

B R E W E R
ATTORNEYS & COUNSELORS

June 1, 2022

VIA EMAIL

Hon. O. Peter Sherwood
Special Master for Discovery
Ganfer Shore Leeds & Zauderer
306 Lexington Avenue
New York, NY 10017
Psherwood@ganfershore.com

**Re: NYAG v. The National Rifle Association of America, et al.,
Index No. 451625/2020: Commercial Division Rule 11 Disclosure**

Dear Judge Sherwood:

On behalf of the National Rifle Association of America (the “NRA”), we request an order directing the Office of the Attorney General (the “OAG”) to serve by no later than June 6, 2022, disclosure contemplated by the amended Rule 11 of the Rules of the Commercial Division.

On May 16, 2022, that rule was amended to require a clear and concise statement of issues in the case, the elements of each claim, and the facts needed to establish the case; the rule as amended states in part:

Rule 11. Discovery.

- (a) The court may direct plaintiff to produce a document stating clearly and concisely the issues in the case prior to the preliminary conference. . . . The court may also direct plaintiff [to] produce a document stating each of the elements in the causes of action at issue and the facts needed to establish their case.
- (b) The **court may further direct**, if a defendant filed a motion to dismiss and[, as here,] the court dismissed some but not all of the causes of action, plaintiff . . . to revisit the document[] **to again state, clearly and concisely, the issues remaining in the case, the elements of each cause of action and the facts needed to establish their case.**

In proposing the now effective rule, the Commercial Division Advisory Committee noted that “[t]he goal of these [amendments] is to streamline the discovery process so that discovery is aligned with the needs of a case and not a search for each and every possible fact in the case.”

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Here, ordering the OAG to serve disclosures pursuant to the rule will particularly benefit the parties and the Court because (i) the case involves 5 defendants, 15 claims, and more than 700 paragraphs of allegations; (ii) the Court dismissed on March 2, 2022, three claims against the NRA and one claim against the individual defendants; and (iii) fact discovery is ongoing (through the end of June 2022), and expert witness discovery has yet to begin.

Pursuant to Paragraph 3 of the Stipulated Special Master Order (NYSCEF 749), the OAG's opposition to this application is due by no later than Tuesday, June 7, 2022.¹

Respectfully,

/s/ Svetlana M. Eisenberg

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**ATTORNEYS FOR THE NATIONAL RIFLE
ASSOCIATION OF AMERICA**

cc: All Counsel of Record (via Email)

Enclosure

¹ In the NRA's letter to the OAG dated May 27, 2022 (enclosed), the NRA requested that the OAG consent to the entry of an order by the Special Master directing the OAG to comply with the new rule. The OAG has not responded to the request.

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May 27, 2022

VIA EMAIL

Monica Connell, Special Counsel
New York State Office of the Attorney General
28 Liberty Street, New York, NY 10005
Monica.Connell@ag.ny.gov

**Re: *People of the State of New York, by Letitia James, Attorney General of the State of New York v. The National Rifle Association of America, et al.,*
Index No. 451625/2020: Rule 11 Disclosure**

Dear Monica:

As you know, on May 16, 2022, the Chief Administrative Judge of the Courts issued an administrative order effective May 31, 2022, amending Rule 11 of section 202.70 (g) of the Uniform Rules for the Supreme Court and County Courts (Rules of Practice for the Commercial Division) (attached). The order amends the rule to read, in pertinent part:

Rule 11. Discovery.

- (a) The court may direct plaintiff to produce a document stating clearly and concisely the issues in the case prior to the preliminary conference. . . . The court may also direct plaintiff [to] produce a document stating each of the elements in the causes of action at issue and the facts needed to establish their case.
- (b) The court may further direct, if a defendant filed a motion to dismiss and the court dismissed some but not all of the causes of action, plaintiff and counterclaim plaintiff to revisit the documents to again state, clearly and concisely, the issues remaining in the case, the elements of each cause of action and the facts needed to establish their case.

Please let me know by Tuesday, May 31, 2022, at 2:00 pm ET, if the NYAG will stipulate to the entry of an order directing her on June 6, 2022 to produce a document stating clearly the issues in the case and each of the elements in the causes of action against the NRA, as well as the facts needed to establish her case.

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Thank you for your attention to this matter.

Respectfully,

/s/ Svetlana M. Eisenberg

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ATTORNEYS FOR DEFENDANT

**THE NATIONAL RIFLE ASSOCIATION OF
AMERICA**

cc: All Counsel of Record (via Email)

Enclosure

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 11 of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), effective May 31, 2022, to read as follows (new material underlined, deletions in strikethrough):

Preamble to Rule 11. Acknowledging that discovery is one of the most expensive, time-consuming aspects of litigating a commercial case, the Commercial Division aims to provide practitioners with a mechanism for streamlining the discovery process to lessen the amount of time required to complete discovery and to reduce the cost of conducting discovery. It is important that counsel's discovery requests, including depositions, are both proportional and reasonable in light of the complexity of the case and the amount of proof that is required for the cause of action.

Rule 11. Discovery.

(a) The court may direct plaintiff to produce a document stating clearly and concisely the issues in the case prior to the preliminary conference. If there are counterclaims, the court may direct the party asserting such counterclaims to produce a document stating clearly and concisely the issues asserted in the counterclaims. The court may also direct plaintiff and counterclaim plaintiff to each produce a document stating each of the elements in the causes of action at issue and the facts needed to establish their case.

(b) The court may further direct, if a defendant filed a motion to dismiss and the court dismissed some but not all of the causes of action, plaintiff and counterclaim plaintiff to revisit the documents to again state, clearly and concisely, the issues remaining in the case, the elements of each cause of action and the facts needed to establish their case.

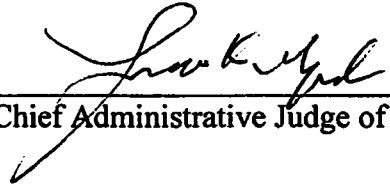
(c) Any written description of a party's claims/defenses provided under this Rule is not binding and does not limit the scope of a party's pleadings.

~~(a)~~(d) The preliminary conference will result in the issuance by the court of a preliminary conference order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as (i) directions for submission to the alternative dispute resolution program, including, in all cases in which the parties certify their willingness to pursue mediation pursuant to Rule 10, provision of a specific date by which a mediator shall be identified by the parties for assistance with resolution of the action; (ii) a schedule of limited-issue discovery in aid of early dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure.

~~(b)~~(e) The order will also contain a comprehensive disclosure schedule, including dates for the service of third-party pleadings, discovery, motion practice, a compliance conference, if needed, a date for filing the note of issue, a date for a pre-trial conference and a trial date.

~~(e)~~(f) The preliminary conference order may provide for such limitations of interrogatories and other discovery as may be necessary to the circumstances of the case. Additionally, the court should consider the appropriateness of altering prospectively the presumptive limitations on depositions set forth in Rule 11-d.

~~(d)~~(g) The court will determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3214(b), pending the determination of any dispositive motion.



Chief Administrative Judge of the Courts

Date: May 16, 2022

AO/117/22