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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

Gregory K. Arenson

If you could choose a word or phrase to describe the Section or your feelings about being involved in the Section, what would it be? This was one of several questions we posed to almost all my 24 predecessors and recorded their responses for presentation at the celebration of the Section's 25 years of existence last October. My answer is: satisfying.

Why satisfying? I have been able to work with great people, both attorneys and judges, on interesting and meaningful projects. I have been able to engage in the study of issues in depth and then publish the results. I have helped to educate my fellow members of the bar. I hope that I have been able to influence the development of the law in several respects. Here are some examples.

Almost at the outset of my involvement, Eli Mattioli, Alan Russo, Richard Swanson, Doug Aronin, and I published a "Report on the Application of Statutes of Limitations in Federal Litigation," 53 *Alb. L. Rev.* 3 (Fall 1988), calling for the enactment of a general catch-all statute of limitations and express statutes of limitations for major federal statutory claims that lacked them, such as securities, civil rights, and labor claims. The Section distributed the report to various members of Congress. On December 1, 1990, 28 U.S.C. § 1658 (Pub. L. 1010-650, Title III, § 313(a)), which established a general federal four-year statute of limitations, became law as part of the Judicial Improvements Act of 1990. I like to think that our report contributed to its adoption.

In 1993, I worked with Bob Wise, Alan Russo, Sharon Porcellio, Allan Pepper, Tom Fleming, and Seth Goodchild to publish *A Practical Guide to the 1993 Amendments to the Federal Rules of Civil Procedure* concerning service of process, discovery, and sanctions. It was published within a month of the effective date of the changes in the rules and led to CLE programs around the state in the winter and spring of 1994.

More recently in late 2006 and early 2007, Adam Cohen, Connie Boland, Steve Bennett, Jim Parver, and I prepared a Section report on proposed Federal Rule of Evidence 502 concerning waiver of the attorney-client privilege and work-product protection and inadvertent disclosure of protected information. The Section submitted the report to the Advisory Committee on Evidence

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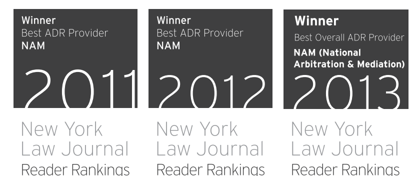

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Rules of the Standing Committee on Rules of Practice and Procedure of the United States Judicial Conference. I believe that our comments contributed to the eventual content of the rule.

What do you wish to tell Section members or prospective Section members about the Section? This was another of the questions we posed to former chairs of the Section. My answer is: get involved.

We have always had a wide range of topics in which our members are involved—from creditors' rights to social media, from appellate practice to pattern jury instructions, from the CPLR to e-discovery, from civil prosecution to hedge fund and capital markets litigation. At the state level, we encouraged the formation of the Commercial Division and the adoption of civility guidelines. At the federal level, we have had input into local and nationwide rules. Our CLE programs cover standard and novel areas of the law and are presented to attorneys and to judges. We foster networking opportunities among the bar and the bench, especially at our annual and spring meetings. The opportunities are available; seize them.

What is the most important thing for the Section to focus on for the next 25 years and why? My answer: stay at the forefront of developments in the law and society.

Twenty-five years ago, there was no Commercial Division; no one knew what has become electronic discovery; there was great concern about Rambo-style litigation tactics; attorneys did not serve on juries; and mortgage-backed securities had barely been invented, but not sliced and diced and sold in the trillions of dollars. I cannot predict the similar kinds of changes that will occur over the next 25 years. But I can predict that, if the Commercial and Federal Litigation Section stays true to its mission, it will participate in, comment on, and educate bench and bar about such developments. To be part of that exciting future is the best reason to join and share in Section activities.

Greg Arenson

NYLitigator Invites Submissions

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

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

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

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

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2014 Annual Meeting of the Section

By James M. Wicks

Great things are in store for the upcoming Annual Meeting of the Section, to be held January 29, 2014 at the New York Hilton Midtown in New York City. The Section promises to deliver two top-tier educational programs during the morning session, followed by the luncheon with a presentation of the Stanley H. Fuld Award for Outstanding Contributions to Commercial Law and Litigation.

The first of the two CLEs will explore the interplay of Delaware and New York law in resolving corporate and commercial disputes. In particular, the panel intends to discuss and debate such topics as fiduciary duties in closely held entities and the ability to contract around them; the advancement and indemnification of corporate officers and directors; the implied covenant of good faith and fair dealing; direct and derivative claims; freeze-out mergers; inspection of books and records; and other related subjects.

The program panel is stellar: Vice Chancellor Travis Laster, Delaware Court of Chancery; Associate Justice David Friedman, Supreme Court of New York, Appellate Division, First Department; Peter A. Mahler, Farrell Fritz, P.C.; David Katz, Schlam, Stone & Dolan, LLP; and Kurt Heyman, Proctor Heyman, LLP of Wilmington, Delaware.

The second program, also with filled with an all-star line-up, promises to educate us on how social media altered the world of legal ethics. Social Media Committee Co-chair Mark A. Berman will moderate an audience interactive discussion with United States Magistrate Judge Lisa Margaret Smith, Southern District of New York; United States Magistrate Judge Ronald J. Hedges (retired), District of New Jersey; Professor Jonathan I. Ezor, Touro Law School; Ignatius A. Grande, Esq., Hughes Hubbard & Reed LLP; and Mark S. Ochs, Esq., Tully Rinckey PLLC.

Some of the questions the second panel hopes to answer include: Can you advise a client to "take down" incriminating social media postings? When "friending" to gain access to an unrepresented witness's "private" postings, do you need to inform her of the purpose of such communication or that you are an attorney? Are there any limitations that an attorney must be aware of when accessing "public" social media posts by the other party? Are there limitations when researching a juror on social media? Can you identify your firm's areas of practice under "specialties" on LinkedIn? Can a judge use social media?

The luncheon follows the educational programs as usual, with the presentation of the Stanley H. Fuld Award to the well-deserving Hon. Shira A. Scheindlin, for her noteworthy and significant contributions to the rule of commercial law and litigation, particularly in the area of e-discovery. The Section is also privileged to announce that the Hon. Jack B. Weinstein has graciously agreed to present the award to Judge Scheindlin.

Former Section Chairs and Current Section Chair at the Section's 25th Anniversary Celebration Reception at Lincoln Center on October 23, 2013

Cathi Baglin, Hon. P. Kevin Castel, John Nonna, Hon. Shira Scheindlin, Robert Haig, Vincent Syracuse, Mark Zauderer, Lauren Wachtler, Greg Arenson, Sharon Porcellio, Lesley Rosenthal, Gerald Paul, Jonathan Lupkin, and David Tennant

25th Anniversary Celebration!

By Helene R. Hechtkopf

On October 23, 2013, the Commercial and Federal Litigation Section celebrated its 25th anniversary with a cocktail reception in the penthouse of the Rose Building at Lincoln Center. There was a large turnout of both judges and practitioners. Judges from many courts attended, including the Second Circuit Court of Appeals, the New York State Court of Appeals, the First and Second Departments of the Appellate Division, and the S.D.N.Y and E.D.N.Y.

The evening began with time for cocktails and schmoozing. Gregory Arenson, chair of the Commercial and Federal Litigation Section, began the evening's presentation with warm thanks to the judges in the room for attending. He noted that the Section has promoted bench-bar relations and supports funding for both the federal and state judiciaries. Since the Section was founded in October 1988, it has had an impact on state and federal courts, said Mr. Arenson.

Mr. Arenson introduced Glenn Lau-Kee, president-elect of NYSBA, who congratulated the Section on its 25th anniversary. Mr. Lau-Kee commended the Commercial and Federal Litigation Section for promoting excellence in practice and providing extensive resources to its members for 25 years. He also praised the Section's advocacy for appropriate funding for the courts.

Arguably the highlight of the evening followed—a short video presentation, in which each of the former chairs of the Section was interviewed about his or her reflections on the Section. Mr. Arenson concluded the video presentation with a note on the changes that have taken place in the past 25 years in the practice of law and expressed optimism that the Section will participate in the changes in the practice that come in the next 25 years as well.

Next, Chief Judge Robert Katzmann of the Second Circuit Court of Appeals spoke. Judge Katzmann, a former Stanley H. Fuld Award recipient (and twice a presenter), praised the Section for its record of achievement. In particular, he spoke about the Section's extensive library of reports, of which the judiciary is a consumer. He noted, for example, the utility of the Section's 2009 report on "Immigration Appeals in the 2d Circuit." The Section's reports not only put a spotlight on important problems, said Judge Katzmann, but point us toward solutions. Finally, he expressed his appreciation for the Section's support of the federal judiciary.

Judge Katzmann was followed by Judge Judith Kaye, former Chief Judge of the New York State Court of Appeals. Judge Kaye's remarks, which elicited much laughter from the crowd, began with a surreptitious welcome to the assembled members of the judiciary. Judge Kaye then went on to commend the Section's role in preserving New York's place as a world financial capital. She noted the development of the Commercial Division, which was a bench-bar collaboration from the start. As Judge Kaye described it, when the concept of the Commercial Division was first mentioned, the idea of a specialized judiciary focusing solely on business cases was not universally accepted. Nevertheless, she explained, the Section persevered, and the Commercial Division was created. Judge Kaye then presented a special t-shirt to Judge Katzmann decorated with the seals of both the Second Circuit and the New York State Court of Appeals, to show the courts' close association.

Finally, Commercial and Federal Litigation founder Bob Haig spoke about the Section's productivity and collegiality. For proof of the Section's productivity, he said, all one must do is look at the portion of the Section's website that contains the multitude of reports published by the Section. He spoke about the report regarding the elimination of exemptions from jury service for various professionals, including lawyers. At the time the report came out, these exemptions were entrenched, but the Section conducted an empirical survey to see if having lawyers on juries would be problematic. After the rigorous survey concluded that lawyers on juries would not have a disproportionate influence and that lawyers would be willing to choose lawyers to serve on juries, ultimately the exemptions were eliminated.

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The Section Reports on Proposed Amendments to Federal Rules and Appendix of Forms

By Michael C. Rakower

At its October 8, 2012 meeting, the Section unanimously adopted the report of its Federal Procedure and E-Discovery Committees on proposed amendments to Rules 1, 4, 16, 26, 26, 30, 31, 33, 34, 36, 37, 84 and Appendix of Forms of the Federal Rules of Civil Procedure. The report, written in response to a public request for comment, has been submitted to the Advisory Committee on Civil Rules ("Advisory Committee") of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States. Federal Procedure Committee Co-chair Michael Rakower appeared before the Advisory Committee on November 7, 2013, in Washington, D.C. to discuss the Section's views.

The proposed amendments are set forth in the Memorandum of the Advisory Committee, dated May 8, 2013, as supplemented June 2013 ("Advisory Committee Memo"). The Advisory Committee Memo forms part of the Preliminary Draft of Proposed Amendments to the Federal Rules of Bankruptcy and Civil Procedure, available online at http://www.uscourts.gov/uscourts/rules/preliminary-draft-proposed-amendments.pdf.

The proposed amendments are intended to reduce litigation costs and delays. The Section supports the proposed amendments to Rules 4, 16, 26, 34, 37, 84, and Rule 84 Official Forms (and a related amendment to Rule 4 regarding Official Forms 5 and 6) because it agrees with both the purpose and anticipated effect of these proposed amendments, although the Section's report makes suggestions with respect to certain of the proposed rule changes. The Section, however, does not support the proposed amendments to Rules 1, 30, 31, 33, and 36 because, in certain instances, the Section believes the proposals are unwarranted, and, in other instances, the Section believes the proposals will be ineffectual.

Concerning the proposed change to Rule 1, which seeks to improve cooperation among parties, the Section agrees that cooperation should be the norm and strongly supports the goal of the proposed amendment, but the proposed language is too circumspect to achieve its desired effect. To enshrine cooperation as a touchstone of federal procedure, any proposed amendment needs to be made explicit in Rule 1.

The Section supports the proposed amendment to Rule 4(m) to shorten the time to serve a summons and complaint but recommends that the Advisory Committee Note explicitly state that extensions of time under the "good cause" exception should be liberally granted and that the proposed amendment is not intended to effect any change in the discretion the courts currently have to grant extensions even in the absence of good cause.

The Section supports all of the proposed amendments to Rule 16(b): (1) shortening the time for the court to issue the scheduling order unless there is good cause for delay (Rule 16(b)(2)); (2) adding to the subjects that may be included in the scheduling order, including a provision that requires a movant to request a court conference before making a discovery motion (Rule 16(b)(3)); and (3) the deletion in Rule 16(b)(1)(B) to emphasize that a scheduling conference with the court be by direct, simultaneous communication with the parties.

The Section supports all of the proposed amendments to Rule 26. It supports the proposed amendment to Rule 26(f) to include as topics of the parties' discussion in their Rule 26(b) conference two of the permitted subjects that would be added under Rule 16(b): preservation of electronically stored information and Rule 502 agreements. The Section supports the proposed amendment of Rule 26(d)(2) to permit early Rule 34 requests and to extend the time to respond to them to 30 days after the first Rule 26(f) conference.

The Section supports, with caution, the proposed amendment to Rule 26(b)(1) regarding scope of discovery that would include a requirement that the discovery be proportional to the needs of the case after considering certain specified factors, which is taken from Rule 26(b)(2)(C)(iii). It suggests that the Advisory Committee Note to amended Rule 26(b)(1) make clear that existing case law interpreting and applying Rule 26(b)(2)(C)(iii) would apply to the new language.

The Section supports the deletion of the current language in Rule 26(b)(1) authorizing a court to order, upon good cause, discovery of "any matter relevant to the subject matter involved in the action." The Section also supports the deletion of the current text in Rule 26(b)(1) providing that "[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence" and to substitute language stating that "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable."

The Section supports, with caution, the deletion of the current text in Rule 26(b)(1) that provides that matter relating to the "existence, description, nature, custody, condition and location of any documents or tangible things, and the identity and location of any persons who know of discoverable material" is discoverable. The Section suggests that the Advisory Committee Note to amended Rule

26(b)(1) provide that the deletion does not mean that such matters are not discoverable.

The Section supports the proposed amendment to Rule 26(c)(1)(B) to expressly authorize a court, for good cause, to enter a protective order to protect a party from undue burden or expense by allocating discovery expenses. The Section suggests that the Advisory Committee make clear, either in the proposed new text or in the accompanying Advisory Committee Note, that the proposed change is not intended to alter the American rule on attorneys' fees and does not authorize the court to allocate attorneys' fees incurred in connection with disclosure or discovery, *i.e.*, that the term "expenses" does not include attorneys' fees.

Although the Section supports the goal of the proposed discovery-related amendments to include the concept of proportionality as a limitation on the scope of discovery, the Section does not support the proposed new or reduced presumptive limits on discovery because it believes the proposed amendments will not solve any problem that exists in the majority of cases and should not apply to the complex cases where discovery will usually exceed those limits. Instead, the Section recommends that courts rely on the proportionality factors of proposed Rule 26(b)(1) during a Rule 16 conference to impose suitable discovery limitations on a case-by-case basis. Specifically, the Section opposes:

- reducing the presumptive number of depositions from ten to five under proposed Rules 30 and 31;
- reducing the length of a deposition from seven hours to six hours under proposed Rule 30;
- reducing the presumptive number of interrogatories from 25 to 15 under proposed Rule 33; and
- limiting to 25 under proposed Rule 36 the number of requests for admission, other than requests to admit the genuineness of documents, unless otherwise stipulated or ordered by the court.

The Section supports the proposed amendments to Rule 34(b)(2)(B), which would expressly require a responding party to "state the grounds for objecting to the request with specificity" and to state whether it will produce copies of documents or electronically stored information instead of permitting inspection. It also supports the proposed amendment to Rule 34(b)(2)(B) that, in the case of production of copies, rather than inspection, the production be completed no later than the time for inspection stated in the request or a later reasonable time stated in the response. The Section supports the proposed amendment to Rule 34(b)(2)(C), which would require a responding party to affirmatively state whether any responsive materials are being withheld from production on the basis of a stated objection. However, the Advisory Committee should make clear, either in the Rule or in the Advisory Committee Note, that a party can respond by stating that it has not yet determined whether any responsive documents are being withheld on the basis of a stated objection but will supplement its response within a reasonable time to provide that information.

The Section supports the proposed amendment to Rule 37(e)(1) to incorporate an obligation to preserve information in anticipation of or during litigation. The Section also agrees that the appropriate scope of information to be preserved is "discoverable information."

The Section supports the proposed amendment to Rule 37(e)(1) regarding measures the court may impose if "discoverable information" is not preserved after the duty to do so has arisen: (1) curative measures, such as additional discovery or paying reasonable expenses, including attorneys' fees, and (2) sanctions, such as an adverse inference jury instruction or those listed in Rule 37(b)(2)(A).

The Section agrees that sanctions should be imposed only upon a showing of substantial prejudice and willfulness or bad faith, or if the failure irreparably deprives a party of any meaningful opportunity to present or defend against claims, regardless of the level of culpability. The Section does not agree that there should be an attempt to define "substantial prejudice," as it will be context specific. However, some clarification is needed that the burden of establishing substantial prejudice should be shifted to the spoliator acting willfully or in bad faith, that willfulness is defined in the Advisory Committee Notes, and that "actions" in proposed Rule 37(e)(1)(B) include failures to act.

With respect to the proposed amendment of Rule 37(e)(2) to list nonexclusive factors the court should consider in assessing a party's conduct, the Section supports the concept of describing such factors and supports the ones described in the proposed amendment. However, the Section recommends that the Advisory Committee's "expectation" that courts "will employ the least severe sanction needed to repair the prejudice resulting from the loss of the information" be made explicit in the introductory language of Rule 37(e)(2), rather than in the proposed Advisory Committee Note to Rule 37(e)(1)(B). The Section suggests that the introductory language of proposed Rule 37(e)(2) be rewritten to read: "The court should consider all relevant factors in selecting the least severe curative measure or sanction under Rule 37(e)(1) needed to repair any prejudice resulting from the loss of information."

The Section supports the proposed amendment to abrogate Rule 84 and the official Forms, except Forms 5 and 6, which would become part of Rule 4.

The Section's full report is expected to be published in the Winter 2014 issue of the *NYLitigator*.

Michael C. Rakower is a founding member of Rakower Lupkin PLLC and co-chair of the Section's Federal Procedure Committee.

CPLR Amendments: 2013 Legislative Session

(2013 N.Y. Laws ch. 1-459)

CPLR §	Chapter, Part (Subpart, §)	Change	Eff. Date
217-a	24(1)	Clarifies cross-references to notice of claim provisions	6/15/13
1101(f)	55(E)(16)	Extends expiration of CPLR 1101(f) until Sept. 1, 2015	3/28/13
3012-b	306(1)	Adds provision on certificate of merit in certain residential foreclosure actions	8/30/13
3015(e)	21	Repeals proviso	5/2/13
3101(d)(1)(iv)	23(4)	Repeals CPLR 3101(d)(1)(iv)	2/17/14
3103(a)	205	Authorizes anyone about whom discovery is sought to move for a protective order	7/31/13
3408	306(2)	Requires filing of proof of service within 20 days regardless of method of service	8/30/13
4106	204	Changes selection, deliberation, and discharge of alternate jurors	1/1/14
5241(a)(13)	270(1)	Adds definition of "issuer"	4/27/14
5241(b)(1), (d), (f)	270(2), (4), (5)	Changes "creditor" to "issuer"	4/27/14
5241(c)(1)	270(3)	Changes contents of income execution	4/27/14
5241(g)	270(6)	Changes contents of remitted payments and requires notification to issuer when debtor no longer receives income	4/27/14
5242(c)-(g)	270(7)	Reletters paragraphs; changes "respondent earns wages" to "debtor has income;" changes contents and transmittal of income deduction order; adds income payors and changes contents and recipient of payments; requires notification to issuer when debtor no longer receives income	4/27/14

Notes: (1) 2013 N.Y. Laws ch. 22, deemed eff. as of 11/1/13, makes technical changes to Jud. Law §§ 478, 484, and 485-a, as amended by 2012 N.Y. Laws ch. 492, relating to practicing or appearing as an attorney-at-law without being admitted or registered. (2) 2013 N.Y. Laws ch. 113, eff. 7/12/13, adds Nassau County to the list of counties in which certain classes of cases in supreme court may be commenced by electronic means.

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 1-26 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; adds provisions on e-filing in small claims assessment (SCAR) proceedings
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; adds RPTL to service alternatives
202.10	Sup.	Adds provision on requesting appearances at conferences by telephone or other electronic means
202.12(b), (c)	Sup.	Adds a non-exhaustive list of considerations for determining whether a case is reasonably likely to include electronic discovery and amends the provision on the non-exhaustive list of considerations for the court in establishing the method and scope of electronic discovery
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
202.28	Sup.	Add provision requiring notification to court of discontinuation of actions in certain instances
202.58(b), (e), (f)	Sup.	Adds provisions on e-filing
202.70 (Rule 8)	Sup.	Amends provision on electronic discovery issues to be addressed at preliminary conferences
202.70 (Rule 13)	Sup.	Adds a provision on expert disclosure
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 that 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 that 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 briefs 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
800.24-b	3rd Dep't	Requires presiding justice to appoint departmental advisory committee on civil appeals management program
1210.1	All	Amends content of Statement of Client's Rights

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.

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Notes of the Section's Executive Committee Meetings

June 12, 2013

Guest speaker Hon. Charles E. Ramos, Commercial Division Justice, Supreme Court, New York County, discussed what he perceives as a current trend in the First Department of issuing inconsistent decisions, particularly in fraud and residential mortgage-backed securities cases. He explained that practitioners have told him of a growing reluctance by clients to litigate in the Commercial Division, New York County, as a result of the split decisions and inability to accurately assess how the court will analyze a case. He also noted that one of the Committees of the Commercial Division Advisory Council is reviewing whether certain panels in the First Department should be designated to hear all Commercial Division appeals, which he thought may help develop a single line of consistent case law.

The Executive Committee discussed the status of the Section's Report on Proposed Legislation to Apply a Judicial Code of Conduct to the U.S. Supreme Court. The Committee approved the Section's revised Report on Proposed Legislation Concerning Protecting the Privacy of Social Media Accounts.

July 9, 2013

Guest speaker Hon. John G. Koeltl, United States District Court Judge for the Southern District of New York, discussed the proposed changes to the Federal Rules of Civil Procedure.

The Executive Committee approved the Committee on Federal Procedure's Report on District Court Review of Magistrate Judge's Reports and Recommendations.

September 12, 2013

Guest speaker Hon. Luis A. Gonzalez, Presiding Justice of the Appellate Division, First Department, discussed the operations and activities of the First Department, especially in commercial cases.

The Executive Committee discussed upcoming CLE programs, a report on the proposed modification to CPLR 4547, and a report on the proposed amendments to the Federal Rules of Civil Procedure.

October 1, 2013

By teleconference, the Executive Committee approved a report of the Federal Procedure Committee and the Electronic Discovery Committee on the proposed amendments to the Federal Rules of Civil Procedure.

Looking for Past Issues?

NYLitigator

http://www.nysba.org/NYLitigator

Commercial and Federal Litigation Section Newsletter

http://www.nysba.org/ComFedNewsletter

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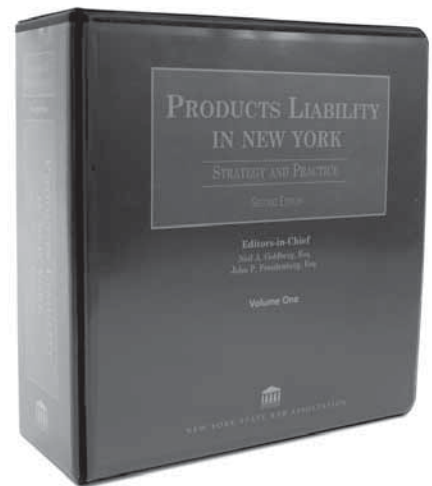

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