



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposal to amend the Rules of the Commercial Division (22 NYCRR § 202.70) by amending the Preamble to Rules 25-33 and adding a new Appendix E to adopt a model pretrial order

Date: January 31, 2025

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The Administrative Board of the Courts is seeking public comment on a proposal recommended by the Commercial Division Advisory Council (CDAC) to amend 22 NYCRR § 202.70 by amending the Preamble to Rules 25-33 and adding a new Appendix E to adopt a model pretrial order.

The proposed amendments are attached as Exhibit 1.

Attached as Exhibit 2 is a memorandum from the CDAC Subcommittee on Best Practices for Judicial Case Management, providing background on this issue and the reasons for the proposed amendments. As noted in that memorandum, the proposed model pretrial order “seeks to capture, in one document, the critical activities for trial as set out in Commercial Division Rules 27 – 33 that the Court may require or address in advance of trial, whether before, during or after the final pretrial conference.” Use of the model pretrial order is not mandatory, and instead is offered as “starting point” to promote “further consistency in practices in the Commercial Division statewide while allowing significant flexibility for each Justice to modify the form to incorporate that Justice’s individual rules, preferences and practices.”

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than Friday, March 28, 2025.

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 1

Proposed Amendments

The Preamble to Rules 25-33 of the Rules of the Commercial Division (22 NYCRR § 202.70) is amended to read as follows (additions are underscored):

Preamble to Rules 25-33.

The Commercial Division operates in accordance with a series of well-crafted rules and principles designed to achieve and promote the goals of efficient and cost-effective case management. These rules stress organization, preparation and cooperation as well as the use of innovative techniques where appropriate. Rules 25-33, which address trial preparation and procedure, reflect these important concepts. These trial rules emphasize the importance of pre-trial preparation and remind the practitioner that such preparation is an essential element of successfully litigating and conducting a complex commercial case and trial. Rules 25-33 identify a series of key items that must be addressed or completed before commencing a trial in the Commercial Division and include: accurately estimating the length of the trial so that the court, counsel and parties can properly allocate their time; preparing and communicating to the court motions in limine in advance of the trial date; reviewing, assembling, and pre-marking exhibits; addressing issues that may arise in connection with the use of deposition testimony at trial; agreeing on a schedule for witnesses and the manner in which each witness will testify (including giving consideration to direct testimony by affidavit in a non-jury trial); and preparing and negotiating jury instructions and verdict sheets. The successful completion and efficiency of the trial depends upon counsel adhering to a key component of the Commercial Division rules to meet and confer and resolve issues without the need for court intervention. When there is compliance with the rules, the result is an efficient and cost-effective proceeding that will ensure that the court's time and attention will be used in the manner in which it is intended and avoid unnecessary delay and unintended consequences.

A Model Pretrial Order can be found at Appendix E. It serves as a "tool" for the Court and counsel. It provides guidance while allowing for flexibility to account for the particular case at hand and the rules of the Trial Part.

The Rules of the Commercial Division (22 NYCRR § 202.70) are amended by adding a new Appendix E to read as follows (all language is new):

APPENDIX E: MODEL PRE-TRIAL ORDER

SUPREME COURT OF THE STATE OF NEW YORK
_____ **COUNTY**

PRESENT: _____
_____ **Justice**
----- X

PLAINTIFF,

Plaintiff,

INDEX NO.

-v-

PRE-TRIAL ORDER

DEFENDANT,

Defendant.

----- X

A pretrial conference has been scheduled in this matter for _____. Counsel are instructed to promptly consult the Rules of the Commercial Division as well as the Court's Rules to familiarize themselves with the Court's trial and pre-trial requirements.

It is hereby:

ORDERED that the **bench/jury trial** in this case shall commence on _____; and it is further

[**ORDERED** that the parties shall participate in a Mandatory Settlement Conference and shall file a joint or separate statement of preferred procedure in compliance with Commercial Division Rule 30(b)(1) on or before _____; and it is further]

ORDERED that the parties will serve and file any **motions in limine** on or before _____; and it is further

ORDERED that, if an **in limine motion** or motions are made, opposition briefs must be served and filed on or before _____. Oral argument on any motion in limine will take place on _____; and it is further

ORDERED that counsel shall confer regarding exhibits and mark **exhibits** in advance of the pretrial conference as provided in Commercial Division Rule 28 and shall be prepared to discuss any contested exhibits as to which objection has been made at the pretrial conference; and it is further

ORDERED that counsel shall consult regarding the portions of **deposition testimony** to be offered as provided in Commercial Division Rule 29 and shall provide a list of deposition testimony to be offered by it as to which objection has not been made and identify separately a list of deposition testimony to which an objection has been made, on or before _____; and it is further

ORDERED that pursuant to Commercial Division Rule 30(c), the parties shall provide a **written stipulation of undisputed facts** on or before _____; and it is further

ORDERED that pursuant to Commercial Division Rule 30(d), the parties shall consult regarding **expert testimony** [and prepare a written stipulation as to those aspects of their experts' anticipated testimony that are not in dispute] on or before _____; and it is further

[**ORDERED** that pursuant to Commercial Division Rule 31(a), **Pre-Trial Memoranda** are required and shall be served and filed on or before _____; and it is further]

ORDERED that each party shall identify in writing the **witnesses** it intends to call and provide the information required by Commercial Division Rule 32 on or before _____, [and shall separately identify for the Court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility]; and it is further

[**ORDERED** that in accordance with Commercial Division Rule 32-a, the parties shall present direct witness testimony of that party's own witnesses via affidavit and shall submit such affidavits to the Court and counsel on or before _____; and it is further]

ORDERED that, pursuant to Commercial Division Rules 28 and 31(b), counsel shall submit a copy of **trial exhibits** for each attorney's and the Court's use on or before _____ [add additional details as appropriate regarding the preferred format]; and it is further

[**ORDERED** that counsel shall provide proposed case-specific requests to charge and proposed jury interrogatories to the Court on or before _____, and any objections to proposed jury requests to charge and proposed jury interrogatories shall be exchanged and provided to the Court on or before _____; and it is further]

ORDERED that all of the above submissions are **mandatory** and failure to meet the deadlines in this order may result in preclusion or other penalties, as provided in Commercial Division Rule 33 and CPLR 3126. The Court explicitly notes that this may include a default judgment against the disobedient party, striking pleadings, or dismissing the action.

Counsel are reminded that they may not stipulate to alter or adjourn any of these dates.

HON. _____
Justice of the Supreme Court

EXHIBIT 2

December 3, 2024

TO: Members of the Commercial Division Advisory Council
FROM: Subcommittee on Best Practices for Judicial Case Management
RE: Model Pretrial Order

The Subcommittee on Best Practices for Judicial Case Management has proposed to the Commercial Division Advisory Council that we adopt the attached "Model Pretrial Order" as Appendix E to the Rules of the Commercial Division. The attached "Model Pretrial Order" seeks to capture, in one document, the critical activities for trial as set out in Commercial Division Rules 27 – 33 that the Court may require or address in advance of trial, whether before, during or after the final pretrial conference. Modeled on the form of orders that some Justices of the Commercial Division around the State are using, the "Model Pretrial Order" can serve as a ready "checklist" reference for counsel and the Justices of the Commercial Division.

It is underscored that use of the "Model Pretrial Order" is not mandatory. It is offered as a "tool" for the Court and counsel. Use of a form of Pretrial Order as a starting point would further consistency in practices in the Commercial Division statewide while allowing significant flexibility for each Justice to modify the form to incorporate that Justice's individual rules, preferences and practices. The "Model Pretrial Order" would serve as a modest effort to assure efficiency and cost effectiveness consistent with the goals noted in the Preamble to the Rules of the Commercial Division.

Two final points. The "Model Pretrial Order," as noted above, will become Appendix E to the Commercial Division Rules. Finally, the Preamble to Rules 25-33 will be supplemented with the following language:

A Model Pretrial Order can be found at Appendix E. It serves as "tool" for the Court and counsel. It provides guidance while allowing for flexibility to account for the particular case at hand and the rules of the Trial Part.

Respectfully submitted,

William M. Savino
Carolyn G. Nussbaum

For the Subcommittee on Best Practices for Judicial Case Management

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY

PRESENT: _____
Justice

-----X

PLAINTIFF,

Plaintiff,

-v-

DEFENDANT,

Defendant.

-----X

INDEX NO.

PRE-TRIAL ORDER

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ORDERED that the parties will serve and file any motions in limine on or before _____; and it is further

ORDERED that, if an in limine motion or motions are made, opposition briefs must be served and filed on or before _____. Oral argument on any motion in limine will take place on _____; and it is further

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Counsel are reminded that they may not stipulate to alter or adjourn any of these dates.

HON. _____
Justice of the Supreme Court