Agenda
NYSBA Committee on Civil Practice Law and Rules

Friday, July 10, 2020, 12:00 p.m. – 2:00 p.m.
Via Zoom Conference

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Please see the link below to view meeting materials:
http://www.nysba.org/CPLRJuly20

1. Welcome by the co-chairs, Souren A. Israelyan and Domenick Napoletano

2. Approval of Minutes for the Committee Meeting of May 15, 2020 (*Exhibit A*)

3. Discussion of the current state of legislative activity Ronald Kennedy

4. Remote depositions – Subcommittee Proposal to Amend CPLR 3113(d) and 3107 (*Exhibit B*)

5. Deposition time limit – Proposal to add subsection (e) to CPLR 3113 (*Exhibit C*)

   2014 OCA Proposal for Adoption of Commercial Division Rule relating to presumptive limitations on the number and duration of depositions (*Exhibit D*)

   NYSBA's Commercial and Federal Litigation Section's memorandum in support of the adoption of the Commercial Division Rule (*Exhibit E*)

6. Service of interlocutory papers by email – Proposal to Amend CPLR 2101 and 2013 (*Exhibit F*)

7. Affirmations of truth of statement – Proposals to amend CPLR 2106 and 2309

   (a) CPLR 2106 (*Exhibit G*)

   (b) CPLR 2309 (*Exhibit H*)

   (c) OCA Advisory Committee proposal re CPLR 2106 (*Exhibit I*)

   (d) Subcommittee working drafts of amendments to CPLR 2106 and 2309 (*Exhibits J and K*)

8. Decisions of Interest:

    a. *Best Global Alternative, Ltd. v American Storage & Trans., Inc.*, __ Misc 3d ___, 2020 NY Slip OP 20113, 2020 WL 2543768 (Sup Ct, Nassau County 2020, Brandveen, J.) – meaning of word "affected" in CPLR 205 (a), and interplay between CPLR 205 (a) and 308 (2). (*Exhibit L*).

    b. Executive Order 202.8, issued March 20, 2020, provides that "any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to . . . the civil practice law and rules, . . . , the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020." Executive Order 202.48, issued on July 6, 2020, continues the suspensions and modifications of law through August 5, 2020. (*Exhibit M*).

9. New Business

10. Next Committee Meeting

Exhibit A

MINUTES OF THE MAY 15, 2020 NYSBA CPLR COMMITTEE MEETING
Via Zoom Conference

Attendance: Souren A. Israelyan, co-chair; Domenick Napoletano, co-chair; Thomas S. D'Antonio; Harold B. Obsfeld; Paul H. Aloe; Dolores Gebhardt; Steven J. Fink; James N. Blair; Dennis R. McCoy; Robert P. Knapp; Blaine H. Bortnick; Cary S. Sklaren; James E. Pelzer; David L. Ferstendig; Stephen G. Crane; Kathleen M. Sweet; Thomas J. Wiegand; Thomas F. Gleason; Gary F. Knobel; Ivan A. Pavlenko; Herbert C. Ross; Michael D. Stallman; Michael J. Hutter; Lucy Billings; Lisa M. Bluestein; Raymond A. Bragar; Monique E. Aziza; Robert P. Knapp; John T. Loss; John LaMancuso; Amanda L. Tate; and Adriel Colon-Casiano, NYSBA staff liaison.

Agenda:

1. Meeting called to order at 12:10 p.m.
   Introduction: co-chairs Souren Israelyan and Domenick Napoletano

This was the first post-COVID19 meeting and the members discussed the affect of COVID19 pandemic on their practices and lives.

2. Approval of Minutes of January 31, 2020.

3. Legislation update (Adriel Colon-Casiano)

Given the COVID19 pandemic, the legislature stopped its activities and while there were expected to return for a brief period, all activities at that time would be expected to deal with immediate needs concerning COVID19 and its consequences. No CPLR bills are expected to advance or debated at the legislature at that time.

4. Given the immense disruption that the COVID19 pandemic brought upon the courts and legal practices, extensive discussion was held on measures to improve court operations, to ease burdens on attorneys and litigants, to save time and resources, and to become more effective and efficient in the practice of law and administration of justice.

   a. Discussion was held about remote depositions that some on the committee had already participated in and which have become the norm in the post-COVID19 era. Those who have conducted remote depositions spoke about the utility and ease with which such depositions were conducted. It was noted that due to the high risk of COVID19 infection still in existence, depriving parties from conducting remote depositions will in effect mean depriving them from due process. Concerns were raised for improper coaching that might occur during remote depositions. A subcommittee was created to study the issues and, if warranted, propose CPLR amendments. Thomas J. Wiegand, chair of the Subcommittee, Raymond A. Bragar, Steven J. Fink, and Amanda L. Tate, members.

b. Discussion was held on remote notarizations and affirmations. The OCA Advisory Committee has a proposal to amend CPLR 2106. A subcommittee was created to study the issues of remote notarizations and affirmation of truth of statement, including the OCA proposal, and, if warranted, propose CPLR amendments. Paul H. Aloe, James N. Blair, James E. Pelzer, Harold B. Obsfeld, Herbert C. Ross, Thomas S. D'Antonio, and Cary S. Sklaren, members.

c. The members were encouraged to make suggestions and recommendations for continued improvements of practice of law and court operations.

5. Brief discussion was held on *Aybar v Aybar*, 169 AD3d 137 (2d Dept 2019), which is currently on appeal at the Court of Appeals, and the parties have yet to fully brief their positions. The case raises the issue of consent jurisdiction by registering. The Subcommittee on Jurisdiction is studying this and other issues concerning the jurisdictional reach of New York courts.

9. Next meeting date is set for July 10, 2020.

Meeting adjourned: 2:30 P.M.

Exhibit B

NYSBA CPLR Meeting

[July 10, 2020]

Proposal to Amend CPLR 3113(d) & CPLR 3107

I. Text of CPLR 3113(d)

CPLR 3113(d): The parties may stipulate that a deposition be taken by telephone or other remote electronic means and that a party may participate electronically. The stipulation shall designate reasonable provisions to ensure that an accurate record of the deposition is generated, shall specify, if appropriate, reasonable provisions for the use of exhibits at the deposition; shall specify who must and who may physically be present at the deposition; and shall provide for any other provisions appropriate under the circumstances. Unless otherwise stipulated to by the parties, the officer administering the oath shall be physically present at the place of the deposition and the additional costs of conducting the deposition by telephonic or other remote electronic means, such as telephone charges, shall be borne by the party requesting that the deposition be conducted by such means.

CPLR 3107: A party desiring to take the deposition of any person upon oral examination shall give to each party twenty days' notice, unless the court orders otherwise. The notice shall be in writing, stating the time and place for taking the deposition, the name and address of each person to be examined, if known, and, if any name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice need not enumerate the matters upon which the person is to be examined. A party to be examined pursuant to notice served by another party may serve notice of at least ten days for the examination of any other party, his agent or employee, such examination to be noticed for and to follow at the same time and place.

II. Proposal for Consideration

CPLR 3113(d): **Remote depositions.** ~~The parties may stipulate that~~ A deposition **may** be taken by telephone or other remote electronic means**,** and ~~that~~ a party may participate electronically. The ~~stipulation~~ **notice under Rule 3107** shall designate reasonable provisions to ensure that an accurate record of the deposition is generated~~,~~ **and** shall specify~~, if appropriate,~~ reasonable provisions for the use of exhibits at the deposition~~; shall specify who must and who may physically be present at the deposition; and shall provide for any other provisions appropriate under the circumstances~~. **The place of a remote deposition is deemed to be the location where the deponent answers the questions.** ~~Unless otherwise stipulated to by the parties,~~ **T**he officer administering the oath ~~shall~~ **need not** be physically present at the place of the deposition and **may administer the oath remotely, subject to the requirements of Rule 3113(a).** ~~the~~ **Any** additional costs of conducting the deposition by telephonic or other remote electronic means~~, such as telephone charges,~~ shall be borne by the party requesting that the deposition be conducted by such means. **Unless the court orders otherwise, the**

parties may stipulate to any alternative procedures for depositions taken by telephone or other remote electronic means, including alternative procedures for administering the oath.

CPLR 3107: A party desiring to take the deposition of any person upon oral examination shall give to each party twenty days' notice, unless the court orders otherwise. The notice shall be in writing, stating the time and place for taking the deposition, the name and address of each person to be examined, if known, and, if any name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice need not enumerate the matters upon which the person is to be examined. A party to be examined pursuant to notice served by another party may serve notice of at least ten days for the examination of any other party, his agent or employee, such examination to be noticed for and to follow at the same time and place. **If the deposition is being taken remotely, the notice shall also comply with the requirements of Rule 3113(d).**

III. Legislative History

CPLR 3113(d) took effect on January 1, 2005, and authorized parties to stipulate to a deposition "by telephonic or other remote electronic means." Under the existing rule, the parties' stipulation must specify the method of recording the remote deposition, the provisions for use of exhibits, and who will be physically present. Even if the parties take the deposition remotely, the rule requires the officer administering the oath to be physically present with the witness, unless the parties stipulate otherwise. *Washington v. Montefiore Hosp.*, 777 N.Y.S.2d 524, 525-26 (3d Dep't 2004).

CPLR 3107 was first enacted in 1962 and has been amended only twice, most recently in 1984. It specifies what information a notice of deposition must provide, but does not currently contain any provisions for remote depositions.

IV. Explanation of Proposed Change

Given the increased need and capacity for remote depositions, the amendment makes them available as of right, not only with the consent of all parties. CPLR 3113(d) currently requires the parties to stipulate to both the taking of remote depositions and the procedures by which they will occur. The COVID-19 pandemic has greatly increased the need for remote depositions, and the technology for taking such depositions has substantially improved. These changed circumstances favor giving parties the right to take remote depositions, rather than requiring them to obtain the consent of opposing counsel.

While the amendment eliminates the requirement of a stipulation, it retains the requirement that the procedures for remote depositions be specified in advance. Because such specification need no longer be made in a stipulation, the amendment requires that it be made in the notice of deposition. The amendment also adds language to CPLR 3107 to clarify that notices of remote deposition, unlike notices for other depositions, must meet additional requirements as set forth in CPLR 3113(d).

The amendment also permits the administration of the oath to occur remotely, provided that the officer administering the oath meets the requirements set forth in CPLR 3113(a). Because CPLR 3113(a) imposes different requirements depending on the location of the deposition, the amendment provides, in keeping with Federal Rule of Civil Procedure 30(b)(4), that "[t]he

place of a remote deposition is deemed to be the location where the deponent answers the questions." As a result, the amendment effectively requires the officer to have authority to administer oaths in the place where the deponent is located, but not that the officer be located in that same place.

While the amendment does away with the requirement of a stipulation, it retains the parties' authority to stipulate to alternative procedures. To do so, it adopts language similar to Federal Rule of Civil Procedure 29, which broadly permits the parties to stipulate to alternative deposition procedures "[u]nless the court orders otherwise." The amendment to CPLR 3113(d) is narrower than Federal Rule of Civil Procedure 29, however, as it permits such stipulations only for remote depositions.

VI. Arguments for the Amendment, and Responses

Argument 1 (Parties should have a right to take remote depositions): Parties' need for remote depositions has increased, and technological developments have enhanced their ability to take them effectively. In light of these developments, a party should not have to obtain agreement from opposing counsel before moving forward with a remote deposition. Opposing counsel's agreement is not a condition for many other types of discovery.

Response: Permitting one party to elect to take a remote deposition creates some risk of abuse. For example, a party might seek to move forward with a remote deposition despite knowing that an opposing party wishes to attend in person, and might do so in a way that inconveniences or prejudices the party wishing to attend in person.

Reply: All rights carry some risk of abuse.

- Nothing in the amendment would prevent a party who wishes to attend a deposition in person from doing so.
- If a party feels that opposing counsel is abusing remote deposition procedures, it can apply for a protective order under CPLR 3103.
- The existing rule also creates a risk of abuse. During the COVID-19 pandemic, refusal to agree to remote depositions can largely prevent depositions from proceeding. Parties can also withhold consent to remote depositions to increase the costs associated with (and thereby deter) depositions of distant witnesses.

Argument 2 (Need for flexibility in administering the oath): The requirement that an oath be administered in person is unnecessarily restrictive and will undermine the availability of remote depositions, if enforced. As long as the officer has the authority to administer an oath where the deponent is located, the deponent will have the necessary incentives to testify truthfully.

Response: In-person administration of an oath helps the officer confirm the identity of the deponent.

Reply: The risk that someone will fraudulently impersonate a deponent seems minimal, and the existing rule already permits remote administration of the oath upon stipulation by the parties.

Exhibit C

NYSBA CPLR Committee Meeting
July 10, 2020

Proposal to add subsection (e) to CPLR 3113:

> (e) An examination before trial is limited to 1 day of 7 hours. For good cause shown, the court may alter the duration of an examination.

The Rules of the New York State Commercial Division of the Supreme Court 202.70, in Rule 11-d (2) provides that "depositions shall be limited to seven hours per deponent." Rule 11-d (2) (f) of the Commercial Division provides: "For good cause shown, the court may alter . . . the duration of an examination."

The Rule of Commercial Division, in effect since April 2015, follows the Federal Rules of Civil Procedure Rule 30(d)(1), in effect for the past 20 years, since 2000, limiting a deposition to 1 day of 7 hours. The 2000 Committee's notes to amend FRCP Rule 30 state:

> "Paragraph (2) imposes a presumptive durational limitation of one day of seven hours for any deposition. The Committee has been informed that overlong depositions can result in undue costs and delays in some circumstances. This limitation contemplates that there will be reasonable breaks during the day for lunch and other reasons, and that the only time to be counted is the time occupied by the actual deposition. For purposes of this durational limit, the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition. The presumptive duration may be extended, or otherwise altered, by agreement. Absent agreement, a court order is needed. The party seeking a court order to extend the examination, or otherwise alter the limitations, is expected to show good cause to justify such an order.
>
> "Parties considering extending the time for a deposition—and courts asked to order an extension—might consider a variety of factors. For example, if the witness needs an interpreter, that may prolong the examination. If the examination will cover events occurring over a long period of time, that may justify allowing additional time. In cases in which the witness will be questioned about numerous or lengthy documents, it is often desirable for the interrogating party to send copies of the documents to the witness sufficiently in advance of the deposition so that the witness can become familiar with them. Should the witness nevertheless not read the documents in advance, thereby prolonging the deposition, a court could consider that a reason for extending the time limit. If the examination reveals that documents have been requested but not produced, that may justify further examination once production has occurred. In multi-party cases, the need for each party to examine the witness may warrant additional time, although duplicative questioning should be avoided and parties with similar interests should strive to designate one lawyer to question about areas of common interest. Similarly, should the lawyer for the witness want to examine the witness, that may require additional time. Finally, with regard to expert witnesses, there may more often be a need for additional time—even after the submission of the report required by Rule 26(a)(2)—for full exploration of the theories upon which the witness relies.

> "It is expected that in most instances the parties and the witness will make reasonable accommodations to avoid the need for resort to the court. The limitation is phrased in terms of a single day on the assumption that ordinarily a single day would be preferable to a deposition extending over multiple days; if alternative arrangements would better suit the parties, they may agree to them. It is also assumed that there will be reasonable breaks during the day. Preoccupation with timing is to be avoided."

The proposed amendment to CPLR 3113 will synchronize deposition practices between New York State and federal courts, as well as the practices between the Commercial Division and other parts of the New York State Supreme and County courts. It would save time and resources for parties and counsel, prevent abuse, and foster culture of effectiveness. When legitimate needs require more time for depositions, reasonable counsel are expected to stipulate, and if not stipulated by the parties, with good cause shown the Court may alter the duration of deposition.

Exhibit D

STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2150
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

To: To All Interested Persons

From: John W. McConnell

Re: Proposed adoption of new Commercial Division Rule and amendment of Commercial Division Rules 8(b) and 11(c), relating to presumptive limitations on the number and duration of depositions.

Date: June 20, 2014

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The Commercial Division Advisory Council has recommended adoption of a new Rule of the Commercial Division that would establish a presumptive limit of 10 depositions for each side and limit the duration of depositions to seven hours per witness (Exh. A). The Advisory Council's proposal follows up on the 2012 Report of the Chief Judge's Task Force on Commercial Litigation in the 21st Century, which endorsed the limitations on depositions set forth in the Federal Rules of Civil Procedure. The Advisory Council's proposed limit of 10 depositions per side is consistent with Fed. Rule Civ. P. 30(a)(2)(A)(i) and procedural rules of other states. The seven hour durational limit is consistent with Fed. Rule Civ. P. 30(d)(1) and would allow for reasonable breaks for lunch and other reasons. To ensure that litigants and judges have flexibility to tailor the presumptive limitations to the circumstances of each case, the parties would be able to extend or alter the presumptive limits by agreement. Absent such an agreement, the party seeking a variance would be required to obtain an appropriate court order upon a showing of good cause. The Advisory Council believes that this proposal will improve the efficiency of discovery and reduce the overall cost of litigation.

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than August 19, 2014.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

MEMORANDUM

TO: Commercial Division Advisory Council

FROM: Subcommittee on Procedural Rules to Promote Efficient Case Resolution

DATE: March 26, 2014

RE: **Depositions in the Commercial Division of the Supreme Court of New York**

EXECUTIVE SUMMARY

As is true in the other parts of New York State Supreme Court, the Commercial Division imposes no presumptive limitations on a civil litigant's right to take depositions. This seemingly unfettered entitlement is bounded only by the court's power, either *sua sponte* or on motion, to issue a protective order "denying, limiting, conditioning or regulating the use of any disclosure device [in order to] prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice to any person or the courts." *See* CPLR 3103. The decision as to whether or not to grant a protective order is one made by the presiding justice on a case-by-case basis.

Exploring ways to improve the process of litigating commercial cases in the New York state court system, Chief Judge Jonathan Lippman's Task Force on Commercial Litigation in the 21st Century (the "Task Force") examined current practices in the Commercial Division to consider whether any warranted modification. Among the issues considered were the number and duration of depositions available to commercial litigants. When the Task Force released its report and recommendations in June 2012 ("Report"), it urged several procedural reforms, including the imposition of presumptive limitations on the number and length of depositions. [1] According to the Report:

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[1] The Chief Judge's Task Force on Commercial Litigation in the 21st Century, Report and Recommendations to the Chief Judge of the State of New York (2012).

> The Task Force endorses as a model the limitations imposed by the Federal Rules of Civil Procedure. For example, under the Federal Rules, there is a presumptive limit of ten depositions per side with each deposition limited to one seven-hour session. Unless the parties stipulate, leave of court is required to increase the number and duration of depositions. While the Federal Rules on depositions can be restrictive, especially in multi-party cases, the Task Force believes that limitations are fundamentally fair to all parties, prevent gamesmanship, and will assist in streamlining discovery in most commercial cases. In addition, a well-tailored preliminary conference order can address whether additional and/or lengthier depositions are warranted.[2]

The Report does not make specific recommendations regarding the precise limitations contemplated. That task was delegated to the Commercial Division Advisory Council (the "Council"), a permanent body of practitioners and jurists charged with advising the Chief Judge on, among other things, the implementation of the Task Force's recommendations.

Having considered the issue, the Council's Subcommittee on Procedural Rules to Promote Efficient Case Resolution (the "Subcommittee") recommends that:

(1) the Council forward to the Administrative Board of Judges the proposed rule set forth in **Exhibit A** (the Proposed Rule"); and

(2) the Proposed Rule be incorporated into the Statewide Rules of Practice for the Commercial Division (the "Commercial Division Rules").

The Proposed Rule would provide a presumptive limit on depositions to 10 per side, and a further presumptive limit on the duration of the examinations – *i.e.* seven hours per witness.

DISCUSSION AND ANALYSIS

Presumptive limitations on length and number of depositions are hardly without precedent. In 1993, the United States Supreme Court adopted amendments to Federal Rules of Civil Procedure, limiting the presumptive number of depositions to 10 per side. In 2000, the Court adopted a further presumptive limitation: that depositions not exceed one day and seven

[2] *Id.* at 23-24.

hours in length.[3] The Advisory Committee Notes that accompanied these amendments explained that they were enacted to encourage counsel "to develop a mutual cost-effective plan for discovery in the case,"[4] and curb the "undue costs and delays" resulting from "overlong depositions."[5]

And the federal court system is not the only one in which the governing rules of practice impose restrictions on the use of depositions as a discovery device. Currently, there are 22 states imposing such restrictions, although limitations differ from state to state; some limit the number of aggregate deposition hours, others limit the duration of individual depositions, and still others limit both the number and duration of examinations. For ease of reference, we have summarized these variations on the chart annexed to this memorandum as **Exhibit B**.[6]

RECOMMENDATION

a. Numerical Limitation

The Subcommittee recommends that the number of depositions permitted in the Commercial Division should be presumptively limited to 10 per side. This limit finds precedent not only in the Federal Rules, but also in the procedural rules adopted by a number of states.[7] Our research has uncovered no jurisdiction that has seen fit to impose a presumptive numerical limit on depositions in excess of 10.[8]

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[3] Fed. Rule Civ. P. 30(a)(2)(A)(i) (numerical limit of 10 depositions); Fed. Rule Civ. P. 30(d)(1) (durational limit of one seven hours day).

[4] Notes of Advisory Committee on 1993 Amendments.

[5] Committee Notes regarding 2000 Amendments.

[6] *See* Koppel G., Toward a New Federalism in State Civil Justice: Developing a Uniform Code of State Civil Procedure Through a Collaborative Rule-Making Process, 58 Vand. L. Rev. 1167, 1219-1220 and Appendix (2005); The Foundation of the International Association of Defense Counsel, State Best Practices Survey (2011).

[7] These states are D.C., Hawaii, Montana, Utah, and Wyoming (see Exhibit B).

[8] For the purposes of this report, and apart from Delaware, we have considered only the basic state statutes and rules of civil procedure collected in the Thomson Reuters 50 State Statutory Survey for Depositions and Interrogatories (2013) *available at* 0020 SURVEYS 3 (Westlaw). It should be noted that the Foundation of the International Association of Defense Counsel did conduct a fairly extensive 300-page survey in 2011on discovery practices throughout the country. That survey identified one court – the North Carolina Business Court – that presumptively limits depositions to 12 for each party (not including depositions by testifying experts). *See* The Foundation of the International Association of Defense Counsel, State Best Practices Survey 206 (2011); N.C. Business Court Rule 18.2. Regarding Delaware, we reviewed the division-specific protocols governing practice in the Complex Commercial Litigation Division of its Superior Court. None of these protocols imposes presumptive limitations on

In connection with our recommendation, we note the likelihood that within the next year, the Federal Rules of Civil Procedure will be amended to reduce the number of presumptive depositions per side from 10 to five.[9] Our considered view is that the presumptive five deposition per side limit is insufficient for cases litigated in the Commercial Division, whose raison d'être is the adjudication of the most complex commercial cases pending in the New York State court system. By contrast, the presumptive five deposition per side limit may be appropriate for cases in the federal courts, which vary in size and complexity from straightforward personal injury actions just over the monetary threshold for diversity jurisdiction to lawsuits alleging violations of the antitrust laws and seeking damages in the billions. In any event, the numerical reduction contemplated by the proposed amendments to the Federal Rules has met with some resistance on grounds, *inter alia*, that the empirical research underpinning the proposed change does not support the reduction.[10]

b. Durational Limitation

We are of the view that a presumptive durational limitation of 7 hours for depositions is appropriate. The Proposed Rule is based upon the current presumptive limit in federal court, and it would follow the federal court practices of both permitting reasonable breaks for lunch and other reasons and charging against the presumptive limitation only the time actually spent on-the-record.

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depositions, although the division's sample case management order contains a decretal paragraph contemplating some limitation on deposition quantity (*i.e.* a numerical limit to be set by the parties and the court at the initial Scheduling Conference) and duration (*i.e.* a seven hour per examination). *See* Revised Case Management Order, available online at http://courts.delaware.gov/Superior/pdf/CCLD_sample_case_mgt_order_rev_2011.pdf

[9] 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

[10] *See* New York State Bar Association Commercial and Federal Litigation Section, Report on Proposed Amendments to Federal Rules of Civil Procedure 1, 4, 16, 26, 30, 31, 33, 34, 36, 37, 84 and Appendix of Forms 31 (2013).

c. Built-In Flexibility

Because the complex litigations that fill the Commercial Division dockets are not "cookie cutter", and because active case management is among the hallmarks of the Commercial Division, judges and litigants must retain the flexibility to tailor the presumptive limitations contemplated by the Proposed Rule to the circumstance of each case. Accordingly, and similar to the Federal Rules[11], the Proposed Rule provides that the presumptive limitations as to both number and duration may be extended, or otherwise altered, by agreement and, absent agreement, the party seeking the variance must obtain an appropriate court order upon a showing of good cause. In addition to assessing the overall complexity of the litigation, courts may also consider other factors, including whether:

a. the deponent require(s) an interpreter;

b. the deponent insists upon providing evasive and/or non-responsive answers to questions;

c. the lawyer representing the deponent engages in inappropriate or otherwise obstreperous conduct;

d. the examination reveals that documents have been requested but not produced;

e. the examination reveals the existence of critical, but as-yet-unrequested documents;

f. additional time is necessary in multi-party cases to permit adequate examination of the deponent by counsel whose interests may not entirely overlap[12]; and

g. the deponent's own lawyer wishes to cross-examine.

[11] *See* Fed. R. Civ. P. 26(b)(2(A).

[12] Of course, the very fact that litigation involves multiple parties does not automatically justify modifications in the presumptive limitations in the Proposed Rule. Counsel in such cases are well-advised to maximize efficiency by allocating the various topics to be covered among themselves or selecting one attorney to act as lead examiner, with remaining counsel being left sufficient time to fill in any perceived interstices.

It is reasonable to expect that the attorneys and the witness will make efforts to reach reasonable accommodations with one another in order to limit the need for judicial intervention.[13]

CONCLUSION

The Subcommittee believes that the Proposed Rule will further a number of laudatory goals, including the encouragement of cooperation among counsel, discouraging unnecessary and potentially wasteful discovery, and reducing the overall cost of litigation. Accordingly, the Subcommittee submits that the Commercial Division Advisory Council recommend adoption of the Proposed Rule by the Administrative Board of Judges and urge its integration into the Commercial Division Rules as soon as is practicable.

JDL

[13] *See* 22 N.Y.C.R.R. §202.7(a)(2).

EXHIBIT A

PROPOSED AMENDMENT

AMENDMENT #1

The Commercial Division Rules shall be amended to add the following immediately following Rule 8(b)(xi):

> "(xii) the need to vary the presumptive number of depositions set forth in Rule 9 (a)(i) or (xiii) the need to vary the presumptive durations of depositions set forth in Rule 9(a)(ii) or 9(a)(iii)."

AMENDMENT #2

The Commercial Division Rules shall be amended to add the following:

> **"Rule 9 Limitations on Depositions.**
>
> (a) Unless otherwise stipulated to by the parties or ordered by the court:
>
> i. the number of depositions taken by plaintiffs, or by defendants, or by third-party defendants, shall be limited to 10; and
>
> ii. depositions shall be limited to 7 hours per deponent.
>
> (b) Notwithstanding Rule 9(a)(i), the propriety of and timing for depositions of non-parties shall be subject to any restrictions imposed by applicable law.
>
> (c) For the purposes of Rule 9(a)(i), the deposition of an entity pursuant to CPLR 3106(d) shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf.
>
> (d) For the purposes of this Rule, each deposition of an officer, director, principal or employee of an entity who is also a fact witness, as opposed to an entity representative pursuant to CPLR 3106(d), shall constitute a separate deposition.
>
> (e) For good cause shown, the court may alter the limits on the number of depositions or the duration of an examination.
>
> (f) Nothing in this rule shall be construed to alter the right of any party to seek any relief that it deems appropriate under the CPLR or other applicable law.

AMENDMENT #3

The Commercial Division Rules shall be amended to add the following sentence at the end of Rule 11(c):

> "Additionally, the Court should consider the appropriateness of altering prospectively the presumptive limitations depositions set forth in Rule 9."

EXHIBIT B

SURVEY OF DEPOSITION LIMITATIONS

Jurisdiction	Limitation	Statute
Federal	Ten depositions per side.	Fed. R. Civ. P. 30(a)
	Depositions limited to one day of seven hours.	Fed. R. Civ. P. 30(d)(2)
Alaska	Three depositions per side. (Figure does not include the depositions of parties, experts, physicians or document custodians)	Alaska R. Civ. P. 30(a)(2)(A)
	Six hours for parties, experts, physicians. Three hours for other deponents.	Alaska R. Civ. P. 30(d)(2)
Arizona	Presumptive prohibition on non-party depositions. (Does not include the depositions of experts and document custodians)	Ariz. R. Civ. P. 30(a)
	Depositions limited to four hours.	Ariz. R. Civ. P. 30(d)
California	Depositions limited to 7 hours. (Does not apply, *inter alia*, to expert witnesses or cases designated as "complex" under Rule 3.400 California Rules of Court. Complex cases are those requiring "exceptional judicial management". Cases provisionally designated as complex include antitrust and securities claims, toxic and mass tort claims and class actions)	Cal. Civ. Proc. Code §2025.290

Jurisdiction	Limitation	Statute
	Persons may be deposed only once.	Cal. Civ. Proc. Code §2025.610(a)
	"Small Claims" (suits under $5,000); no discovery.	Cal. Civ. Proc. Code §116.310(b)
	"Limited Civil Case" (suits under $25,000): one oral deposition.	Cal. Civ. Proc. Code §94(b)
Colorado	One deposition of each adverse party and of two other persons. (Does not include expert witnesses)	Colo. R. Civ. Proc. 26(b)(2)(A)
	Depositions limited to one day of 7 hours.	Colo. R. Civ. Proc. 26(d)(2)
Connecticut	Discovery in "Expedited Process Cases" (i.e. under $75,000) limited to depositions of parties only.	Conn. R. Super. Ct. Civ. §23-6
D.C.	Limited to ten depositions	D.C. Super. Cut. R. Civ. P. 30(a)(2)(A)
	Depositions limited to one day of seven hours.	D.C. Super. Cut. R. Civ. P. 30(d)(2)
Hawaii	Limited to ten depositions	Haw. Rul. Civ. P. 30(a)(2)(A)
	Depositions limited to one day of seven hours	Haw. Rul. Civ. P. 30(d)(2)
Illinois	In cases under $50,000, depositions limited to parties, treating physicians and expert witnesses.	Ill. Sup. Ct. R. 222(f)(2)(a)-(b)

Jurisdiction	Limitation	Statute
	Depositions in all cases limited to three hours.	Ill. Sup. Ct. R. 206(d) and 222(f)(2)
Iowa	In small claims (i.e. $5,000 or less); presumptive prohibition on depositions	Iowa R. Civ. P. 1.702
Kentucky	In "Economical Litigation Docket" cases (i.e. cases, regardless of the amount in controversy, regarding contracts, personal injury, property damages, property rights and termination of parental rights), depositions presumptively limited to parties.	KY. R. Civ. P. 89 and 93.01
Maine	Limit of five depositions per party.	ME. R. Civ. P. 30(a)
	Deposition limited to 8 hours.	ME. R. Civ. P. 30(d)(2)
Maryland	Deposition limited to one day of seven hours.	MD. Circ. Ct. R. 2-411
Massachusetts	Presumptive prohibition on depositions if, *inter alia*, there is no reasonable likelihood that recovery will exceed $5,000 if plaintiff prevails.	Mass. R. Civ. P. 30(a)(ii)
Minnesota	Deposition limited to one day of seven hours.	Minn. R. Civ. P. 30.04(b)
Montana	Ten depositions per side.	Mont. R. Civ. P. 30(a)(2)(A)(i)
	Depositions limited to one day of seven hours.	Mont. R. Civ. P. 30(d)(1)
New Hampshire	Volume limit of 20 hours *in total* per party	NH R Super. Ct. 26(a)
New Mexico	Depositions limited to one day of seven hours. (Does not apply to experts)	NM R Dist. Ct. 1-030(D)(2)
Oklahoma	Deposition limited to six hours.	Okla. Stat. Ann. Tit. 12, §3230(a)(3)
South Dakota	Depositions limited to one day of	SD ST §15-6-30(d)(2)

Jurisdiction	Limitation	Statute
	seven hours.	
Texas	Depositions limited to six hours in all cases.	Tex. R. Civ. P. 199.5(c)
	"Discovery Control Plans" (every case must be governed by one of three plans, under which the discovery volume limits vary) Level 1 – suits involving $100,000 or less: volume limit of 6 hours *in total* per party, which can be expanded up to 10 hours without leave of court. Level 2 – suits not governed by Level 1 or Level 3; volume limit of 50 hours *in total* per side. Level 3 – requires court (on party's motion or on its own) to tailor a discovery order to the circumstances of the case; not volume limits.	Tex. R. Civ. P. 190.1-190.4.
Utah	Tier 1 ($50,000 or less); parties limited to 3 hours of depositions. Tier 2 ($50,000 - $300,000); parties limited to 15 hours of depositions Tier 3 ($300,000 or more); parties limited to 30 hours of depositions.	Utah R. Civ. P. 26(c)(5)
	Depositions limited to four hours for non-parties, and seven hours for parties.	Utah R. Civ. P. 30(d)
Wyoming	Limit of ten depositions per side.	Wyo. R. Civ. P. 30(a)(2)(A)
	Depositions limited to one day of seven hours.	Wyo. R. Civ. P. 30(d)(2)

Exhibit E

NEW YORK STATE BAR ASSOCIATION
NYSBA One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

August 14, 2014

VIA ELECTRONIC AND FIRST CLASS MAIL

John W. McConnell, Esq., Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

Dear Mr. McConnell:

On behalf of the New York State Bar Association's Commercial and Federal Litigation Section, I enclose the attached memoranda with the Section's comments on the new proposed rules of the Commercial Division relating to (a) the imposition of sanctions and (b) the presumptive number and duration of depositions.

If you have any questions about the Section's comments, please let me know.

Respectfully yours,

Paul D. Sarkozi
Chair

Enclosure

To: John W. McConnell

From: Commercial and Federal Litigation Section of the New York State Bar Association

RE: Proposed Commercial Division rule change concerning sanctions

Date: August 12, 2014

The Commercial and Federal Litigation Section of the New York State Bar Association (the "Section") submits the following comments in response to your memorandum dated June 27, 2014 with respect to the proposed adoption of a Preamble to the Rules of the Commercial Division addressing the imposition of sanctions for dilatory litigation conduct, failure to appear for scheduled matters, undue delay in producing relevant documents and other conduct causing unnecessary expense and delay.

The Section endorses the adoption of the proposed Preamble.

The Section is of the opinion that the proposed preamble provides the Court with the ability to express its intent within the context of existing rules and statutes that already cover the topic of sanctions. By providing a statement of its intent and the specific provisions of existing rules and laws that give the Court the power to mete out sanctions, litigants and counsel are being provided with ample additional and prior notice that non-compliance with Court rules and Orders will not be tolerated and may not be without cost to the violators.

While some may conclude that the proposed preamble is unnecessary, it satisfies our sense of fairness as this addition is intended to give notice to all constituencies that the Court intends a noteworthy change in its approach to sanctions.

To: John W. McConnell

From: Commercial and Federal Litigation Section of the New York State Bar Association

RE: Proposed Commercial Division rule changes concerning presumptive limitations on number and length of depositions

Date: August 12, 2014

The Commercial and Federal Litigation Section of the New York State Bar Association (the "Section") submits the following comments in response to your memorandum dated June 20, 2014 with respect to the proposed adoption of new Commercial Division Rule and amendment of Commercial Division Rules 8(b) and 11(c), relating to presumptive limitations on the number and duration of depositions.

The Section endorses the proposed new Rule and the proposed amendments.

The adoption of presumptive limitations on the length and number of depositions in cases governed by the Federal Rules of Civil Procedure did not, from the anecdotal experiences of our members, thwart or impair the ability of commercial litigants in federal court to obtain effective discovery. Lawyers are creative; they can figure out how to do more with less. Witness the effect of page limits on briefs and time limits on oral arguments.

Boundaries provide reasons for lawyers to be more efficient. And if both lawyers conclude they cannot get the job done within the limitations, proposed Rule 9(a)[1] gives them the flexibility to agree to vary the limitations in their case, without seeking relief from the Court. To the extent that the limitation imposes a greater burden on one party than another, the Court will undoubtedly entertain the grounds for exceeding the limitation, while at the same time providing protection to the objecting party who will at least have the rule to rely upon in the first instance. (The limitations might also cause the parties to communicate in more detail about witnesses in advance of serving notices to identify the witnesses who can provide the "biggest bang" for the "discovery buck.")

The presumptive limitations also impose a sense of proportionality, which is clearly consistent with the trend in the Commercial Division's analysis of other discovery issues, notably electronic discovery. A case involving a $200,000 dispute could (and should?) be fairly litigated with fewer than ten depositions.

The Committee also notes that there is nothing in the proposed rule changes that precludes a party from seeking protection within the presumptive limits. That is, if the dispute

[1] The Section notes that Rule 9 has been assigned to Accelerated Adjudication Actions, so that the numbering of the proposed rule needs to be changed. In addition, the Section notes that Amendment No. 1 makes reference to proposed Rule 9(a)(iii), which does not appear anywhere in the proposed rule.

involves limited issues and a relative small amount in controversy, a party who notices nine depositions might well be faced with a motion for protection under CPLR 3103.

In any event, the flexibility to seek relief from the limitations appears to have been a sufficient safety valve in federal practice and there is no reason to doubt its efficacy before the Commercial Division. While the Committee did hesitate momentarily when noting that the Delaware Superior Court did not have such a presumptive limitation, on further reflection it was concluded that a presumptive limitation in the Commercial Division would likely be yet another "selling" point for commercial litigation in the Commercial Division.

Exhibit F

DRAFT: PAF; 1/19/2017 6:50 PM

Proposed Amendment to CPLR 2101 and 2103

§ 2101. Form of papers.

(d) Indorsement by attorney. Each paper served or filed shall be indorsed with the name, address, ~~and~~ telephone number and email address of the attorney for the party serving or filing the paper, or if the party does not appear by attorney, with the name, address, ~~and~~ telephone number and email address of the party.

§ 2103. Service of papers.

(b) Upon an attorney. Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served upon the party's attorney. Where the same attorney appears for two or more parties, only on copy need be served upon the attorney. Such service upon an attorney shall be made:

> 7. by transmitting the paper to the attorney by email at the most recent email address set forth pursuant to section 2101 subdivision (d) or by electronic means where and in the manner authorized by the chief administrator of the courts by rule, but such service shall not be effective if the serving party learns that the paper served did not reach the person to be served ~~and unless such rule shall otherwise provide, such transmission shall be upon the party's written consent~~. The subject matter heading for each paper sent by electronic means must indicate that the matter being transmitted electronically is related to a court proceeding.

(c) Upon a party. If a party has not appeared by an attorney or the party's attorney cannot be served, service shall be upon the party by a method specified in paragraph one, two, four, five ~~or~~ six, or seven of subdivision (b) of this rule.

(f) Definitions. For the purposes of this rule:

> 2. "Electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce, in the original form, the information transmitted in a tangible medium of expression;

Supporting Memorandum

This bill expressly permits the use of email to serve legal papers after an action has been commenced in the trial courts of record without the need for consent from the recipient and in cases that are not subject to electronic filing. It does not affect the system in place for the service of initial process. Email would be permitted regardless whether a party is represented by counsel.

The change is accomplished in two steps. Added to the information required to be provided under CPLR 2101(d) is the email address of the attorney appearing for a party or the party's email address if no attorney is appearing for the party. Concurrently, CPLR 2103(b)(7) would be changed to expressly permit service by email at the address set forth in CPLR 2101(d) without the need for consent of the intended recipient and without regard to whether electronic filing is applicable in a court.

Given the virtually universal use of email to transmit documents, this method of communication is carved out of the broader definition of "electronic means" contained in CPLR 2103(f)(2) because it is believed that, given the widespread use of email, special rules are not a necessary prerequisite to its use. A small addition to the definition of electronic means has been proposed to make clear that any document that is emailed must be reproducible by the recipient in the original form of the document.

In recent years New York has begun to adapt to the changes in modern technology that have marked the computer age. Electronic filing continues to spread throughout the court system, and it has been well-received. Nonetheless, electronic filing is not universal, and it does not apply in certain courts. Although the Uniform Rules for the Trial Courts contemplate that electronically filed documents will be deemed served on parties who have consensually agreed to participate in e-filing (*see, e.g.*, 22 NYCRR §202.5-b) or who are required to participate (22 NYCRR §202.5-bb), where an action is not subject to electronic filing, or where the document is not required to be filed, no provision of CPLR 2103 permits service of interlocutory papers by email, even though email is the common method by which lawyers communicate in any given case.[1]

This bill would change the current system by: permitting service by email regardless whether electronic filing is permitted; removing the need for consent with respect to service by email; and permitting service of papers by email in all trial courts to which the CPLR applies.

This bill recognizes the dramatic growth in the use of email as a method of communication in the legal community. It also recognizes the virtual universality of email, including by *pro se* litigants. The proposed changes recognize the reality that many practitioners already reach informal agreements to permit the service of papers by email. The bill regularizes the use of email and thus brings the CPLR in line with modern custom and practice.

The reasons for the widespread use of email are self-evident. Among them are: the benefits of rapid, real-time transmission of information; and the general trend away from paper communications engendered by environmental concerns and the increasing cost of storing ever-expanding paper files.

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[1] *See also*, the following sections of 22 NYCRR, the rules for the trial courts: §206.5-aa (governing electronic filing in the Court of Claims and tracking 202.5-b); §207.4-a (service permitted in Surrogate's Court on consent in counties specified by the Chief Administrator); §207.4-aa (electronic filing and service in Surrogate's Court mandated in counties designated by the Chief Administrator; exemptions (i) upon submission of an attorney's certification that the requisite hardware is lacking or (ii) for unrepresented parties who opt out). Service by electronic means is not permitted in any other trial court.

It is believed that there is no good reason for tying service of papers by email to electronic filing. Service by email is not dependent upon electric filing and the latter should not impede the interaction between the parties in an action or proceeding. This proposed amendment recognizes that a good practice should be permitted to stand on its own.

The benefits of service by email are significant. Email service is simple and immediate. It represents a significant savings in terms of a dramatic reduction in the use of reams of paper, eliminating the cost of postage and messenger service and significantly reducing the need for space for the sole purpose of storing paper files. The reduction of the use of paper that would result from service by email is consistent with many aspects of modern life, ranging from governmental laws and regulations mandating such reduction in the use of paper by governmental agencies to businesses offering customers online access to receipts and monthly statements.[2]

A further benefit of email service of papers is that it helps expedite litigation. When papers are served by mail, there is an inherent delay, such that CPLR 2103(2) adds five days to the applicable time period where mail service is used, and CPLR 2103(6) adds one day where an overnight delivery service is used to effect service. Email service avoids these needless delays.

A thoughtful analysis of the interplay between law and technology, albeit in a context somewhat different from the service by email proposed here, is contained in *Baidoo v. Blood-Dzraku*, 48 Misc.3d 309 (Sup. Ct. NY Co. 2015):

> That [a] concept is new to the law is something that may very well require a court to exercise a high degree of scrutiny and independent legal analysis when judicial approval is sought. But a concept should not be rejected simply because it is novel or non-traditional. This is especially so where technology and the law intersect. In the age of technological enlightenment, what is for the moment unorthodox and unusual stands a good chance of sooner or later being accepted and standard, or even outdated and passé. And because legislatures have often been slow to react to these changes, it has fallen on courts to insure that our legal procedures keep pace with current technology (see *New England Merchants Natl. Bank v. Iran Power Generation & Transmission Co.*, 495 F. Supp. 73, 81 [S.D.N.Y. 1980] ["Courts cannot be blind to changes and advances in technology."] As noted by the United States Court of Appeals for the Ninth Circuit in *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d. 1007, 1017 (9th Circ. 2002), one of the earliest cases authorizing service of process by email, the "broad constitutional principles" upon which judicially devised alternative service is based "unshackles …courts from anachronistic methods of service and permits them entry into the technological renaissance."

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[2] The relationship between email service and the reduced use of paper is no less compelling than the relationship between electronic filing and the beneficial reduced use of paper in connection with electronic filing commented upon in *Rakofsky v. Washington Post*, 39 Misc.3d 1226(A), *fn.* 1 (Sup. Ct. N.Y. Co. 2013). In that case, Justice Hagler noted: "This case should be the proverbial poster child for e-filing, or the electronic filing, of papers to avoid the needless waste of reams of paper to serve about a dozen attorneys and the court. E-filing would have been more efficient, and preserved limited judicial resources."

Email in particular has garnered express approval by the courts as a means of service, even in the instance of initial service of process, a critical jurisdictional step that goes farther than this bill. The stated reasons for such approval militate in favor of the appropriateness of the instant bill:

> …[W]ith the common utilization of e-mail as a means of communication Courts [*sic*] have been inclined to entertain and grant requests to allow for service by e-mail. (*Hollow v. Hollow*, 193 Misc 2d 691…) Upon proper application, both New York Courts and Federal Courts have granted e-mail service of process as an appropriate method when statutory methods have proven to be ineffective or impossible. Although not directly set forth in the CPLR as a means of service there is no prohibition provided appropriate circumstances exist. (*Alfred E. Mann Living Trust v. ETIRC Aviation S.A.R.L.*, 78 AD3d 137…).[3] Upon granting e-mail service the Court in *Baidoo v. Blood-Dzraku* further found that electronic mail has "all but replaced ordinary mail as a means of communication" and although not specifically set forth in the statute courts are "routinely permitting it as a form of alternative service." (*Baidoo v. Blood-Dzraku*, 48 Misc 3d 309…).

Matter of J.T., 53 Misc. 3d 888, 891 (Fam. Ct. Onondaga Co. 2016).

It is believed that the concept of nonconsensual use of service of interlocutory papers by email, with such service untethered from electronic filing, represents the type of "unshackling" envisioned in *Baidoo* and is consistent with the judicial approbation of email service found in *Matter of J.T.* and the cases cited therein.

[3] *Mann*, a First Department case, was cited with approval by the Fourth Department in *Safadjou v. Mohammadi*, 105 A.D.3d 1423, 1426 (2013).

Exhibit G

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 21. Papers

McKinney's CPLR Rule 2106

Rule 2106. Affirmation of truth of statement

Effective: January 1, 2015

Currentness

(a) The statement of an attorney admitted to practice in the courts of the state, or of a physician, osteopath or dentist, authorized by law to practice in the state, who is not a party to an action, when subscribed and affirmed by him to be true under the penalties of perjury, may be served or filed in the action in lieu of and with the same force and effect as an affidavit.

(b) The statement of any person, when that person is physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, subscribed and affirmed by that person to be true under the penalties of perjury, may be used in an action in lieu of and with the same force and effect as an affidavit. Such affirmation shall be in substantially the following form:

I affirm this ... day of ....., ..., under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature)

Credits

(L.1962, c. 308. Amended Jud.Conf.1973 Proposal No. 3; L.2014, c. 380, § 1, eff. Jan. 1, 2015.)

Exhibit H

McKinney's CPLR § 2309

§ 2309. Oaths and affirmations

Currentness

(a) Persons authorized to administer. Unless otherwise provided, an oath or affirmation may be administered by any person authorized to take acknowledgments of deeds by the real property law. Any person authorized by the laws of this state to receive evidence may administer an oath or affirmation for that purpose. An oath to a juror or jurors may be administered by a clerk of court and his deputies. This section shall not apply to an oath of office.

(b) Form. An oath or affirmation shall be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.

(c) Oaths and affirmations taken without the state. An oath or affirmation taken without the state shall be treated as if taken within the state if it is accompanied by such certificate or certificates as would be required to entitle a deed acknowledged without the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath or affirmation.

(d) Form of certificate of oath or affirmation administered by officer of the armed forces of the United States. The certificate of an oath or affirmation administered within or without the state or the United States, by an officer of the armed forces of the United States authorized by the real property law to take acknowledgment of deeds, shall state:

1. the rank and serial number of the officer before whom the oath or affirmation is taken and the command to which he is attached;

2. that the person taking the oath or affirmation was, at the time of taking it, a person enlisted or commissioned in or serving in or with the armed forces of the United States or the dependent of such a person, or a person attached to or accompanying the armed forces of the United States; and

3. the serial number of the person who takes, or whose dependent takes the oath or affirmation, if such person is enlisted or commissioned in the armed forces of the United States. The place where such oath or affidavit is taken need not be disclosed.

Credits

(L.1962, c. 308. Amended L.1963, c. 282, § 2; L.1963, c. 532, § 14; L.1964, c. 287, § 1.)

Exhibit I

6. Expand the Use of Affirmations Made Under Penalty of Perjury to All Persons (CPLR 2106)

Allowing the use of an Affirmation in a Civil Action by Any Person

The Committee recommends the amendment of CPLR R. 2106 to permit the use of an affirmation in place of an affidavit in a civil action or proceeding by any person wherever made, and for all purposes. This is a procedure modeled upon the Uniform Unsworn Declarations Act promulgated in 2016, and upon the Federal declaration procedure (see 28 USCA 1746;unsworn declarations under penalty of perjury.) Under the amended statute any person when making an affirmation may be physically located within or outside the boundaries of the United States. This will extend to New York the same flexibility that federal law since 1976 and a large number of states have employed for decades. It will promote uniformity and reduce aspects of confusion regarding differences in federal and state litigation practice.

Currently under R. 2106 (a) only specified professional persons (attorney, physician, osteopath or dentist) within the geographic boundaries of the United States may substitute an affirmation for an affidavit. R. 2106(b), patterned after the Uniform Unsworn Foreign Declarations Act, permits an affirmation to be used with the same force and effect as an affidavit by any person when that person is outside of the geographic boundaries of the United States or territories subject to the jurisdiction of the United States.

The current law as limited in subparagraph (a) has created a significant problem in New York practice by requiring a notarized affidavit for litigants and others, often unrepresented, who by reason of location or time constraints have difficulty locating a notary. Within the state it is often difficult to find a notary outside of central business districts. The significant needs of pro se litigants for notary services has resulted in a heavy demand upon the county and court clerk's offices, particularly in the City of New York, resulting in a burden upon an unrepresented party. Delay and unnecessary cost often results for the poor, for persons residing outside of cities, and for those for whom notary services may be necessary outside of business hours.

This proposed amendment will not affect the efficacy of a notarized affidavit. An unsworn affirmation is a permissive alternative to an affidavit that may be used when

circumstances cause difficult in obtaining a notary. It will not relieve a person from establishing, when required by other law, the identity of the declarant or the authenticity of the applicable document. It relates only to a declaration of the truth of that document.

The Committee has concluded that whether a person provides an affidavit or an affirmation, a false statement made with intent to mislead the court will constitute perjury in the second degree, a Class E. felony punishable by up to four years imprisonment. Penal Law 70.00(2) (e), 210.00(1) and (5),210.10.

Proposal

AN ACT to amend the civil practice law and rules, in relation to an affirmation by any person, wherever located, in a civil action.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Rule 2106 of the civil practice law and rules is amended to read as follows:

Rule 2106.Affirmation of truth of statement. The statement of any person .wherever made, subscribed and affirmed by the person to be true under the penalty of perjury, may be used in an action in New York in lieu of and with the same force and effect as an affidavit. Such affirmation shall be in substantially the following form:

I affirm this—day of ---------- , at ---------- under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that the foregoing may be used in an action or proceeding in a court of law.

Signature

§ 2. This act shall take effect immediately and apply to all actions commenced on or after the date on which it shall have become law and all actions pending on the date one which it shall have become law.

Exhibit J

Amend CPLR 2106 to read as follows.

A declaration made in accordance with section 2310 of this Chapter may be used in lieu of an affidavit.

Enact new CPLR 2310 as follows

> Declarations. The subscribed statement of any individual wherever made, declared by the individual to be true under the penalty of perjury, may be used in an action in New York in lieu of and with the same force and effect as an affidavit. Such declaration shall be in substantially the following form: I affirm this—day of ---------- , at ----------under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that the foregoing may be used in an action or proceeding in a court of law. Signature

NB: Effective date would be set days after the enactment, with affirmations made prior to the and in accordance enactment being valid if made in accordance with rule 2106 as it existed before the date of the enactment. We would also change the style of Article 23 to include declarations, viz "subpoenas,, oaths, affirmations and declarations"

The declaration provided in this section would appear to qualify as a basis for a perjury charge, where false. Penal Law § 210.00 subd 1 broadly provides that an oath "includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated."

Exhibit K

Proposal by Herb Ross (June 9, 2020 email):

I advocate amending CPLR 2106 to read as follows:

> 2106. The ***written*** statement of any person subscribed and affirmed by that person to be true under the penalties of perjury, may be used in an action in lieu of and with the same force and effect as an affidavit. Such affirmation shall be in substantially the following form:
> I affirm this … day of ……, …., under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.
> (Signature)

I also advocate adding to CPLR §2309 the following subsection (e):

> (e) the provisions of this section do not apply to an affirmation described in Rule 2106.

Exhibit L

2020 WL 2543768
Supreme Court, Nassau County, New York.

BEST GLOBAL ALTERNATIVE, LTD, Plaintiff,
v.
AMERICAN STORAGE & TRANSPORT, INC. and Christopher Shea, Defendant.

606577/17
|
Decided May 19, 2020

Synopsis
Background: Creditor brought action against individual and corporate debtors, for, among other things, setting aside of debtors' conveyance of assets, which claims creditor previously asserted in prior action between same parties, which was dismissed in part for lack of subject matter jurisdiction and voluntarily discontinued in part. Debtors moved to dismiss or for leave to amend answer. Creditor cross-moved to strike debtors' answer.

[Holding:] The Supreme Court, Antonio I. Brandveen, J., held that creditor's failure to file proof of service within six months of dismissal of prior action did not constitute failure to effect service.

Motion granted in part and denied in part; cross-motion granted in part.

West Headnotes (3)

[1] Statutes

Words in a statute are not to be rejected as superfluous where it is practicable to give each a distinct and separate meaning.

[2] Process

Creditor's failure to file proof of service of its claims against individual debtor for failure to pay commissions due and owing within six months of dismissal of identical action on ground of lack of subject matter jurisdiction did not constitute jurisdictional defect of failure to "effect service" upon debtor, as would have precluded revival of claim; by using term "effected" rather than "completed" in context of service of process after termination of a prior action, Legislature indicated that "effecting service" required delivering and mailing process, as specified in general personal service statute, and did not include completion of service through filing proof of service, and creditor timely delivered and mailed process to debtor. N.Y. CPLR §§ 205(a), 308.

[3] Limitation of Actions

A voluntary discontinuance, by any method at all, including by notice, by stipulation, or by order, is an exception to the statute allowing recommencement of dismissed claims within six months notwithstanding the statute of limitations: a discontinuing plaintiff planning to start over must always make sure either that the original statute of limitations is still alive, or that the plaintiff has in hand an agreement by the defendant not to interpose the statute of limitations defense in the new action. N.Y. CPLR § 205(a).

Attorneys and Law Firms

Lance S. Grossman, Esq., 11 Broadway, Suite 615, New York, NY 10004, For Plaintiff

James Trainor, Esq., 45 Broadway, Suite 3120, New York, NY 10006, For Defendants

Opinion

Antonio I. Brandveen, J.

***1** Defendants move (sequence 001) for an order *inter alia* dismissing the complaint against defendant Shea on the ground that it is barred by the statute of limitations; plaintiff cross-moves (sequence 002) for an order *inter alia* striking the defendants' answer.

Defendants' motion presents not only procedural issues suitable for a Bar examination, but a novel question which has not specifically been addressed by an appellate court: should the clause in CPLR 205 (a)'s six-month extension of time to refile an action that has been dismissed—"... provided that ... service upon defendant is *effected* within such six-month period [emphasis added]"—mean that service of process pursuant to CPLR § 308 (2) must be *delivered* "to a person of suitable age and discretion" *and mailed* to that person's "last known residence or actual place of business," in accordance with the two-step procedural requirements of that statute, *before* the expiration of that six-month period, or should the word "effected" be interpreted to mean, within the context of CPLR § 308 (2) service of process, that the process *must also*, within that six-month window, *be filed* with the "clerk of the Court" and thus "*complete[d],*" ten days after that filing?

The underlying action seeks to recover commissions which are allegedly due and owing pursuant to an oral agreement between the parties. The plaintiff asserts in its fourth cause of action pursuant to Debtor and Creditor Law § 274 that the defendants fraudulently conveyed assets to avoid paying those commissions. This cause of action is identical to the fourth cause of action asserted by the plaintiff in a prior action between the parties in the District Court of Nassau County. The first, second and third cases of action in plaintiff's District Court complaint were dismissed on the ground of lack of subject matter jurisdiction. The Court noted in its order dated and entered on January 13, 2017 (Darcy, J.) that the fourth cause of action was voluntarily discontinued by the plaintiff in its cross-motion "in the event" the three other causes of action were dismissed, and consequently the Court ordered the fourth cause of action discontinued pursuant to CPLR § 3217 (b). The plaintiff did not appeal or reargue the District Court order of January 13, 2017.

Instead, five months and twenty-four days later, on July 7, 2017, the plaintiff filed the instant action. On July 10, 2017, defendant Shea was served by substituted service pursuant to CPLR § 308 (2) at his place of business. The process server avers that he mailed a copy of the summons and complaint on July 11, 2017; process was filed with the County Clerk that same day.

The defendants argue that the service of process on defendant Shea was completed pursuant to CPLR § 308 (2) on July 21, 2017, six months and eight days after the January 13, 2017, dismissal by the District Court of plaintiff's identical prior action, and thus barred by CPLR § 205 (a).

***2** CPLR § 205 (a) states in relevant part that

> "[i]f an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff ... may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is *effected* within such six-month period. [ephasis added]."

CPLR § 308 (2) states in relevant part that "[p]ersonal service upon a natural person [may] be made

> 2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be ***effected*** within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is ***effecte***d later; service shall be complete ten days after such filing...[emphasis supplied]."

In support of their argument that the plaintiff's action is time-barred by CPLR § 205 (a), the defendants rely on a lengthy, thorough, trial court court decision in the Fourth Department, *Roth v. Syracuse Hous. Auth.*, 2002 WL 31962630, 2002 NY Slip. Op. 40550(U) (Sup. Ct., Onondaga County, July 17, 2002, Paris, J.), *aff'd* 306 A.D.2d 921, 760 N.Y.S.2d 377 (2003) [for the reasons stated at Supreme Court], *lv denied* 1 N.Y.3d 507, 776 N.Y.S.2d 223, 808 N.E.2d 359 (2004), which granted

summary judgment in favor of the defendants and dismissed each cause of action asserted against them, and also held that service of process on a defendant was required to be pursuant to CPLR § 308 (2) within the six-month time frame allowed by CPLR § 205 (a). Defendants' counsel maintains that since the Appellate Division, Second Department, has not ruled on whether service must be *made, or completed*, pursuant to CPLR § 308 (2) within the six-month period , this Court is bound by *Roth* by the doctrine of *stare decisis (see, e.g.,Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 476 N.Y.S.2d 918 [2nd Dept. 1984].

This Court respectfully declines to follow *Roth* since the Appellate Division Second Department has interpreted CPLR § 308 differently in an analogous setting, attempting to " effectuate" service of process within the 120-day time frame required by CPLR 306-b (*see, Mighty v. Deshommes*, 178 A.D.3d 912, 915, 115 N.Y.S.3d 454 [2nd Dept. 2019]) and the fact that Fourth Department has never discussed specifically the meaning of the word "effected" within the context of service of process in the six-month savings period permitted by CPLR 205 (a).

***3** [1]" '[A] court, in interpreting a statute, should attempt to effectuate the intent of the Legislature. As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof' (*Majewski v. Broadalbin—Perth Cent. School Dist.*, 91 N.Y.2d 577, 583, 673 N.Y.S.2d 966, 696 N.E.2d 978 [1998] [citations and internal quotation marks omitted]" (*State of New York Mortg. Agency v. Braun*, 182 A.D.3d 63, 119 N.Y.S.3d 522, 529 [2nd Dept. 2020]). The Court of Appeals has "recognized that meaning and effect should be given to every word of a statute. 'Words are not to be rejected as superfluous where it is practicable to give each a distinct and separate meaning' (*Cohen v. Lord, Day & Lord*, 75 N.Y.2d 95, 100, 551 N.Y.S.2d 157, 550 N.E.2d 410 [1989]; see also, McKinney's Cons. Laws of NY, Book 1, Statutes § 231)" *Leader v. Maroney, Ponzini & Spencer*, 97 N.Y.2d 95, 104, 736 N.Y.S.2d 291, 761 N.E.2d 1018 [2001]; *see, Mental Hygiene Legal Serv. v. Daniels*, 33 N.Y.3d 44, 67, 98 N.Y.S.3d 504, 122 N.E.3d 21 [2019]; *Patrolmen's Benevolent Assn. of City of NY v. City of New York*, 41 N.Y.2d 205, 208, 391 N.Y.S.2d 544, 359 N.E.2d 1338 [1976]; McKinney's Cons Laws of NY, Book 1, Statutes § 92 [a]).

[2]Applying these fundamental principles of statutory construction here, this Court concludes that the Legislature could have clearly and simply stated in CPLR § 205 (a) the word *completed* instead of *effected* in the context of service of process pursuant to CPLR § 308, especially since the Legislature declared in CPLR §§ 308 (2) and (4) that "service is complete ten days after the filing [of the affidavit of the service of process with the clerk of the court]." Consequently, this Court holds that the word *effected* as stated in CPLR § 205 (a) must be construed as embodying only the two-prong jurisdictional predicate in CPLR 308 § (2) of "delivering" and then "mailing" the process within a twenty period (***see***,Siegel & Connors, NY Prac. § 52 , at 116 (6th ed. 2018)["if the plaintiff in the second action uses the substituted service methods in CPLR 308 (2) and (4), both service steps must be carried out within the 6 month period [mandated by CPLR 205 (a)]"; *see also Wells Fargo Bank, N.A. v. Heaven*, 176 A.D.3d 761, 762—63, 109 N.Y.S.3d 162 [2nd Dept. 2019]), and should not be interpreted to also include the eventual "complet[tion]" of that service of process whenever it is filed with the clerk of the court (*see*, Siegel & Connors, NY Prac. § 72 , at 179, 181-182 (6th ed. 2018) ["[s]ervice becomes 'complete' 10 days after proof of service is filed...means only that the defendant's responding time will not start until then...The 'completion' of service under CPLR 308 (2) has nothing to do with the statute of limitations...which is satisfied if...[b]oth the delivery and the mailing [is] carried out within the 120-day period for service that follows the filing of the action"])."[T]he failure to file proof of service within the time specified...[in CPLR 308] was not a jurisdictional defect but was rather a 'procedural irregularity' that could be cured by an order permitting the late filing of proof of service, absent an order curing the irregularity..." (*Rodriguez v. Rodriguez*, 103 A.D.3d 117, 120—21, 957 N.Y.S.2d 699 [2nd Dept. 2012]).

Accordingly, the branch of defendants' motion for an order pursuant to CPLR § 3211(a) (5) dismissing the complaint against defendant Shea on the ground that it is time-barred is denied.

[3]The branch of defendants motion for an order dismissing the fourth cause of action against ASTI or alternatively, if the branch of defendants' motion to dismiss pursuant to CPLR § 3211 (a) (5) is denied, granting the defendants leave to amend their answer, pursuant to CPLR § 3025(b) and CPLR § 203 (d), to allege additional affirmative defenses and counterclaims consistent with the proposed amended answer annexed to the moving papers, is granted in its entirety (see, CPLR § 3217 [b]; CPLR § 3025 [b]). "[A] voluntary discontinuance, by any method at all [i.e., by notice, by stipulation, or by order] is an exception to CPLR 205(a) and does not get the six months [to re-commence the action]...A discontinuing plaintiff planning to start over must always make sure either that the original statute of

limitations is still alive, or that the plaintiff has in hand an agreement by the defendant not to interpose the statute of limitations defense in the new action" (*see,* Siegel & Connors, NY Prac. § 298 at 716 [6th ed. 2018]). The proposed amended answer shall be deemed served by the electronic uploading of this order to the Court's e-filing system.

***4** The cross-motion by the plaintiff for an order (1) pursuant to CPLR 3126 (3) striking defendants' answer for failing to comply with plaintiff's demand for documents and demand for responses to the interrogatories 57-80 propounded by the plaintiff, or alternatively, (2) for an order pursuant to CPLR 3126 (2), precluding the defendants from offering into evidence at trial any documents pertaining to the plaintiff's demand for documents and demand for responses to interrogatories, or alternatively, (3) for an order pursuant to CPLR 3126 (1), resolving in plaintiff's favor the issues contained in the documents demanded, or alternatively, (4) compelling the defendants to respond to the plaintiff's document demands and responses to interrogatories 57-80, is granted to the extent that the defendants shall comply with plaintiff's document demands and responses to interrogatories 57-80 within 60 days after the service of a copy of this order upon the defendants' attorney. However, in the interests of judicial and litigation economy, this Court directs that a settlement conference be conducted, either telephonically or by Skype for business, **on June 17, 2020, at 11 a.m.**, in view of the coronavirus pandemic and the subsequent orders promulgated by the Executive and Judicial branches of government. Counsel are directed to contact the undersigned by remote email on June 15 to ascertain whether the conference will take place as scheduled. In the event that the parties cannot agree on settling the matter, then respective counsel shall communicate with each other on a stipulation, to be "so-ordered," regarding the scheduling of all outstanding discovery.

The foregoing constitutes the decision and order of this Court.

All Citations

--- N.Y.S.3d ----, 2020 WL 2543768, 2020 N.Y. Slip Op. 20113

Exhibit M

State of New York

Executive Chamber

No. 202.48

EXECUTIVE ORDER

CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14, as continued and contained in Executive Order 202.27, 202.28, , and 202.38, for another thirty days through August 5, 2020, except the following:

- The suspension or modification of the following statutes and regulations, and the following directives, are not continued, and such statutes, codes, and regulations are in full force and effect as of July 7, 2020:

    - The suspension of Education law section 3604(7), and any associated directives, which allowed for the Commissioner of Education to reduce instructional days, as such suspensions and directives have been superseded by statute, contained in Chapter 107 of the Laws of 2020;

    - The suspension of Section 33.17 of the Mental Hygiene Law and associated regulations to the extent necessary to permit providers to utilize staff members transport individuals receiving services from the Office of Mental Health or a program or provider under the jurisdiction of the Office of Mental Health during the emergency;

    - The suspensions of sections 2800(1)(a) and (2)(a); 2801(1) and (2); 2802(1) and (2); and 2824(2) of the Public Authorities Law, to the extent consistent and necessary to allow the director of the Authorities Budget Office to disregard such deadlines due to a failure by a state or local authority to meet the requirements proscribed within these sections during the period when a properly executed declaration of a state of emergency has been issued, are continued only insofar as they allow a state or local authority a sixty day extension from the original statutory due date for such reports;

    - Section 390-b of the Social Services Law and regulations at sections 413.4 and 415.15 of Title 18 of the NYCRR;

    - Subdivision 8 of section 8-407 of the Election Law;

- The suspension of Criminal Procedure Law to the extent it requires a personal appearance of the defendant, and there is consent, in any jurisdiction where the Court has been authorized to commence in-person appearances by the Chief Administrative Judge; provided further that the suspension or modification of the following provisions of law are continued:
  - Section 150.40 of the Criminal Procedure Law, is hereby modified to provide that the 20-day timeframe for the return date for a desk appearance ticket is extended to 90 days from receiving the appearance ticket;
  - Section 190.80 of the Criminal Procedure Law, is hereby modified to provide that the 45-day time limit to present a matter to the grand jury following a preliminary hearing or waiver continues to be suspended and is tolled for an additional 30 days;
  - Section 30.30 of the Criminal Procedure Law, is hereby modified to require that speedy trial time limitations remain suspended until such time as petit criminal juries are reconvened or thirty days, whichever is later;
  - Article 195 of the Criminal Procedure Law, is hereby suspended to the extent that it would prohibit the use of electronic appearances for certain pleas, provided that the court make a full and explicit inquiry into the waiver and voluntariness thereof;
  - Sections 190.45 and 190.50 of the Criminal Procedure Law, are hereby modified to the extent necessary to allow an incarcerated defendant to appear virtually with his or her counsel before the grand jury to waive immunity and testify in his or her own defense, provided the defendant elects to do so;
  - The suspension of Section 180.80 and 190.80 of the Criminal Procedure Law, as modified by Executive Order 202.28, is hereby continued for a period not to exceed thirty days in any jurisdiction where there is not a grand jury empaneled; and when a new grand jury is empaneled to hear criminal cases, then 180.80 and 190.80 of the criminal procedure law shall no longer be suspended beginning one week after such grand jury is empaneled;
  - The suspension of Sections 180.60 and 245.70 of the Criminal Procedure Law, as modified by Executive Order 202.28, which allowed protective orders to be utilized at preliminary hearings, is hereby continued for a period of thirty days; and
  - The suspension of Sections 182.20, in addition to the modification contained in Executive Order 202.28 of section 182.30 of the Criminal Procedure Law is hereby extended for a period of thirty days, to the extent that it would prohibit the use of electronic appearances for felony pleas, or electronic appearances for preliminary hearings or sentencing;

- Business Corporation law sections 602, 605, and 708, as such suspensions have been superseded by statute, as contained in Chapter 122 of the Laws of 2020;

- Banking Law Section 39 (2), as such suspension has been superseded by statute, as contained in Chapters 112 and 126 of the Laws of 2020, as well as the directives contained in Executive Order 202.9;

- Insurance Law and Banking Law provisions suspended by virtue of Executive Order 202.13, which coincide with the expiration of the Superintendent's emergency regulations;

- Subdivision (28) of Section 171 of the Tax Law, to the extent that the Commissioner has extended any filing deadline;

- Sections 3216(d)(1)(c) and 4306 (g) of the Insurance Law, and any associated regulatory authority provided by directive in Executive Order 202.14, as the associated emergency regulations are no longer in effect;

- The directive contained in Executive Order 202.28, as extended, that prohibited initiation of a proceeding or enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, is continued only insofar as it applies to a commercial tenant or commercial mortgagor, as it has been superseded by legislation for a residential tenant, and residential mortgagor, in Chapters 112, 126, and 127 of the Laws of 2020; and

- The directive contained in Executive Order 202.10 related to restrictions, as amended by Executive Order 202.11, related dispensing hydroxychloroquine or chloroquine, as recent findings and the U.S. Food & Drug Administration's revocation of the emergency use authorization has alleviated supply shortages for permitted FDA uses of these medications.

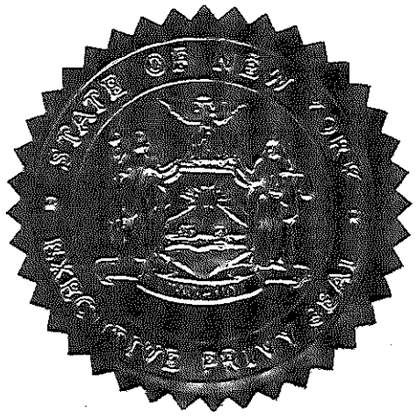
- The directives contained in Executive Order 202.3, that closed video lottery gaming or casino gaming, gym, fitness center or classes, and movie theaters, and the directives contained in Executive Order 202.5 that closed the indoor common portions of retail shopping malls, and all places of public amusement, whether indoors or outdoors, as amended, are hereby modified to provide that such directives remain in effect only until such time as a future Executive Order opening them is issued.

IN ADDITION, I hereby suspend or modify for thirty days through August 5, 2020:

- the provisions of Articles 11-A and 11-B of the State Finance Law, and any regulations authorized thereunder, to the extent necessary to respond to the direct and indirect economic, financial, and social effects of the COVID-19 pandemic.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives for the period from the date of this Executive Order through August 5, 2020:

- The directive contained in Executive Order 202.41, that discontinued the reductions and restrictions on in-person workforce at non-essential businesses or other entities in Phase Three industries or entities, as determined by the Department of Health, in eligible regions, is hereby modified only to the extent that indoor food services and dining continue to be prohibited in New York City.



GIVEN under my hand and the Privy Seal of the State in the City of Albany this sixth day of July in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor