22 NYCRR 202.12. Preliminary conference.
Effective: May 20, 2024

Preamble.

The parties, with the court's assistance, are encouraged to consider as early as possible how best to achieve the most efficient, expeditious and cost-effective resolution of every case. A preliminary conference will frequently be a useful and even critical tool for furthering these goals. A preliminary conference should be held before the assigned judge, soon after commencement of the case and after the parties have conferred. An in-person conference should not be held, however, if such conference will be non-substantive or involve only the submission of a stipulated order (for example, because of the nature of the case or the caseload of the particular court or the assigned judge, or otherwise). In such cases, stipulations should be submitted or a scheduling order should be issued in accordance with subdivisions (b) or (g) of this section and counsel should not be required to appear. Further, pursuant to section 202.10 of this part, the court may also in its discretion, address preliminary conference matters, in whole or in part, telephonically or by remote technology with the attorneys for all parties.

When preliminary conferences are held, the court shall engage the parties in a discussion of the merits of the case aimed at determining how best to resolve the dispute as expeditiously and efficiently as possible. Among other topics, the court and the parties may consider at the preliminary conference:

- the principal factual and legal issues in dispute;

- the timing of presumptive mediation and the appropriateness of other forms of alternative dispute resolution for the dispute;

- the timetable for the proceedings, including the appropriateness of sequencing motion practice, discovery or other aspects of the case, to address threshold dispositive issues while discovery on other issues is held in abeyance;

- other matters as set forth in subdivision (c) of this section; and

- the date for a subsequent conference to follow-up on the matters discussed at the preliminary conference.

(a) A party may request a preliminary conference at any time after service of process. The request shall state the title of the action; index number; names, addresses, telephone numbers and email addresses of all attorneys appearing in the action; and the nature of the action. If the action has not been assigned to a judge, the party shall file a request for judicial intervention together with the request for a preliminary conference. The request shall be served on all other parties and filed with the clerk for transmittal to the assigned judge. The court shall order a date for preliminary conference in any action upon such request and subject to the following.

(b) In the absence of a party request as set forth in subdivision (a), and except as provided in subdivision (g), after the filing of a request for judicial intervention, the court shall promptly email to all parties the form of a stipulation and order, prescribed by the Chief Administrator of the Courts which shall provide for completion of disclosure within twelve (12) months of the filing of the request for judicial intervention for a standard case, or within fifteen (15) months of such filing for a complex case. The form of the stipulation shall contain a certification by attorneys for the parties that they have met and conferred on the items set forth in sections 202.11 and 202.12(c). If all parties sign the form and return it to the court within thirty (30) days, such form shall be “so ordered” by the court and no preliminary conference shall be held unless the court orders otherwise. If such stipulation is not returned signed by all parties, the court shall schedule a conference to be held virtually before the court or, in the court’s discretion, nonjudicial personnel, for the purpose of completing the form stipulation. Except where a party appears in the action pro se, an attorney thoroughly familiar with the action and authorized to act on behalf of the party shall appear at such conference.

(1) If the parties agree on the form stipulation it may be “so ordered” by the court. Where the parties cannot agree, or where issues arise that need judicial intervention, the court may schedule a conference before the assigned judge or before the judge in charge of the preliminary conference part. At the discretion of the court, the conference may be held virtually or in person.

(2) At the preliminary conference the parties shall be prepared to discuss the items set forth in sections 202.11 and 202.12(c) and such other items as the court may direct.

(c) Where a case is reasonably likely to include electronic discovery, attorneys for all parties shall meet and confer on the subject of electronic discovery. If the parties are

unable to reach a stipulation governing electronic discovery, the court may direct a conference on the subject. The parties or attorneys appearing at such conference must be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery, and attorneys may bring a client representative or outside expert to assist in such e-discovery discussions. A non-exhaustive list of considerations for determining whether a case is reasonably likely to include electronic discovery is:

(1) Does potentially relevant electronically stored information ("ESI") exist;

(2) Do any of the parties intend to seek or rely upon ESI;

(3) Are there less costly or less burdensome alternatives to secure the necessary information without recourse to discovery of ESI;

(4) The cost and burden of preserving and producing ESI and whether such costs and burdens are proportional to the amount in controversy; and

(5) What is the likelihood that discovery of ESI will aid in the resolution of the dispute.

(d) The court may, in its discretion, either in advance of the preliminary conference or in response to the filing of the stipulation and order contemplated by subdivision (b) of this section, require the parties to provide to the court their positions on each of the items in sections 202.11 and 202.12(c) and such other matters as the court deems necessary or appropriate.

(e) The matters which may be considered at a preliminary conference or at the first conference before the court if the preliminary conference has been cancelled under sections 202.12(b) or 202.12(g), shall include:

(1) the positions of the litigants on the matters described in sections 202.11 and 202.12(c), particularly alternative methods for resolving the dispute, simplification and limitation of factual and legal issues, where appropriate, expedited disposition of the

action, and effective controls to prevent protracted litigation due to lack of judicial management;

(2) the terms, provisions and schedule included in the stipulation described above submitted by the attorneys for the litigants, and the establishment of a timetable for the completion of all disclosure proceedings, provided that all such procedures must be completed within the timeframes set forth in subdivision (b) of this section, unless otherwise shortened or extended by the court depending upon the circumstances of the case;

(3) Where the court deems appropriate, it may establish the method and scope of any electronic discovery. In establishing the method and scope of electronic discovery, the court may consider the following non-exhaustive list, including but not limited to:

(i) identification of potentially relevant types or categories of ESI and the relevant time frame;

(ii) disclosure of the applications and manner in which the ESI is maintained;

(iii) identification of potentially relevant sources of ESI and whether the ESI is reasonably accessible;

(iv) implementation of a preservation plan for potentially relevant ESI;

(v) identification of the individual(s) responsible for preservation of ESI;

(vi) the scope, extent, order, and form of production;

(vii) identification, redaction, labeling, and logging of privileged or confidential ESI;

(viii) claw-back or other provisions for privileged or protected ESI;

(ix) the scope or method for searching and reviewing ESI; and

(x) the anticipated cost and burden of data recovery and proposed initial allocation of such cost.

(4) addition of other necessary parties;

(5) settlement of the action;

(6) removal to a lower court pursuant to CPLR 325, where appropriate; and

(7) any other matters that the court may deem relevant.

(f) At the conclusion of the conference, the court shall make a written order including its directions to the parties as well as stipulations of the parties' attorneys. Alternatively, in the court's discretion, all directions of the court and stipulations of the attorneys may be recorded by a reporter. Where the latter procedure is followed, the parties shall procure and share equally the cost of a transcript thereof unless the court in its discretion otherwise provides. The transcript, corrected if necessary on motion or by stipulation of the parties approved by the court, shall have the force and effect of an order of the court. The transcript shall be filed by the plaintiff with the clerk of the court.

(g) In its discretion, taking into account the caseload of the court, the nature of the claim, the absence of an IAS judge to preside, the inability of a defendant to retain counsel, the failure of an insurer to appoint counsel, or the inability of the parties to meet and confer, the presiding court, either in advance of the preliminary conference or at the request of one of the parties, may issue to all parties a case scheduling order setting forth a timetable which shall provide for completion of disclosure within 12 months of the filing of the request for judicial intervention for a standard case, or within 15 months of such filing for a complex case. If a case scheduling order is issued by the court the order may also provide for other terms and conditions as the court deems appropriate, and the

preliminary conference shall be cancelled. In response to such scheduling order, any party may, within 10 days of entry of the scheduling order, object thereto and request a preliminary conference as described above.

(h) In the discretion of the court, failure by a party to comply with the order or transcript resulting from the preliminary conference, or with the so-ordered stipulation or scheduling order provided for in subdivisions (b) and (g) of this section, or the making of unnecessary or frivolous motions by a party, shall result in the imposition upon such party of costs or such other sanctions as are authorized by law.

(i) A party may request the court to advance the date of a preliminary conference upon a showing of appropriate circumstances. During the course of the case, any party may request such additional conferences as appropriate. The court will give the attorneys notice of the conference at least one week before any conference unless there are special circumstances requiring an earlier conference.

(j) The court, in its discretion, at any time may order such conferences as the court may deem helpful or necessary in any matter before the court.

(k) The provisions of this section shall apply to preliminary conferences required in matrimonial actions and actions based upon a separation agreement, in medical malpractice actions, and in real property tax assessment review proceedings within the City of New York, only to the extent that these provisions are not inconsistent with the provisions of sections 202.16, 202.56 and 202.60 of this Part, respectively.

(l) The provisions of this section shall apply where a request is filed for a preliminary conference in an action involving a terminally ill party governed by CPLR 3407 only to the extent that the provisions of this section are not inconsistent with the provisions of CPLR 3407. In an action governed by CPLR 3407 the request for a preliminary conference may be filed at any time after commencement of the action, and shall be accompanied by the physician’s affidavit required by that provision.