

ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend Rule 30 of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), effective February 1, 2022, to read as follows (new material underlined, deletions in strikethrough):

Rule 30. Settlement and Pretrial Conferences

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(b) Mandatory Settlement Conference. Unless exempted as set forth herein, the parties in every case pending in the Commercial Division must participate in a court-ordered mandatory settlement conference (MSC) following the filing of a Note of Issue.

(1) Referral to MSC. Following the filing of a Note of Issue, the parties must confer and file a request to proceed to a MSC pursuant to one of the following four tracks. If all parties have agreed upon the settlement conference track that they prefer, they may file a joint request with a statement of preferred procedure for MSC. If the parties do not agree, they must file separate requests with statements as to their preference for a MSC track. The parties' preferences would ordinarily be given presumptive weight. The four possible settlement conference tracks are as follows:

(A) The parties may agree to have a settlement conference before the assigned justice or another judge pursuant to Commercial Division Rule 3(b).


(B) The court may refer the case to the Judicial Hearing Officer/Special Referee office for assignment of a Judicial Hearing Officer or Special Referee to conduct the MSC.

(C) The court may refer the case to the ADR coordinator or other designated court official in the judicial district where the case is pending for assignment, at no charge to the parties, of a neutral selected from the roster of neutrals or mediators under Part 146 of the Rules of the Chief Administrative Judge. If the parties wish to continue talks with the neutral beyond the initial conference, an arrangement will have to be made to retain such neutral at terms agreed to by the neutral and the parties.

- (D) The parties may agree to engage a private neutral.
- (2) Attendance at MSC. The MSC shall be attended by a person with knowledge of the case and authority to settle the case.
  - (3) Submissions to the neutral conducting the MSC. The neutral shall determine whether a submission should be provided to the neutral and the service thereof.
  - (4) Exemptions from MSC. MSC is mandatory for all cases in the Commercial Division unless the assigned justice to the case, for good cause shown, exempts the case from MSC under this Rule.
  - (5) Confidentiality. All attendees of the MSC, including the assigned neutral, shall treat as confidential information any settlement submission created expressly for use in the MSC, anything that happened or was said during the course of or pursuant to the MSC, and any positions taken or offers made during the MSC. Such material cannot be disclosed to anyone not involved in the litigation or to the court, and may not be used in any fashion in the litigation of the case.
  - (6) Report. Following the MSC, the parties will advise the assigned justice whether a settlement was reached, and if a settlement was reached, a date by which the parties expect to complete documentation of the settlement. The parties shall not discuss any reasons why a settlement was not reached.
  - (7) Scheduling and Procedures. Any scheduling and procedural issues shall be determined by the justice assigned to the case. If it is determined that the MSC is to be held before a neutral other than the assigned justice, scheduling and procedural issues with respect to the MSC shall be determined by the neutral.
  - (8) Non-exclusive. Nothing in the Rule shall preclude or replace any settlement practices used by the court, by any individual justice, or as agreed to by the parties and the assigned justice shall retain ultimate authority with respect to each aspect of the MSC.

(b) (c) Pre-trial Conference. Prior to the pretrial conference, counsel shall confer in a good faith effort to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. At the pre-trial conference, counsel shall be prepared to discuss all matters as to which there is disagreement between the parties, including those identified in Rules 27-29, and settlement of the matter. At or before the pre-trial conference, the court may require the parties to prepare a written stipulation of undisputed facts.

(e) (d) Consultation Regarding Expert Testimony. The court may direct that prior to the pre-trial conference, counsel for the parties consult in good faith to identify those aspects of their respective experts' anticipated testimony that are not in dispute. The court may further direct that any agreements reached in this regard shall be reduced to a written stipulation.

  
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Chief Administrative Judge of the Courts

Date: January 7, 2022

AO/10/22