

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 February 4, 2020.

Members Participating in Person

Laurel Kretzing, Chair	Sonia Russo
Viktoria Liberchuk	Peter Mastaglio
Jessica Moller**	Michael Antangiiovanni
James Wicks	Gregory LaSpina
Michael Cardello III	Stephen Brodsky
Philip Butler	Katharine Santos
Paige Bartholomew	Hon. James Hudson**
Natalia Gandolfo	Hon. Jerome Murphy**
Jaclyn Rugginello	Hon. Elizabeth Hazlitt Emerson**
Jana Schwartz	

Members Participating by Video Conference

Daniel Wiig, Vice-Chair
Jay Himes
Ann Sekel

Members Participating by Telephone

Alan J. Brody
Richard J. Dircks
Jonathan Fellows, Chair Elect
Claire P. Gutekunst
Catherine Carl
Gregory Arenson
Hon. Helen Freedman
Alan Mansfield
Kevin Quaratino

**Indicates guest attendees and speakers at the meeting

Section Chair, Laurel Kretzing, called the meeting to order at 6:14 p.m.

Guest Speakers

***Hon. James Hudson (Commercial Division, Suffolk County) and
Hon. Jerome Murphy (Commercial Division, Nassau County)***

In a question and answer style discussion, Justices Hudson and Murphy spoke about various issues relating to the way in which the newly implemented presumptive mediation is affecting Nassau and Suffolk County, and other matters, including:

1. *How are you handling the new presumptive mediation rules?* In Nassau County, some judges will not themselves handle a mediation if the case is going to involve a non-jury trial. Generally, the assignment for mediation will occur at the Preliminary Conference and the case may be referred to one of several different mediators (including a JHO), but assignment for mediation will not stay discovery, pending settlement discussions when referring out to a JHO. In Suffolk County, the new presumptive mediation rules implemented in December 2019 will not be applied to a commercial case if the RJI specifies that it is a commercial division case because you cannot be forced into presumptive ADR with a true commercial division case. But if commercial case is not specified on the RJI, the case will get put in with the other cases and may get referred to ADR, then if no settlement at ADR the parties can request a referral to commercial division. The benefit of mediation through presumptive ADR is that the mediator is free.
2. *When the parties say they can self-mediate, how much leeway will the court give the attorneys?* Generally, if all attorneys agree, the court will let attorneys set their own pace, but if even one attorney does not agree to the self-mediation then the court will set time frames and 22 NYCRR § 202.7 will all come back into play.
3. *Do you agree that under presumptive ADR, there is now a requirement in courts that it is up to the judge to impose on the parties as early as possible a pre-discovery effort to engage in settlement discussions?* Every case is different. Sometimes there are very legitimate reasons why the parties do not want to engage in settlement early on (e.g., waiting for an expert report), that the court will entertain in delaying settlement discussions.
4. *What technology is available in the courtroom?* In Suffolk County, some justices have the ability to use Skype in chambers, in addition to courtrooms being set up with standard projectors and Wi-Fi. Generally, although it depends on the particular courtroom, there is very limited technology in the courtrooms in Nassau County. Attorneys can bring certain technology into court, which may be very helpful in a document-intensive case.
5. *What do you like, what can attorneys do better?* Motions for re-argument are generally underutilized. Anything that you think should be appealed, in good faith, should be preceded by a motion for re-argument because it gives the judge an opportunity to re-review everything. If a mistake was made or something was overlooked, a judge would generally rather reverse himself/herself with a motion to

re-argue than get reversed on appeal. But motions to re-argue should only be made in good faith, and generally should only be made when it involves an important issue, otherwise it will just waste the parties' and the court's time.

Review of January 15, 2020 Meeting Minutes

The minutes of the January 15, 2020 meeting were amended to show Hon. Frank Maas attended in-person and to correct the spelling of his name in the listing of members at large. A motion to approve the minutes as amended was made, seconded and unanimously approved.

Report on Annual Meeting

Daniel Wiig reported on the NYSBA Annual Meeting that was held last week. Approximately 170 registered for the Section's CLE presentations, and there was great attendance at luncheon as well. Some attendees thought the CLE portion was not long enough, but the Section is always constrained with timing to ensure the lunch starts on time since there needs to be a hard stop at 2:00 p.m. There was some discussion about possibly starting the welcome remarks slightly earlier next year to give a few more minutes to the CLE portion.

Becoming an Ally: Four Trailblazing Jurists Discuss Diversity & Inclusion CLE Program Update

Kevin Quaratino and Viktoria Liberchuk presented an update on the Becoming an Ally: Four Trailblazing Jurists Discuss Diversity & Inclusion CLE Program scheduled for tomorrow, February 5, 2020 at Foley & Lardner in NYC. Approximately 70 people are currently registered to attend, including several justices and their law clerks. In addition to the substantive presentations, it will provide a nice networking opportunity in light of the anticipated judicial attendance.

Other Business

The Section's next Executive Committee meeting will be held on March 3, 2020 at Foley & Lardner in NYC.

There will be a mock trial program on April 22, 2020 that will give an opportunity for less experienced attorneys to do a trial with guidance from more experience attorneys and with judges who will critique their performance.

Jonathan Fellows reported on the planning of the Section's Spring meeting that is scheduled for May 1-3, 2020 at the Otesaga Hotel in Cooperstown. Four panels are being planned.

Gregory Arenson reported on the House of Delegates and Section Caucus. The caucus adopted best practices on contemplation of reports, including sections working on reports should get other sections who may be interested tuned in with the report as soon as possible in order to avoid conflicts down the road. The best practices guidelines should be available soon. The Association is interested in having sections do more reports. Also, the House of Delegates approved several items: (1) non-attorney affiliates may become section members (includes

paralegals, JDs that are not admitted to practice); (2) adopted a diversity plan that, among other things, says the sections are supposed to appoint liaisons to standing Committee on Diversity and Inclusion, and that sections are supposed to create and submit diversity plans by January 31, 2021; and (3) NYSBA formally came out in favor of adult recreational use of marijuana.

Stephen Brodsky reported that he is going to be discussing a panel with Judge Berman relating to the SDNY mediation program

Meeting adjourned at 7:45 p.m.