

# Commercial and Federal Litigation Section Newsletter



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

The Section will be  
bestowing its 2017  
**Stanley H. Fuld Award**  
to the  
**United States Court  
of Appeals For  
the Second Circuit**



## Upcoming Commercial and Federal Litigation Section Events and Co-Sponsored Events

**Monday, November 14, 2016**

CLE Program and Awards Ceremony | 5:00 p.m. to 8:00 p.m. | Reception | NYC

The Section will be presenting its **First Annual Shira A. Scheindlin Award for Excellence in the Courtroom** to **Carrie H. Cohen**. The **Shira A. Scheindlin Award** will be bestowed annually upon a female litigator who has distinguished herself in the courtroom in federal or state court in New York and who has shown a commitment to mentoring young attorneys in the legal community. More information at [www.nysba.org/ScheindlinAward](http://www.nysba.org/ScheindlinAward).



**Women's Initiative Trial Practice CLE: A Re-Enactment of a Commercial Trial** | 1.0 MCLE in Skills  
Creating compelling opening and closing statements and conducting tactical examinations of witnesses.

**The Kaye Scholarship** will be awarded to up to five female junior litigators who will be called Kaye Scholars. The goal of the Scholarship is to help increase the number of women taking a leadership role in commercial cases litigated in both the state and federal courts. *Co-Sponsored by the Committee on Women in the Law and the Young Lawyers Section.*

## NYSBA 2017 Annual Meeting Events

**Tuesday, January 24, 2017**

Evening at Thurgood Marshall with the Second Circuit | 5:00 p.m. to 7:30 p.m. | Thurgood Marshall U.S. Courthouse

In advance of our Annual Meeting and the awarding of the **Stanley H. Fuld Award to the United States Court of Appeals for the Second Circuit**, the Section invites its members, members of the Young Lawyers Section and others to meet the Judges of the Second Circuit. There will be tours of selected spaces at the courthouse. Second Circuit Chief Judge Robert A. Katzmann, Southern District Judge P. Kevin Castel, and NYSBA President Claire Gutekunst will speak. Cocktails and hors d'oeuvres will be served.



**Wednesday, January 25, 2017**

Annual Meeting and Gala Luncheon | 9:00 a.m. to 2:00 p.m. | New York Hilton Midtown | NYC

The Section will be bestowing its **Stanley H. Fuld Award to the United States Court of Appeals for the Second Circuit**. *The award recognizes outstanding contributions to the development of commercial law and jurisprudence in New York.*

Our first panel will address Current Ethical Issues in Commercial Litigation, including developments related to the scope of the common-interest doctrine, privilege issues implicated in internal investigations, transfer of the privilege in mergers and acquisitions, the use of law firm general counsel, confidentiality concerns and other ethical developments. Our second panel will address Appellate Attacks on Arbitration Awards, including discussion of the scope of permitted review under the Federal Arbitration Act and New York's Civil Practice Law and Rules, the use of appellate arbitration panels, the impact these standards have on the arbitration process and the timely and efficient resolution of disputes through arbitration.

Meeting 9:00 a.m. to 12:00 p.m. | Reception and Luncheon 12:00 p.m. to 2:00 p.m.

## Commercial Litigation Academy 2017

**Thursday, May 4, through Friday, May 5, 2017**

**Commercial Litigation Academy 2017** (*more details to come soon*)

CLE Program and Webcast | 9:00 a.m. to 5:00 p.m. | NY Society of Security Analysts | 1140 Broadway | NYC | 16.0 MCLE

An extraordinary panel of distinguished and well-known commercial litigators and judges will take you step by step through federal and state commercial litigation practice.

The Commercial Litigation Academy provides attorneys with one full year of required MCLE credits (16.0 credits, 7.0 in professional practice, 6.0 in skills and 3.0 in ethics.) This program qualifies for newly admitted attorneys.

## 2017 Commercial and Federal Litigation Section Spring Meeting

**Friday, May 19, through Sunday, May 21, 2017**

**2017 Commercial and Federal Litigation Section Spring Meeting** (*more details to come soon*)

The Gideon Putnam Hotel | 24 Gideon Putnam Road | Saratoga Springs

## Upcoming Commercial and Federal Litigation Section Events and Co-Sponsored Events

Thursday, January 12, 2017

### Amendments to the Statewide Commercial Division Rules

CLE Live Webcast | 12:30 p.m. to 1:35 p.m. | Lupkin & Associates | 26 Broadway | NYC | 1.0 MCLE

\* \* \*

Thursday, February 16, 2017

### Deferred Action for Childhood Arrivals (DACA) Immigration Webcast

CLE Live Webcast | 12:15 p.m. to 2:30 p.m. | New York City | 2.0 MCLE

\* \* \*

Monday, March 13, 2017

### Joint Commercial and Federal Litigation Section and Dispute Resolution Section program held at Fordham Law School

The focus will be on the respective efforts of the litigation and arbitration worlds to provide quicker and less expensive trials and hearings and to handle the difficult issues presented by electronically stored information.

Organized by the Commercial and Federal Litigation Section's Committee on Arbitration and ADR, its International Committee, the Arbitration Committee of the Dispute Resolution Section, and co-sponsored by the American Arbitration Association. *More details will be available soon, please check [www.nysba.org/ComFed](http://www.nysba.org/ComFed).*

Thursday, March 30, 2017

\* \* \*

### Legal Ethics in the Digital Age: Practical Strategies for Using Technology Ethically in Your Practice

CLE Program and Live Webcast | 9:00 a.m. to 1:00 p.m. | Executive Conference Center | 1601 Broadway | NYC

Renowned speakers on ethics, social media and electronic discovery. Learn the ins and outs of protecting privilege in electronic communications. Speakers will also cover managing records in the cloud and organizing client files. A panel discussion on the do's and don'ts of attorney social media use and advice to clients. 4.0 MCLE Credits in Ethics.

*Co-Sponsored by the Commercial and Federal Litigation Section, the Committee on Continuing Legal Education and the Law Practice Management Committee.*

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## Upcoming Commercial and Federal Litigation Section Executive Committee Meetings



**November 16, 2016:**

Kramer Levin Naftalis & Frankel LLP | New York City

With Commercial Division, Kings County Supreme Court Justice Sylvia G. Ash



**December 15, 2016:**

Jury Assembly Room, James M. Hanley Federal Building | Syracuse  
& Kramer Levin Naftalis & Frankel LLP, NYC (by video)

With United States District Judge Brenda K. Sannes



**January 10, 2017:**

Thurgood Marshall U.S. Courthouse | Judges Conference Center | Room 307 | New York City  
& Kramer Levin Naftalis & Frankel LLP, NYC (by video)

With United States Court of Appeals for the Second Circuit Executive Karen Greve Milton



**February 15, 2017:**

Federal Building and United States Courthouse | White Plains  
& Kramer Levin Naftalis & Frankel LLP, NYC (by video)

With United States District Judge Cathy Seibel



**March 7, 2017:**

Kramer Levin Naftalis & Frankel LLP | New York City

With Kings County Administrative Judge for Civil Matters,  
and Supreme Court Justice Lawrence Knipel

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# Message from the Chair



Mark A. Berman

The vitality of the Section depends on making our programming relevant to the Bar in order to attract new members. To that end, this year we held two practical “hands on” CLE programs entitled “Legal Ethics in the Digital Age,” attended by almost 150 people in person and online, and “Practical Tips to Achieve Success in Mediating Employment Disputes,” which took place at JAMS for national

“mediation week.” In addition, scheduled for the spring is a unique program on arbitration and e-discovery which is a joint program organized by two NYSBA sections: our own Arbitration and ADR Committee along with the Dispute Resolution Section. We also have planned lunch webinars on immigration and the new Commercial Division rules. Each of the above programs is geared in significant part toward the Section’s younger lawyers.

The Section, this year in particular, is devoting itself to further extending its reach to the younger generation of lawyers and to other groups that are underrepresented in the Section, which include women, diverse attorneys, and lawyers who work for the judiciary.

## Younger Lawyer Outreach

As part of the Section’s outreach, we will invite younger members of the Bar to join us for cocktails and hors d’oeuvres on the evening prior to the Section’s Annual Meeting in January at the Thurgood Marshall U.S. Courthouse, which will provide a rare opportunity to mingle with the judges of the Second Circuit. Second Circuit Chief Circuit Judge Robert A. Katzmann and Southern District Judge P. Kevin Castel will speak to our younger lawyers, and there will be tours of the courthouse. We will be working with the Young Lawyers Section to get the word out about this one-of-a-kind program. Outreach to our younger lawyers will also include the Section’s biannual Commercial Litigation Academy—specifically designed for junior attorneys—which will take place in May 2017. We also are encouraging Section committee chairs to create webinars where panelists are only associates, just as the Social Media Committee did with its “Twibel” CLE, in order to increase younger lawyers’ participation in the Section.

Communication is the key to bringing younger members into the Section and getting them involved, and often the best way to communicate with them is electronically and over social media. Accordingly, we have set goals this year of increasing the number of Section Twitter messages and to improve the quality of our tweets in order to provide value added to our younger members and to encourage them to participate with us digitally. We also intend to update the Section’s LinkedIn page to further encourage the younger generation of lawyers to engage with our Section.

The Section would like to hold events in the spring that will aim to encourage law clerks and court attorneys working for our Federal and State Judges to join and actively participate in the Section.

Of course, our Spring Meeting in Saratoga Springs will again have a “Kids Club” for our youngest “members-to-be.” Having a “Kids Club” program permits younger Section members with families to attend our Spring Meetings without having to worry about child-care. Last year, we had over fifteen different children participate in our “Kids Club.”

## Students

When the Section holds executive committee meetings outside of Manhattan, the officers of the Section will endeavor to meet with the dean of the local area law school to discuss the Section’s mission and to encourage student membership. We also will then try to meet directly with the law school student body to discuss our Section and to show the video the Section’s officers put together highlighting the benefits of Section membership. Already through September, the Section has actively participated in the State Bar’s “Pathway to the Profession” program by having a representative at the “Dinner with a Lawyer Program” for Pace Law School students and at the “Meet the Sections” event at Albany Law School.

## The Women’s Initiative

Of course, we are confident that our November 14th program where the Section will award the Shira A. Scheindlin Award for Excellence in the Courtroom to Carrie H. Cohen, as well as the CLE that will be presented by the women former chairs of the Section, and the awarding of the Kaye Scholarships to junior female attorneys, will encourage younger women to join our Section. The Section also worked with the New York Women’s Bar Association to promote our program.

## Diversity Outreach

In addition, we have reached out to a variety of the diversity bars in New York to encourage their members to also join with the Section, and members of the Asian American Bar Association have attended our Executive Meetings. The Section recognizes the value of not only an active, but also of a diverse, community of state and federal litigation attorneys. In the spirit of the Section’s “Smooth Moves” program, and its gender initiatives, the Section is in the process of reaching out to minority bar associations and the diversity committees of regional bar associations across northern, central, and western New York. The plan is to host a central conference to discuss the issues of diversity and inclusion that are unique to the practice of law in these upstate communities. The goal is to have the conference take place by mid-2017.

Mark A. Berman

# Female Former Chairs of the Section Are Studying Women’s Role in the Courtroom and in ADR

By Shira A. Scheindlin

Much has been written and discussed in the last several years as to whether women are appearing in court with the expected frequency given their numbers in the profession. The same question has arisen with respect to the role of women in ADR. The women former Chairs of the Commercial and Federal Litigation Section agreed that the Section should take an active part in this discussion. As a result, an *ad hoc* Committee—made up of all women former Chairs—was formed. The Committee, together with the Section leadership, has undertaken a project seeking to diagnose whether there is a problem—and, if there is, then work toward a solution.

I begin with a description of our project. We have prepared a questionnaire that asks the New York federal courts and fourteen New York state courts to track all court appearances during the fall of 2016—specifically from the day after Labor Day through Christmas Eve. The questionnaire asks the judge to indicate on a form whether the person who spoke in court was a woman and, if so, in what type of case she appeared, identified by subject matter and whether the case involved a government party or a private party. The form also asks what type of proceeding was held—for example, a trial, a motion, an appeal, or an evidentiary hearing. The form tracks appearances primarily in civil cases, although it also tracks federal criminal cases. When the study period closes, we will aggregate the data we receive and prepare a report informing the legal community as to the presence or absence of women in the courtroom. Should our findings show a distinct and worrisome disparity between males and females, the Committee would propose remedies to eliminate that disparity.

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*According to the author of a 2014 article on gender diversity in international arbitration, only 10% to 15% of appointments in international arbitration have gone to women. When the matter involved more than \$1 billion, the percentage shrank to 4%.*

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We have also prepared a questionnaire that will ask a number of ADR organizations to distribute a form to their neutrals that will track how many mediations or arbitrations are handled by women, how the neutral or neutrals were selected, and in what fields of law they are appointed. Once again, we hope to determine whether

women are equally represented in the ADR world or whether they are underrepresented. Copies of both forms follow this article.

And now for the background of the questions we are seeking to answer. Approximately one year ago, a research report, titled “First Chairs at Trial: More Women Need Seats at the Table,” was prepared by two women attorneys with support from the ABA’s Commission on Women in the Profession and the American Bar Foundation. This report was based on a “docket study” based on a sample of all cases filed in 2013 in the Northern District of Illinois. The data reported was drawn from a review of the Civil Cover Sheets filed in those cases. The authors studied 558 civil cases, and 50 criminal cases. As a baseline, the study noted that, as of the date of the study, women made up 17% of all equity partners in big firms and 22% of general counsel in Fortune 500 companies. The results of the study showed that women were underrepresented in the courtroom. Here are just a few of the findings:

- Of all appearances in civil cases, 68% of the lawyers who appeared were men.
- Of those appearing as *lead counsel* 76% were men, meaning that men are three times more likely to appear as lead counsel in a civil case than women.
- The same holds true for those designated as *trial counsel*, which showed that 73% were men.
- The gender gap was greatest in certain areas of law, including contracts, torts, labor, and intellectual property. The gender gap was less in civil rights, social security, and real property cases.
- When the government was a party (federal, state, or local), women are more likely to appear, ranging from 31% when the federal government was a party to 40% when the state or a municipality was a party.
- By contrast, when individual litigants or businesses are the party, almost 80% of lead counsel were men.
- Of those women who are lead counsel, 60% represent defendants, but only 40% represent plaintiffs.
- The statistics for class actions were worse, where men made up 87% of the lead counsel.

In a news article written in August of 2015, the Chief Judge of the Northern District of Illinois confirmed these findings anecdotally. He spoke at the ABA annual meeting and was quoted as stating that, in his twenty-one years on the bench, he has seen only fourteen or fifteen cases where women served as lead counsel. As a district judge in the Southern District of New York for that same period of time, I had a remarkably similar experience.

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*The International Institute for Conflict Prevention & Resolution (CPR) reflected that women were appointed in only 10% of cases although they made up 18% of the panel.*

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A similar study has been conducted with respect to ADR providers. According to the author of a 2014 article on gender diversity in international arbitration, only 10% to 15% of appointments in international arbitration have gone to women. When the matter involved more than \$1 billion, the percentage shrank to 4%. Recent data show statistics for each international ADR center. For example, in 2015, in arbitrations under the auspices of the Interna-

tional Centre for the Settlement of Investment Disputes, women were appointed in only 12% of the cases. For the fiscal year 2015, arbitrations conducted by The International Institute for Conflict Prevention & Resolution (CPR) reflected that women were appointed in only 10% of cases although they made up 18% of the panel. Other ADR organizations had similar statistics.

None of these studies was based on observations, but rather on dockets or records maintained by ADR providers. Our study, by contrast, will be based on direct observation of proceedings in court or in ADR proceedings. We will learn whether women are in the courtroom, but not assigned a speaking role, or whether they are absent. We will learn whether they appear with greater frequency in certain types of cases and in what type of proceedings or in certain courts (federal or state; trial or appellate), and whether their appearances vary by the location of the court (upstate/downstate; urban/rural).

In sum, the Committee is excited about this project and very much wants all Section members to be aware of it and its goals.

## Is YOUR Firm Participating?

The Foundation is announcing the 2016 Firm Challenge and invites firms of all sizes across New York to participate!

Stand out and be recognized as a firm that cares about making a difference as a philanthropic partner of The Foundation. Your support will help The Foundation meet the goal of doubling the much needed grant program.

The New York Bar Foundation wishes to thank the following firms that have committed to the Challenge and making a difference so far!

The deadline for the Firm Challenge is December 1! Don't be left out—visit [www.tnybf.org/firmchallenge](http://www.tnybf.org/firmchallenge) and get involved!



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Around the state.

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## JUDICIAL FORM FOR TRACKING COURT APPEARANCES

Identify your court (e.g. SDNY, 1st Dep't; 2d Cir; Commercial Div. N.Y. Co) \_\_\_\_\_

### I. Type of Case

A. Trial Court Criminal \_\_\_\_ (for federal court)  
Civil \_\_\_\_ (please specify subject matter e.g. contract, negligence,  
employment, securities)

B. Appeal Criminal \_\_\_\_ (for federal court) Civil \_\_\_\_

### II. Type of Proceeding

A. Arraignment \_\_\_\_ B. Bail Hearing \_\_\_\_ C. Sentencing \_\_\_\_ (for federal court)

D. Initial Conference \_\_\_\_ E. Status/Compliance Conference \_\_\_\_

F. Oral Argument on Motion \_\_\_\_ (please specify type of motion e.g. discovery,  
motion to dismiss, summary judgment, TRO/preliminary injunction, class  
certification, in limine)

G. Evidentiary Hearing \_\_\_\_ H. Trial \_\_\_\_ I. Post-Trial \_\_\_\_ J. Appellate Argument \_\_\_\_

### III. Number of Parties (total for all sides)

A. Two \_\_\_\_ B. Two to Five \_\_\_\_ C. More than Five \_\_\_\_

### IV. Lead Counsel for Plaintiff(s) (the lawyer who primarily spoke in court)

Plaintiff No. 1	Plaintiff No. 2	Plaintiff No. 3
Male ____	Male ____	Male ____
Female ____	Female ____	Female ____
Public ____	Public ____	Public ____
Private ____	Private ____	Private ____

### V. Lead Counsel for Defendant(s) (the lawyer who primarily spoke in court)

Defendant No. 1	Defendant No. 2	Defendant No. 3
Male ____	Male ____	Male ____
Female ____	Female ____	Female ____
Public ____	Public ____	Public ____
Private ____	Private ____	Private ____

### VI. Additional Counsel for Plaintiff(s) (other lawyers at counsel table who did not speak)

Plaintiff No. 1	Plaintiff No. 2	Plaintiff No. 3
Male ____	Male ____	Male ____
Female ____	Female ____	Female ____
Public ____	Public ____	Public ____
Private ____	Private ____	Private ____

### VII. Additional Counsel for Defendant(s) (other lawyers at counsel table who did not speak)

Defendant No. 1	Defendant No. 2	Defendant No. 3
Male ____	Male ____	Male ____
Female ____	Female ____	Female ____
Public ____	Public ____	Public ____
Private ____	Private ____	Private ____



**ADR FORM FOR TRACKING APPEARANCES IN ADR PROCEEDINGS**

- I. Is this an arbitration or mediation? \_\_\_\_\_ If it is a mediation, is it court ordered? \_\_\_\_
- II. Type of Case (please specify) (e.g., commercial, personal injury, real estate, family law)  
\_\_\_\_\_
- III. If there is one neutral, is that person a female? \_\_\_\_\_
- IV. If there is a panel, (a) how many are party arbitrators and, if so, how many are females? \_\_\_\_  
(b) how many are neutrals and, if so, how many are females? \_\_\_\_  
(c) is the Chair a female? \_\_\_\_\_
- V. Assuming the panel members are neutrals, how was the neutral(s) chosen?
  - 1. From a list provided by a neutral organization? \_\_\_\_\_
  - 2. By the court? \_\_\_\_\_
  - 3. Agreed upon by parties? \_\_\_\_\_
  - 4. Two arbitrators selected the third? \_\_\_\_\_
- VI. Number of Parties (total for all sides) \_\_\_\_\_
- VII. Amount at issue (apx.) on affirmative case \$ \_\_\_\_\_ Counterclaims, if any \$ \_\_\_\_\_
- VIII. Lead Counsel for Plaintiff(s):  
(lawyer who primarily spoke) (other lawyers who did not speak, including local counsel)  
Male \_\_\_\_ Male \_\_\_\_  
Female \_\_\_\_ Female \_\_\_\_  
Government \_\_\_\_ Government \_\_\_\_  
Non-Government \_\_\_\_ Non-Government \_\_\_\_
- IX. Lead Counsel for Defendant(s):  
(lawyer who primarily spoke) (other lawyers who did not speak, including local counsel)  
Male \_\_\_\_ Male \_\_\_\_  
Female \_\_\_\_ Female \_\_\_\_  
Government \_\_\_\_ Government \_\_\_\_  
Non-Government \_\_\_\_ Non-Government \_\_\_\_
- X. Was the Plaintiff a female or, if a corporation, was the GC/CEO/CFO a female? \_\_\_\_\_
- XI. Was the Defendant a female or, if a corporation, was the GC/CEO/CFO female? \_\_\_\_\_
- XII. Was this your first or a repeat ADR matter for these parties or their counsel? If repeat, please describe the prior proceeding(s) in which you served and at whose behest and whether the proceeding involved the same or a different area of the law.  
\_\_\_\_\_

# Study to Track Female Lead Counsel in NY Courts, Arbitration

By Christine Simmons

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While many lawyers say they still see fewer women lead counsel in New York courtrooms than men, there is little to no data available to show the extent of any disparity.

Now a group of lawyers from the New York State Bar Association's Commercial and Federal Litigation Section is initiating a large-scale survey to track the frequency of female lead counsel in New York state and federal courts, and in mediation and arbitration.

Organizers said such a survey, tracking demographics of counsel with speaking roles in New York courts and in ADR, appears to be the first of its kind.

"Once you have a diagnosis, you can get to a solution," said Shira Scheindlin, a former federal judge and one of the organizers of the survey, which is being conducted now through December this year.

At the end of the study, the section's members will issue a report on the results, propose solutions and have discussions with the courts, law firms and in-house legal departments, said Mark Berman, chair of the section and a partner at Ganfer & Shore.

In the study, courts and ADR providers are being asked to fill out a one-page questionnaire at each appearance. The court questionnaire asks for the gender of lead counsel for the plaintiff and defendant, whether at an arraignment, status conference, oral argument or trial. Meanwhile, a survey for mediations and arbitrations seeks to track the gender of neutrals.

The surveys do not request names of attorneys or case citations. Data will be aggregated to arrive at general gender trends of lead counsel in the courts and in ADR, said Scheindlin, now of counsel at Stroock & Stroock & Lavan.

Many state and federal courts in New York have been asked to participate. In particular, organizers have asked judges from the state's Supreme Court Commercial Division, the four departments of the Appellate Division and the state Court of Appeals to participate.

They have also asked all four federal district courts and the U.S. Court of Appeals for the Second Circuit to take part.

But how many courts and judges will participate is unclear at this early stage.

Some judges in the Southern District are participating, including Chief Judge Colleen McMahon. However, Eastern District federal judges are not.

"We decided as a whole that we should only collect data" for programs required or initiated by the judiciary, said Eastern District Chief Judge Dora Irizarry in an interview.

When asked why the court decided not to collect data for private entities, she said "this was a consensus" by the Eastern District court.

The Second Circuit has not yet made a decision and the matter is under review, said the clerk of the court, Catherine O'Hagan Wolfe, on Wednesday.

Meanwhile, the state's Appellate Division, First Department, is participating, said court of the clerk Susanna Molina Rojas.

She said the court staff will track the gender of attorneys arguing cases and writing briefs in civil cases for the next three months.

At the Commercial Division of Manhattan Supreme Court, Justice Charles Ramos said, after learning last week about the survey, he intends to take part, too.

Ramos, the most senior judge in the Commercial Division in Manhattan, said tracking such information "is a great idea."

Ramos said when he began hearing cases on the Commercial Division about 20 years ago, "it was almost exclusively a male court."

"In the past, there's been a lot of second seating" of women or minority attorneys, he said, adding that "seems like window dressing."

But in the last three years, he said, he has seen a substantial pickup in the number of lead women counsel. "It's nice to see a change," Ramos said.

The survey has generally been well received, organizers said. "The section anticipates great judicial response," including the participation of more than a hundred state and federal judges, Berman said.

Individual judges in courts are deciding whether to opt in or out, while some courts that have an especially high volume of cases are not tracking lead counsel in criminal cases, Scheindlin said.

Scheindlin said judges are encouraged to track whenever it is possible and when time allows, on a voluntary basis.

"Each court has made its own decision on what it could and couldn't do," Scheindlin said. "Whatever data we get is good. The more data, the better."

Some court participants were initially concerned that the questionnaire would take too long to complete, she said, but added those concerns were eased after seeing that the questionnaire takes two minutes to fill out per appearance, whether done by a judge, clerk or other court staff.

The ADR organizations which have agreed to take part in the survey include the American Arbitration Association and its international arm, the International Centre for Dispute Resolution, as well as National Arbitration and Mediation, said Bernice Leber, another organizer and a litigation partner at Arent Fox. JAMS will also participate, said Scheindlin, a JAMS neutral herself.

The ADR survey asked organizations to identify the gender of neutrals, general counsel and CEOs of companies in arbitration or mediation. But Leber said the study is generally seeking the gender of neutrals on a panel. How much other data will be gathered is yet to be determined. "We're not sure what will come in," Leber said.

In her own practice, she said she encounters a fair number of women neutrals, but "the data will reveal to us exactly how far we've come."

The organizers of the study, from the state bar's Commercial and Federal Litigation Section, include Berman; Scheindlin; Leber; Carrie Cohen, partner at Morrison & Foerster; Sharon Porcellio, member at Bond, Schoeneck & King; Tracee Davis, of counsel at Zeichner Ellman & Krause; Lauren Wachtler, partner at Mitchell Silberberg & Knupp; Lesley Rosenthal, general counsel of the Lincoln Center for the Performing Arts; and Carla Miller, in-house counsel at Universal Music Group.

When organizing the project, the group reviewed a study by the American Bar Foundation and the ABA Commission on Women in the Profession that looked at 600 federal court cases in Illinois in 2013. That study found that, out of 558 civil cases, three-quarters of the lead counsel were men, and out of 50 criminal cases, two-thirds were men.

Scheindlin and other organizers said their own experiences in the courtroom suggest lopsided figures in New York too. "I often saw 15 men and no women in big cases. I was very surprised by that," Scheindlin said, referring to her time on the Southern District bench.

However, she said she saw much more diversity among counsel for government legal offices, such as the U.S. Attorney's Office or the Corporation Counsel.

Cohen, a partner at MoFo who recently served as a federal prosecutor in the Southern District, observed that lead defense counsel in major white-collar cases that have received wide attention have been predominately men.

"Why not at least gather the data we can gather and see if we are right?" she said.

**Christine Simmons can be reached via email or on Twitter @chlsimmons.**

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# Exploring Ethics in the Electronic Age: The NYSBA Considers What It Means to Practice Law in the 21st Century

By Ronald J. Hedges

What does it mean for an attorney to be competent to deal with electronically stored information (ESI) in litigation? How can an attorney protect the confidentiality of electronic communications? What restrictions exist on the use of social media by attorneys? How might an attorney use “the cloud” to store files? These questions were explored on September 29, 2016, in *Legal Ethics in the Digital Age: Practical Strategies for Using Technology Ethically in Your Practice*. Co-sponsored by the Commercial and Federal Litigation Section, the Committee on Continuing Legal Education, and the Law Practice Management Committee of the NYSBA and chaired by Maura R. Grossman, principal of Maura R. Grossman Law, and Ronald J. Hedges, senior counsel with Dentons, the program offered practical tips for a successful practice in the 21st Century.

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*Attendees were reminded of their obligations under New York State ethical rules concerning receipt of inadvertently transmitted ESI that was privileged, and there then was discussion of steps that could be taken to avoid inadvertent disclosure of privileged information.*

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First, the program explained the meaning of competence. This began with how to prepare for litigation and the premise that ESI is “everywhere” and used by both individual and corporate clients constantly and in a variety of forms. That premise led to a discussion of the skills outlined by California State Bar Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2015-193 (June 30, 2015), including, among other things, how to assess ESI-related needs and issues, implement the preservation of ESI, and understand a client’s ESI systems.

After consideration of competence, the program turned to protection of client confidences and of privilege and work product. Attendees were reminded of their obligations under New York State ethical rules concerning receipt of inadvertently transmitted ESI that was privileged, and there then was discussion of steps that could be taken to avoid inadvertent disclosure of privileged information. Discussion turned to what attorneys might do under the Federal Rule of Evidence 502 or New York State law to protect against waiver of the attorney-client privilege or work product.

The program moved to the use of social media by attorneys for, among other things, investigation, advertising, and juror research. One theme that emerged was the importance of understanding the limitations of social media platforms and, specifically, knowledge of how to use a particular platform’s settings to enable attorney use of the platform in conformity with ethical obligations. There was also discussion of advice that should be given a client in litigation with regard to privacy settings and what disclaimers an attorney should include when using social media.

Lastly, management of electronic files became the topic for consideration. This led to discussion of whether and when to store files beyond the four corners of an attorney’s office and with a service provider in the cloud. Factors leading attorneys to cloud storage include cost savings and reliability. However, caution was expressed about the need for attorneys to “vet” a provider of cloud storage and understand, among other things, the need for quick as opposed to long-term access to stored files. There was also discussion of providing notice to clients when an attorney intended to store client files in the cloud.

The program was well-attended both in person and remotely. There was substantial participation by attendees both in terms of questions and comments. Hopefully, attendees left with an appreciation of how to use electronic communications in practical and ethical ways.



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# DIVERSITY FELLOWSHIP

## Commercial and Federal Litigation Section's Diversity Fellowship

By Carla Miller and Mark A. Berman

Through annual gifts made by the Commercial & Federal Litigation Section of the New York State Bar Association, The New York Bar Foundation has awarded for the last decade the Section's Diversity Fellowship to a minority first-year student who is enrolled in a New York law school. The Diversity Fellow is assigned to work for the summer in the chambers of a Commercial Division justice. The goal of the Fellowship is to increase the representation of lawyers and students from a diverse range of backgrounds in commercial litigation, and to provide students from a diverse range of backgrounds with an opportunity to experience litigation practice. The ultimate goal of the Fellowship is to forge relationships and create a pipeline which hopefully will foster greater diversity among commercial and federal litigators throughout the State of New York.

This past summer, Simonne Isaac from the Maurice A. Deane School of Law at Hofstra University, the recipient of the Section's 2016 Fellowship, spent the summer in the chambers of New York County Commercial Division Justice Anil C. Singh. The Section is proud to publish in our Section's *Newsletter* for the first time the Diversity awardee's thoughts on her experience.

Further, as part of the Section's support of the Fellowship, the Section will be inviting the Diversity

awardee to attend the Section's Executive Meetings for the year after the awardee's Fellowship in order to experience first-hand how the Section meets its mission of improving the quality of representation of clients, providing a forum for the improvement of law and procedure in the areas of commercial and federal litigation, and enhancing the administration of justice.



Simonne Isaac with Ryan Larson from the Admissions Office of the Maurice A. Deane School of Law at Hofstra University

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### **Don't miss out on the joint March 13th, 2017, Commercial and Federal Litigation and Dispute Resolution Sections' program held at Fordham Law School!**

The focus will be on the respective efforts of the litigation and arbitration worlds to provide quicker and less expensive trials and hearings and to handle the difficult issues presented by ESI.

*Organized by the Commercial and Federal Litigation Section's Committee on Arbitration and ADR, its International Committee, the Arbitration Committee of the Dispute Resolution Section, and co-sponsored by the American Arbitration Association.*

**More details will be available soon, please check [www.nysba.org/ComFed](http://www.nysba.org/ComFed)**

# 2016 Commercial and Federal Litigation Diversity Fellowship: An Invaluable Summer Experience

By Simonne Isaac

At law school, we are taught the relevant foundational skills necessary for lawyering, such as researching, reading and analyzing cases, synthesizing rules, clear and concise writing, the importance of firmly standing by the position you take as long as there is sound evidence corroborating your position, to name a few. My 2016 summer fellowship in the Commercial and Federal Litigation Department of the New York State Supreme Court, Part 45, with the Honorable Judge Anil C. Singh, supplemented the theoretical aspect of lawyering taught at law school. In addition to reinforcing and strengthening the aforementioned skills, I learned about the nuances in advocacy, how a judge sees his or her role in the legal system, and his or her reasoning behind his judgments. Moreover, despite making factual and legal determinations, it is important to also trust your instinct and to be empathetic and respectful of both clients and co-workers alike, despite status.

During my fellowship at Part 45, I conducted intensive research and writing on various causes of action and motions, including, but not limited to, breach of contract, breach of implied covenant of good faith and fair dealing, *quantum meruit*, unjust enrichment, piercing the corporate veil, the law of the case doctrine, recusal, motion to vacate a lower court's decision that has been affirmed by the Appellate Division, sanctions for frivolous filings, dismissals under CPLR 3211(a)(1) and CPLR 3211(a)(7), civil conspiracy, concealment of documents, false imprisonment, Notice to Admit pursuant to CPLR 3123(a), and a motion to amend a complaint.

The human instinct is to pre-judge a situation. When I first read one party's complaint, I immediately formed an opinion but after reading the opponent's brief and researching the relevant law, I was reminded not to make any rash decisions without examining both sides and the law. In practice, it is truly evident that there is no simple, clear-cut answer.

Legal professionals are advocates for their clients. An attorney's credibility and the art of writing well are two of the tools used to be effective advocates. Attorneys must master the art of persuasion combined with applying the relevant rules as they apply to the specific facts in your case. Although, as an advocate, you want to emphasize the facts that are favorable to your client, you should always be very careful to accurately present the facts. One's credibility is of utmost importance, as it can affect the outcome of the case. Paying attention to detail and using the best words that accurately say what you mean is also crucial. When writing, write for your audience.

We have been given those guidelines at law school, but the actual practice of using and developing those skills is invaluable. In practice, we are reminded daily how our actions and preparations can have serious rami-

fications on the lives of those we serve. During the fellowship, I fully understood the weight of the responsibility we are entrusted with. This realization can be unsettling, but it is also a humbling one, as our clients depend on us and trust us. We cannot betray that trust. By effective advocacy, we have the opportunity to right many wrongs.

As a result of this fellowship, I believe that I am a better writer and person, as I remember that my client is depending on me to competently represent him or her. Our work product will reflect the pride in our work and the value we place on our clients. We should also never think that we are above learning from someone else, and we must be empathetic toward all, clients and colleagues as well, and try to treat everyone with dignity.

Before this fellowship, I was terrified by the idea of clerking for a judge and timid about the idea of litigation. Now, I am adding other areas of interest to my already varied interests in the field of law, law clerk for a judge and litigation. Although members of the judiciary make decisions grounded in the law, our individual experiences help to shape who we are, the values we have, and the way we think. Oftentimes, those who do not have the means do not get adequate representation. What better way to be an advocate for the marginalized than to clerk for a judge? My sense of fairness and empathy, combined with the legal knowledge and writing skills I acquire during the course of my career, will help me to be an advocate for others who do not have equity in legal representation.

I have returned to Maurice A. Deane School of Law at Hofstra University with an awakening as to the greater sense of responsibility entrusted to me, a renewed drive to strive for excellence as my time here lays the foundation for my future. This fellowship experience was an invaluable one as it has reinforced a strong work ethic and developed my research, writing, and critical thinking skills. I have also learned to be creative within the parameters of the law. I am more determined to be a better colleague and advocate and realize the value of respectfully standing by your convictions and not being afraid to speak up, even if what you have to say might go against the majority. No classroom experience can replace the valuable lessons gained from the actual practice of law. Those experiences are varied and include, but are not limited to, human interaction; legal creativity; research; succinct yet persuasive writing, both overtly and subtly; the intricacies of the court system; and other areas where a law degree is beneficial outside the practice of law.

Find details on programs, meetings and much more  
on our Website at [www.nysba.org/ComFed](http://www.nysba.org/ComFed)

# White Collar Criminal Litigation Update

By Evan T. Barr

The Committee on White Collar Criminal Litigation, created in 2007 by former Section Chair Lesley Friedman Rosenthal, seeks (1) to educate its members about important developments in federal and state criminal law and related regulatory matters; (2) to provide a forum for members to share questions and experiences; and (3) to encourage discussion between the white collar bar and regulators concerning a range of issues, from trends in enforcement to the impact of new judicial decisions or congressional activity. From time to time, the Committee studies and makes recommendations on legal, ethical, and policy issues of importance to the white collar bar in New York State. Our membership has included defense lawyers, federal prosecutors and government lawyers, and in-house counsel.

Monthly meetings routinely feature a prominent guest speaker. Speakers typically address their experience in handling a recent trial or other large matter. Other programs may focus on particularly timely issues of general interest to the white collar bar. This past year we have heard from the following speakers:

- Greg Morvillo, partner at Morvillo LLP, and Stephen Fishbein and John Nathanson, partners at Shearman & Sterling, discussing their experience both at trial and on appeal in the Newman/Chiasson insider trading litigation;
- Joel Sickler, head of the Justice Advocacy Group, one of the nation's leading experts in helping clients who have been committed to the custody of the U.S. Bureau of Prisons;
- Elizabeth Prewitt, a partner at Hughes Hubbard and formerly Assistant Chief in the New York Field office of the DOJ Antitrust Division, discussing trends and developments in the field of criminal antitrust enforcement;
- Abbe Lowell, a partner at Chadbourne & Parke and one of the nation's leading white collar defense attorneys, discussing his high profile representation of Senator Robert Menendez of New Jersey in connection with federal corruption charges;

- Michael Schachter, partner at Willkie Farr & Gallagher, on his representation at trial in the SDNY of former Rabobank trader Anthony Allen in connection with alleged manipulation of LIBOR; and
- Steven Molo, a partner at MoloLamken LLP, discussing his recent trial defense of Sheldon Silver, the former Speaker of the New York State Assembly in the SDNY.

We have also had well-attended presentations in recent years from (among others): Ben Rosenberg, General Counsel to the Manhattan District Attorney; Kevin Puvalowski on his trial defense of Abacus Bank in New York Supreme Court; Neil Barofsky, author and former TARP Special Inspector General; and well-known defense attorneys Elkan Abramowitz and Barry Berke.

Periodically the Committee has sponsored or cosponsored various CLE panels, which have addressed the following topics (1) Emerging Issues in Cybercrime; (2) Internet Gambling Enforcement; (3) Financial Penalties and Victims' Rights in Criminal Cases; and (4) Challenges of Multi-jurisdictional Investigations. We also issued an enlightening statistical study and report, which was published by the NYSBA, regarding the exercise of prosecutorial discretion in insider trading cases by New York federal prosecutors.

In terms of recent events, at our meeting held on September 21, 2016, our guest speaker, Steven Peikin, a partner at Sullivan & Cromwell, discussed his recent trial defense of former high-frequency trader Michael Coscia in connection with commodities fraud and spoofing charges. In October, we are planning to hear from Joseph Demarco on recent developments in cybercrime and high technology cases.

**The Committee on White Collar Criminal Litigation is co-chaired by Evan T. Barr, Fried Frank Harris Shriver & Jacobson, [evan.barr@friedfrank.com](mailto:evan.barr@friedfrank.com), and Joanna C. Hendon, Spears & Imes LLP, New York City, [jhendon@spearsimes.com](mailto:jhendon@spearsimes.com). We welcome new members and law firms or other sponsors interested in hosting our monthly meetings.**

## Save the Date!

Wednesday, January 25, 2017

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# Ethics and Professionalism Committee

By Anne B. Sekel

The Committee on Ethics and Professionalism strives to provide guidance on ethical and professionalism issues that attorneys face in the field of commercial litigation. In furtherance of this aim, each year the Committee reports on current ethical issues facing commercial litigators, comments on and recommends rule changes where appropriate to improve the ethical and professional practice of commercial litigation, and provides opportunities for its members to expand their expertise in ethics and professionalism and to network with other attorneys who are interested in practicing commercial litigation in accordance with the highest ethical standards. The Committee is co-chaired by Anthony Harwood of Harwood Law PLLC and Anne Sekel of Foley & Lardner LLP.

The Committee maintains an active “docket” of diverse ethical and professionalism issues that it addresses and discusses informally during monthly meetings. Among the topics considered by the Committee over the past year, were the proposed new rule of the New York Court of Appeals (N.Y. Comp. Codes R. & Regs. Tit. 22, § 523 (N.Y.C.R.R.)) authorizing the temporary practice of law in New York by out of state and foreign (non-U.S.) attorneys; New York City Bar Association, Formal Opinion 2015:7: *The Application of Attorney Advertising Rules to LinkedIn*; the practice of surcharging for outsourced attorney and paralegal work; and the American Bar Association’s decision not to pursue its consideration of alternative business structures for law firms (such as non-lawyer firm ownership).

These monthly exchanges of ideas often serve as the incubator for topics that the Committee takes up in further detail in written articles and reports. For example, the Committee recently prepared for publication in the *NY Litigator* an in-depth article on the ethical obligations imposed by Federal Rule of Evidence 502 (Attorney-Client Privilege and Work Product; Limitations on Waiver). During the past year, the Committee also drafted a report for the Commercial and Federal Litigation Section entitled *Threatening Disciplinary Action Against Attorneys in New York*. Noting that there exists a conflict in the ethics opinions and case law addressing the issue of threatening disciplinary action in New York, this Report surveys the authorities on the issue and provides guidance to attorneys who confront violations by opposing counsel in cases of the Rules of Professional Conduct, or who are on the receiving threats by opposing counsel.

In the coming year, the Committee plans to draft a comprehensive summary of sanctions against litigators by New York State Courts and an analysis of trends with respect to the imposition of sanctions against attorneys for various ethical and professionalism transgressions.

The Committee also is preparing a report on how ethically to navigate a limited scope representation with a client. Finally, a recurring column for the *NY Litigator* on current ethical issues facing litigators is in the works.



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# Activities of the Committee on Arbitration and ADR

By Jeffrey T. Zaino

In the first two quarters 2016, the Section's Arbitration and ADR Committee held two very successful CLE programs to educate both advocates and neutrals, and worked to finalize a report on the best arbitration practices. Both programs were co-sponsored by the American Arbitration Association (AAA). On February 24, 2016, "The 10 Most Important Things for Counsel and Arbitrators" CLE program was held at the AAA. The program was designed to get perspectives from a seasoned arbitrator, arbitration administrator, advocate, and appellate court attorney. The panelists were Charlie Moxley, AAA Arbitrator and Co-Chair of ComFed's Committee on Arbitration and ADR; Jeffrey T. Zaino, AAA Vice President, Commercial Division, and Co-Chair of ComFed's Committee on Arbitration and ADR; Peter Stroili, D'Amato & Lynch, LLP; and Clara Flebus, Appellate Court Attorney. Each speaker had an opportunity to provide what they deemed to be the top ten most important things in the process for both counsel and arbitrators. The other speakers then had an opportunity, along with the audience, to question the speaker. The program was highly interactive and over 40 people registered for the program.

Esq., SVP, Chief Counsel and Director of Mediation and Strategy, FINRA Dispute Resolution; Rosemary Townley, Esq., Independent Arbitrator & Mediator, Larchmont, New York; Steven Skulnik, Esq., Senior Legal Editor, Arbitration Practical Law, Thomson Reuters; and Neal M. Eiseman, Esq., Goetz Fitzpatrick LLP. Over 40 people participated in the program. Some of the highlights included discussions on the use of social media and getting involved in various bar associations.

## Report on Best Practices of Litigators in Representing Parties in Arbitration

This report, which is being prepared from the perspectives of litigators and arbitrators, proceeds on the premise that arbitration is sufficiently different from court-based litigation as to present different opportunities and pitfalls to counsel in representing clients in the respective mediums.

It is our observation that, while much has been written on Best Practices for arbitrators in conducting arbitrations and on Best Practices in representing clients in court-based litigation, considerably less attention has been devoted to identifying Best Practices of counsel in representing clients in arbitration. This report will attempt to distill the distinctive opportunities and pitfalls for litigators in representing clients in arbitration as opposed to in court-based litigation.

The Committee also had a meeting in 2016 at which Marc Goldstein presented the "New Model Arbitration Witness Summons" recently developed by the Arbitration Committee of the New York City Bar Association, providing an analysis of the issues addressed by the model summons and its annotations. The presentation also included an in-depth analysis of the arbitral subpoena power of arbitrators under FAA § 7 and state law.

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*This report will attempt to distill the distinctive opportunities and pitfalls for litigators in representing clients in arbitration as opposed to in court-based litigation.*

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Following the success of the February program, the Committee held the program entitled "Building a Sustainable ADR Practice: A Guide for Lawyers" on March 29, 2016. Elizabeth Champnoi of Stout Risius Ross, Inc., coordinated the program. The panelists included: Charlie Moxley, AAA Arbitrator; Jeffrey T. Zaino, Esq., AAA Vice President, Commercial Division; Kenneth L. Andrichik,

## CPLR Committee Update

This year the CPLR Committee reviewed the proposed amendment to CPLR 3212(b), allowing expert affidavits to be used in summary judgment motions regardless of whether the expert's identity had previously been disclosed to the opposing party. The Committee presented a summary of this legislative change to the Executive Committee and drafted a report, which was approved by the Executive Committee.

# Securities Litigation and Arbitration Committee

By James Yellen and James J. Beha, II

The Securities Litigation and Arbitration Committee continued its recent tradition of hosting judicial guest speakers at its meetings. In January, almost forty committee members and guests came to hear Hon. Paul A. Englemayer, United States District Judge for the Southern District of New York, speak to the Committee about the impact of the Second Circuit's *Newman* decision on the law of insider trading. In May, the Committee hosted Justice Barry R. Ostrager of the New York Supreme Court, Commercial Division, who spoke about his experience joining the Commercial Division bench after a long and distinguished career in private practice at Simpson Thacher. The Committee thanks Morrison

& Foerster and Reed Smith for hosting its 2015-2016 meetings.

In addition, in November, the committee again sponsored, and Committee Co-Chair Jim Yellen co-chaired, a day-long securities arbitration seminar. The Committee has helped host this seminar every year and one half over the past fifteen years. The most recent program featured a full day seminar with leading New York practitioners in securities arbitration and had a sellout with over 100 attendees and 20 speakers. Next year's program is scheduled for March 2017.

## *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:

Daniel K. Wiig, Esq.  
Municipal Credit Union  
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dwiig@nymcu.org

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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## Section Members Again Meet With and Inspire Law Students

By Barry A. Wadler

On September 22, 2016, three members of the Section, Barry A. Wadler, Angel Castro, and Kathy Marks, participated in a “Dinner with a Lawyer” program to meet informally with 30 students from Pace Law School. The law students came hungry for dinner, but even thirstier for insights about the real world of practicing law.

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*The programs are very popular with the law schools. The program with Pace Law School sold out within an hour.*

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Law students often have definite ideas about what area of law they want to practice, but only vague ideas about what that area of practice entails. So any chance to meet and dine informally with practicing attorneys is a welcomed opportunity for law students to ask what life will really be like if they pursue their chosen path

or to learn about other areas they had not considered. To facilitate such meetings, NYSBA’s “Pathways to the Profession” initiative joins with law schools for the “Dinner with a Lawyer” program. NYSBA runs about 3 to 4 such programs each semester with different law schools. The programs are very popular with the law schools. The program with Pace Law School sold out within an hour. NYSBA Sections typically provide 10 to 15 practicing attorneys. In addition to the volunteer attorneys from the Commercial and Federal Litigation Section, there were attorneys from such Sections as Intellectual Property, Environmental Law, Real Property Law, and Family Law. These programs are also popular with the attorney volunteers. “It is energizing to inspire students,” said Barry A. Wadler, “about the constant intellectual challenges we deal with as commercial litigators and that no two matters are the same. I love what I do, and love to mentor.”

## Students Meet the Commercial and Federal Litigation Section in Albany

By John F. Queenan

John F. Queenan, a partner with Iseman, Cunningham, Riester & Hyde, a law firm in Albany and Poughkeepsie, New York, represented the New York State Bar Association’s Commercial and Federal Litigation Section at a “Meet the Sections” event held September 7 at Albany Law School. More than 20 representatives from Sections of the New York State Bar Association participated and

shared information with current Albany Law School students about NYSBA programs and benefits as well as membership and career resources. John and the students discussed what it means to be a commercial litigator with examples of litigations. John also discussed opportunities for participation and potential pathways for young lawyers toward a career in commercial litigation.

**For more information about  
Pathway to the Profession or  
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please contact Megan O’Toole  
at [motoole@nysba.org](mailto:motoole@nysba.org).**

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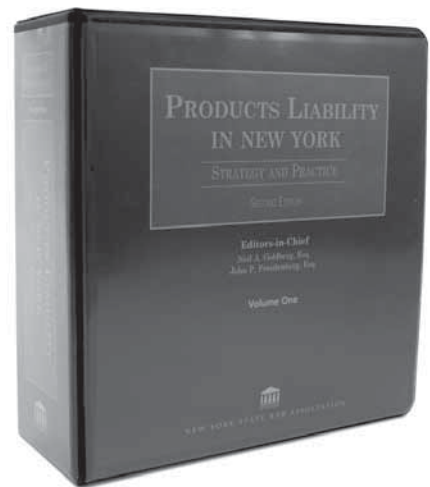
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# CPLR Amendments: 2016 Legislative Session

(2016 N.Y. Laws ch. 1-395)

CPLR §	Chapter (Part) (Subpart, §)	Change	Eff. Date
214-f	128	Adds a statute of limitations for actions for personal injury caused by substances in a superfund site	7/21/16
3408	73(Q, 2-3)	Expands requirements for mandatory settlement conferences in residential foreclosure actions	12/20/16 <sup>1</sup>
4503(b)	262	Adds revocable trusts	8/19/16

Notes: The expiration of the revival of Agent Orange actions was extended from June 16, 2016, to June 16, 2018. 2016 N.Y. Laws ch. 75. See CPLR 214-b.

<sup>1</sup> The amendments to CPLR 3408 set forth in section 2 of Part Q of 2016 N.Y. Laws ch. 73 expire on the date set forth in 2009 N.Y. Laws ch. 507, as amended, at which time the amendments to CPLR 3408(a) set forth in section 3 of Part Q of chapter 73 shall take effect. 2016 N.Y. Laws ch. 73, Part Q, § 11(a).

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\*You must be a Commercial and Federal Litigation Section member and logged in to access.

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The screenshot shows the NYSBA website interface. At the top, there is a navigation bar with links for Communities, Online Store, News Center, Contact Us, and Help. Below this is a header for the 'NEW YORK STATE BAR ASSOCIATION' with the tagline 'Serving the legal profession and the community since 1876'. A user is logged in as 'Simone Smith'. The main content area is titled 'PUBLICATIONS' and features a sidebar with 'INSIDE THIS SECTION' containing links for 'Reprint Permission' and 'Commercial and Federal Litigation Section Newsletter Article Submission'. The main content area displays the 'COMMERCIAL AND FEDERAL LITIGATION SECTION NEWSLETTER' with a featured image of a statue of Lady Justice and a thumbnail of the newsletter cover. Below the image are buttons for 'ARCHIVE OF PAST ISSUES', 'ABOUT THIS PUBLICATION', and 'TABLE OF CONTENTS CURRENT ISSUE'. At the bottom, there is a link to the 'Archive of Past Issues of the Commercial and Federal Litigation Section Newsletter (2001-)'.



**Go to [www.nysba.org/NYLitigator](http://www.nysba.org/NYLitigator) or [www.nysba.org/ComFedNewsletter](http://www.nysba.org/ComFedNewsletter)**

# 2016 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

A copy of these rules changes is available on the Section's website at [http://www.nysba.org/Sections/Commercial\\_Federal\\_Litigation/Commercial\\_and\\_Federal\\_Litigation\\_Section.html](http://www.nysba.org/Sections/Commercial_Federal_Litigation/Commercial_and_Federal_Litigation_Section.html) under the New Rules tab.

22 NYCRR §	Court	Subject (Change)	Eff. Date
202.5(e)(1)(v)	Sup.	Adds certain documents, testimony, and evidence in matrimonial actions to categories of confidential personal information	3/1/16
202.16(m)	Sup.	Adds a provision on omission or redaction of confidential personal information from matrimonial decisions	3/1/16
202.70(g), Rule 3	Sup.	Adds a provision on settlement conferences before a justice other than a justice assigned to the case	7/1/16
202.70(g), Rule 11-g	Sup.	Adds a proposed form of confidentiality order	7/1/16
202.70(g), Rule 14-a	Sup.	Adds a new rule on procedures at disclosure conferences conducted by non-judicial personnel	7/1/16
500.1(j), (l)	Ct. App.	Changes "computer-generated" papers to "papers prepared by a word-processing system" and changes "Times Roman" to "Times New Roman"	6/22/16
500.11(m)	Ct. App.	Adds word and page limits for submissions in alternative procedure for selected appeals	6/22/16
500.13(c)	Ct. App.	Adds word and page limits for briefs in normal course appeals	6/22/16
500.23	Ct. App.	Requires that amicus submissions meet word and page limits of 500.11(m) and 500.13(c)	6/22/16
800.23(c)	3rd Dep't	Increases fees for admission certificates	2/1/16
800.24-a(a)	3rd Dep't	Adds as an exception appeals entered in proceedings pursuant to Mental Hygiene Law art. 9, 10, and 15	8/8/16

Note: (1) On May 23, 2016, effective July 1, 2016, the Chief Administrative Judge of the Courts rescinded the Appendix of Official Forms for the CPLR. See CPLR 107. AO/119/16.

(2) On June 24, 2016, effective August 1, 2016, the Chief Administrative Judge of the Courts promulgated a revised New Model Preliminary Conference Order form for optional use in the Commercial Division. AO/132/16.

## Looking for Past Issues?

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# Notes of the Section's Executive Committee Meeting

June 14, 2016

Guest speaker Hon. Anil C. Singh, Supreme Court, New York County, Commercial Division, discussed efficient mechanisms for beginning a case in the Commercial Division and the use and purpose of a temporary restraining notice. He also discussed the use of mediation, mechanisms to address discovery disputes, motion practice, his view on the use of sanctions, the use of privilege logs, and the balancing of the new proportionality



requirement in the Commercial Division rules with the state policy of liberal discovery.

The Executive Committee discussed various programs of the Section. The Executive Committee also approved a report of the Commercial Division Committee on the proposed Commercial Division rule permitting the court to require certain direct testimony to be submitted in affidavit form.

\*\*\*

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### Upcoming Executive Committee Meetings

<b>November 16, 2016</b> Kramer Levin Naftalis & Frankel LLP <i>New York City</i>	<b>December 15, 2016</b> James M. Hanley Federal Building <i>Syracuse</i>
<b>January 10, 2017</b> Thurgood Marshall U.S. Courthouse <i>New York City</i>	<b>February 15, 2017</b> Federal Building and United States Courthouse <i>White Plains</i>
<b>March 7, 2017</b> Kramer Levin Naftalis & Frankel LLP <i>New York City</i>	

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