

# Commercial and Federal Litigation Section Newsletter



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

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*...and more!*



# Message from the Chair

## The Struggle Is Real

I heard my recent college graduate tell me “the struggle is real” in reference to some seemingly minor hassle that she was dealing with. I looked up the phrase and the *Urban Dictionary* reports that the phrase denotes a situation where the user wishes to express that they are encountering some sort of undesirable difficulty, but dealing with it. With irony, it has a comical effect of dramatizing a non-critical, yet undesirable, situation.

Against the backdrop of so many critical issues affecting our legal and political institutions, my struggle to prove to new law school graduates and new lawyers the value of membership in our Association, let alone active participation in the Association and our Section, seems real enough to me, albeit a small issue all other things considered. Yet I persist.

I work at being the best version of myself, and a big part of “self” for me has been my identification as a lawyer. If you are like me (accept my sympathies but please continue) and have focused on being the best legal professional you can be, there are many advantages. Lawyering skills can make you better prepared to deal with the big and small issues, not only in your practice but in other aspects of your life. As trial lawyers, we focus on the art of empathy and listening, of discerning facts from fabrications, and critical thinking. These skills are very handy when it comes to interacting with friends and family, dealing with colleagues, working in groups, and, for example, negotiating with personnel at the DMV.

The Association and our Section offer you, as it does to me, the opportunity to help you become the best version of yourself. (For those who just rolled your eyes,



Mitchell J. Katz

let me explain.) Not only do we offer CLE programs, we offer the ability to teach. We provide you not only great content to read, we provide the opportunity to write. You can attend our events AND you can help plan them. You can appear before a judge AND you can meet judges and even break bread with them. You can donate to the New York Bar Foundation AND you can help the Foundation identify and support programs that provide legal assistance to those who cannot afford us. Through your interactions on our committees and program planning groups, you will enhance your interpersonal skills AND you will build your network. By

attending our award programs, you will not only learn from those who achieved notable success, but you can meet them and perhaps develop relationships that will help guide you. Through participation in our diversity and inclusion events, you will learn what it is like to be a member of a minority group, and you may find yourself thinking about what you can do to improve the representation and participation of minorities in our profession.

Sure, you can get your CLE credit online or in the office with people you already know, and you can eat lunch at your desk while reading the *Journal*, *Litigator*, and the *Newsletter*. But you know you want more than that, and you know that you will derive much more personal and professional satisfaction if you make some time to participate.

My struggle is real, so if you do nothing else, please help me figure out how we can get you to spend a couple of hours a month working with us!

Mitchell J. Katz

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# Update: International Litigation Committee

By Clara Flebus

Increased globalization of markets and rapid proliferation of electronic information present new and complex challenges in international litigation, such as the existence of laws protecting the transfer of data located abroad and restricting depositions in foreign fora, which often result in further disputes over cross-border discovery. To promote dialogue and solutions in this area, the Section's Committee on International Litigation is spearheading an innovative project aimed at developing a declaration of principles for cooperation in international discovery that can be presented to commercial judges from around the world convening in New York for a judicial conference next Fall. Our goal is to produce recommendations that provide guidance in managing, shaping, and directing the taking of evidence and exchange of information across national borders, in the spirit of increasing collaboration and coordination among jurisdictions in matters of discovery.

In addition to leading the cross-border discovery project, the Committee continues its outreach activities aimed at educating foreign judges, lawyers, and law students on the dynamics of litigation, judicial proceedings, and dispute resolution alternatives in the United States. Our efforts in this area include developing programs and materials designed to increase knowledge of the U.S. legal system among jurists with foreign backgrounds, facilitating discussion on the practice of law in the international context, and promoting New York as a leading litigation and arbitration venue worldwide. In the past few months, the Committee has organized several educational programs and lectures for delegations of law students visiting from China, and for lawyers pursuing an LL.M. degree in New York. These programs tie in with the Section's effort to develop long-term relationships with law schools by devising initiatives focused on the interests of young professionals.

Additionally, the Committee endeavors to keep its members abreast of recent developments in the field of international litigation and arbitration. To that end, we recently partnered with a sister committee at the New York County Lawyers' Association in offering a program for practitioners on the impact that global enforcement of national anti-corruption laws is currently having on international arbitration.

We are proud to share some additional highlights of our recent activities. In February, the Committee organized a program that discussed the appellate process in state courts for Fordham law students enrolled in a course on litigation practice for international lawyers. This lecture used as a case study an appeal from a decision on a motion for summary judgment involving the interpretation and application of a New York statute, and examined practical aspects relating to the life of an appeal from the

filing of the briefs to the issuance of a decision. The topics addressed included the importance of case law in resolving statutory interpretation questions, and the principle of *stare decisis* that distinguishes the common law from civil-law systems. Twenty-nine students from around the world attended the program, which also discussed distinctive features of the U.S. adversarial system from the perspective of a foreign lawyer.



Clara Flebus

Earlier this year, the Committee hosted a delegation of Chinese law students at New York Supreme Court. The students met with Justice Doris Ling-Cohan (of the Supreme Court and Appellate Term), who compared her work as a trial judge with her experience as an appellate judge sitting on a panel. Judge Ling-Cohan described the structure and content of briefs and records filed on appeal, and explained the purpose of oral argument. She emphasized that attorneys should be prepared for a hot bench, because judges carefully read all the papers submitted by the parties before sitting for oral argument. After hearing from Judge Ling-Cohan, the Chinese students enjoyed a presentation by the author of this article on the types of proceedings in aid of international arbitration brought in the Commercial Division and the scope of judicial review of international arbitration awards.

Last November, the Committee co-sponsored a program with the Foreign and International Law Committee of the New York County Lawyers' Association featuring Daniel Schimmel (a partner at Foley Hoag LLP), who spoke about international arbitration in the context of recent efforts by regulators around the world to investigate and prosecute corporate corruption. Mr. Schimmel explained that corrupt payments by third-party representatives, such as agents, distributors, or consultants, are one of the largest and most uncertain risks to companies that are subject to the Foreign Corrupt Practices Act or anti-corruption laws of other countries, and corruption investigations frequently give rise to arbitrations when companies impose moratoriums on payments due to such consultants. The program further focused on the interplay between corruption investigations and international commercial arbitration, and covered a broad range of issues, including arbitrability, jurisdiction, burden of proof for allegations of corruption, enforcement, and cultural differences in the perspectives of arbitrators.

Also in November, the Committee presented an educational program to foreign students attending a course on American litigation practice at Columbia Law School. This lecture analyzed appeals taken from decisions rendered on motions for summary judgment and after trial in commercial matters, and examined instances in which a trial or a hearing might be necessary to resolve a business dispute. The students also had the opportunity to meet with Justice Eileen Bransten (of the Commercial Division). Judge Bransten discussed the nature of motion practice in complex commercial cases and the process through which she arrives at a disposition.

Finally, the Committee organized a presentation for a delegation of law students from several prestigious universities in China, visiting New York through the U.S.- China Legal Exchange Foundation last August. The program was held at Wollmuth Maher & Deutsch, LLP (“WMD-Law”) and moderated by the author of this article. The speakers included Vincent T. Chang, a partner at WMD-Law focusing on complex commercial litigation; Sandip C. Bhattacharji, a partner at WMD-Law focusing on corporate transactional matters; Ashley Nam, an associate in the Corporate & Securities Group and Litigation & Dispute Resolution Group of the firm; and Hugh H. Mo, the principal of Hugh H. Mo, P.C. The panelists

addressed issues in international litigation involving Chinese and U.S. companies and explored potential areas of cooperation between Chinese and U.S. lawyers. The discussion also touched upon the “One Belt and One Road” initiative launched by the Chinese government to promote regional interconnectivity and economic integration among Eurasian countries. Hugh Mo commented that future lawyers in China should be prepared to take advantage of the new professional opportunities expected to arise from the development of infrastructure and markets in the countries along the Belt and Road.

**The Committee is chaired by Clara Flebus, who is a Court Attorney in New York Supreme Court. Ms. Flebus focuses on commercial litigation and assists the International Arbitration Part of the Commercial Division in the disposition of international arbitration-related matters. The Committee always welcomes new members who are interested in participating in its programs and activities. Please email [clara.flebus@gmail.com](mailto:clara.flebus@gmail.com) if you wish to join the Committee.**



Chinese delegation at Wollmuth Maher & Deutsch LLP



Chinese students with Judge Doris Ling-Cohan



Columbia Law School students with Judge Eileen Bransten



# Legal Ethics in the Digital Age

By Maverick James

On October 25, the NYSBA Commercial and Federal Litigation Section held a critically important CLE program aptly titled “Legal Ethics in the Digital Age: Practical Strategies for Using Technology Ethically in Your Practice.” The event was held at the New York Society of Security Analysts, where approximately 100 attorneys attended to seek practical guidance on handling electronically stored information, protecting privilege and work-product in electronic communications and publications, the “Rules of the Road” of the Social Media use, and managing records in the cloud.

## The program faculty included known experts including:

**Mark A. Berman, Esq.**, Ganfer & Shore LLP, NYC  
**Prof. Michael L. Fox**, Mount Saint Mary College, Newburgh, NY

**Daniel E. Lust, Esq.**, Wilson Elser, NYC

**Maura R. Grossman, Esq.**, Maura Grossman Law, NYC

**Ronald J. Hedges, Esq.**, Senior Counsel, Dentons US LLP, NYC

**Shawndra G. Jones, Esq.**, Epstein Becker & Green, P.C., NYC

**Scott L. Malouf, Esq.**, Office of Scott L. Malouf, Pittsford, NY

**Hon. Rosalyn H. Richter**, NYS Supreme Court, Appellate Division, First Department.

The purpose behind this program was to make sure New York City is at the forefront of understanding electronic use. Additionally, it is the first CLE that offers 4.0 MCLE credits!

There were four individual sessions with different panelists. Each one focused on the legal ethics needed for what is already in place, such as e-discovery, as well as innovative technology like cloud storage.

## (1) What Attorney Competence Means When It Comes to Handling Electronically Stored Information

Moderator:

**Maura R. Grossman, Esq.**, Maura Grossman Law

Speakers:

**Ronald J. Hedges, Esq.**, Dentons US LLP

**Shawndra G. Jones, Esq.**, Epstein Becker & Green, P.C.

**Hon. Rosalyn H. Richter**, NYS Supreme Court, Appellate Division, First Department

The faculty stressed that it is important to know the consequences of saying the wrong things in court about electronically stored information, which can be different

depending on whether one is in state or federal court. Thus, questions arise: How are you communicating with your client? If you are texting or emailing, where are you storing your information? If you are using a smartphone, do you know what data is being collected? These questions can leave litigators unprepared in court and ultimately hurt their advocacy.

The panel stressed the necessary ethical duties in managing e-discovery. It is important to analyze and understand a client’s electronically stored information systems and storage. A judge can easily hold you accountable for not complying with e-discovery since judges understand e-discovery processes very well now.

Specific things you can do to comply with competent practice include: redacting properly, getting your document scrubbed by third parties, encrypting your documents, and even understanding what the privacy settings on your client’s social media sites are on. Shawndra Jones informed attendees that there are third party providers that have software that cleans and scrubs a document for you.

## (2) Tips and Tools for Protecting Privilege and Work-Product in Electronic Communications and Publications

Moderator:

**Ronald J. Hedges, Esq.**, Dentons US LLP

Speakers:

**Mark A. Berman, Esq.**, Ganfer & Shore LLP

**Shawndra G. Jones, Esq.**, Epstein Becker & Green, P.C.

**Hon. Rosalyn H. Richter**, NYS Supreme Court, Appellate Division, First Department

Both the New York and the American Bar Association’s Standing Committee on Ethics and Professional Responsibility have promulgated rules that now require attorneys to take specific steps to protect electronically divulged communication. Ronald Hedges informed attendees that “a client may require the lawyer to implement special security measures not required by this Rule, or may give informed consent to forgo security measures that would otherwise be required by this Rule.” However, it is up to the lawyer to know what is in compliance with the law and what is not.

Mark Berman stressed the importance of being careful of where you access the internet through your devices when housing confidential client information. “Don’t use Starbuck’s wifi.” Other things you can do is to use a privacy screen on your laptops. This also means that you don’t have to encrypt everything. However, according to new ABA rules, it may not be acceptable to use email that

is not encrypted; that rests on a case by case basis. You just have to take reasonable measures. Document management systems are not as expensive as you might think, especially when balancing the risk. A lack of a firewall is a bad thing, but when you want to install a firewall you should adhere to due diligence principles and find out what is going into your firewall.

### **(3) The Dos and Donts of Attorney Social Media Use and Advice to Clients: An Overview of the “Rules of the Road”**

Moderator:

**Prof. Michael L. Fox**, Mount Saint Mary College

Speakers:

**Ignatius A. Grande, Esq.**, Berkeley Research Group

**Maura R. Grossman, Esq.**, Maura Grossman Law

**Scott L. Malouf, Esq.**, Office of Scott L. Malouf

Nowadays, most attorneys use social media in their practices. It isn't a bad thing. We want to get new clients through solicitation, but note that solicitation rules will kick in. However, the question really presents itself during the course of litigation. Social media allows for more bad facts to arise. Anything can be relevant. There is a general duty of confidence in knowing what all of these platforms do.

Questions arise during litigation on what a lawyer can do with respect to jurors, clients, and witnesses. For example, can you research jurors on their social media platforms, can you friend witnesses? What if that witness is not represented by counsel—can you still friend him or her? Interestingly, in New York, you can as long as you use your own name. You cannot use a fake profile. That violates ethical standards. Many attorneys may think that social media is a gold mine of information without any repercussions, but it can come out in court that the use of social media was in fact unethical.

Social media use when interacting with clients can also be hazy. Scott Malouf stressed a need for lawyers to communicate with clients. Ask them what they use so that you as an attorney can be ready.

### **(4) Managing Records in the Cloud and Elsewhere: Takeaways for Organizing Your Client Files**

Moderator:

**Ignatius A. Grande, Esq.**, Berkeley Research Group

Speakers:

**Prof. Michael L. Fox**, Mount Saint Mary College

**Shawndra G. Jones, Esq.**, Epstein Becker & Green, P.C.

**Scott L. Malouf, Esq.**, Office of Scott L. Malouf.

When we hear the expression, “oh it's somewhere in the cloud,” we often don't go any further and simply dismiss its relevance. For a lawyer, that may and should not be the first instinct. With the constant use of electronic documents that are frequently shared throughout an office or organization, it is impossible to get away from the technology. As Professor Michael Fox stated, “This technology is here to stay, so it is in your best interest to know how best to use it and to take any needed precautions.” Cloud computing is becoming mainstream now and its impacts are wonderful, such as increasing the scalability of your practice to house more information. However, just as was mentioned before, attorneys need to take precautions that they are complying with ethics rules when handling client information

There are many benefits to cloud computing such as:

- Giving you extra space;
- Allowing multiple parties to collaborate;
- Increasing productivity;
- Creating a remote backup data storage that can automatically occur.

With the benefits, however, there can be drawbacks. Entering into an age where data is so prevalent in any transaction and is such an asset, we have an obligation to pay close attention to protecting data we have from clients. The panelists suggested first looking at your basic tools such as Word and questioning what protections these services have. Shawndra Jones suggested to even turn off the automatic syncing so that you can assess whether it would be safer to keep the document with the information off the cloud.

This does not only apply to larger institutions. The cloud is proliferating in access through basic technology like our phones. Thus, it is imperative that attorneys understand this new technology and keep abreast of how technology advances.

Understanding the cloud, and really all social media and technological innovation, is tough. However, you don't have to do it alone. Attending CLEs and consulting with experts is not only beneficial but also is needed in your advocacy for your clients.

**Maverick is a second-year student attending New York Law School. He hopes to pursue a career where he will advocate and advise his clients with an expertise in utilizing innovative technology and understanding its privacy implications. He is always looking to connect with legal professionals from various industries. He can be reached through LinkedIn: <http://www.linkedin.com/in/maverickjames>.**



# How the NYSBA ComFed Diversity Fellowship Provided Me With New Perspectives: A Conversation With Geoffrey Williams

By Catherine Benny

Law students and lawyers alike are always searching for opportunities to hone their skills and make new connections; however, as there are many networking opportunities it can be difficult to know which ones are truly beneficial. On November 17, 2017, I had the opportunity to speak with Geoffrey Williams, a recent graduate of Fordham Law School and former recipient of the NYSBA Federal Commercial Litigation Section’s Diversity Fellowship, about his experience. One of the things Geoffrey highlighted over the course of the interview was how the Section’s Diversity Fellowship helped him expand his professional network. He still keeps in touch with Judge Scarpulla, the judge he interned for, and today works as a law clerk in the Bankruptcy Court in the EDNY.

Although Geoffrey had worked at a litigation firm prior to law school, he felt that the judicial internship with Judge Scarpulla actually provided him with more trial experience because he was exposed to what goes on behind the bench. Outside of the typical research and writing assignments that are part of a legal internship, Geoffrey also had the opportunity to observe trials where he heard arguments from both plaintiffs and defendants in a case, attended weekly discovery conferences, and as a judicial intern even gave the judge his opinions on motions submitted by attorneys that argued in the judge’s courtroom. Interestingly, Geoffrey stated that his exposure to trials from behind the bench allowed him to gain exposure to several different issues because trials deal with myriad issues. Contrastingly, when working at the litigation firm he was only exposed to the argument

for the firm’s client and only worked on a few cases a year. When asked how this experience with the Section changed how he sees the law or changed his interests, Mr. Williams stated, “It opened my eyes to different scenarios and changed my perspective, particularly on how different subjects within the law interact. It was my best summer experience and has definitely impacted my decision to clerk right now.” As previously mentioned, he is still in touch with the judge he interned under, and feels comfortable reaching out for mentorship or advice.

A typical day for Geoffrey in his current job as a law clerk seems to involve responsibilities similar to those he had as a judicial intern. Currently, he works with career law clerks to work on objective memos to the judge on cases he is assigned. Then, he must present these memos to the judge and defend any points if necessary. When asked if he ever gets attached to one side when writing these memos, Geoffrey responded, “You get invested in the research, but not necessarily in one side. The important thing to remember is that the goal is the best outcome for the case.” Overall my conversation with Geoffrey was very insightful – both as to what the fellowship was like and how connections we make anywhere can serve as an unexpected foothold to future opportunities.

**Catherine Benny is a second-year law student from New York and attends the Maurice A. Deane School of Law at Hofstra University in Hempstead, N.Y. She graduated from Hofstra University with a B.A. in Political Science in May 2016.**

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## Commercial & Federal Litigation Section–New York State Bar Foundation 1L Commercial Division Minority Fellowship Participants

Year	Name	Law School	Graduation Year	Comm. Div. Justice
2007	Lina M. Martinez	Fordham	2010	Justice Ramos
2008	Ji Zhang	Fordham	2010	Justice Cahn
2009	Nia Kitwana Ngozi Jackson	Hofstra	2011	Justice Bransten
2010	Alet Brown	St. Johns	2012	Justice Fried
2011	Mariel Fernandez	Columbia	2013	Justice Sherwood
2011	Danielle May	Fordham	2013	Justice Kapnick
2012	Jonathan Riddix	Hofstra	2014	Justice Kornreich
2013	Catalina Ford	Fordham	2015	Justice Oing
2014	Ana Federico	Albany	2016	Justice Friedman
2015	Geoffrey Williams	Fordham	2017	Justice Scarpulla
2016	Simonne Isaac	Hofstra	2018	Justice Singh
2017	Janae Cummings	Brooklyn	2019	Justice Sherwood

Thank you

*As a New York State Bar Association member you recognize  
the value and relevance of NYSBA membership.*

*For that, we say thank you.*

Your commitment as members has made NYSBA the largest voluntary state bar association in the country. You keep us vibrant and help make us a strong, effective voice for the profession.

Sharon Stern Gerstman

*President*

Pamela McDevitt

*Executive Director*



# Executive Committee Meetings Summaries

## October 3, 2017 Executive Committee Meeting

By Jamila Moore

Section Chair Mitchell Katz, commenced the meeting by yielding the floor to two New York State Commercial Division Justices, the Hon. Judge Deborah A. Chimes and the Hon. Henry J. Nowak of the 8th Judicial District. The duo opened by discussing their roles, responsibilities, and appointment process to the Commercial Division of the Supreme Court. Judge Nowak later explained the growth of the Division, from one judge to two, with personal law clerks.

Judge Chimes continued the discussion by explaining how she uses various scheduling methods to facilitate resolutions rather than drawing out litigation proceedings. She specifically cited frequent attorney appearances in front of her as an incentive for efficiency and accountability throughout any given case. Further, she noted her use of the ADR system to encourage mediation.

Similarly, Judge Nowak explained that he encourages attorneys to counsel their clients to reach a resolution through the ADR process. However, Judge Nowak often orders the parties to attend mediation. To date, he has issued approximately 50 mediation orders, which have yet to be challenged. Judge Nowak attributes the extensive mediation system, the training of mediators, and fee allocation to the success of the court-ordered mediation. Further, he asserted that 30%-40% of his cases are settled through mediation, a figure with which Judge Chimes agreed.

The discussion with Judges Chimes and Nowak ended with members of the executive committee inquiring more about the judges' day-to-day statistics and procedures. The questions addressed the permanency of appointment to the Commercial Division, the roles of women throughout the process, and the types of trials requested by the parties.

After Judge Chimes and Nowak summarized their experiences with women in the courtroom, Mitchell Katz commenced the business portion of the meeting by opening the floor to a discussion regarding the Preliminary Report on Judiciary Law § 470 by the Legislative and Judicial Initiatives Committee, chaired by Vincent Syracuse. There were a number of questions regarding the impact of the rule on lawyers local and non-local to New York. Doug Tabachnik championed the cause and explained the impact of the rule and methods for overcoming the implementation of the rule. Many were concerned about the legal work of local lawyers potentially being outsourced by the repeal of the rule; however, the Section voted to publish the report with minor edits.

The Chair next discussed the Scheindlin Award update and the award winners. Katz explained the separate CLE component, which will take place on March 6, 2018. The Section next discussed the Evening at Thurgood Marshall event, which will include a cocktail hour and which occurs the day before the Annual Meeting, including a plan to ensure that the Southern District law clerks receive an invitation.

Next, the White Collar Criminal Litigation Committee presented highlights of its programs. Thereafter, Robert Holtzman updated the Section on amending the Section's bylaws, a plan for communicating the amendments by January 2018, and a plan for nominating the candidates for 2018-2019 Section officers.

Katz ended the meeting by updating the committee on the Women's Task Force Report. He requested that everyone determine additional ways to continue to promote the report.

**Jamila Moore is a recent graduate of Brooklyn Law School. Throughout her tenure in law school she worked in New York City's public schools as a dean and attended law school part-time. She recently sat for the Uniform Bar Exam and is awaiting her results.**

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## December 5, 2017 Executive Committee Meeting

By Maverick James

Section Chair Mitchell Katz opened the meeting to introduce newly minted Commercial Division Justice, the Honorable Andrea Masley of the Supreme Court of the State of New York, New York County. Justice Masley shared how she runs her court by first letting attendees know that, while she has adopted a majority of Justice Oing's practices along with certain practices of other Justices, she intends to revise some of the rules she has adopted. Some of her practices include relying on submitted papers instead of hearing motions, advising attorneys to avoid "legalese" and use direct language, and striving to decide matters from the bench to promote efficiency in the court. She advocated for a more transparent practice where conferences will be held in which all interested parties will know exactly what is being discussed. Lastly, she emphasized that the court is utilizing technology-based interfaces, such as Skype for Business, and encourages the use of technology to promote an efficient judicial process.

Next, the Alternative Dispute Resolution Committee, led by Charles Moxley, recapped the success of their program on building a mediation practice. Mosley also spoke



about a big initiative in conjunction with the Dispute Resolution Section to survey successful mediation programs across the country in order to implement similar practices in New York. On February 1st, the committee is planning another program on building an arbitration practice. Katz asked for participation from members towards committee endeavors to also address diversification of participants and programming geared towards young lawyers.

Mitch then introduced guests from the Dispute Resolution Section, including Deborah Masucci, who emphasized the need to collaborate in order to address the issue of litigators needing to be trained to become good arbitrators. Masucci emphasized the need to actively participate in mediation advocacy since firms cannot commit to a practice of mediation because of the billable requirements. However, Masucci spoke about the changing environment and how law schools are fostering alternative dispute resolution skills in structured programs. She also mentioned the Dispute Resolution commitment to promoting diversity within both areas of the law.

The Chair invited committee members to share their experiences at the Scheindlin Award ceremony. Members spoke about the success of the program and the emotions of everyone in the room who recognized the need to generate gender diversity. The Chair concluded the meeting by discussing the Annual Meeting, which will include CLEs on Cybersecurity and Implicit Bias, a networking reception, and special honorees.

The Chair also requested that everyone continue to get the word out on the Annual Meeting and to attend the meeting and lunch on January 24.

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## **February 4, 2018 Executive Committee Meeting**

### **By Jamie Sinclair**

On February 4, 2018, the Executive Committee of NYSBA's Commercial and Federal Litigation Section had the pleasure of being joined by guest speaker Justice Marguerite A. Grays, who brought along the newest member of the Queens County Commercial Division, Justice Joseph Risi. Justice Grays is currently the Presiding Justice of the Queens County Commercial Division and Justice Risi joined the Commercial Division only weeks before speaking at the February meeting. The Justices provided an overview of the Queens County Commercial Division before engaging in a question and answer session with Executive Committee members. The Queens County Commercial Division now has three dedicated judges: Justice Joseph Risi, Justice Leonard Livote, and Justice Marguerite A. Grays, all of whom actively work to manage the Court's full docket. In order to help manage the heavy caseload (which includes a full range of commercial litigation matters but is heavily weighted with corporate dissolution and construction litigation matters),

the Justices actively encourage early mediation of all commercial division cases.

Justice Grays also provided some practical insight into the operation of her courtroom. In order to cut down on motion practice, her law clerk handles most telephone conferences with the parties. In terms of in person conferences, Justice Grays stressed that the most important component for success in her courtroom is preparation: Lawyers should arrive fully familiar with both the facts and history of the case and ready to have a productive conference. A discussion was held regarding the Women's Task Force report and the Section's encouragement for younger lawyers to take the lead role in the courtroom.

By way of background, Judge Risi served in the Civil Terms of the Queens Supreme Court before being appointed as a judge of the New York State Court of Claims in November 2017 and recently joining the Commercial Division. Justice Grays graduated from Hofstra University School of Law in 1982 and began her career at Queens Legal Services. She was first elected in 2000 as Judge of the New York City, Civil Court, Queens County, where she served until her election to the New York State Supreme Court, Queens County, in 2002. In 2015 Justice Grays became the Deputy Administrative Judge in the Eleventh Judicial District located in Jamaica, NY.

NYSBA's Commercial and Federal Litigation Section Executive Committee meets monthly and invites guest speakers (often judges) to join them from all over the State. Recent speakers have included: Hon. Andrea Masley, Chief Judge Robert A. Katzmann, and Michael A. Cardozo.

**Jamie Sinclair is an associate in the Real Estate Operations group at Greenberg Traurig, LLP and the Secretary of NYSBA's Commercial and Federal Litigation Section.**

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## **March 2018 Executive Committee Meeting**

### **By Jamila Moore**

Section Chair, Mitch Katz, called the meeting to order at approximately 6:00 p.m. with an introduction of the guest speaker, Paul David, Assistant General Counsel of Cantor Fitzgerald.

### **Guest Speaker**

David's role focuses on the in-house perspective of commercial litigation. Cantor Fitzgerald created an internal legal team, which decreases the need to outsource legal matters. Fitzgerald attorneys act as first chair and partner with outside counsel when litigating outside their jurisdiction or when a specialized area of the law is involved. Further, the legal team provides services to all

of Cantor Fitzgerald's subsidiaries, which allows the legal team to interface with multiple business types.

Six litigators provide a cost effective method of supporting the company. The legal team acts as a boutique law firm with a lean load and multiple attorneys on each case. This model is saving money and providing high success. When there is a dedicated general counsel for a specific subsidiary, the in-house legal team works with the general counsel; however, the in-house team is lead on litigation and communication. The team keeps track of time based on the percentage of allocated time to a matter; there is no tracking of hours unless there is an affirmative case.

### Lead Program Recap

Lauren Wachtler reviewed the Lead Program Recap CLE, on March 5. The goal of the program was to promote diversity in the legal community. The Lead Program provided a showcase of a scripted trial that allowed for exposure to all aspects of a trial. A panel of five judges provided feedback to the participants. The comments following the event were all positive. The next event will be less of a script, in order to include in the moment objections.

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## Lesley Rosenthal, Past Chair of the Commercial and Federal Litigation Section, Receives the 2017 Root/Stimson Award

By Patrick Leavy

On June 18, 2017, State Bar President Sharon Stern Gerstman presented Lesley Rosenthal, the executive vice-president and general counsel of the Lincoln Center for the Performing Arts in New York City, with the New York State Bar Association's 2017 Root/Stimson Award.

The Root/Stimson Award, named after Elihu Root and Henry Stimson, honors a lawyer who has demonstrated outstanding commitment to community and volunteer service and to the improvement of the justice system. The award recognizes members of the legal profession who have given unstintingly of their time through community service activities. Elihu Root and Henry Stimson both dedicated their careers to public service, and between them, they held five cabinet posts, served as senator and U.S. Attorney, founded the Council on Foreign Relations, and won a Nobel Peace Prize. Indeed, New York lawyers have a grand tradition of public service, which has been gracefully carried on by Lesley Rosenthal.

Throughout her career, Rosenthal has exemplified her commitment to public service by giving back to her community through countless volunteer efforts. Early in her life, Rosenthal was debating whether to pursue a career

### Spring Meeting Update

Robert Holtzman gave an update on the Spring Meeting. Registration is currently open. The committee will visit Lake George, May 4-6. There will be four CLE programs and a gala dinner on Saturday including an honoree. The CLEs will include topics such as the benches view of what works well and what does not, privilege and ethical issues encountered in corporate investigations, and examinations of digital issues impacting lawyering today.

### Other Business

The section has upcoming CLE events including the Smooth Moves Program on April 10, 2018. The section is also planning a race to raise funds for a legal charity and a webinar series regarding trial practice and procedures.

The meeting adjourned at approximately 7:40 p.m.

**Jamila Moore is a recent graduate of Brooklyn Law School. Throughout her tenure in law school she worked in New York City's public schools as a dean and attended law school part-time. She recently sat for the Uniform Bar Exam and is awaiting her results.**

as a violinist or a lawyer. She visited with her elementary school music teacher, who advised her that "you can always be a lawyer and play the violin on the side, but you can't do it the other way around." She heeded the advice and attended Harvard Law School, wanting to pursue a career in public interest work.

Upon graduating from law school, Rosenthal clerked for the Honorable Shirley Wohl Kram, United States District Court for the Southern District of New York. Rosenthal planned to complete her clerkship and then pursue public interest work. However, Judge Kram counseled her about the benefits of working for a law firm coming off a clerkship. Specifically, law firms provide excellent training for young lawyers, and the salary also helps pay off student loans.

During the term of her clerkship, Rosenthal noticed one firm that repeatedly appeared before Judge Kram on important commercial matters and pro bono matters. The firm was Paul, Weiss. She applied for and accepted a position with Paul, Weiss after her clerkship. In addition to offering training and the ability to pay student loans, Paul, Weiss was extremely supportive of several opportunities for Rosenthal to provide pro bono services. While

working at the firm, she became the general counsel for her college roommate's modern dance company on a pro bono basis, which was her first exposure to being a general counsel to a nonprofit. The firm also had her take over as outside pro bono general counsel to Child Care Action Campaign, which was a much larger advocacy organization. Her 13 years at Paul, Weiss allowed her to gain the necessary training to excel at the practice of law, as well as fulfill her passion of giving back to her community through the numerous pro bono matters she handled.

After working for Paul, Weiss, Rosenthal became general counsel to Lincoln Center. In her first year, she pioneered a new initiative to procure pro bono counsel to reduce outside legal costs for the Center. The program was widely successful and reduced outside legal spending by about 90 percent. Lincoln Center now receives millions of dollars worth of pro bono counsel every year. This initiative led to Rosenthal helping to start Charity Corps, which was a project through the State Bar and state Attorney General's office that helped match nonprofits with lawyers who would provide their services on a pro bono basis.

She also is actively involved in the New York State Bar Association. Most notably, she served as Chair of our Section, the Commercial and Federal Litigation Section, from 2006-2007. As Chair, she cofounded Smooth Moves, which is a diversity program designed to enhance opportunities for attorneys of color. Smooth Moves provides a yearly CLE program, awards a Pioneer Award named after former Court of Appeals Judge George Bundy Smith, and also provides a fellowship for a diverse New York state law student to intern for a commercial judge in Manhattan.

Recently, Rosenthal founded a charity called Friends of Afghanistan, National Institute of Music. This charity partners with the Afghanistan National Institute of Music, which is a coed music school in Kabul, Afghanistan, and provides high quality academic and music education to children in the country. The charity works with people across the globe to provide funding and support for the

school to assist in preserving the cultural heritage of Afghanistan, as well as teaching western music.

In addition to these activities, Rosenthal also is the chair of the New York State Bar Association's Bylaws Committee and serves as the vice president of the New York State Bar Foundation, the charitable arm of the Association. The Foundation gives away nearly a million dollars a year to worthy law-related causes across New York State.

During her acceptance speech, Rosenthal urged lawyers to "reflect upon [their] own public service activities." She asked us to think strategically about community service and said "[t]hat means focusing your energies, setting personal goals, allocating regular time, financial and other resources to fulfill your commitments, and hold yourself up to a measurable standard." In the interview she gave for this article, Rosenthal noted that one's values drive one's passion and one's passion drives one's community work. She urged lawyers, and especially younger lawyers, to follow their personal convictions and get involved in their communities.

Rosenthal has now undertaken a new project where she and her husband Ted Rosenthal organize participatory workshops where artists, lawyers, and others come together to better understand Rule of Law concepts. She said that the Rule of Law is "foundational to our democracy, that even in these fractious political times, it is one thing that we lawyers can all agree upon." She is also piloting a law school course called "Advocating for the Rule of Law: A Practical Approach."

Lesley Rosenthal is a model lawyer who gives back to her community and the State Bar, and we congratulate our past chair on receiving the 2017 Root/Stimson Award.

**Patrick Leavy is an Assistant Editor for the Commercial and Federal Litigation Section, Publications Committee and a first year associate at Rupp Baase Pfalzgraf Cunningham, LLC in Buffalo, New York.**

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# New York County Bar and Bench Event

By Moshe O. Boroosan

On November 27, 2017, the New York State Bar Association's Commercial and Federal Litigation Section presented the New York County Commercial Division Bar and Bench Forum, for a special panel discussion with the justices of New York County's Commercial Division. The event, hosted by Foley & Lerner, LLP, was entitled *True Innovation and Efficiency: New York County Commercial Division Justices Discuss the Success of the New Commercial Division Rules*. As the name suggests, the goal of the evening was to discuss lessons to be drawn from the implementation of recent Commercial Division rule changes, and prospects for further innovation.

Present at the event were all of the Commercial Division Justices of New York County—Justices Eileen Branten, Marcy Friedman, Shirley Werner Kornreich, Andrea Masley, Barry Ostrager, Charles Ramos, and O. Peter Sherwood—with the exception of Justice Saliann Scarpulla. The discussion was moderated by Peter N. Wang, Esq., and Anne B. Sekel, Esq., of Foley & Lardner, LLP. Judge George Silver, the deputy chief administrative judge of New York County, also appeared as a special guest speaker.

In a lively 90-minute discussion, the panelists explored recent Commercial Division rule changes. The panelists actively solicited feedback from the members as to how to improve the mandatory mediation program, and discussed when it is most effective to send a case to mediation. They provided guidance and insight into how practitioners should approach the amendments to the Preamble to the Commercial Division Rules confirming that principles of proportionality apply to discovery. And, they offered their frank advice on the efficacy of the Special Masters Pilot Program.

But in addition to the substantive discussion, the event reflected the commitment of the Commercial Division judges to coordinate efforts between the bench and the bar to foster the timely and cost-effective resolution of business disputes and to enhance the Commercial Division as the preferred forum for the business community.

That tone was neatly set by the opening remarks of Judge George Silver, who praised the Commercial Division as the “crown jewel of the New York court system” and reminded the attendees that the Commercial Division's success was dependent upon the continued engagement and feedback of commercial practitioners. Judge Silver issued a standing offer to meet with members of the Section to address any concerns or initiatives that might help streamline the litigation process in the Commercial Division.

It was a theme that was repeated throughout the night. Robert N. Holtzman, Esq., the Chair-Elect of the Section, welcomed all attendees, and issued an open invitation to meet with all commercial practitioners and Section members. When Peter Wang first took the podium as moderator, he encouraged all attendees to engage in an active dialogue with the Justices, instead of being passive participants. Each of the judges also indicated a desire and willingness to collaborate with the Section and commercial practitioners to adapt to the challenges of a changing business world and increasing docket sizes.

**Moshe Boroosan is an Associate of Lynn, Gartner, Dunne & Covello, LLP, in Mineola, New York.**



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#### Commercial and Federal Litigation Committees

Please designate in order of choice (1, 2, 3) from the list below, a maximum of three committees in which you are interested. You are assured of at least one committee appointment, however, all appointments are made as space availability permits.

- Antitrust (FED1300)
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- Alternative Dispute Resolution (FED1200)
- Civil Practice Law and Rules (FED1900)
- Civil Prosecution (FED2000)
- Commercial Division (FED5200)
- Continuing Legal Education (FED1020)
- Corporate Litigation Counsel (FED6600)
- Creditors' Rights and Bankruptcy Litigation (FED2700)
- Diversity and Inclusion (FED6100)
- Electronic Discovery (FED6400)
- Employment and Labor Relations (FED3000)
- Ethics and Professionalism (FED4300)
- Federal Judiciary (FED3200)
- Federal Procedure (FED3300)
- Hedge Fund and Capital Markets Litigation (FED7600)
- International Litigation (FED3600)
- Internet and Cyber Security (FED6900)
- Legislative and Judicial Initiatives (FED7400)
- Securities Litigation and Arbitration (FED4600)
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- State Court Counsel (FED5700)
- White Collar Criminal Litigation (FED6800)



# 2018 Annual Meeting Commercial and Federal Litigation Events

















# Judicial Tips to Simplify eDiscovery

By Scott L. Malouf

Screens are everywhere. Whether you are enjoying this article in hard copy or on-line you are likely surrounded by screens on phones, tablets, wearable devices, computers, TVs/displays, thermostats, kiosks, etc. The devices behind those screens create useful electronic records, particularly when networked. How to identify, sort, analyze, produce and use such records was the subject of an October CLE—*Easy eDiscovery*.

*Easy eDiscovery* featured three local judges: Hon. John Curran (Appellate Division, 4th Department), Hon. Jonathan Feldman (U.S. District Court, Western District of New York), Hon. Daniel Doyle (New York State Supreme Court) and eDiscovery Advisor Susan Kavanagh. Jeff Harradine (Ward Greenberg), Stacey Trien (Leclair Korona Vahey Cole) and I co-chaired the event. The Commercial and Federal Litigation Section of NYSBA and the Monroe County Bar Association co-sponsored the CLE.

The judicial panelists explained that discovery disputes often arise from poor communication between opposing counsel. As electronic records involve many formats and can be voluminous, miscommunication in eDiscovery can readily lead to cost overruns and delay. For example, poor definitions in document demands means demands can be overbroad, too narrow or miss key information. Similarly, privilege logs must properly and carefully explain what is being withheld and the basis for withholding to avoid motion practice and the need for *in camera* review. Counsel can fend off such problems by understanding the data at issue, its relevance and clearly describing the data in all written communications and demands.

Ms. Kavanagh supplemented the judicial guidance with technical detail. She indicated an eDiscovery vendor can help a party quickly identify and map data locations, preserve data, collect data, identify the right software to analyze data, as well as estimate costs for collection and processing of data. Counsel should also ask whether a vendor offers solutions to reduce costs, such as a litigation hold dashboard that suggests language for litigation holds, emails data custodians, tracks confirmation of hold obligations from custodians, and allows for updated hold information. The judicial panelists agreed that a vendor,



Scott L. Malouf

or IT staffer, who could explain complex systems at early stages of discovery could reduce wasted effort and would generally be welcomed.

The panel also pointed attendees to useful, free eDiscovery resources such as the *Benchbook for New York State Judges Pertaining to the Discovery of Electronically Stored Information (ESI)* (2015) and the recently released Federal Judicial Center's *Managing Discovery of Electronic Information 3d* (2017).

If you could not attend, here are some useful tips for your next eDiscovery matter:

1. Understand client data early. Ask clients what programs and devices they use for relevant activities.
2. Consider creating a data map of relevant data and where it is located. A data map is useful beyond litigation, such as to execute records retention and destruction policies.
3. If you claim a demand is burdensome or costly, explain your position in detail. For example, provide estimates of potential review time or collection costs to support your contentions.
4. Technology is evolving rapidly so you may need to explain relevant technology to the judge. Understand what aspects of the technology are important to your contentions and your opponent's.
5. Get to know eDiscovery vendors before cases arise. Some common issues are:
  - a. Understand how a vendor charges for services. Invoices or quotes from competing vendors can be quite different.
  - b. Once a case starts, contact an eDiscovery vendor as soon as possible to estimate costs and time frames.
  - c. Ask about tools or software to reduce data volumes or time spent managing rote tasks (e.g., litigation holds) or reviewing materials.

6. Keep abreast of publications by organizations focused on eDiscovery such as the Sedona Conference, and the New York State Bar Association's Committee on eDiscovery and Committee on Social Media Law.

as evidence and helps businesses use social media to achieve goals while minimizing risks. His website is [www.scottmalouf.com](http://www.scottmalouf.com).

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*Photo Credit: Teresa Tang.*

**Scott L. Malouf, Esq. (Law Office of Scott L. Malouf) helps other attorneys find and use social media**



Left to right:  
Jeff Harradine (podium), Scott Malouf, Judge John Curran.



Left to right: Jeff Harradine, Scott Malouf, Judge John Curran, Susan Kavanaugh, Judge Jonathan Feldman, Judge Daniel Doyle.

# Nassau County Commercial Division Lunches

On January 10, 2018, Justice Stephen A. Bucaria, Justice of the Supreme Court, Nassau County, Commercial Division, participated in the second in the series of lunches with the Commercial Division Justices. The lunch was held in the boardroom of the Nassau County Supreme Court and was attended by over 35 practitioners, ranging from new lawyers to seasoned attorneys, predominantly from Nassau County. In an open forum discussion, Justice Bucaria spoke about his expectations

from counsel when appearing before him whether for a conference or trial. Justice Bucaria answered many questions from the attendees, ranging from his thoughts on his Part rules, including motions for summary judgment, to his philosophy on presiding over complex bench and jury trials in the Commercial Division. Stay tuned for the next in the lunch series from Long Island, which will be held later this year.





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# CPLR Amendments: 2017 Legislative Session

(2017 N.Y. Laws ch. 1-506)

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

CPLR §	Chapter (Part) (Subpart, §)	Change	Eff. Date
203(g)	506(1)	Adds proviso for calculation of limitations period in malpractice cases based on negligent failure to diagnose cancer [Note: repealed and replaced by 2018 NY Laws ch. 1]	1/31/18
214-a	506(2)	Adds proviso for actions based on negligent failure to diagnose cancer [Note repealed and replaced by 2018 NY Laws ch. 1]	1/31/18
503(a)	366	Adds to proper venue the county in which a substantial part of the events or omissions giving rise to the claim occurred	10/23/17
2112	99 (2)	Deletes exception that e-filing may not be mandated in certain types of actions and proceedings	7/24/17
3408(a)	58 (FF, 2)	Adds exception for certain reverse mortgages	4/20/17 (until 2/13/20)
4518(c)	229	Adds procedure for certification of out-of-state hospital records	8/21/17

Notes: (1) The expiration of CPLR 1101(f) and the amendment to CPLR 1101(d), as enacted by 1999 N.Y. Laws ch. 412, Part D, § 4, as amended, was extended from Sept. 1, 2017, to Sept. 1, 2019. 2017 N.Y. Laws ch. 55, Part A, § 16.

(2) The expiration of CPLR 2111(b)(2-a), as enacted by 2015 N.Y. Laws ch. 237, was extended from Sept. 1, 2017, to Sept. 1, 2018. 2017 N.Y. Laws ch. 99, § 3.

# CPLR Amendments: 2018 Legislative Session

(2017 N.Y. Laws ch. 1-3)

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

CPLR §	Chapter (Part) (Subpart, §)	Change	Eff. Date
203(g)(2)	1(1)	Replaces exception from general rule on computing time from discovery of facts for limitations purposes in malpractice actions based on negligent failure to diagnose cancer	1/31/18 with provisos
214-a	1(2)	Amends proviso for actions based on negligent failure to diagnose cancer	1/31/18 with provisos

## The Section's District Leaders

County (District)	District Leader	Firm
New York (1st)	Joseph Drayton Adrienne Beth Koch	Cooley LLP Katsky Korins LLP
Kings (2nd)	Gregory M. LaSpina	Borchert & LaSpina, P.C.
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Westchester (9th)	Courtney Rockett Patrick Joseph Rohan	Boies, Schiller & Flexner LLP Boies, Schiller & Flexner LLP
Nassau/Suffolk (10th)	Michael Cardello, III Kathryn C. Cole	Moritt Hock & Hamroff LLP Farrell Fritz, PC
Queens (11th)	Frances Y. Ruiz	Ruiz Law Group PC

# 2017 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 1-24)

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

22 NYCRR §		Subject (Change)	Eff. Date
130-1.1-a(b)(ii)	All	Corrects cross-reference to Rules of Professional Conduct Link: <a href="http://nycourts.gov/rules/chiefadmin/AO-70-17.pdf">http://nycourts.gov/rules/chiefadmin/AO-70-17.pdf</a>	4/5/17
202.5-b(b)(2)	Sup.	Amends procedure for consenting to e-filing after commencement of action; adds provision on conversion of pending actions to electronic form Link: <a href="http://nycourts.gov/rules/trialcourts/AO%20193.pdf">http://nycourts.gov/rules/trialcourts/AO%20193.pdf</a>	12/15/17
202.5-b(d)	Sup.	Amends requirements for form of documents filed and notice on hard copy filings, adds provision on erroneously e-filed documents, and requires county clerk to indicate in NYSCEF record if hard copy documents are maintained in the matter Link: <a href="http://nycourts.gov/rules/trialcourts/AO%20193.pdf">http://nycourts.gov/rules/trialcourts/AO%20193.pdf</a>	12/15/17
202.5-b(f)	Sup.	Amends provision on email address for service and requires filing users to monitor that address for currency Link: <a href="http://nycourts.gov/rules/trialcourts/AO%20193.pdf">http://nycourts.gov/rules/trialcourts/AO%20193.pdf</a>	12/15/17
202.5-b(g)	Sup.	Amends requirements on addition of parties in pending e-filed action Link: <a href="http://nycourts.gov/rules/trialcourts/AO%20193.pdf">http://nycourts.gov/rules/trialcourts/AO%20193.pdf</a>	12/15/17
202.5-b(h)	Sup.	Amends procedure on entry of orders and judgments Link: <a href="http://nycourts.gov/rules/trialcourts/AO%20193.pdf">http://nycourts.gov/rules/trialcourts/AO%20193.pdf</a>	12/15/17
202.5-b(k)	Sup.	Deletes deadline for motion to prohibit or restrict e-filing of documents subject to proprietary rights, trade secrets, or other privacy interests and requires NYSCEF administrators to seek to protect social security numbers Link: <a href="http://nycourts.gov/rules/trialcourts/AO%20193.pdf">http://nycourts.gov/rules/trialcourts/AO%20193.pdf</a>	12/15/17
202.70(d)(2)	Sup.	Adds (1) provision on forum selection clauses consenting to the exclusive jurisdiction of the Commercial Division and choice of law clauses and (2) sample forum selection clause (App. C) and choice of law clause (App. D) Links: <a href="http://nycourts.gov/rules/comments/orders/AO-116-17-ForumSelection.pdf">http://nycourts.gov/rules/comments/orders/AO-116-17-ForumSelection.pdf</a> <a href="http://nycourts.gov/rules/comments/orders/AO-204.pdf">http://nycourts.gov/rules/comments/orders/AO-204.pdf</a>	7/1/17 & 1/1/18
202.70(g), Rule 10	Sup.	Requires certification of discussion of availability of ADR with opposing counsel and whether party is willing to pursue mediation; adds form for attorney ADR certification Link: <a href="http://nycourts.gov/rules/comments/orders/AO%20202.pdf">http://nycourts.gov/rules/comments/orders/AO%20202.pdf</a>	1/1/18
202.70(g), Rule 11	Sup.	Adds date for identification of mediator where parties certified willingness to pursue mediation under Rule 10 Link: <a href="http://nycourts.gov/rules/comments/orders/AO%20202.pdf">http://nycourts.gov/rules/comments/orders/AO%20202.pdf</a>	1/1/18
202.70(g), Rule 20	Sup.	Requires that notices of TRO include copies of all supporting papers Link: <a href="http://nycourts.gov/rules/comments/orders/TROs-AO-71.pdf">http://nycourts.gov/rules/comments/orders/TROs-AO-71.pdf</a>	7/1/17
202.70(g), Rule 26	Sup.	Court may require that estimate of trial length contain total number of anticipated hours for trial, on which court may rule Link: <a href="http://nycourts.gov/rules/comments/orders/AO-64-17-Comm%20Div%20hours.pdf">http://nycourts.gov/rules/comments/orders/AO-64-17-Comm%20Div%20hours.pdf</a>	7/1/17
202.70(g), Rule 30(c)	Sup.	Adds a requirement for consultation regarding expert testimony Link: <a href="http://nycourts.gov/rules/comments/orders/Expert%20Consultation.pdf">http://nycourts.gov/rules/comments/orders/Expert%20Consultation.pdf</a>	5/1/17
202.70	Sup.	Revises Model Status Conference Stipulation and Order (App. A) Links: <a href="http://nycourts.gov/rules/comments/orders/AO-205.pdf">http://nycourts.gov/rules/comments/orders/AO-205.pdf</a> <a href="http://nycourts.gov/rules/comments/orders/AO-206.pdf">http://nycourts.gov/rules/comments/orders/AO-206.pdf</a>	1/1/18
202.70	Sup.	Establishes a Large Complex Case List pilot program for Commercial Division, New York County Link: <a href="http://nycourts.gov/rules/comments/orders/AO%20203.pdf">http://nycourts.gov/rules/comments/orders/AO%20203.pdf</a>	1/1/18



# 2018 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 1-8)

Adopted Rules on OCA website, at <http://nycourts.gov/rules/comments/index.shtml>

22 NYCRR §		Subject (Change)	Eff. Date
1245.1-1245.10	1st-4th Dep'ts	Adds Electronic Filing Rules of the Appellate Division, including formatting requirements for documents filed electronically (Attachment A) Link: <a href="http://nycourts.gov/rules/comments/orders/ADEfilingRules-Approved-Announced-02-06-18.pdf">http://nycourts.gov/rules/comments/orders/ADEfilingRules-Approved-Announced-02-06-18.pdf</a>	1/1/18
1250.1-1250.17	1st-4th Dep'ts	Adds uniform Practice Rules of the Appellate Division, applicable to all four departments, including, inter alia, rules regulating: motion practice; methods of perfecting cases; reproduction of records, appendices, and briefs; form and content of records and appendices; exhibits; form and content of briefs; time, number, and manner of filing of records, appendices, and briefs; dismissal of appeals; transferred proceedings; original special proceedings; calendar preference and notice; oral argument; post-argument submissions; decisions, orders, and judgments; costs; remittitur; motions for reargument or leave to appeal to Court of Appeals; court clerk fees Link: <a href="http://nycourts.gov/rules/comments/orders/ADPracticeRules.pdf">http://nycourts.gov/rules/comments/orders/ADPracticeRules.pdf</a>	9/15/18

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# Proposed Rules of Interest to Civil Litigators

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

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

**March 8, 2018: Proposed Amendment of Rule 11-e of the Rules of the Commercial Division (22 NYCRR §202.70[g], Rule 11-e), to Address Technology-Assisted Review in Discovery**

Description of proposal: <http://nycourts.gov/rules/comments/PDF/CDTechAssistedReview.pdf>

Email comments to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) by May 15, 2018

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**November 15, 2017: Proposed Amendment to Commercial Division Rule 11-g to Mitigate Risk Associated with Inadvertent Privilege Waiver During Disclosure**

Description of proposal: <http://nycourts.gov/rules/comments/PDF/InadvertentPrivilegeWaiver.pdf>

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

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

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

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

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

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

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

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

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Buffet Luncheon with all attendees: Saturday, May 5 \_\_\_\_\_ (No. attending) **or**

Advancing Women in the Profession luncheon: Saturday, May 5 \_\_\_\_\_ (No. attending)

Cocktail Reception/Dinner: Saturday, May 5 \_\_\_\_\_ (No. attending)

**GOLF**

Sagamore Golf Course: 1:00 p.m. Saturday, May 5. **Fees are on an individual basis and payable to golf course.**

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**CHILDREN ACTIVITIES**

**Children's Dinner:** Friday, May 4 \_\_\_\_\_ (No. attending)

\_\_\_\_\_  
(Names/ages of children)

**Children Activities at Rec Center** Saturday, May 5 \_\_\_\_\_ (No. attending)

\_\_\_\_\_  
(Names/ages of children)

**Children's Dinner:** Saturday May 5 \_\_\_\_\_ (No. attending)

\_\_\_\_\_  
(Names/ages of children)

**Children's Activities at Rec Center** Sunday, May 6 \_\_\_\_\_ (No. attending)

\_\_\_\_\_  
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**Commercial & Federal Litigation Section**

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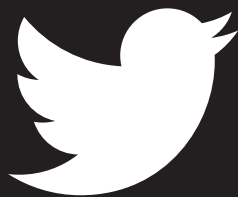
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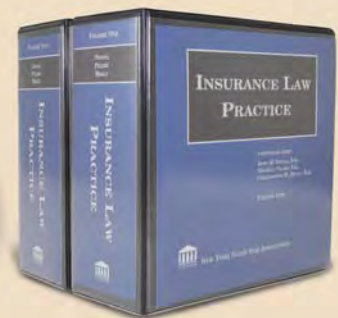
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