 to 33. Short and concise pretrial memoranda are preferred, containing a statement of the facts and issues of the case and the relevant principles of law with citations to controlling authority. Counsel must confer prior to appearance at the pre-trial conference so that exhibits that are not disputed can be identified and stipulated into evidence.

ALTERNATIVE DISPUTE RESOLUTION

25. In the interest of expediting prompt resolution of disputes at minimum expense to the litigants, a mediation program is available through the Kings County Commercial Division. Pursuant to Uniform Rules § 202.70(g)(3), the Court may direct counsel and the parties to participate in non-binding mediation. In Kings County, experienced former jurists, acting as JHO's, are available at no expense to the parties. Alternatively, Kings County has available a roster of trained practitioners willing to accept a referral from the Court for mediation, to whom you may be referred. Discovery continues pending mediation unless otherwise ordered by the Court.