

# Commercial and Federal Litigation Section Newsletter



A publication of the Commercial and Federal Litigation Section  
of the New York State Bar Association

## Inside

- Annual Meeting
  - Resolving E-Discovery Disputes Efficiently in Arbitration and in Court
  - 2018-2019 Amendments to the Uniform Rules for Supreme, County Courts
  - 2019 CPLR Amendments
- ... and more*

## Message from the Chair

It's striking to me that this is the last introduction to our *Newsletter* that I will write as Chair of the Section. I am proud of the accomplishments we have achieved and the plans we have set in place for future success, and humbled by the contributions so many others have made to the Section and its activities this year.



**Robert N. Holtzman**

Were you one of those who joined us this year? An organizer of or panelist on one of our dozens of CLE programs across the state? A member of one of our Committees? Did you attend our Annual Meeting in New York City or our Spring Meeting in Manchester, Vermont? Or one of the many events we are sponsoring across the state to bring members of the bar together with Commercial Division Justices? Perhaps you joined us for Smooth Moves 2019 or the annual awarding of the Shira A. Scheindlin Award for Excellence in the Courtroom?

The Section engages in and sponsors more outstanding programming in any given year than any one person could hope to attend. But if you did not make it to any events in the past year, I strongly encourage you to attend just one event in the coming months, and then attend a

second. You will have the opportunity to meet and work with lawyers and judges at the top of our profession in a community setting that many long-time bar aficionados will tell you has been one of the most satisfying aspects of their careers.

I want to express special gratitude to Mark Davies, Editor of our *Newsletter*, and Dan Wiig, Editor of *The Litigator*, who together have co-chaired our Publications Committee since its inception. Their tireless behind-the-scenes work ensures that these outstanding publications continue from year to year. This will be Dan's last year as editor of *The Litigator*, as he has been elected Vice-Chair of the Section for the coming year. We also are indebted to the dedicated members of the Publications Committee, who write many of the articles in this publication and edit those in *The Litigator*.

I also want to recognize the officers I have had the luck to serve with this year: Laurel Kretzing, Jonathan Fellows, Anne Sekel, and Natasha Shishov. To me, each of them represents precisely the combination of excellence, fellowship, and character that exemplifies our Section and its members. The Section is in good hands for the coming year.

And, finally, thank you to the Section for the honor of serving as an officer for the past three years and as chair this year. I look forward to celebrating the successes of the Section for many years to come.

**Robert N. Holtzman**

# NEW YORK STATE BAR ASSOCIATION COMMERCIAL & FEDERAL LITIGATION SECTION

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# NEW YORK STATE BAR ASSOCIATION

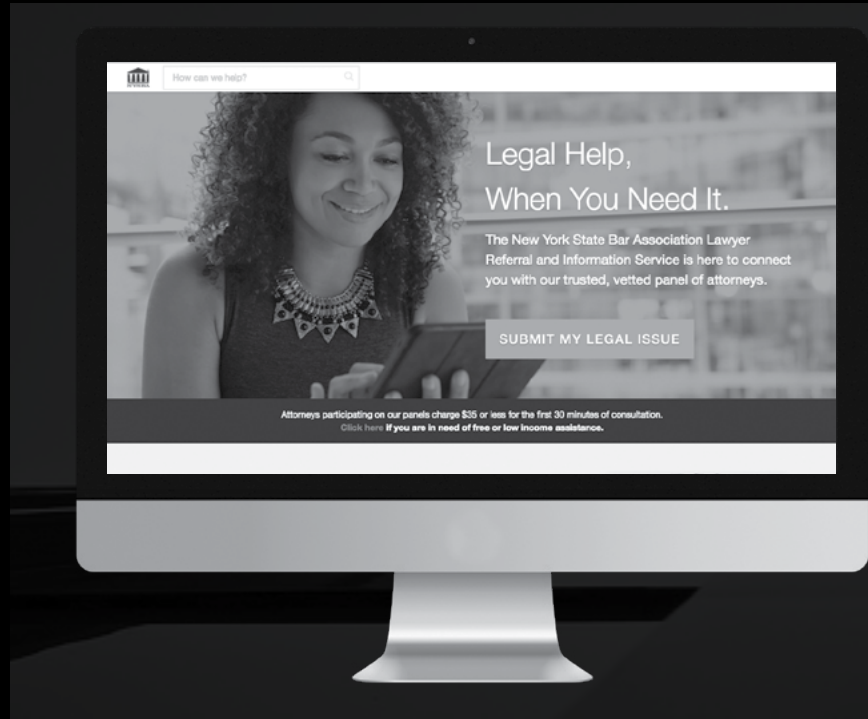
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# Annual Meeting CLE Programs

By Christie McGuinness

On January 16, 2019, the Commercial and Federal Litigation Section put on its annual CLE program as part of the New York State Bar Association Annual Meeting. The program was extremely well attended, with over 100 attorneys present.

## Technologically Assisted Review

The first program focused on issues involving Technologically Assisted Review (TAR). TAR is the procedure through which documents in a litigation are run through an algorithm and the computer generates a list of which documents are the most responsive to the least responsive. The panelists began the discussion by addressing the developments in TAR. When TAR was first introduced, the party utilizing TAR would input into the program the keywords that the program would then use to generate the responsive documents. For example, if the dispute involved a broker-dealer and transactions with a certain company, the TAR program would be given a key set of documents in order to instruct the program on what responsive documents would be for that particular dispute.

With this context in mind, the panel discussed the potential disputes that may arise among the parties. A common dispute is the disclosure of the key set of documents that was used to calibrate the algorithm. As it goes in science, “junk in, junk out.” There was concern that without disclosure of the key set of documents, there could be no assurances that the TAR program was calculated properly. However, as the panel further discussed, technology has advanced to the point where many of those concerns have been addressed. Now, TAR programs have been equipped with artificial intelligence and can continue to learn what “responsive” documents are. Taking the broker dealer example, say it is learned that, in addition to a particular company, a particular subsidiary is involved in the alleged fraud; the TAR program can subsequently be programmed to also search for documents involving that subsidiary. Eventually, the program can come to a mathematical conclusion that all responsive documents have been found.

The panelists discussed that what has been so effective about the new TAR program is that it alleviates the heavy reliance on the key set of documents because the program can continually learn what is and is not a responsive document. A party to the litigation can also provide an example of a document the party is searching for and run it through the program for the program to search for documents of a similar nature. This strikes a delicate balance between a party’s concerns that the set of key documents, which a party may not want to disclose because they contain confidential documents, is

incomplete and thus result in providing incomplete data, and the need for disclosure to ensure the integrity in the search for documents.

The panelists also discussed that in today’s society where the amount of data collected can quite literally make it impossible for parties to go through all the data in a particular case, TAR may be the only viable way to review the data. As to cost-effectiveness, in lieu of a party spending time and money on associates reviewing all the data, TAR offers the most cost-effective strategy, as it will take less time for a program to go through the data than associates.

Coming from a wide variety of practice areas, the panelists also discussed disputes that require a party to use TAR. The common view, among the panelists and in court decisions, was that a party requesting documents could not force the producing party to use TAR in reviewing its own documents, but a party on the receiving end of a document request could use TAR to review its own documents in preparation to produce them. The panelists also discussed that in cases involving sophisticated parties, the likelihood is that the parties will be accustomed to TAR and there will be fewer issues involving the parties’ use of TAR. In circumstances involving a non-sophisticated party opposed to TAR, the panel concluded that case law supports a party using TAR when it wishes to do so.

## Litigating Sexual Harassment

The second panel focused on litigating sexual harassment in light of the #MeToo era. In the wake of the allegations surrounding Harvey Weinstein, states have become more cognizant in writing their sexual harassment laws and in the training they require.

New York State, in response to the #MeToo movement, passed a law that made six changes to New York State law related to sexual harassment. New York City also passed a law that changed rules in New York City related to sexual harassment.

In addition to discussing the new laws, the panel also addressed the effect the #MeToo movement may have on juries, and a litigator’s strategy in moving forward with these claims. The panelists also discussed how these claims, in addition to fomenting litigation, also present a major public relations problem for the company. The panelists also addressed the concern that someone coming forward with claims of sexual harassment may

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**CHRISTIE MCGUINNESS** is a litigation associate at Saul, Ewing, Arnstein & Lehr, LLP and a 2017 graduate of Brooklyn Law School.

not want their story being splashed on the pages of the newspapers, especially if they are looking to change jobs.

The panel discussed the very real concerns arising when the person accused of the sexual harassment is a high-level executive, such as the CEO, and, for example, the company is going through a merger and acquisition.

The panel noted that, in light of the Harvey Weinstein scandal, lawsuits have been brought against the board of his production company alleging that the board knew about the allegations against Weinstein and failed to properly discipline him and that that failure was a major factor in the stock price plummeting following the breaking of the story. Similarly, insurance companies are litigating coverage in the Harvey Weinstein case where the board knew about his actions, and failed to act.

The panel ended by discussing non-disclosure agreements and why a company and/or client may want such an agreement.

There has been a change in the tax laws that does not allow a company to deduct payments made for a sexual harassment claim subject to a non-disclosure agreement and does not allow a plaintiff to deduct attorneys' fees in a sexual harassment claim subject to a non-disclosure agreement. These are very real monetary considerations that must be discussed with a client.

Both panels discussed cutting-edge topics in litigation and left the audience with much to consider. The moderators and panelists showcased the variety of litigation the Section encompasses.

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**Michael Miller**  
President

**Pamela McDevitt**  
Executive Director



# 2019 Shira A. Scheindlin Award

By Natasha Shishov

On November 15, 2018, the Commercial and Federal Litigation Section hosted its annual ceremony bestowing the Shira A. Scheindlin Award for Excellence in the Courtroom. This event honors outstanding women trial lawyers and recognizes the many achievements of female trailblazers of the legal profession.

As in prior years, the evening was held in the Ceremonial Courtroom at the Southern District of New York. Opening remarks were made by the Section's chair, Robert Holtzman, who also introduced Chief Judge of the Southern District of New York, Judge Colleen McMahon. Judge McMahon welcomed attendees to the Southern District and spoke about the importance of the presence of female litigators in the courtroom and their role as lead attorneys on matters.

This year, the Shira A. Scheindlin Award was presented to Rita M. Glavin, Esq. and Diane M. Perri Roberts, Esq. Ms. Glavin is a partner in the Litigation group and co-head of the Government Enforcement and Internal Investigations practice of Seward & Kissel LLP. She advises companies around the globe on regulatory and security issues. She has represented clients in criminal and civil enforcement investigations and has been trial counsel in 20 federal jury trials. Prior to entering private practice in 2010, she worked for almost 12 years in the U.S. Department of Justice and served as head of the DOJ's Criminal Division in 2009. Before that Ms. Glavin served as a federal prosecutor with the DOJ's Public Integrity Section and was an Assistant U.S. Attorney in the Southern District of New York.

Diane M. Perri Roberts, Esq. is a Senior Partner at Lipsitz Green Scime Cambria LLP. She represents businesses in contract disputes and employment matters in federal and state court as well as in mediations and arbitrations. Additionally, Ms. Perri Roberts guides business owners in managing their risk of exposure to employment claims. She has been practicing law for over twenty-eight years, focuses on mentoring young attorneys, and is the first Western New York attorney to receive this annual award.

Also honored at this event were this year's recipients of the Honorable Judith S. Kaye Commercial and Federal Litigation Scholarships. The scholarships are awarded annually to up to five female commercial litigators who have been admitted to practice law in New York between two and ten years. The scholarship covers the registra-

tion and cost for the recipients to attend the Commercial Litigation Academy, which is sponsored by the New York State Bar Association Commercial and Federal Litigation Section. The goal of the scholarships is to help increase the number of women prepared to serve as first chair in large commercial cases in New York. This year's Kaye Scholars were Nelida Lara, a partner at DelBello Donnella Weingarten Wise & Widererkehr LLP; Viktoriya Liberchuk, an associate at Farrell Fritz; Jennifer Luo, an associate at Sher Tremonte LLP; and Deena K. Mueller-Funke, a senior associate at Phillips Lytle LLP.

After the presentation of the awards, Vivia Chen presented the keynote address. Ms. Chen is a creator and chief blogger of *The Careerist* and is a senior columnist of *The American Lawyer*. She has been covering the business and culture of law firms for a decade. A former corporate lawyer, Ms. Chen analyzes the issue of those who thrive (as well as those who don't) in the legal profession. Ms. Chen addressed the issue of implicit bias and the promotion of women and minorities in the legal profession.

The evening concluded with a reception, where attendees, including members of the Bar and Bench, had a chance to network as well as celebrate the many achievement of women in the law.

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**NATASHA SHISHOV** is a Principal Appellate Court Attorney with the Appellate Division, First Department.

NEW YORK STATE BAR ASSOCIATION

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# CLE: Resolving E-Discovery Disputes Efficiently in Arbitration and in Court

By Christie McGuinness

On January 28, 2019, at the offices of Kramer Levin Naftalis & Frankel, the Commercial and Federal Litigation Section, co-sponsored by JAMS, put on a CLE regarding e-discovery and the potential disputes that may arise in either arbitration or litigation. This was the second time the Section had presented this program, and it was well attended by approximately 40 attorneys.

The first part of the CLE was entitled “E-Discovery Issues in Arbitration.” The panel was moderated by the Honorable Frank Maas (Ret.) and included panelists Prof. Michael Fox, J.D., Kerri Ann Law, Esq., and Roger Maldonado, Esq. The panel discussed the importance of understanding the considerations that go into choosing whether to go to arbitration, which arbitration forum the litigants choose, and the parties to the arbitration. Arbitration is meant to be more streamlined than litigation, having matters come to a resolution in a shorter time. However, in the modern era, where increasingly parties are dealing with complex e-discovery disputes, how are those resolved in arbitration? The panel first discussed the importance of taking care in choosing where parties go to arbitration, as each forum has its own discovery rules and procedures, and that while clients may be willing to go to arbitration for the cost savings, they may not be willing to go if the particular arbitration will significantly limit their ability to conduct discovery. Attorneys must be practical when conducting discovery in arbitration, and attempt to work out as many issues among the parties themselves. For example, two sophisticated companies battling in arbitration will be more equipped to work out e-discovery issues, and will not need to involve the arbitrator. The rules of the particular arbitration forum will also help dictate and educate where parties will go. For example, if an IT expert will be required to be deposed to establish that a thorough search was conducted for responsive documents, parties should consider going to a forum that will enable more depositions. The panelists also discussed that typically, if parties agree to a discovery schedule, the neutrals will not disturb the schedule.

The overall conclusion was that the name of the game is reasonableness. The parties in arbitration need to act reasonably to maintain the benefits of going to arbitration rather than going through litigation. For example, conferencing discovery issues by telephone, after submitting letter briefs, instead of formal motion practice can still leave parties with both an opportunity to succinctly voice their position on a discovery issue and an opportunity for the neutral to make a decision. Ultimately, the panelists concluded that overall the neutrals will be looking for which party is being the most reasonable and who has presented the most reasonable position.

The second part of the program addressed the use of special masters and e-discovery mediators in connection with court litigation. The panel was mediated by Mark Berman, Esq. and included panelist Jeremy R. Feinberg, Esq., Maura R. Grossman, Esq., Hon. Shirley Werner Kornreich (Ret.), and Hon. Frank Maas (Ret.).

This panel spoke on the practical considerations of using special masters in cases involving complex discovery issues. Special masters are appointed by the court to resolve discovery issues and can be very effective in minimizing costs for litigants in cases involving either complex issues or where the litigants themselves would be unable to come to the resolution on the issue. For example, one case involved a dispute between two companies and the alleged stealing of code. As the case involved highly technical, extremely complex issues requiring knowledge of code, a special master was appointed to resolve discovery disputes involving the allowing of each side to review the other side’s code in the least invasive way possible. Another example where a special master was effectively used was in a case involving thousands of pages of discovery where there were issues of privilege and discovery issues would take up too much of the court’s time to resolve.

The panel also discussed how special magistrates and/or referees can be effective in cases involving technological disputes where the parties would be unable to come to a resolution among themselves and a decision made by a neutral would be required. The example discussed involved two parties disagreeing over “search terms” for technologically assisted review, where a special magistrate/referee was used, as the dispute among the parties would take up too much of the court’s time. Both parties early on in the litigation agreeing to the special magistrate/referee and agreeing to the scope of the assignment offers an effective tool. Practical considerations also arise when discussing the appointment of a special magistrate/referee, including price sharing among the parties, the standard of review for the special magistrate/referee’s decision, and a timeline for the special magistrate/referee’s decision.

In all, the CLE provided effective tools for litigants to consider when attempting to streamline discovery in cases where discovery disputes will inevitably arise. In litigation, the largest expense that parties undergo is discovery, and clients look for ways to complete discovery in the most efficient way possible. Whether submitting a case for arbitration or utilizing a special magistrate/referee in lieu of extensive motion practice, parties have at their disposal options to go through discovery in the most cost-effective way possible.



# Executive Committee Meetings

**September 25, 2018**

**By Christie McGuinness**

On September 25, 2018, an Executive Committee was held at the law offices of Kramer, Levin, Naftalis & Frankel LLP.

The meeting commenced with opening remarks by the Chief Judge of the United States District Court for the Southern District of New York, the Hon. Colleen McMahon. Judge McMahon, a former litigator at Paul Weiss, discussed the increase in criminal trials in the Southern District, the challenges facing the Southern District with its unfilled vacancies, and the exciting upgrades being made to the courthouses in both Manhattan and White Plains, the latter a courthouse near and dear to her. Judge McMahon also addressed the importance of bar associations and their ability to weigh in on topics involving the court, such as the proposal in the House of Representatives regarding PACER fees.

Following Judge McMahon's remarks, the Executive Committee commenced its business, beginning with a discussion of the Second Meeting of the Standing Forum of International Commercial Courts. This meeting is an exciting program among judges from around the world who handle commercial disputes. The program was designed primarily as a program for these judges to discuss issues facing them, such as enforcement of judgments across borders. In this increasingly globalized world where disputes often may involve more than one country, the issues facing enforcement of judgments are quite interesting. The program also offered social opportunities for the judges to mingle, including a cocktail hour, enhancing the sense of international cooperation and brotherhood.

Next was a follow-up on discussions relating to the guidelines proposed for Cross-Border Discovery Protocol. In conjunction with the Honorable Charles E. Ramos and Honorable Master Steven Whitaker, along with attorneys from Singapore, France, and Brazil, the committee reported on its efforts to author a set of guidelines and best practices to foster cooperation in evidence gathering in international cases. Representing the Section were Stephen J. Younger, Ryan Mott, and Clara Flebus. The guidelines are intended as black letter principles, with insights taken from all over the world, condensed to one page as a starting point for attorneys handling complex cross-border evidence disputes/issues. These guidelines will be made public following approval from the State Bar.

The Executive Committee also addressed the exciting Continuing Legal Education courses sponsored by the Section, and co-sponsored with other sections of the Association, such as the Dispute Resolution Section. The committee also addressed the importance of reminding

attorneys that most CLEs are available for on-demand downloading from the Association website, which helps address lawyers' busy schedules and allows for flexibility in completing CLE requirements.

The Executive Committee also discussed the upcoming Annual Meeting, taking place January 14-18 in Manhattan, where the Section will be put on two exciting panels, one addressing litigation of sexual harassment claims in light of the #MeToo Movement and the second addressing Technology Assisted Review of evidence (TAR). Both topics focus on cutting-edge issues in the litigation of commercial and federal disputes.

Upcoming Section events include the Shira A. Scheindlin Award for Excellence in the Courtroom (November 15, 2018, at the Southern District of New York), CLEs during Legal Tech Week, and a collaborative CLE with the Dispute Resolution Section regarding ethics in mediation. More information is available on the NYSBA website.

**November 27, 2018**

**By Chris Donati**

Section Chair Robert Holtzman opened the meeting by welcoming and introducing the Hon. Deborah A. Kaplan, the Administrative Justice for the Civil Term of the Supreme Court, New York County. Justice Kaplan has served on the bench for 12 years and served as the Interim Administrative Justice for the 13th Judicial District prior to her appointment to her position in New York County.

*"Justice Kaplan herself has taken on 500 of the years-old non-commercial cases in the Civil Term and has developed mediation calendars to move those cases closer to resolution."*

Justice Kaplan stated that her goal as Administrative Justice was to be responsive to and open to conversations with the legal community to aid in her management the Civil Term's already efficient systems. In particular, Justice Kaplan is working to reduce the number of old cases that have idly lingered on the court's dockets. As part of her efforts, Justice Kaplan herself has taken on 500 of the years-old non-commercial cases in the Civil Term and has developed mediation calendars to move those cases closer to resolution. Despite her responsibilities as Administrative Justice and her work on clearing backlogged

cases, Justice Kaplan mentioned that she still makes time to preside over matrimonial cases.

Justice Kaplan's goals arise from a fact well known to practitioners in the Supreme Court, New York County Civil Term: she manages one of the busiest courts in the nation, and one that handles a wide range of cases. Justice Kaplan noted that the Civil Term's efficiency in the face of its large caseload attracts international delegations who come to the court to study and learn from the Civil Term and its successful programs, such as the Commercial Division.

Justice Kaplan also discussed and encouraged usage of the Civil Term's Alternative Dispute Resolution programs, namely the Court Mediation Program. Justice Kaplan addressed concerns about the quality of the Mediation Program's mediator panel, and stated that the mediator list has recently been reviewed and adjusted to ensure that the mediators on the list are well-qualified to help resolve cases. Justice Kaplan also discussed the Civil Term's mandatory mediation program, which moved from a pilot project to a permanent program in an expanded form in 2017. This program covers commercial cases not filed in the Commercial Division that have no pending motions but do have a request for a hearing. Fifty-six percent of cases that enter this program resolve in settlement.

Finally, Justice Kaplan addressed the Civil Term's increasing efforts to introduce new technology into the courtroom. These efforts are not only intended to increase the efficiency and accessibility of the courtroom, but also the ability of the court to retain the attention and focus of practitioners and jurors during proceedings. As part of this effort, the court is considering sponsoring a CLE program on tech in the courtroom. The technology introduced into Justice Scarpulla's courtroom is an example of what will be included in more courtrooms, and this year alone three additional courtrooms will be outfitted with that technology.

Before closing, Justice Kaplan stated that her efforts as Administrative Justice will not get in the way of her policy of being responsive and communicative to anyone who has comments and requests that seek to improve the administration of the Supreme Court, New York County Civil Term.

**January 30, 2019**

**By Christie McGuinness**

On January 30, 2019, at the offices of Kramer Levin Naftalis & Frankel, LLP, the Executive Committee met for its monthly meeting. Joining as guest speaker was the Hon. Jennifer Schecter, Justice of the Supreme Court,

New York County, Commercial Division. Prior to joining the Commercial Division, Justice Schecter was elected to Civil Court; she began her career litigating at Skadden, Arps, Slate, Meagher & Flom LLP.

Justice Schecter spoke extensively on two issues: the importance of including less experienced associates in court proceedings and the prudent use of sealing client documents when presenting those documents to the court. Justice Schecter spoke first about the importance of including less experienced associates, in particular less experienced women associates, in court proceedings,

*"In regard to the potential difficulty in managing a client's reservations about having a less experienced associate argue before the court, it was noted that many Justices have provisions in their rules allowing for two attorneys to appear before the court on the same matter."*

and spoke to the fact that this issue is on the mind of the Commercial Division and the First Department justices. Many justices have provision in their individual rules that call for allowing less experienced associates to have an active role in court proceedings requiring argument before the court. In regard to the potential difficulty in managing a client's reservations about having a less experienced associate argue before the court, it was noted that many justices have provisions in their rules allowing for two attorneys to appear before the court on the same matter. For example, for a point in a motion where the issue is not really contested, *i.e.*, whether an owner of a building is a proper defendant in a Labor Law case, allowing a less experienced associate to argue that part of the motion is an invaluable opportunity for the associate to gain experience arguing before the court. Justice Schecter also stressed that the court is not blind to the experience level of the associate, and that a potential stumble in the presentation from a less experienced associate is not detrimental to a case, as the justices have typically read the papers before the argument and have an understanding of what their decision will be. Justice Schecter also spoke anecdotally about the problematic image of a less experienced associate sitting at counsel

table, and having to defer to the partner to answer a question.

Secondly, Justice Schecter spoke about the importance of prudently asking the court to seal documents presented to the court. Justice Schecter spoke about circumstances where confidential documents, not important to the motion, were presented to the court and were asked to be sealed. Justice Schecter spoke about the two important policy concerns: the duty of an attorney to maintain client confidence and for court proceedings to be public. Justice Schecter cautioned that when confidential documents do not truly need to be presented to the court for the court to make a determination on a motion, they should not be presented.

If the documents need to be presented, the attorney should redact what is necessary and keep as much as possible for public review. Recognizing that commercial disputes often involve companies, their business, and sometimes a company's trade secrets, a balance must be struck between legitimately protecting what needs to be protected and unnecessarily sealing documents, and attorneys should spend the time carefully considering the documents before presenting them.

Following, the presentation from Justice Schecter, the Executive Committee reviewed the Annual Meeting and the two CLE programs. The luncheon following the first program was well attended, and the speeches at the luncheon were uniformly viewed as excellent.

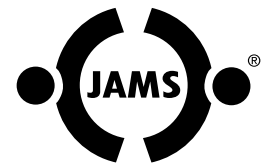
The Section also had put on a CLE entitled "Resolving E-Discovery Disputes Efficiently in Arbitration and in Court," which was the second time that the Section had put on that CLE program, which was held at the offices of Kramer Levin and had about 40 in attendance.

The Committee also discussed its Evening at the Thurgood Marshall Courthouse, an annual hit. The justices of the Second Circuit came down to greet the attorneys, making it a wonderful evening.

Looking forward, the Committee discussed the upcoming Spring Meeting, which will be taking place in Manchester, Vermont, at The Equinox from May 3 to May 5. It should prove to be an excellent weekend of CLE programming and social activities. Promotional material will also be sent out in the near future. Also discussed was the annual "Smooth Moves" program on May 23, 2019. The award recipients will be Preet Bharara and his deputy Joon H. Kim.

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# Commercial & Federal Litigation Section 2019 Annual Meeting

Above left, Hon. Richard Sullivan receives a round of applause. He received the Fuld Award at the 2019 Annual Meeting. At left, Judge Sullivan with Carrie Cohen and Section Chair Robert H. Holtzman. Bottom left, it was a packed house at the awards luncheon. Bottom right, Judge Sullivan addresses the attendees from the podium.



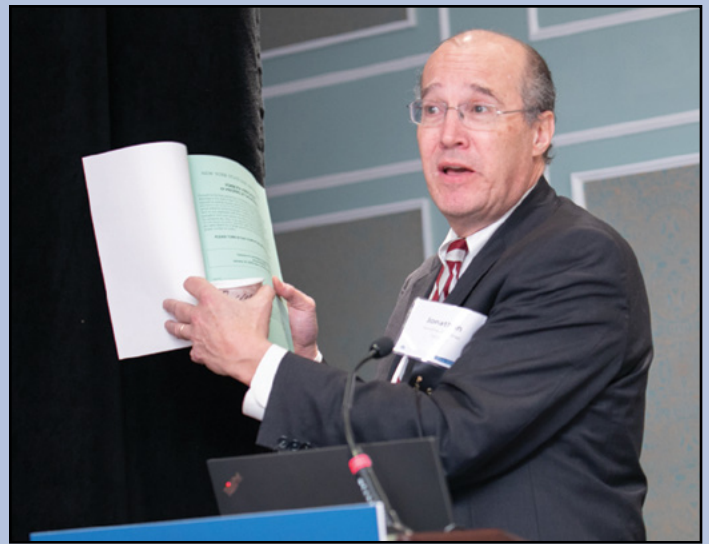




Hon. Saliann Scarpulla, Carrie Cohen, Kathleen Peratis and Lou DiLorenzo take part in a panel discussion.



NYSBA President Michael Miller talks with Karen Milton, Second Circuit Executive.




Section Vice-Chair Jonathan Fellows speaks at the podium.



Commercial and Federal Litigation Section Officers attend the Annual Meeting. From left, Anne B. Sekel, treasurer, Foley Lardner LLP; Laurel R. Kretzing, chair-elect, Office of the Nassau County Attorney; Robert N. Holtzman, chair, Kramer Levin Naftalis & Frankel LLP; Jonathan B. Fellows, vice-chair, Bond Schoeneck & King, PLLC; and Natasha Shishov, secretary, New York State Supreme Court, Appellate Division, First Department.



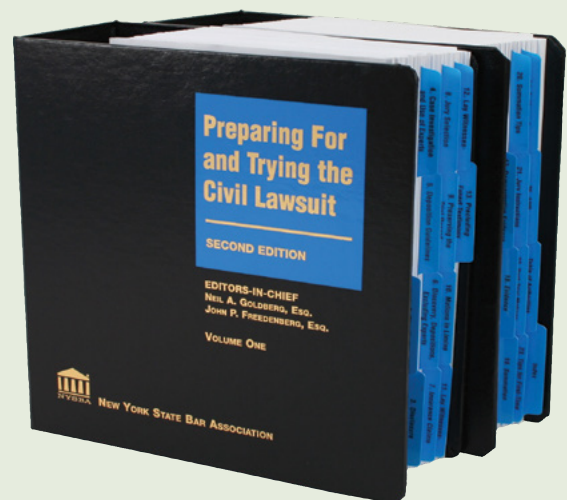
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# CPLR Amendments: 2019 Legislative Session (2019 N.Y. Laws ch. 1-19)

CPLR §	Chapter (Part) (Subpart, §)	Change	Eff. Date
208(b)	11(2)	Extends statute of limitation for sexual abuse claims and causes of action	2/14/19
214-g	11(3)	Adds revival provision for sexual abuse claims and causes of action	2/14/19
3403(a)	11(4)	Adds a special trial preference for cases revived under 214-g	2/14/19
Art. 63-a	19(1)	Adds provisions on extreme risk protection orders	8/24/19

## 2018-2019 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

(West's 2018 N.Y. Orders 1-38 and 2019 N.Y. Orders 1-9; Adopted Rules on OCA website, at <http://nycourts.gov/rules/comments/index.shtml>; amended rules on appellate court websites)

22 NYCRR §	Court	Subject (Change) Link to Order	Eff. Date
202.50(b) (2)	Sup.	Adds a requirement for use of instructions in uncontested matrimonial actions and App. A (instructions) Link: <a href="http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/AO-191-18-MaritalHome.pdf">http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/AO-191-18-MaritalHome.pdf</a>	5/31/18
202.50(b) (3)	Sup.	Amends required decretal paragraphs in divorce judgments Link: <a href="https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-100-2017-Mat%20Post-Judgment%20Venue.pdf">https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-100-2017-Mat%20Post-Judgment%20Venue.pdf</a>	9/30/18
202.50(b) (4)	Sup.	Adds language for inclusion in decretal paragraph in divorce judgments Link: <a href="http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/AO-191-18-MaritalHome.pdf">http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/AO-191-18-MaritalHome.pdf</a>	5/31/18
202.70(g)	Sup.	Replaces Preamble for the Rules for the Commercial Division Link: <a href="https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-332-18.pdf">https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-332-18.pdf</a>	1/1/19
202.70(g), Rule 3(a)	Sup.	Adds provision encouraging counsel to work together to select mediator Link: <a href="https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-399-18.pdf">https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-399-18.pdf</a>	1/1/19
202.70(g), Rule 9-a	Sup.	Adds a new rule on immediate trial or pre-trial evidentiary hearing Link: <a href="http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/AO-243-18-ImmediateTrial.pdf">http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/AO-243-18-ImmediateTrial.pdf</a>	10/1/18
202.70(g), Rule 11-e(f)	Sup.	Adds new provision on review of electronically stored information (ESI) Link: <a href="http://nycourts.gov/rules/comments/orders/AO-242-18.pdf">http://nycourts.gov/rules/comments/orders/AO-242-18.pdf</a>	10/1/18
202.70(g), Rule 11-g(c)	Sup.	Adds (1) new provision on privilege claw-back and (2) Appendix E (Commercial Division Privilege Clawback Provision) Link: <a href="http://nycourts.gov/rules/trialcourts/AO-150-18.pdf">http://nycourts.gov/rules/trialcourts/AO-150-18.pdf</a>	7/1/18

202.70(g), Rule 17	Sup.	Replaces page limit with word limit and adds a requirement for counsel to certify word count  Link: <a href="http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/AO-247-18-LengthPapers.pdf">http://ww2.nycourts.gov/sites/default/files/document/files/2018-08/AO-247-18-LengthPapers.pdf</a>	10/1/18
500.12(f)	Ct. App.	Adds prohibition on reply briefs by amicus curiae  Link: <a href="http://nycourts.gov/ctapps/news/nottobar/Nottobar042518.pdf">http://nycourts.gov/ctapps/news/nottobar/Nottobar042518.pdf</a>	5/16/18
500.23(a) (4)	Ct. App.	Adds requirement for inclusion of statement of identity of movant and its interests and statement indicating contributions of a party's counsel to amicus curiae brief or any person's monetary contribution for brief  Link: <a href="http://nycourts.gov/ctapps/news/nottobar/Nottobar042518.pdf">http://nycourts.gov/ctapps/news/nottobar/Nottobar042518.pdf</a>	5/16/18
Part 600	1st Dep't	Repeals and replaces Part 600 with new Rules of Practice supplementing the new uniform Practice Rules of the Appellate Division (Part 1250)  Link: <a href="http://nycourts.gov/courts/ad1/NewLocalRules600.pdf">http://nycourts.gov/courts/ad1/NewLocalRules600.pdf</a>	9/17/18
Part 670	2nd Dep't	Repeals and replaces Part 600 with new Rules of Practice supplementing the new uniform Practice Rules of the Appellate Division (Part 1250)  Link: <a href="http://nycourts.gov/courts/ad2/pdf/ADM_20180622-Amending_Rules.pdf">http://nycourts.gov/courts/ad2/pdf/ADM_20180622-Amending_Rules.pdf</a>	9/17/18
670.3(c), (d)	1st Dep't	Adds provisions on Pre-Perfection Civil Appeals Management Program and Mandatory Civil Appeals Mediation Program  Link: <a href="http://nycourts.gov/courts/ad2/pdf/ADM_20180622-Amending_Rules.pdf">http://nycourts.gov/courts/ad2/pdf/ADM_20180622-Amending_Rules.pdf</a>	9/17/18
670.9(a)	2nd Dep't	Replaces emailing of digital copies of records, appendices, and briefs with a reference to the court's website for uploading  Link: <a href="http://nycourts.gov/courts/ad2/pdf/Local%20Rules%20-%2020180917.pdf">http://nycourts.gov/courts/ad2/pdf/Local%20Rules%20-%2020180917.pdf</a>	9/26/18
670.9(a)	2nd Dep't	Adds requirement that digital copies of records, appendices, and briefs comply with guidelines for e-filed documents  <a href="http://nycourts.gov/courts/ad2/pdf/Local%20Rules%20-%2020180917.pdf">http://nycourts.gov/courts/ad2/pdf/Local%20Rules%20-%2020180917.pdf</a>	11/28/18
Part 850	3rd Dep't	Repeals and replaces Part 800 with new Part 850, Rules of Practice supplementing the new uniform Practice Rules of the Appellate Division (Part 1250)  Link: <a href="http://www.nycourts.gov/ad3/Rules%20of%20Practice%20Part%20850.pdf">http://www.nycourts.gov/ad3/Rules%20of%20Practice%20Part%20850.pdf</a>	9/17/18
Part 1000	4th Dep't	Repeals and replaces Part 1000 with new Rules of Practice supplementing the new uniform Practice Rules of the Appellate Division (Part 1250)  Link: <a href="https://www.nycourts.gov/courts/ad4/Clerk/Part1000-LocalPracticeRules.pdf">https://www.nycourts.gov/courts/ad4/Clerk/Part1000-LocalPracticeRules.pdf</a>	9/17/18
1245.1- 1245.10	1st-4th Dep'ts	Adds Electronic Filing Rules of the Appellate Division, including formatting requirements for documents filed electronically (Attachment A)  Link: <a href="http://nycourts.gov/rules/comments/orders/ADEfilingRules-Approved-Announced-02-06-18.pdf">http://nycourts.gov/rules/comments/orders/ADEfilingRules-Approved-Announced-02-06-18.pdf</a>	1/1/18
1250.1- 1250.17	1st-4th Dep'ts	Adds uniform Practice Rules of the Appellate Division, as revised, applicable to all four departments, including, inter alia, rules regulating: motion practice; methods of perfecting cases; reproduction of records, appendices, and briefs; form and content of records and appendices; exhibits; form and content of briefs; time, number, and manner of filing of records, appendices, and briefs; dismissal of appeals; transferred proceedings; original special proceedings; calendar preference and notice; oral argument; post-argument submissions; decisions, orders, and judgments; costs; remittitur; motions for reargument or leave to appeal to Court of Appeals; court clerk fees  Link to rules as revised: <a href="http://nycourts.gov/rules/comments/orders/Part1250-PracticeRules-Revised-6-29-18A.pdf">http://nycourts.gov/rules/comments/orders/Part1250-PracticeRules-Revised-6-29-18A.pdf</a>	9/17/18

# Proposed Rules of Interest to Civil Litigators

(<http://nycourts.gov/rules/comments/index.shtml>)

Note: The comment periods for all of the following proposed rules have expired.

## **November 14, 2018: Request for Public Comment on a Proposal to Enhance Attorney Certification Concerning Mediation in the Commercial Division**

Description of proposal:

<https://www.nycourts.gov/LegacyPDFS/RULES/comments/PDF/RPC-CommDivRule10%2011-14.pdf>

## **October 15, 2018: Request for Public Comment on the Proposed Adoption of Certain Rules of the Commercial Division in Other Courts of Civil Jurisdiction**

Description of proposal:

<http://ww2.nycourts.gov/sites/default/files/document/files/2018-10/UsingCommercialDivRulesOct15.pdf>

## **Jul 31, 2018: Request for Public Comment on a Proposed Amendment of 22 NYCRR Part 125 (Uniform Rules for the Engagement of Counsel) to address postponement of criminal proceedings involving incarcerated defendants**

Description of proposal:

<https://www.nycourts.gov/LegacyPDFS/RULES/comments/PDF/Part125.pdf>

## **April 10, 2017: Proposal to Amend E-filing Rules to Require an Opportunity to Correct a Failure to Provide Working Copies of Motion Papers**

Description of proposal:

<http://nycourts.gov/rules/comments/PDF/Efile-WorkingCopiesA.pdf>

## **October 12, 2016: Proposed Amendment to Commercial Division Rules—Sealing of Court Records**

Description of proposal:

<http://nycourts.gov/rules/comments/PDF/RequestPublicComment-Commercial%20Division-Sealing.pdf>

## **October 6, 2016: Proposed Amendment to Commercial Division Rules—Hyperlinking**

Description of proposal:

<http://nycourts.gov/rules/comments/PDF/RPC-Commercial-Division-Hyperlinking.pdf>

## **September 16, 2016: Proposed Amendments to the Rules Governing Electronic Filing**

Description of proposal:

<http://nycourts.gov/rules/comments/PDF/Request-Public-Comment-E-Filing.pdf>

Public Comments:

<http://nycourts.gov/rules/comments/PDF/received/ElectronicFilingRules-Comment.pdf>

# The Commercial and Federal Litigation Section Welcomes New Members

*The following members joined between August 1, 2018 and February 28, 2019:*

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## COMMERCIAL AND FEDERAL LITIGATION SECTION NEWSLETTER

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## Upcoming Commercial and Federal Litigation Events

### The Courtroom of the Future

Tuesday, April 30, 2019 | 2:15 p.m. - 4:15 p.m. | Live Program | NY County Supreme Court - Commercial Division | 60 Centre Street | NYC

### Public Utility Law 2019

Thursday, May 2, 2019 | 9:00 a.m. - 4:30 p.m. | Live and Webcast | NYSBA | Albany

### The GDPR at One Year

Thursday, May 23, 2019 | 12:00 p.m. - 2:00 p.m. | Webinar

### Keeping Current with Automobile Litigation in New York

Thursday, May 30, 2019 | 9:00 a.m. - 5:00 p.m. | Live and Webcast | NYSBA | Albany

Friday, May 31, 2019 | 9:00 a.m. - 5:00 p.m. | Live Program | Hyatt Place | Buffalo

Friday, May 31, 2019 | 9:00 a.m. - 5:00 p.m. | Live Program | Melville Marriott | Long Island

Monday, June 3, 2019 | 9:00 a.m. - 5:00 p.m. | Live Program | Convene | NYC

### Bridging the Gap - Skills

Friday, June 7, 2019 | 9:00 a.m. - 5:00 p.m. | Live Program | NYC

Visit [www.nysba.org/CLE](http://www.nysba.org/CLE) for more information on upcoming programs.

## NYLitigator Invites Submissions

The *NYLitigator* welcomes submissions on topics of interest to members of the Section. An article published in the *NYLitigator* is a great way to get your name out in the legal community and advertise your knowledge. Our authors are respected statewide for their legal expertise in such areas as ADR, settlements, depositions, discovery, and corporate liability.

MCLE credit may also be earned for legal-based writing directed to an attorney audience upon application to the CLE Board.

If you have written an article and would like to have it considered for publication in the *NYLitigator*, please send it in electronic document format (pdfs are NOT acceptable), along with biographical information to its Editor:

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Authors' Guidelines are available under the "Article Submission" tab on the Section's Web site: [www.nysba.org/NYLitigator](http://www.nysba.org/NYLitigator).

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