

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK  
CITY BAR

**COMMITTEE ON TORT LITIGATION**

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Hon. Janet DiFiore  
Chief Judge of the State of New York  
New York State Unified Court System  
Office of Court Administration, Rm. 852  
25 Beaver Street  
New York, NY 10004

**Re: Recommendations by the Tort Litigation Committee of the NYC Bar Association to Ease Court Congestion**

Dear Chief Justice DiFiore:

In light of your recent publicized efforts to reduce backlogs in the courts, the Tort Litigation Committee of the New York City Bar Association (“City Bar”) offers the following recommendations.

Our committee of 30 lawyers is comprised of plaintiff’s attorneys, defense attorneys, and members of the judiciary, and focuses on issues relating to personal injury and civil rights litigation, tort law and practice, and the handling of civil litigation and trials in New York courts. Over the past three years this committee has discussed meaningful ways to help expedite discovery, and we have met with several New York State Supreme Court Justices to hear about methods they have employed to resolve discovery disputes efficiently. The City Bar’s Committee on State Courts of Superior Jurisdiction, which focuses on issues relating to the New York State Supreme Court, the Appellate Division, the Court of Claims and the Court of Appeals, concurs with the recommendations herein.

Discovery is at the heart of litigation as it involves the pursuit of evidence necessary to prosecute or defend the action. When discovery disputes arise, the aggrieved party may be compelled to seek court intervention. Unfortunately, it can take six months to a year to obtain an order pursuant to a discovery motion. Moreover, the resulting order often replicates the prior discovery order and the only outcome achieved was the expenditure of time and money.

While the Preliminary Conference Order usually specifies a date for a compliance conference, often that date is scheduled so far ahead that discovery may be delayed for months while the parties wait to resolve disputes at that conference. We believe that the majority of discovery issues in personal injury litigation can be resolved in a brief conference with the court. Many judges in counties with smaller case loads already allow the parties to request an expedited conference once a discovery dispute arises. Likewise, Supreme Court judges in the Bronx, Brooklyn, and Manhattan have found great success in resolving discovery issues promptly by permitting the parties to seek an expedited conference.

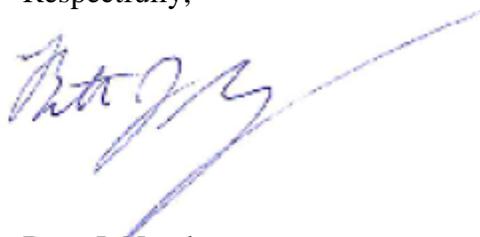
We recommend promulgating a new section of the Uniform Rules directing the IAS court to schedule a conference within fourteen days of receiving a letter, copied to all parties, stating: “The party is seeking an expedited conference pursuant to Uniform Rule \_\_\_ as there is a discovery dispute that could not be resolved despite good faith efforts and which requires court intervention.” The letter should (a) identify the precise discovery dispute to be addressed at the conference; and (b) state that the parties have conferred in good faith in an effort to resolve the dispute. In less than 150 words, all issues in dispute should be identified simply and succinctly to give the court and the adversary fair notice of what will be raised at the conference.

The opposing party, and any other party, shall, within five days of receipt, serve a letter in response and which identifies any other issues in dispute, in less than 150 words, which have not been resolved despite good faith efforts. No exhibits may be annexed to any of the letters. The rule should make clear that it is intended as an additional method for resolution and does not preclude or limit any party’s right to motion practice. We believe that this additional procedural method would reduce court congestion and result in substantial savings of time and costs to both the courts and the parties.

We also recommend the use of conditional orders in this context and, particularly, to address repeated noncompliance. A conditional order that provides a reasonable time within which to comply (e.g., 45 to 60 days) is a fair and effective means to obtain compliance with the court’s order and to prevent court congestion. Conversely, simply re-writing an order with new deadlines when a party has failed to comply with a previous order promotes further noncompliance.

Thank you for taking on this important initiative and for your consideration of these comments.

Respectfully,

A handwritten signature in blue ink, appearing to read "Brett J. Nomberg", with a long horizontal flourish extending to the right.

Brett J. Nomberg  
Chair, Tort Litigation Committee