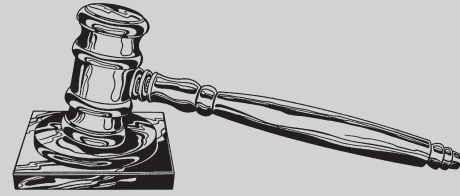


Updates on Rules



The End of the 60-Day Rule or, at Least, So We Thought!

By Vincent J. Syracuse

October 1, 2006, marked the end of the so-called 60-day rule, which imposed an obligation on counsel for a moving party to notify the court by letter that a motion had remained undecided for 60 days, at least, so we thought. The end of this controversial and unpopular rule took the form of repeal of Section 202.8(h) of the Uniform Civil Rules for the Supreme and County Courts and its replacement with a new rule that requires court administrators to issue a computer-generated notice indicating that 60 days have elapsed since the motion was submitted and that the motion remains undecided. The rule also allows a Justice of the Supreme Court to make an application to have a motion designated as complex, which will result in giving the court 120 days to decide the motion.

The problem is that there is a separate 60-day rule that applies in the Commercial Division that was not repealed. The Rules of the Commercial Division became effective on January 11, 2006, with the enactment of Section 202.70 of the Uniform Civil Rules for the Supreme and County Courts. Section 202.70 includes Rule 23, which is the Commercial Division's own 60-day rule and "technically" has not been repealed, an obvious oversight.

The Commercial and Federal Litigation Section supports the immediate repeal of Rule 23 and hopes that this will take place as quickly as possible. In the interim, "to write, or not to write, that is the question."

New Rule for Conduct of Depositions in New York State Courts

Effective October 1, 2006, the Chief Administrative Judge of the Courts for the State of New York, with the advice and consent of the Administrative Board of the Courts, adopted a new Part 221 of the Uniform Rules for the Trial Courts, relating to the conduct of depositions. The new Part, consisting of three sections, thus applies to depositions taken in all trial courts of the State.

The first rule, 22 N.Y.C.R.R. § 221.1, regulates objections at depositions. Under the rule, no objections may be made at a deposition except those which, pursuant to CPLR 3115(b), (c), or (d), would be waived if not interposed or, in the case of objections to the form of written questions, except in compliance with CPLR 3115(e). All objections made at a deposition must be noted by the officer before whom the deposition is taken, and the answer must be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to CPLR Article 31.

Rule 221.1 also requires that every objection raised during a deposition must be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, must include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by this rule or by CPLR 3115, during the course of the examination persons in attendance may not make statements or comments that interfere with the questioning.

The second rule, 22 N.Y.C.R.R. § 221.2, addresses refusals to answer when an objection is made. Under this rule, a deponent must answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney may not direct a deponent not to answer, except as provided by this rule or by CPLR Rule 3115. Any refusal to answer or direction not to answer must be accompanied by a succinct and clear statement of the basis for the refusal or direction. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

Finally, the third rule, 22 N.Y.C.R.R. § 221.3, regulates communication with the deponent. An attorney may not interrupt the deposition for the purpose of communicating with the deponent, unless all parties consent or unless the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 and, in that event, the reason for the communication must be stated for the record succinctly and clearly.

New Rule Requires Notice of Motions Seeking a TRO

A new rule applicable in Supreme and County Courts has been adopted, effective October 1, 2006, that requires notice of a motion for a TRO. Under the new 22 N.Y.C.R.R. § 202.7(f), upon an application for an order to show cause or motion for a preliminary injunction seeking a temporary restraining order, the application must contain, in addition to the other information required by 22 N.Y.C.R.R. § 202.7, an affirmation demonstrating there will be significant prejudice to the party seeking the

restraining order by the giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date, and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application. The new rule does not apply to orders to show cause or motions in special proceedings brought under Article 7 of the Real Property Actions and Proceedings Law.

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