

## Comments on Proposed Amendment of Commercial Division Practice Rules 10 and 11 to Address Alternate Dispute Resolution

### DISPUTE RESOLUTION SECTION

DR #1

June 12, 2017

The Dispute Resolution Section of the New York State Bar Association submits these comments in response to the April 10, 2017 Memorandum of John W. McConnell, Esq. requesting comments on the proposal to amend Commercial Division Practice Rules 10 and 11 (the “Proposal”).

Our Section wholeheartedly supports the Proposal’s amendment that requires attorneys to advise their clients of the availability of *early* mediation as an effective way of reducing the costs to the parties inherent in litigation. We totally agree with the reasons for and benefits of the Proposal as set forth in the January 20, 2017 memorandum from the Commercial Division Advisory Council supporting the Proposal. In addition to increasing the use of early mediation in Commercial Division cases, the amendment to Rule 10 will benefit *the parties*, who bear the risks and costs of litigation, by involving them as well as their lawyers in making the decision as to whether and when to pursue mediation.

In order to assist the client in making the decision as to whether and when to pursue mediation, the form of certification attached to the Proposal as Exhibit A wisely requires the attorney to certify that he or she has discussed Alternative Dispute Resolution options with the client. Because not all attorneys may fully understand the benefits of mediation and how and why it works, they might additionally benefit from a reminder that helpful information is available on the Office of Court Administration’s website at [https://www.nycourts.gov/ip/adr/What\\_Is\\_ADR.shtml](https://www.nycourts.gov/ip/adr/What_Is_ADR.shtml).

Chair: Daniel F. Kolb, Esq.