Changes To The Uniform Rules: Just What Was Fixed?

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- **Section 202.1 Application of Part; Waiver; Additional Rules; Application of CPLR; Definitions.**
  - (b) Waiver. For good cause shown, and in the interests of justice, the court in an action or proceeding may waive compliance with any of the rules in this Part, other than sections 202.2 and 202.3, unless prohibited from doing so by statute or by a rule of the Chief Judge.

  - The court may waive compliance with any of the uniform rules, even if these changes prove not to apply retroactively to pending motions and cases. Courts are not necessarily aware of this provision in the Uniform Rules, and you may need to remind them of their discretion.

- **Section 202.5 Papers filed in court.**
  - (a)(2) **Unless otherwise directed by the court**, each electronically-submitted memorandum of law, affidavit and affirmation, exceeding 4500 words, **which was prepared with the use of a computer software program**, shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.

Section 202.8-b Length of Papers

- **Section 202.8-b Length of Papers.**
  - (a) **Where prepared by use of a computer**, unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7.000 words each: (ii) reply affidavits, affirmations, and memoranda shall be no more than 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief.
  - (b) For purposes of paragraph (a) above, the word count shall exclude the caption, table of contents, table of authorities, and signature block.
  - (c) Every brief, memorandum, affirmation, and affidavit **which was prepared by use of a computer** shall include on a page attached to the end of the applicable document, a certification by the counsel who has filed the document setting forth the number of words in the document and certifying that the document complies with the word count limit. The counsel certifying compliance may rely on the word count of the word-processing system used to prepare the document.
  - **(d) Where typewritten or handwritten, affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 20 pages each; and reply affidavits, affirmations, and memoranda shall be limited to 10 pages each and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief.**
  - **(e) Where a party opposing a motion makes a cross-motion, the affidavits, affirmations, briefs, or memoranda submitted by that party shall be limited to 7,000 words each when prepared by use of a computer or to 20 pages each when typewritten or handwritten. Where a cross-motion is made, reply affidavits, affirmations, briefs or memoranda of the party who made the principal motion shall be limited to 4,200 words when prepared by use of a computer or to 10 pages when typewritten or handwritten.**
  - **(f)** The court may, upon oral or letter application on notice to all parties permit the submission of affidavits, affirmations, briefs or memoranda which exceed the limitations set forth above. In the event that the court grants permission for an oversize submission, the certification required by paragraph **(c)** above shall set forth the number of words in the document and certify compliance with the limit, if any set forth by the court.

Section 202.8-b Length of Papers

- The rules make the distinction between documents prepared on a computer and handwritten or typewritten documents.
- The word limits on documents prepared on a computer remain the same, but typewritten or handwritten affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 20 pages each and reply affidavits, affirmations, and memoranda shall be limited to 10 pages each.
- Cross motions are limited to 7,000 words on documents prepared on a computer or 20 pages for handwritten or typewritten documents. Reply documents of the party who made the principal motion are still limited to 4,200 words or 10 pages handwritten or typewritten.

- **Section 202.8-g Motions for Summary Judgment; Statements of Material Facts.**
  - (a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, **the court may direct that** there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.
  - (b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.
  - (c) Each numbered paragraph in the statement of material facts required to be served by the moving party **[will] may** be deemed to be admitted **for purposes of the motion** unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party. **The court may allow any such admission to be amended or withdrawn on such terms as may be just.**
  - (d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.
  - **(e) In the event that the proponent of a motion for summary judgment fails to provide a statement of undisputed facts though required to do so, the court may order compliance and adjourn the motion, may deny the motion without prejudice to renewal upon compliance, or may take such other action as may be just and appropriate. In the event that the opponent of a motion for summary judgment fails to provide any counter statement of undisputed facts though required to do so, the court may order compliance and adjourn the motion, may, after notice to the opponent and opportunity to cure, deem the assertions contained in the proponent's statement to be admitted for purposes of the motion, or may take such other action as may be just and appropriate.**

Section 202.8-g Motions for Summary Judgment; Statements of Material Facts

- 202.8-g no longer applies to all summary judgment motions (other than those brought under 3213). Now, the inclusion of a Statement of Undisputed Facts in moving papers is only where "the court may direct."
  - The rule, which is now modeled on the Commercial Division language, contemplates a case by case determination by the court.
  - If the judge sets a blanket rule for all summary judgment motions it may be appropriate to ask for an exception to the rule in cases where use of the Statement may be inappropriate, such as (i) motions where the movant and/or opponent must include expert affidavits, (ii) motions where the opponent seeks denial based upon CPLR 3212(f); (iii) motions where the opponent claims that the movant has failed to meet its burden; (iv) motions which are untimely.
- Failure to adequately respond to any numbered paragraph of a Statement of Undisputed facts is no longer "deemed admitted" for all purposes in the case. Now, the court "may" deem such paragraph admitted for purposes of the motion only.
- The court has the discretion to permit any such admission to be amended or withdrawn.
- Where the court has directed a statement of facts, but the proponent fails to so provide, the court has the discretion to deny the motion without prejudice, permit an adjournment to allow compliance, or take some other action. Similarly, where a party opposing summary judgment has failed to provide a counter statement, the court may adjourn to allow compliance or, after notice and an opportunity to cure, deem the assertions in the statement to be admitted for purposes of the motion.

- **Section 202.20 Interrogatories.**
  - Interrogatories are limited to 25 in number, including subparts, unless **the parties agree** or the court orders otherwise. This limit applies to consolidated actions as well.
- **Section 202.20-a Privilege Logs.**
  - (b) Court Order. Agreements and protocols agreed upon by parties **[shall] may** be memorialized in a court order. In the event the parties are unable to enter into an agreement or protocol, the court shall by order provide for the scope of the privilege review, the amount of information to be set out in the privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging, whether any categories of information may be excluded from the logging requirement, and any other issues pertinent to privilege review, including the entry of an appropriate non-waiver order, and the allocation of costs and expenses as between the parties.

Sections 202.20 Interrogatories 202.20-a Privilege Logs

- Court orders are no longer required when parties agree to increase the number of interrogatories or to set protocol on privilege logs.

- **Section 202.20-c Requests for Documents.**
  - (c) **[In each Response,]** **The Response shall contain, at the conclusion of thereof, the affidavit of the responding party stating:** (i) whether the production of documents in its possession, custody or control and that are responsive to the individual requests is complete; or (ii) that there are no documents in its possession, custody or control that are responsive to any individual requests.

202.20-c Requests for Documents

- Parties can now submit an affidavit attesting to whether the document production is complete or if there are no documents in its possession instead of individual responses.

- **Section 202.20-h Pre-Trial Memoranda, Exhibit Book and Requests for Jury Instructions.**
  - (a) **The court may direct that** counsel **[shall]** submit pre-trial memoranda at the pre-trial conference, or such other time as the court may set. Counsel shall comply with CPLR 2103(e). **Unless otherwise directed by the court**, a single memorandum no longer than 25 pages shall be submitted by each side **and** no memoranda in response shall be submitted.
  - (b) **The court may direct that** on the first day of trial or at such other time as the court may set, counsel shall submit an indexed binder or notebook, or the electronic equivalent, of trial exhibits for the court's use. **Such submission shall include** a copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses. Plaintiff's exhibits shall be numerically tabbed, and defendant's exhibits shall be tabbed alphabetically.
  - (c) Where the trial is by jury, counsel shall, on the first day of the trial or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions - Civil, a reference to the PJI number will suffice. Submissions should be by hard copy and electronically, as directed by the court.

Section 202.20-h Pre-Trial Memoranda, Exhibit Book, and Requests for Jury Instructions

- Pre-trial Memoranda are no longer required in every case. They are now limited to cases in which the "court may direct."

- Exhibit Books are no longer required in every case. They are now limited to cases in which the "court may direct." Where they are required, the book submitted by counsel must include a copy for each other attorney.

- **Section 202.20-i Direct Testimony by Affidavit.**
  - **Upon request of a party**, the court may **[require]** **permit** that direct testimony of **that** party's own witness in a non-jury trial or evidentiary hearing be submitted in affidavit form, provided, however, **[(a) that the court may not require the submission of a direct testimony affidavit from a witness who is not under the control of the party offering the testimony and (b)]** **that** the opposing party shall have the right to object to statements in the direct testimony affidavit, and the court shall rule on such objections, just as if the statements had been made orally in open court. Where an objection to a portion of a direct testimony affidavit is sustained, the court may direct that such portion be stricken. The submission of direct testimony in affidavit form shall not affect any right to conduct cross-examination or re-direct examination of the witness.

Section 202.20-i Direct Testimony by Affidavit

- Court can no longer require direct testimony by affidavit unless specifically requested by the party whose witness will so testify.

- If party so requests, court may permit such testimony.

- **Section 202.26 Settlement and Pretrial Conferences.**
  - (c) Consultation Regarding Expert Testimony. The court **presiding over a non-jury trial or hearing** may direct that prior, or during, the trial **or hearing**, 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

Section 202.26(c) Settlement and Pretrial Conferences

- Requirement of counsel to confer regarding expert testimony limited to request by court in non-jury matters only.

- Adds hearings, in addition to non-jury trials.

- **Section 202.34 Pre-Marking of Exhibits**
  - Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. **Unless otherwise directed by the court**, prior to the commencement of the trial, each side shall mark its exhibits into evidence, subject to court approval, as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the clerk of the part for guidance. The court **[will] should** rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked.

Section 202.34 Pre-Marking of Exhibits

- The updated rule includes language for the Court to change the procedure for marking exhibits and states the Court **should** rule upon the objections to the contested exhibits at the earliest possible time.

- **Section 202.37 Scheduling Witnesses.**
  - At the commencement of the trial or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility. The court may permit for good cause shown and in the absence of substantial prejudice, a party to call a witness to testify who was not identified on the witness list submitted by that party. The estimates of the length of **testimony and the order of witnesses** provided by counsel are advisory **only**, and the court **may permit witnesses to be called in a different order and** may permit further testimony from a witness notwithstanding that the time estimate for such witness has been exceeded.

Section 202.37 Scheduling Witnesses

- The length of testimony and the order of witnesses are advisory only, and the court may permit witnesses to be called in a different order.