

Commercial and Federal Litigation Section Newsletter

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

Message from the Chair

It is hard to believe that as I write this column, my term as Section Chair is more than halfway complete. Looking back over the past several months, I must say that thanks to the tremendous talent and contributions of our membership, the Section continues its tradition of vitality, innovation, and service to the overall legal community. I cannot help but be proud of the Section's many accomplishments during the last half of 2012, outlined in more detail below, and of our Section's once again, highly successful Annual Meeting Program, which took place this year at the New York Hilton on January 23, 2013.



Tracee E. Davis

The Annual Meeting Program, organized by Paul Sarkozi, our Section's Vice-Chair, included timely and thought-provoking Continuing Legal Education Programs focusing on the future of litigation in New York State and an afternoon awards luncheon honoring Judge Jed S. Rakoff, which was full to capacity. The morning's first panel, moderated by former New York Chief Judge Judith Kaye, now of counsel at Skadden, Arps, Slate, Meagher & Flom, focused on how best to execute some of the reforms to the New York State Commercial Division recommended by the Report of the Chief Judge's Task Force on Commercial Litigation in the 21st Century, as well as the importance, in light of the current economic climate, of a bench-bar collaboration to ensure the early and efficient resolution of commercial cases. The panel included Commercial Division Justice Elizabeth Hazlitt Emerson, Sullivan & Cromwell LLP partner Robert J. Giuffra, Howard Levine of Whiteman, Osterman

& Hanna, and our Executive Committee's own Macy's, Inc. Assistant General Counsel Mitchell F. Borger. The second panel, "Financial Crisis Litigation in the Commercial Division in Federal Courts," examined the effect of the financial collapse of 2008 on litigation in New York state and federal courts. Moderated by Benjamin Nagin, a partner at Sidley Austin, this panel included Commercial Division Justice Shirley Kornreich; Southern District Judge Victor Marrero; James Gange, Chief Compliance Officer of Davidson Kempner Capital Management;

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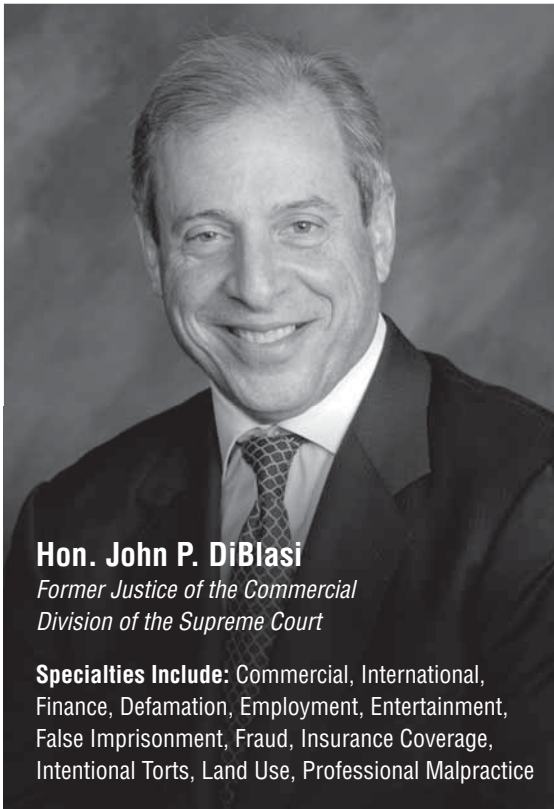
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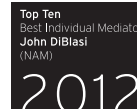
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Message from the Chair

(Continued from page 1)

Kevin McCarthy, Deputy General Counsel at BNY Mellon; and Hector Gonazlez, a partner at Dechert LLP.

The Program was topped off by the Section's Annual Meeting luncheon, during which Second Circuit Judge Robert Katzmann, himself a Fuld Award recipient, presented Judge Rakoff with the Section's Fuld Award in front of a crowd including more than 60 state and federal judges as well as hundreds of practitioners from dozens of law firms throughout our State.

During the last half of 2012, just a few of the Section's many accomplishments included a Report of the Committee on Federal Procedure, co-chaired by Chair-Elect Gregory Arenson (Kaplan Fox & Kilsheimer) and Michael Rakower (Rakower Lupkin PLLC), recommending a revision to Rule 5 of the Federal Rules of Civil Procedure to allow for the electronic service of discovery without the advance consent of each party in writing, a Report completed thanks to the efforts of Jeffrey Haradine (Ward Greenberg Heller & Reidy LLP), a member of the Committee who contributed substantially to its drafting. This Report, adopted by the Executive Committee at its December meeting, has been sent to the Advisory Committee on Civil Rules for consideration. Our Section's Committee on Employment and Labor Relations, co-chaired by Gerald Hathaway (Mitchell Silberberg & Knupp LLP) and Robert N. Holtzman (Kramer Levin Naftalis & Frankel LLP), also completed a joint report with the Labor and Employment Law Section on the New York WARN statute, which recommends a revision to the language of this statute dealing with the obligations of employers contemplating mass layoffs. Mr. Hathaway presented the Report to the NYSBA House of Delegates, which was adopted at its January meeting.

Additionally, the American Bar Association has, with the co-sponsorship of the New York State Bar Association procured through our Section's efforts, recently adopted the very proposal that was set forth by this Section's Bankruptcy Litigation Committee in its Report on the seminal case *Stern v. Marshall*: that Bankruptcy Judges should, with the consent of the parties, be permitted to determine matters otherwise reserved to the jurisdiction of Article III courts. The *Stern v. Marshall* Report was the result of the tremendous efforts of our Bankruptcy Litigation Committee, chaired by Douglas Tabachnik.

In addition, the Committee on the Federal Judiciary, co-chaired by John Winter (Patterson Belknap Web & Tyler) and Jay Safer (Locke Lord Bissell & Liddell LLP), recently completed an updated *Guide to Individual Practices of Federal Magistrate Judges in the Southern and Eastern Districts*, a tremendous practical tool that is now available on the Section's website; and the Committee on Electronic Dis-

covery, co-chaired by Constance Boland (Nixon Peabody LLP) and Adam Cohen (Ernst & Young), recently completed an updated *Best Practices in E-Discovery in New York State and Federal Court*, another excellent practical tool that also is available to all Section members on our website.

As we progress into 2013, our Section and its members continue to make invaluable contributions to the Bar, with various projects and initiatives in the pipeline. Just a handful of these ongoing projects and initiatives include: the Section's newly formed Social Media Committee, co-chaired by Mark Berman (Ganfer & Shore, LLP) and Ignatius Grande (Hughes Hubbard & Reed, LLP), which is the first committee of the New York State Bar Association dedicated to social media issues and which will focus on social media's impact on our profession as well as evolving social media legislation; and the continued efforts of our Special Committee on Pattern Jury Instructions, led by Hon. Andrea Masley, New York City Civil Court, who is joined by Commercial Division Justice Shirley Kornreich, former Section Chair Lauren J. Wachtler (Mitchell Silberberg & Knupp LLP) and Hon. Melissa A. Crane, New York City Civil Court, to draft new instructions and explore new areas of law in ongoing collaboration with the Pattern Jury Instructions Committee of the Association of Supreme Court Justices, which will be available to our members in database form on our Section's website. Also, in keeping with our Section's goal to provide our members with important and useful information, on the Federal side, the Section under the leadership of Hon. Melanie Cyganowski (Otterbourg, Steindler, Houston & Rosen), in collaboration with the Committee on ADR, chaired by Charles J. Moxley (Moxley ADR LLC), continues to examine best practices for advancing mediation in the United States District Court for the Southern District of New York. These efforts will culminate in a Best Practices Guide, available to all Section members.

With respect to membership events, in addition to the Annual Meeting, we also recently co-sponsored, with the Bar Association of Erie County, a Commercial Division Appreciation and Welcoming Reception for the 8th Judicial District in Buffalo, which I was delighted to attend, as well as a cocktail reception honoring Maris Buckner, former ADR coordinator, at 60 Center Street, co-sponsored by the Dispute Resolution Section. In the coming months, the various Section events that we have to look forward to include the Section's annual Smooth Moves Event and CLE Program, which will be held again this year at Lincoln Center for the Performing Arts, a flagship event including free continuing legal education credits and a cocktail reception which is open to everyone; and our Section's Spring Meeting, scheduled this year for May 3-5 at the Gideon Putnam Hotel in Saratoga Springs, New York,

which promises to be an exciting weekend of continuing legal education classes as well as various opportunities to socialize and mingle with members of the Section.

Last, but not least, I am pleased to announce that I was invited, on behalf of the Section, to participate in the ABA's Delegation to Cambodia from February 18, 2013, to February 22, 2013, during which members of the United States bench and bar will participate in a series of lectures for Cambodian Judges on several substantive areas of U.S. law. I hope to parlay this experience into an ongoing opportunity for collaboration between our Section and members of the Bar in Cambodia. I hope that this trip will

result in exciting future opportunities for our Section's membership, and perhaps international exposure.

In short, our Section continues to reflect the talents, vitality, energy, and enthusiasm of our membership, without which the Section's contributions to Bar, overall, would not be possible. I encourage each and every one of you to become more involved in all that this Section has to offer. Please feel free to reach out to me at 212-826-5358, and I will personally assist you in becoming meaningfully involved.

Tracee E. Davis

Foundation Memorials

A fitting and lasting tribute to a deceased lawyer or loved one can be made through a memorial contribution to The New York Bar Foundation...

This meaningful gesture on the part of friends and associates will be appreciated by the family of the deceased. The family will be notified that a contribution has been made and by whom, although the contribution amount will not be specified.

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The Section Recommends Revision to Federal Rule of Civil Procedure 5

By Gregory K. Arenson

At its December 12, 2012 meeting, the Section unanimously adopted the report of its Federal Procedure Committee, principally drafted by Jeff Harradine, to revise Rule 5 of the Federal Rules of Civil Procedure to allow for electronic service of papers without prior consent. That report has been submitted to the Civil Rules Advisory Committee of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States for its consideration.

Currently, Rule 5(b)(2) provides: “A paper is served under this rule by:.... (E) sending it by electronic means if the person consented in writing—in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served....” The Section proposes three modifications: (1) removing the requirement that a serving party obtain written consent to serve by electronic means; (2) specifying that the manner in which the service is to be effectuated is to be in a manner reasonably calculated to lead to effective service, it being understood that conformance with a district court’s format guidelines for electronic case filing (“ECF”) or electronic service is presumptively reasonable; and (3) requiring that notice of service be filed with the district court, thereby providing litigants with an additional layer of notice of service in the event that an electronically served document is not received. The Section proposes that the Rule be changed as follows: “A paper is served under this rule by:.... (E) sending it by electronic means in a manner reasonably calculated to achieve effective service and if the serving party contemporaneously files a certification with the court that identifies the particular paper served and the date and manner of such service if the person consented in writing—in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served....”

The present wording of Rule 5 makes prior written consent a prerequisite for electronically serving papers. The requirement of prior written consent prevents electronic service from occupying the same default footing as personal service or service via mail or common carrier. The Section concluded that it is appropriate to modify Rule 5 to place electronic service on an even footing with more traditional methods of service to reflect the practice of most federal practitioners today—service of discovery papers via electronic mail or another established file transfer system or protocol without the need of prior consent.

The Section recommends that the new standard for electronic service of papers be that which is “reasonably calculated to achieve effective service.” This standard is, by design, a flexible standard intended to cover both present practices and future practices that may not be reasonably foreseeable at present. It is sensible to use each district court’s ECF guidelines and requirements implemented by local rule or administrative provision as the guidelines for electronic service of discovery papers. A proposed Advisory Committee Note states that service of papers via electronic means in a format that conforms to a district court’s ECF standards will be presumed to have been served in a manner reasonably calculated to achieve effective service. This allows the standard to be readily modified through district-specific guidelines as technology dictates.

An additional notice-of-filing requirement requires a serving party also to file a certification with the district court identifying the paper served and the manner of service. It is expected that the certification will be a simple short document and would not be a burden on either the serving party (who must create the document) or the district court (whose ECF system would house it).

The notice-of-filing requirement provides assurance that, in the event that actual service is not successful, a receiving party will have timely notice of the failure and, if something is amiss, be able to timely address the situation where electronically served papers were not received. The proposed Advisory Committee Note would state that it is expected that the parties will honor the spirit of Rule 1 and work cooperatively in the event that electronic service attempted reasonably and in good faith is nonetheless unsuccessful. For example, in the event that a serving party learns that, despite having complied with the requirements of subparagraph (e), such service was actually ineffective, it is expected that the serving party will not take the indefensible position that the receiving party is obligated to act on the paper within the same time period as if service had been effective. Similarly, if the serving party complies with the requirements of subparagraph (e), but electronic service is actually ineffective, it is expected that the receiving party will not unreasonably object to the re-serving of the paper in question and will consent to reasonable scheduling modifications as needed to allow the serving party to comply with any applicable deadlines or notice periods.

Gregory K. Arenson is a partner at Kaplan Fox & Kilsheimer LLP and co-chair of the Section’s Federal Procedure Committee.

Annual Meeting 2013

By Clara Flebus

The cold weather did not deter over 400 lawyers and judges from attending the Commercial and Federal Litigation Section's Annual Meeting and Luncheon on January 23, 2013, at the Hilton New York Hotel in midtown Manhattan. This year's programming featured two CLEs addressing changes that are broadly reshaping the way commercial litigation is practiced in both state and federal courts in New York.

The first program, entitled "The Chief Judge's Task Force Report on Commercial Litigation in the 21st Century: From Ideas to Implementation," highlighted some



Former Commercial Division Justice Bernard Fried talks to Chief Judge Jonathan Lippman at the CLE Program

of the innovations to business litigation proposed in June 2012 by the Task Force on Commercial Litigation for the 21st Century created by Chief Judge Jonathan Lippman. Chief Judge Lippman, who attended a portion of the CLE, stated that the Task Force's goal was "to make sure that New York remains at the cutting edge of how commercial disputes are resolved." In exploring the Task Force's recommendations, the CLE panel focused on reforms that would be easiest to implement—those that can be implemented without legislative action by adopting new court rules.



Former Chief Judge Kaye

Former Chief Judge Judith S. Kaye, now Of Counsel at Skadden, Arps, Slate, Meagher & Flom and co-chair of the Task Force, moderated the panel. At the outset, she asked the panelists to explain why it is important to implement reforms in the Commercial Division. There was a consensus that the Commercial Division has succeeded in providing a specialized,

competitive forum that contributes to the development of commercial law—law that is both respected and regularly incorporated into contracts throughout the world. Still, the panel felt continuing innovations are necessary to ensure that business disputes can be handled with the judicial resources and attention that parties demand and that complex matters require. Former Court of Appeals Judge Howard A. Levine, who now practices with Whiteman Osterman & Hanna in Albany, explained that the court

has become a "victim of its success," with the number of cases filed having an impact on expeditious resolution. Mitchell F. Borger, assistant general counsel at Macy's Inc. and the Chair of the Commercial and Federal Litigation Section's Faster Cheaper Smarter Working Group, remarked that from an in-house counsel standpoint it is important to have court procedures that help a litigant figure out how to resolve cases as quickly and fairly as possible because "litigation dollars are lost dollars to the company."



The Task Force Panel—Former Chief Judge Judith Kaye, Former Court of Appeals Judge Howard Levine, Justice Elizabeth Hazlitt Emerson, Robert Giuffra, Jr. and Mitchell Borger

Turning to the Task Force proposals, the panel first addressed a group of reforms defined as "structural." Robert J. Giuffra, Jr., a partner at Sullivan & Cromwell LLP, explained that increasing the monetary threshold to file a case in the Commercial Division in New York County from \$150,000 to \$500,000 would reduce the case-load of commercial judges who are overworked. He also noted that the suggestion of periodically reviewing the categories of cases eligible for the Division would help limit docket congestion.

The panel also examined the possibility of increasing the use of special masters drawn from seasoned commercial litiga-



A capacity crowd for the Section's CLE programs

tors no longer in practice to handle discovery disputes or other pretrial matters. Unlike in the federal courts, where Magistrate Judges frequently handle discovery issues, the Supreme Court Justices in the Commercial Division either have no such resource or must rely on the limited pool of Judicial Hearing Officers available to assist with the increased volume of discovery disputes arising from the

burgeoning sources of data available from electronically stored information. Suffolk County Commercial Division Justice Elizabeth Hazlitt Emerson observed that special masters can make “a tremendous amount of difference in the resolution of a case,” when they are referred specific issues early in the process, as they allow the court to allocate time more efficiently in “an almost like a triage situation.” Although parties have to pay for special masters, she added that this practice would gain momentum once clients saw the benefits of a more streamlined litigation process. Mr. Borger agreed that in a complex case paying for a special master may be money well spent, and Mr. Giuffra proposed that the procedure could be standardized by having a court rule allowing judges to direct the parties to a special master above a certain dispute amount.

The discussion then turned to the implementation of “procedural” reforms. The panel emphasized the importance of getting cases assigned to the Commercial Division before substantial motion practice or discovery has occurred, so that judges may help in finding pragmatic and cost-effective ways to manage and resolve disputes. Panelists generally supported the Task Force proposal to have a court rule providing that any party seeking assignment of a case to the Commercial Division must



Former Section Chair David Tennant asks a question

do so within 90 days of service of the complaint. “If you snooze, you lose,” offered Mr. Borger, pointing out that sophisticated parties should be able to comply with that deadline.

The panel also discussed measures to enhance efficiency in handling pretrial proceedings. Justice Emerson raised the point that using letter submissions is a way of quickly identifying and dealing with pretrial issues, so long as the letters do not become “stealth” motions with a myriad of attachments or contain communications that may implicate a judge’s ethical obligations. She pointed out that rules are needed to set forth parameters defining what letter submissions are, what they are used for, and what to do if they fail to comply with the rules. Justice Emerson emphasized that a process should be devised to make sure a letter is well published and memorialized in the record. Mr. Borger supported the use of letter submissions, stating they save a client from having to pay for its lawyer’s time and travel to the courthouse.

The panel also agreed that pretrial proceedings could be

expedited by promulgating court rules setting limits, similar to the Federal Rules of Civil Procedure, on the number of depositions and interrogatories and allowing parties to exceed that



Justice Shirley Werner Kornreich and Judge Victor Marrero

amount only upon court’s approval. Mr. Giuffra opined that this is a realistic proposal because it happens all the time in complex civil matters in federal court. He also suggested using a standard form at the preliminary conference to delineate key issues in the case, expected dispositive motions, the shape of discovery, and potential settlement. He stressed the importance of having someone knowledgeable in e-discovery issues attend the preliminary conference “because the amount of money that can be spent on e-discovery can be, in some cases, literally into the millions of dollars.”

Finally, the panel addressed the use of mandatory mediation as a cost-effective means to resolve disputes early in the process. The Task Force proposed the implementation of a pilot program with a target that one out of every five cases assigned to the Commercial Division be sent to mediation within 180 days of the assignment. The panelists supported the proposal, agreeing that mediation is effective because clients are involved in the process early on and can gauge their expectations. Judge Levine underlined that mediation provides the client with an opportunity to get some feedback about the merits of its case from a knowledgeable and credible person, while also getting exposed to the other side’s views. To address the concern that parties may not have sufficient information to conduct meaningful settlement talks, the Task Force provides a mechanism to allow for settlement-



Program Chair Paul Sarkozi introduces the CLE programs

related disclosure early in a case, a proposal that Mr. Borger agreed would help make mediation more successful.

In closing, former Chief Judge Kaye commented that “these are great ideas, and they need more structured implementation.” She stressed that bench and



Financial Crisis Litigation Panel—Benjamin Nagin, Justice Shirley Werner Kornreich, Judge Marrero, Hector Gonzalez and J. Kevin McCarthy



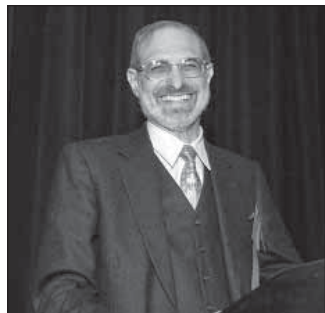
Program Chair Paul Sarkozi and Section Chair Tracee Davis react to a comment during the CLE Program

bar should work together to seek ways to implement the proposed reforms discussed by the panel.

The second program, entitled “Financial Crisis Litigation in the Commercial Division and Federal Courts,” explored how the landscape of commercial litigation has changed in New York state and federal courts after the financial meltdown of

2008. The moderator, Benjamin R. Nagin, a partner at Sidley Austin, began the discussion by asking panelists to comment on the new phenomenon of “deep pocket” plaintiffs, such as banks, hedge funds, insurance companies and other financial institutions, increasingly bringing lawsuits for common law breach of contract and fraud. New York County Commercial Division Justice Shirley Werner Kornreich confirmed that cases arising from the credit crisis involve sophisticated entities on both sides, and can become very complicated because fraud claims

require extensive discovery. She observed that institutional plaintiffs “are going all out” in these cases, and they are creating new law. She cautioned these institutions, however, to consider the consequences of the case law being created, and how such precedent will affect them if they are defendants in future litigation. Justice Kornreich also noted that a typical case



Chair-Elect Gregory Arenson at the Annual Luncheon

now includes substantially overlapping claims for breach of contract, breach of warranty, and fraud. While the non-contract claims have typically been subject to dismissal based on the economic loss rule, recent Appellate Division precedent has allowed these claims to proceed.

Southern District Judge Victor Marrero stated that he sees the same type of fraud, breach of contract, and breach of warranty actions in federal court. By way of example, he pointed to the case of *Dodona I, LLC v. Goldman, Sachs & Co.*, 847 F. Supp. 2d 624 (S.D.N.Y. 2012), a putative class action in which sophisticated plaintiffs invested large amounts of money in a complex subspecies of financial instrument called “synthetic CDOs.” The functioning of the synthetic CDOs could barely be explained or understood,



Judge Katzmann and Judge Rakoff and the Section's Officers and Officers-Elect (Jaclyn Grodin, Paul Sarkozi, Gregory Arenson, Tracee Davis, James Wicks and Deborah Edelman)

and plaintiffs claimed they were defrauded by the investment bank after suffering substantial losses.

Panelists commented that from a practitioner’s perspective some of the cases resulting from the financial crisis are challenging because they require balancing business relationships among several actors and also implicate dealings with regulatory and law enforcement agencies. The panel used the Article 77 proceeding titled *In the Matter of the Application of Bank of New York Mellon*, Index No. 651786/2011, currently pending in the Commercial Division (Kapnick, J.), as a primary example. In that action, the bank trustee for 530 trusts containing mortgage-backed securities sought court approval of a proposed \$8.5 billion settlement to resolve claims for breach of representations and warranties in the agreements that govern the trusts. J. Kevin McCarthy, deputy general counsel at BNY Mellon, noted that the attorneys general of both New York and Delaware intervened in the action for public policy reasons.



Judge Jed Rakoff delivering his remarks at the Annual Luncheon

Hector Gonzalez, partner at Dechert LLP, commented that when an institutional client is facing various claims at state and federal level, it is important that both outside and in-house counsel conduct an early case assessment. He explained that the overlay of the regulatory liability has an impact on institutions that have fiduciary liabilities, institutions that must evaluate not only the litigation risk but also the risk to their reputations. Mr. McCarthy noted that “there is a tremendous amount of pressure on institutions to coordinate, cooperate, inform, and bring along the various regulatory constituencies.... You don’t want to learn in a press release from a regulator about what’s happening to your institution.”

The discussion then turned to the phenomenon of multiple actions in different venues arising from the same facts and coordination among courts. Judge Marrero explained that allegations of fraud may give rise to three or more actions—a civil action brought by the Securities and Exchange Commission, civil cases filed by individual plaintiffs (sometimes multiple cases consolidated into a Multi-District Litigation), and a criminal action. In such situations, judges can effect judicial economy by conferring, when appropriate, about conflicting or overlapping case management issues. Justice Kornreich recalled that she had a posi-



Former Section Chair Lesley Friedman Rosenthal at the Annual Luncheon

tive experience when she coordinated with judges from other jurisdictions in pharmaceutical cases and agreed that such coordination would be useful in commercial disputes.

Finally, Justice Kornreich addressed some of the issues discussed by the first (Task Force) panel. She strongly supported proposals geared toward

bringing cases before a Commercial Division justice as early as possible. She also observed that since judges have been requiring the parties to meet and confer before the preliminary conference, the dispute resolution process “has become much smoother than it used to be.”

The Section’s program concluded with a luncheon reception and presentation of the Stanley H. Fuld Award for Outstanding Contributions to Commercial Law and Litigation to the Hon. Jed S. Rakoff, United States District Court Judge for the Southern District of New York. Judge Rakoff was recognized for



Section Chair Tracee Davis at the Annual Luncheon

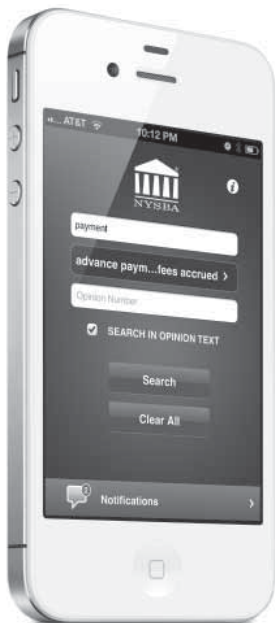
his commitment to justice and judicial independence, his expertise and dedication to the development of business and securities law, and his ability to handle high-profile matters with creativity. The award was presented to Judge Rakoff by the Hon. Robert A. Katzmann, United States Circuit Judge for the United States Court of Appeals, Second Circuit. After receiving the Fuld Award, Judge Rakoff spoke about a newly created International Commercial Court in Iraq with exclusive jurisdiction over commercial cases in which at least one of the parties is a foreign person or entity. He underscored the importance of the rule of law in fostering commercial development and attracting foreign investment and praised the courage of Iraqi judges who, despite violence and assassinations, remain committed to the development of a functioning judicial system free of corruption.



Fuld Award Recipient Judge Jed Rakoff thanking Former Fuld Award Recipient Judge Robert Katzmann for presenting the award

Clara Flebus is an appellate court attorney in New York State Supreme Court. She has clerked in the Commercial Division of the court and holds an LL.M. degree in International Business Regulation, Litigation and Arbitration from NYU School of Law.

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Commercial and Federal Litigation Section

Spring Meeting
Gideon Putnam Resort
Saratoga Springs, New York
May 3 - 5, 2013

This MCLE program offers **up to 6 MCLE credit hours** consisting of **4.5 in Professional Practice** and **1.5 in Ethics**.



SCHEDULE OF EVENTS

Friday, May 3

- 3:00 p.m. **Registration – Hotel Lobby**
- 6:00 p.m. **Cocktail Reception – Gallery**
- 6:45 p.m. **Opening Banquet – Hathorne Coesa**
- 8:30 - 9:20 p.m. ***From Tomb Raiders in Turkey to Hitler's Crimes Against Humanity: Recovering Stolen Artworks and Other Cultural Property (1 Professional Practice)***
- Speaker: **Howard N. Spiegler, Esq.**, Co-Chair, Art Law Group, Herrick Feinstein LLP, will share with us his experiences in recovering artworks and antiquities stolen before and during World War II or looted from native lands. This program will analyze the legal principles underlying the efforts to recover cultural property with examples of cases.

Saturday, May 4

- 8:00 a.m. **Registration – Gallery**
- 8:00 – 10:00 a.m. **Continental Breakfast**
- 9:00 a.m. – 12:30 p.m. **General Session – Hathorne Coesa**
- 9:00 – 9:15 a.m. **Welcoming Remarks**
Tracee E. Davis, Esq., Section Chair
- New York State Bar Association Welcome**
David M. Schraver, Esq., President-Elect, New York State Bar Association
- Program Overview**
Gregory K. Arenson, Esq., Section Chair-Elect and Program Chair
- 9:15 – 10:45 a.m. ***The Southern District of New York Pilot Program and Practice in Complex Cases: How Will It Improve Practice for Commercial Litigators and Has It Worked So Far? (1.5 Professional Practice)***
The Southern District of New York Pilot Program, begun in November 2011, promulgated special rules for complex civil cases in an attempt to make them faster, cheaper and more efficient. This program will discuss how those rules have withstood practical everyday experience and whether they have made a difference in the cases to which they have been applied.
- Moderator: **Jay Safer, Esq.**
Locke Lord LLP
New York City
- Panelists: **Hon. Victor Marrero**
United States District Court
Southern District of New York
- Hon. Shira Scheindlin**
United States District Court
Southern District of New York
- Steven C. Bennett, Esq.**
Jones Day
New York City
- Melanie L. Cyganowski, Esq.**
Otterbourg, Steindler, Houston & Rosen P.C.
New York City

SCHEDULE OF EVENTS

Saturday, May 4 (continued)

10:45 – 11:00 a.m. **Refreshment Break**

11:00 a.m. – 12:30 p.m. ***Third-Party Litigation Funding: Boon or Bane? (1.5 Ethics)***
This program will explore the ethical and legal implications of third-party litigation funding. It will consider the pros and cons of such funding and discuss which jurisdictions have accepted and rejected it so far.

Moderator: **Prof. Patrick Connors**, Albany Law School, Albany

Panelists: **John H. Beisner Esq.** Skadden, Arps, Slate, Meagher & Flom LLP
Washington, D.C. **John P. "Sean" Coffey, Esq.** Managing Director
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12:30 – 2:00 p.m. **Buffet Lunch - Arches**

2:00 – 6:00 p.m. **Afternoon Free for Recreation and Spa Activities**

6:30 p.m. **Cocktail Reception - Gallery**

7:30 p.m. **Gala Dinner – Orenda Geysler Coesa**

Presentation of the Robert L. Haig Award for Distinguished Public Service
Presenter: **Hon. Reena Raggi**, Judge, United States Court of Appeals for the Second Circuit
Recipient: **Hon. Carol B. Amon**, Chief United States District Judge, Eastern District of New York

Sunday, May 5

8:15 a.m. **Registration – Gallery**

8:00 – 10:00 a.m. **Continental Breakfast**

8:45 a.m. – Noon **General Session – Hathorne Coesa**
Blowing the Whistle on Commercial Fraud
This program will examine the use of whistleblower laws in the civil prosecution of commercial fraud under the federal False Claims Act, the New York False Claims Act, and the Securities and Exchange Commission Whistleblower Program. It should provide practical guidance to private practitioners, government lawyers and the judiciary.

8:45 – 9:45 a.m. ***The Federal False Claims Act (1 Professional Practice)***
This panel will examine the recently strengthened federal False Claims Act, first passed in 1863, and its varied uses as the federal government's most powerful civil weapon to fight fraud on the government in health care, the financial industry, and beyond.

Moderator: **Richard J. Dircks, Esq.**, Getnick & Getnick LLP, New York City

SCHEDULE OF EVENTS

Sunday, May 5 (continued)

Panelists: **Pierre Armand, Esq.**
Assistant United States Attorney
Deputy Chief, Civil Frauds Unit
Southern District of New York

Robin L. Baker, Esq.
WilmerHale
New York City

Neil V. Getnick, Esq.
Getnick & Getnick LLP
New York City

9:45 – 10:40 a.m. ***The New York False Claims Act (1 Professional Practice)***
The New York False Claims Act is the strongest state false claims act in the nation and is unique in its breadth of application. This panel presents a rare opportunity to hear directly from the prosecutorial force behind its enforcement: the Office of the New York Attorney General.

Moderator: **Dana V. Syracuse, Esq.**
Assistant Attorney General
Taxpayer Protection Bureau
Office of the New York Attorney General
New York City

Panelists: **Sally G. Blinken, Esq.**
Special Assistant Attorney General
Office of the New York Attorney General
New York City

Randall M. Fox, Esq.
Bureau Chief
Taxpayer Protection Bureau
Office of the New York Attorney General
New York City

Gregory M. Krakower, Esq.
Senior Advisor and Counselor to the Attorney General
Office of the New York Attorney General
New York City

10:40 – 10:55 a.m. **Refreshment Break**

10:55 – 11:50 a.m. ***The SEC Whistleblower Program (1 Professional Practice)***
The Dodd-Frank Act established the SEC Whistleblower Program in 2010. This panel looks at the structure of the program as well as developments to date from the perspectives of whistleblower counsel, defense counsel, and the SEC.

Moderator: **Margaret J. Finerty, Esq.**
Getnick & Getnick LLP
New York City

Panelists: **Carolyn G. Nussbaum, Esq.**
Nixon Peabody LLP
Rochester

Michael J. Osnato, Jr., Esq.
Assistant Regional Director
Securities and Exchange Commission
New York City

Jordan A. Thomas, Esq.
Labaton Sucharow LLP
New York City

11:50 a.m. – Noon ***Q&A (program wide)***

12:00 Noon **Adjournment & Departure**

Lunch is on your own

Grand Jury Subpoenas for Foreign Documents Produced in Civil Litigation—A New Report of the Antitrust Committee

By Jay L. Himes

The pendency of federal criminal proceedings and ongoing parallel private civil litigation, regular occurrences today in antitrust and other areas of law, can present tensions that call on the courts to accommodate both criminal and civil justice interests. A recent example arose in a United States Department of Justice antitrust investigation and criminal prosecution involving price-fixing in the liquid crystal display (“LCD”) industry, conducted in the Northern District of California.

Many of the companies involved in the LCD proceedings were located outside the United States. Thus, when grand jury subpoenas *duces tecum* issued in the criminal investigation, the DOJ, following its regular practice, stated that documents located abroad were not required to be produced unless and until the DOJ advised the subpoena recipient otherwise. Subpoenaed companies therefore were not required to include such “foreign” documents in their productions to the grand jury.

Meanwhile, in parallel civil treble damage actions, also pending in the Northern District of California, document production went forward. Defendants in the civil litigation produced foreign documents to the civil plaintiffs, and sets of the foreign documents came into the possession of law firms located in the United States. As is typical, the defendants made production under the terms of a protective order, which restricted the documents’ use and disclosure.

The DOJ then issued federal grand jury subpoenas to the U.S. law firms to produce in the criminal investigation the foreign documents produced in the parallel civil case. Because the civil protective order did not authorize disclosure to the grand jury, subpoenaed law firms moved to quash the grand jury subpoenas. Thus, the question arose: which court process prevailed—the criminal grand jury subpoena or the civil protective order? The Ninth Circuit upheld the grand jury subpoenas, and the Supreme Court declined review. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M-07-1827 SI (N.D. Cal. Mar. 29, 2010), ECF No. 1646, *rev’d sub nom. In re Grand Jury Subpoenas (White & Case)*, 627 F.3d 1143 (9th Cir. 2010), *cert. denied*, 131 S. Ct. 3061 & 3062 (2011).

When, as in the LCD proceedings, the authority of the grand jury to subpoena evidence bumps up against a protective order in civil litigation, designed to promote discovery, one or the other will need to give way. This is, at bottom, a policy decision where weighty considerations on each side cry out for recognition. Either Congress or the Supreme Court will eventually make the choice.

The clash in the LCD proceedings is the subject of a recent report by the Section’s Antitrust Committee that surveys the current case law in this area. The report discusses the issues raised from three perspectives: (1) the defense; (2) the DOJ; and (3) the private plaintiffs. Watch for it on-line and in the NYLitigator: *When Blue Turns to Grey: Grand Jury Subpoenas for Foreign Documents Produced in Civil Litigation*.

Jay L. Himes is a partner at Labaton Sucharow LLP and co-chair of the Section’s Antitrust Committee.

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NYSBA

The Section Celebrates New York's Commercial Division and Honors Hon. John A. Michalek

By Heath J. Szymczak

On January 30, 2013, members of New York's 8th Judicial District (consisting of the counties of Western New York) came together to celebrate the growth and success of the Commercial Division and to honor the contributions made by the Honorable John A. Michalek toward its advancement. The event also welcomed the incoming Commercial Division Justice, the Honorable Timothy J. Walker. The ceremony was jointly sponsored by the Commercial and Federal Litigation Section and the Bar Association of Erie County (BAEC). The event, which was organized by Heath J. Szymczak (Jaekle Fleischmann & Mugel), was held in the beautiful and historic Hotel Lafayette in Buffalo, New York.

As pictured above, an award was presented to Justice Michalek by Tracee E. Davis, Chair of the Commercial and Federal Litigation Section; Kathleen M. Sweet, BAEC President; and Daniel E. Sarzynski, Chair, BAEC Commercial & Bankruptcy Law Committee. Even before there was a Commercial Division, Justice Michalek was no stranger to Commercial Law, developing a record of distinguished jurisprudence. As Presiding Justice, his courtroom has been noted for its thoroughness and efficiency. Justice Michalek praised his staff and law clerks for their hard work and expertise. He also praised the high caliber of advocacy delivered by the local bar practicing in the Commercial Part. Justice Michalek welcomed Justice Walker as the incoming Presiding Justice and offered to assist him in making the transition, a tradition of collegiality that has been passed along with each new justice since the Commercial Part's inception.

Justice Walker also has extensive experience in commercial litigation, having represented individual business owners, as well as Fortune 500 and multi-national organizations, while in private practice. He thanked Justice Michalek for his contributions, as well as the hard work of the 8th Judicial District's Administrative Judge, the Honorable Paula L. Feroletto, who was also in attendance. He remarked that he was very pleased to see Tracee Davis, having recently met her in New York City at the NYSBA's Annual Meeting a couple of weeks earlier. He emphasized the importance of the support of the Com-



From left: Kathleen M. Sweet, Hon. John A. Michalek, Tracee E. Davis, and Daniel E. Sarzynski

mercial and Federal Litigation Section and affirmed his commitment to Chief Judge Jonathan Lippman's goal of continuing to improve the Commercial Division to make New York a place where companies will prefer to do business.

Over one hundred members of the bench and bar, together with friends and family, were in attendance. The Commercial and Federal Litigation Section was very well represented, including several members who came in from outside of Western New

York. Section Chair Tracee Davis flew in from New York City; David H. Tennant (immediate past Section Chair) and Sharon M. Porcellio (former Section Chair) came in from Rochester; and Mitchell J. Katz (Co-Chair of the Commercial Division Committee) came in from Syracuse. Also in attendance was the NYSBA President-Elect, David M. Schraver (also from Rochester), as well as immediate past NYSBA President Vincent E. Doyle III. The strong showing from the NYSBA leadership was a demonstration of support to the Western New York contingent and the Commercial Division itself.

From its humble beginnings, New York's Commercial Division is now statewide, consisting of twenty-seven justices in eight counties and two entire judicial districts. By all accounts, the Commercial Division has been a tremendous success. Many states have followed New York's example, with business courts now found in over nineteen states. In 2010, even Delaware, known for its venerable Court of Chancery, created a separate business court that resembles the New York model. Most recently, Michigan has created a business court, which will open its doors this year. The Commercial and Federal Litigation Section is committed to the advancement of the Commercial Division through the tireless work of the Section's various committees and working groups. It also stands ready to assist Chief Judge Lippman's "Task Force on Commercial Litigation in the 21st Century" in ensuring that New York's Commercial Division is the premier forum for the adjudication of business disputes in the Nation.

Heath J. Szymczak is a partner at Jaekle Fleischmann & Mugel, LLP.



The Section's New Committee on Social Media

Social media is having a great impact on our society and our legal community, and the Commercial and Federal Litigation Section under the leadership of Chair Tracee E. Davis has decided to meet this continuing challenge "head on" by creating a new Committee, one of the first of its kind in the nation. It will be co-chaired by Mark A. Berman and Ignatius A. Grande.

Mr. Berman is an experienced commercial litigator and a partner at Ganfer & Shore, LLP. He has had a column in *The New York Law Journal* since 1995 addressing New York State electronic discovery issues. Mr. Berman is a member of the New York State E-Discovery Working Group and Secretary of the Section's Electronic Discovery Committee. He also has taught e-discovery and social media law to a variety of judicial and bar groups as well as at various law schools. He is also a member of the Second Circuit Committee of the Federal Bar Council.



Mr. Grande is Senior Discovery Attorney/Director of Practice Support at Hughes Hubbard & Reed LLP. In his role at Hughes Hubbard, he provides legal counsel to case teams and clients on the best ways to manage e-discovery and social media during the course of litigation. He is a member of the Section's Electronic Discovery Committee and The Sedona Conference Working Group on Electronic Document Retention and Production. Mr. Grande is an author and frequent speaker on the topics of electronic discovery and social media law.



The Committee's mission is multi-faceted. One significant part of its mission will be to bring the Section to the "next level" by actively using social media to promote the work of the New York State Bar Association and the Section, including their various forward-thinking initia-

tives, as well as CLE programs that the Section sponsors. The Committee will be working with the State Bar Association to utilize social media to keep Section members current on information about the Section and important legal developments.

The Section well understands that attorneys are now communicating with their clients and opposing counsel, as well as investigating their cases, through electronic means, including social media. To that end, part of the Committee's mission is to educate Section members about the risks and benefits of using social media as part of their law practice. Attorneys, however, must be aware of their professional obligations when communicating through social media in order to steer clear of ethical, disciplinary, and malpractice issues. The Committee, in conjunction with other Section committees, intends to develop informative programs to keep the Section's members "on top of" these critical issues when litigating a case. For example, the Committee will seek to educate attorneys on how to deal with the thorny issue of how social media may affect jury deliberations.

The Committee with other Section committees will also focus on such areas as the preservation and collection of social media for use in litigation and investigations, the types of social media and its discoverability, and how social media best can be used to prosecute and defend a case. The Committee will sponsor CLEs in this rapidly evolving area.

In addition, the Committee will monitor legislative developments as they relate to social media and will seek to keep the Bar apprised of them. Since improper social media communications can lead to litigation in the employment and securities arenas, the Committee intends to address appropriate corporate policy in these areas, among others.

These are a few of the projects that the Committee envisions putting together during the next year or two. Messrs. Berman and Grande look forward to receiving suggestions and comments on this agenda. If you have an interest in participating in this Committee's forward-thinking activities, please e-mail Mr. Berman at mberman@ganfershore.com or Mr. Grande at grande@hugheshubbard.com.

Court of Appeals Amends Rules of Practice

By Mark Davies

On January 10, 2013, the New York State Court of Appeals adopted extensive amendments to its Rules of Practice. The amendments may be found at <http://www.nycourts.gov/ctapps/news/nottobar/nottobar011713.pdf>.

Of particular note are the following:

- Copies of cited materials, other than decisions, not readily available must be submitted as a separate filing (decisions not readily available must be included in the submission in which the decisions are cited)—22 NYCRR § 500.1(h).
- The rule on sealing and redaction of confidential and sensitive material has been substantially amended—22 NYCRR § 500.5.
- The number of copies of record material and briefs has been reduced from an original and nineteen to an original and nine—22 NYCRR §§ 500.12, 500.14, 500.23(a)(1)(ii), 500.25.
- Briefs must now include questions presented and point headings—22 NYCRR § 500.13(a).
- Appendices should be filed as a separately bound document, not as an attachment to the party's brief—22 NYCRR §§ 500.13(a), 500.14(b), (c).
- A motion for leave to file an amicus brief on an appeal may not be combined with a motion for leave to file an amicus brief on motions for permission to appeal—22 NYCRR § 500.23(a)(3).

The Court of Appeals rules, as amended, may be found on the Court's website at <http://www.nycourts.gov/ctapps/500rules.htm>.

In addition, the Court of Appeals has developed an online service—the Court of Appeals Public Access and Search System (Court-PASS)—that “provides an improved method for the filing of records and briefs in digital format on appeals to the Court of Appeals and, for the first time, offers universal online access to these documents through a publicly searchable database on the Court's website.” *Notice to the Bar, Introduction of Court-PASS: The Court of Appeals Public Access and Search System*, Jan. 17, 2013, at 1, available at <http://www.nycourts.gov/ctapps/news/nottobar/nottobar011713.pdf>. The URL for Court-PASS is: <https://www.nycourts.gov/ctapps/courtpass/>.

Finally, counsel's attention should be called to the Practice Aids and Court Forms found on the Court's website, in particular:

- The Court's *Guide for Counsel in Cases to be Argued before the New York State Court of Appeals*, found at <http://www.nycourts.gov/ctapps/forms/counsguide.htm>; and
- *Technical Specifications and Instructions for Submission of Briefs and Record Material in Digital Format*, available at <http://www.nycourts.gov/ctapps/techspecs.htm>.

Mark Davies is an Adjunct Professor of Law at Fordham University School of Law, where he teaches New York Practice, and editor of the Newsletter.



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CPLR Amendments: 2012 Legislative Session

(2012 N.Y. Laws ch. 1-505)

CPLR §	Chapter, Part (Subpart, §)	Change	Eff. Date
214-b	69	Extends commencement deadline to June 16, 2014	6/29/12
217-a	500(2)	Provides a one-year-ninety-day statute of limitations in personal injury, property damages, and wrongful death suits against governmental entities	6/15/13
2310	333(1)	Repeals CPLR 2310	8/1/12
3015(e)	458	Requires a license at the time services were rendered	10/3/12
3101(d)(1)(iv)	438(5)	Provides that a physician may be called as an expert witness at trial in a podiatric medical malpractice action	2/17/14
7701	155(47)	Deletes second reference to Superintendent of Financial Services	7/18/12

Notes: (1) 2012 N.Y. Laws ch. 184, § 3, eff. 7/18/12, extends until January 1, 2015, the deadline for the Chief Administrator's report to the legislature, governor, and Chief Judge on commencement, filing, and service by electronic means in criminal and certain family court proceedings and expands the scope of the report; (2) 2012 N.Y. Laws ch. 478, eff. 1/1/13, amends Jud. Law §§ 475 and 475-a to include ADR; (3) 2012 N.Y. Laws ch. 492, § 1, eff. 11/1/13, amends Jud. Law § 478 to permit sister-state or foreign attorneys admitted pro hac vice in NY State to appear without being admitted to NY bar.

NYLitigator Invites Submissions

The *NYLitigator* welcomes submissions on topics of interest to members of the Section. An article 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.

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2013 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

(West's N.Y. Orders 1-10 of 2013)

22 NYCRR §	Court	Subject (Change)
202.5-b(b), (d)-(f), (h)	Sup.	Adds provisions on signatures, proof of service, format of e-filed documents, notification of e-filing, filing in NYSCEF system, service of interlocutory documents, service of notice of entry
202.5-bb(a), (b), (e)	Sup.	Deletes certain definitions; permits SCAR representatives to claim exemption from e-filing; authorizes court to require additional hard copy from persons exempt from e-filing
202.12-a(b)(3)	Sup.	Adds provision on consequences of plaintiff failing to file proof of service of summons and complaint within 120 days after commencement of action in certain counties
202.16-a(1)	Sup.	Amends provisions on automatic orders
500.1(h), (o)	Ct. App.	Requires submission of other cited materials not readily available; requires request for acknowledgement of receipt be accompanied by additional copy of papers
500.2(a), (b), (f)	Ct. App.	Adds cross-reference to § 500.27(e); requires compliance with clerk's instructions for submission; authorizes clerk to reject non-complying briefs and record material
500.5	Ct. App.	Changes procedures for sealing documents
500.9(a)	Ct. App.	Clarifies that appeal is taken by serving as well as filing notice of appeal
500.10	Ct. App.	Adds that Court may transfer appeal
500.11(k), (l)	Ct. App.	Requires material submitted digitally pursuant to § 500.11 to comply with clerk's specifications and instructions and changes reference from Appellate Division to intermediate appellate court; requires compliance with sealing and redaction requirements of § 500.5
500.12	Ct. App.	Reduces number of copies of brief required to be filed from 19 to 9 (plus original); clarifies that appeal is taken by serving as well as filing notice of appeal; requires material submitted digitally comply with clerk's instructions; requires compliance with sealing and redaction requirements of § 500.5
500.13(a)	Ct. App.	Requires that briefs also contain questions presented and point headings; deletes authorization for supplementary appendix in respondent's brief
500.14	Ct. App.	Reduces number of copies of appendices or full records required to be filed from 19 to 9 (plus original); encourages that appendices and supplementary appendices be separately bound; requires that full records contain the CPLR 5531 statement; requires full records be authenticated or stipulated to; changes reference from Appellate Division to intermediate appellate court; requires material submitted digitally comply with clerk's instructions; requires compliance with sealing and redaction requirements of § 500.5
500.17(c)	Ct. App.	Deletes reference to Albany sessions
500.23	Ct. App.	Reduces from 19 to 9 copies of brief required to be filed; transfers provision on contacting Clerk's Office and on website; deletes authorization for amicus movant on motion for leave to appeal to also request permission to submit amicus brief on appeal itself (a new motion is required)
500.26	Ct. App.	Reduces from 25 to 10 number of copies of appellant's Appellate Division brief and record or appendix and of respondent's brief; reduces from 24 to 9 number of copies of appellant's letter with arguments (plus original) and of respondent's letter in opposition
500.27(e)	Ct. App.	Requires clerk to notify parties of time periods for filing briefs in digital format

Note that the court rules published on the Office of Court Administration's website include up-to-date amendments to those rules: <http://www.nycourts.gov/rules/trialcourts/index.shtml>.

2012 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

(West's N.Y. Orders 1-22, 24 of 2012)

22 NYCRR §	Court	Subject (Change)
202.5-b(d)(3)(iii)	Sup.	Prohibits secure filings of a affirmation/affidavit of service, notice of pendency, cancellation of notice of pendency, bill of costs, proof of service, RJI, release of liens, and satisfaction of judgment
202.5-bb	Sup.	Amends requirements for mandatory e-filing to include breach of contract actions; permits authorized representatives to claim exemptions from e-filing
202.6(b)	Sup.	Eliminates default applications to the clerk from RJI's filed without fee
202.12-a	Sup.	Authorizes Chief Administrator to require parties to bring additional documents to settlement conference
800.8(a)	3rd Dep't	Limits supplemental pro se briefs to 25 printed/35 typewritten pages
1000.3(c)(2), (h)(2)	4th Dep't	Expands applicability of provisions on appeals by poor persons; deletes provision on technical specifications for CD-ROM records and briefs
1000.4(a)(3), (f)(5)	4th Dep't	Prohibits condensed form transcript pages unless submitted to trial court; specifies color of briefs submitted by an Attorney for the Child
1000.11(a), (c), (g)	4th Dep't	Permits only one person to argue where a joint brief is submitted; prohibits argument in Sex Offender Registration Act appeals; requires 10 copies of post-argument submissions
1000.13(g), (m)	4th Dep't	Expands provision on motions to vacate dismissal of appeals to include motions to vacate dismissal of proceedings; expands provision on motions to expedite appeals to include motions to adjourn appeals
1000.15(c)	4th Dep't	Deletes subparagraph reference to 22 NYCRR 1000.14(c)
1000.20	4th Dep't	Adds provision on confidential and sealed records

Note that the court rules published on the Office of Court Administration's website include up-to-date amendments to those rules: <http://www.nycourts.gov/rules/trialcourts/index.shtml>.

Notes of the Section's Executive Committee Meetings

October 10, 2012

Guest speaker, Hon. Thomas A. Dickerson, Associate Justice, Appellate Division, Second Department, spoke about class actions in New York State, his treatise on litigating international torts in United States courts, and making New York courts more attractive as a center for commercial litigation.

The Executive Committee discussed the work of the Section's Special Committee on Pattern Jury Instructions, the Appellate Practice Committee's work on the Second Circuit Standard of Review Handbook, the creation of a Section Committee on Banking and Finance, upcoming CLE programs, and the NYSBA Executive Committee's draft rules on management of CLE programming.

November 13, 2012

Guest speaker, Hon. Lawrence K. Marks, Justice of the Supreme Court, New York County, Commercial Division, discussed what is going on in the court system, including the immediate effects of Hurricane Sandy and the upcoming budget, as well as his carrier with the court system.

The Executive Committee discussed the work of the Section's Special Committee on Pattern Jury Instructions, upcoming CLE programs, a draft report of the Section's Committee on Federal Procedure on Fed. R. Civ. P. 5, and diversity initiatives. The Executive Committee approved a report on Grand Jury Subpoenas for Foreign Documents Produced in Civil Litigation.

December 12, 2012

Guest speaker, Hon. Sherry Klein Heitler, Administrative Judge for Civil Matters, First Judicial District, ad-

ressed topics relevant to what is going on in New York County, particularly in regard to commercial law.

The Executive Committee adopted a report of the Section's Committee on Federal Procedure on Fed. R. Civ. P. 5, the Committee on the Federal Judiciary's updated *Guide to Individual Practices of Federal and Magistrate Judges in the Southern and Eastern Districts*, and the Committee on Electronic Discovery's updated *Best Practices in E-Discovery in New York State and Federal Court*. The Executive Committee discussed upcoming CLE programs, the proposed Committee on Social Media, the work of the Section's Special Committee on Pattern Jury Instructions, and the NYSBA's proposed CLE guidelines.

January 8, 2013

Guest speaker, Hon. Elizabeth Stong, U.S. Bankruptcy Judge for the Eastern District of New York, delivered comments regarding her "view from the Bench" and spoke about the heavy case load in Bankruptcy Court and her opinion of how the practical approach to cases in Bankruptcy Court could be used to improve efficiencies in commercial litigation generally.

The Executive Committee discussed the work of the Section's Special Committee on Pattern Jury Instructions, the proposed new Section Committee on Social Media, upcoming CLE programs, the upcoming Annual Meeting, the NYSBA diversity reception, and the Smooth Moves event, as well as membership initiatives.

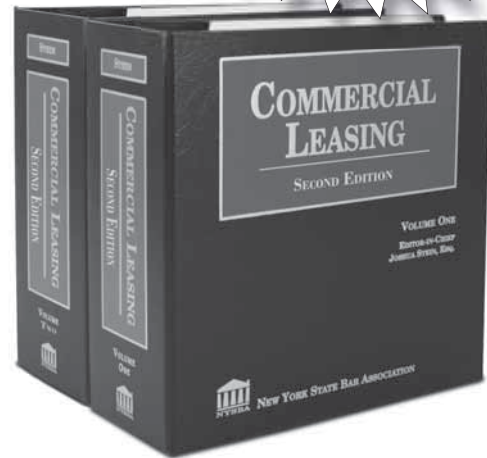


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