

THE NEW YORK STATE BAR ASSOCIATION
COMMERCIAL AND FEDERAL LITIGATION SECTION
EXECUTIVE COMMITTEE

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on December 4, 2019.

Members Participating in Person

Laurel Kretzing, Chair
Natasha Shishov, Secretary
Daniel Wiig, Vice-Chair
Hon. Karla Moskowitz
Mark Berman
Hon. William H. Pauley**
Kevin Quarantino
Robert Holtzman
Gregory Arenson
Viktoria Liberchuk

Members Participating by Telephone

Jonathan Fellows, Chair-Elect
Hon. Helen Freedman
Rachel Morgenstern
Scott Malouf
Jessica Moller**
Ignatius Grande
Lara Nowicki

**Indicates guest attendees and speakers at the meeting

Section Chair, Laurel Kretzing, called the meeting to order at 6:15 pm.

Guest Speakers:

Honorable William H. Pauley - *Southern District of New York*

The Honorable William H. Pauley presented on the issue of sealing documents. He commented that lawyers frequently attempt to wholesale seal for no reason other than client driven confidentiality concerns. The frequency with which attorneys are attempting to seal documents has increased in the last 25 years; potentially due to the expansion of ECF and the popularity of arbitration proceedings, which are generally confidential.

Since arbitrations are generally confidential, an application to vacate or confirm arbitration awards are filed under seal, which requires a visit to the courthouse. The emergency Judge routinely grants these emergency sealing applications. In such an instance, even the Judge that is ultimately assigned to case cannot see the sealed documents on ECF.

The Judge commented that wholesale sealing can infringe on the public's right to access the courts and lets cases dealing with large companies to go unnoticed. The public has a right to know when these cases are in Federal Court. Pursuant to the Federal Arbitration Act, parties are free to contract to resolve issues in arbitration. However, when parties resort to courts they have to be bound by the rules of the court; they cannot contract to avoid the court rules. The Second Circuit has recently held that judicial documents include all documents filed, which may include settlement agreements and documents filed in support of motion to vacate or confirm arbitration awards. Thus, even though arbitration proceedings may be confidential, the parties cannot circumvent public access to documents that are filed with the Court. In short, once litigants ask the court to exercise their Article III rights, the documents are entitled to the presumption of public access unless stated otherwise by statute or under limited instances, such as cases that deal with national security.

Review of October 23, 2019 Meeting Minutes

The minutes were unanimously approved.

Report on NYSBA Website Rollout

Scott Malouf reported on NYSBA plans to redesign of the virtual bar center, which will be better adapted for mobile access. Additionally, NYSBA can now track when individuals are engaged in the website, but don't join NYSBA, and can track what people are searching for on the NYSBA website. With this updated technology, NYSBA would target and provide information based on what people are searching. The anticipated date to launch these new features is undetermined. NYSBA is also hoping to include access to certain materials only for Section members. Phase two of the update will involve updates to Communities.

Report on Section Leaders Conference

Laurel Kretzing reported what occurred at the NYSBA Section Leaders Conference. A presentation was made about the new website and the new marketing team was introduced. NYSBA is committed to marketing and communications to be rolled out over the next year.

Laurel also commenced that there have been problems reported with the NYSBA website and if anyone has trouble registering or buying CLE programs/tables, they should let Laurel know and email Lara.

Report on Changes to Section Bylaws and Member at Large Positions

ByLaws were approved by the NYSBA EC in November. One substantive change includes limiting the Members at Large position to two year terms. There are currently 26 Members and Large, who should reach out to Laurel and let her know whether they are interested in staying on.

Report on November 2019 NYSBA House of Delegates

Robert Holtzman reported on the November 2019 NYSBA House of Delegates and Section Caucus. Changes include permitting paralegals to join the association after January 1st as "associates of the association" "non-attorney affiliates". The EC needs to examine the Section's ByLaws to determine how to integrate these potential new members into the Section. Robert also reported that Mark Berman presented an informational report to the HOD on the Sections' Social Media Guidelines.

Also discussed at the Section Caucus is the recommendation that Sections reach out to each other when considering reports that can be applicable and impact multiple Sections. Robert emphasized that this is good practice but is not mandatory and that those individuals working on Section reports should be mindful of that.

Report on Shira A. Schindlin Excellence in the Courtroom and Kaye Scholar Award Program

Laurel Kretzing reported on this annual program. We had good attendance and five Kaye scholars received scholarships to attend the Section's Commercial Litigation Academy and, for the first time, will also be Section guests at NYSBA's annual gala and meeting. We had 16 applicants for the Kaye Scholarship this year. Hank Greenberg provided the keynote address.

Mark Berman commented that attendance at this event, and other Section events, should be better and suggested that the Women in the Law Section join in hosting this event in future years.

Report on Commercial Litigation Academy

The Commercial Litigation Academy was held on November 14th and 15th. Attendance was discussed again and ideas were shared about how to increase attendance.

Annual Meeting Update

Daniel Wiig presented an update on the Section's upcoming annual meeting. The registration link is up. He is waiting for table numbers, has lined up three sponsors and is working on obtaining two more.

Other Business

The Section's Diversity Committee is in need of new members, including those who would help in organizing the annual Smooth Moves program.

The next EC meetings are tentatively scheduled for January 15th and February 4th (which will be held at Farrell Fritz, in Nassau County).

Meeting Adjourned at 8:08.