



COMMERCIAL AND FEDERAL LITIGATION SECTION

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MEMORANDUM

To: New York State Office of Court Administration

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

Date: August 6, 2025

Re: Request for Public Comment on a Proposal to Amend Commercial Division Rule 25-a Related to the Virtual Evidence Courtroom

SUMMARY

The NYSBA Commercial & Federal Litigation Section (“ComFed”) submits this memorandum in response to the Office of Court Administration’s request for public comment on a proposal recommended by the Commercial Division Advisory Council (“CDAC”) to amend the Rules of the Commercial Division (22 NYCRR § 202.70) by adding a new Rule 25-a relating to Virtual Evidence Courtrooms (“VECs”). ComFed supports the proposal.

COMMENT

PROPOSED AMENDMENT

Rule 25-a. Virtual Evidence Courtrooms

(a) Purpose. To promote the effective, efficient, and accessible management of trial evidence, the Commercial Division encourages the use of Virtual Evidence Courtrooms (VECs) for managing and presenting evidence during trials. VECs may be used to facilitate real-time access to trial exhibits and other relevant documents.

(b) Definition and Application. A “Virtual Evidence Courtroom” (VEC) is a secure web-based platform for organizing, storing, and sharing evidentiary materials in real time. A VEC may be used to present documents to the court, parties, witnesses and, where applicable, a jury. Documents uploaded to a VEC are not considered to have been filed with the court. A VEC is not part of the official County Clerk’s record and, the documents uploaded to the VEC are available only to those individuals given access by the court; they are not available and accessible to the public. When a VEC is used and documents that must be filed with the court, they must be separately uploaded to the NYSCEF docket in the case. While VECs will typically

contain the evidence to be offered by the parties, issues relating to what materials may be uploaded to the VEC and when shall be determined by the justice presiding over the case in consultation with counsel.

(c) Use and Access Control. The use of a VEC is encouraged in cases that are particularly complex and document intensive. Accordingly, the parties should confer regarding the proposed use of a VEC prior to the pretrial conference in the matter. At the pretrial conference itself, or at any other appropriate time, the court should discuss the use of a VEC with counsel. Thereafter, the parties may request, or the court may direct, with or without consent, the establishment of a VEC for use at trial. Once use of the VEC has been authorized, the parties, in consultation with the court, should agree to access rights and the assignment of secure, role-based permissions to all authorized parties so as to ensure compliance with the parties' discovery and confidentiality obligations.

(d) Confidentiality, Security Measures, and Data Retention. The VEC platform currently incorporated into the NYSCEF system complies with the Office of Court Administration's standards for data security and confidentiality, including encryption, user authentication, and secure access protocols. The party uploading a document to the VEC is responsible for ensuring all information uploaded to the VEC complies with all applicable laws, rules or court orders relating to confidentiality or privacy. Furthermore, NYSCEF's VEC platform enables the presiding justice to delete documents from the VEC. Whether, and if so, when and under what circumstances some or all the documents on the VEC should be removed will be determined by the presiding justice, in consultation with the parties to the case.

COUNCIL'S RATIONALE FOR REVISION

The New York Commercial Division has long been at the forefront of modernizing courtroom practices to enhance efficiency, streamline processes, and adapt to the complexities of commercial litigation in the modern age. Since its establishment, the Commercial Division has pioneered innovative procedural rules and adopted advanced technologies to ensure that its practices meet the needs of contemporary litigants, making it a model for specialized courts across the nation.

The integration of technology into courtroom practice has become increasingly vital for enhancing efficiency and accessibility in legal proceedings. Virtual Evidence Courtrooms (VECs) represent a significant technological advance, offering a secure, digital platform for managing and presenting evidence during trials. Justices Andrew Borrok, Mar Rathod Patel and Melissa Crane of the New York County Commercial Division have successfully implemented VECs in their courtrooms, demonstrating the practical benefits of this technology. This memorandum proposes the adoption of a rule to encourage the use of VECs in Commercial Division cases.

I. Technology and Functionality of Virtual Evidence Courtrooms

A Virtual Evidence Courtroom (VEC) is a secure, web-based platform that centralizes trial exhibits, evidence, and case files, making them accessible to authorized parties, including judges, counsel, and court staff. VECs facilitate real-time sharing of documents, enabling efficient and organized access and review. Key features of VECs include exhibit indexing, search functionality, and secure, role-based, access control.

Once VEC usage has been authorized by the justice presiding over a matter, VECs are made accessible directly within the NYSCEF interface, appearing as a distinct tab in the case docket; users need not download or access separate applications or software. Instead, once authorized, chambers will activate VEC functionality on NYSCEF and set up access for counsel of record, who will all receive NYCSEF-generated emails with instructions for use. At that point, counsel can seamlessly toggle across different case resources, including the docket, case details, and the VEC itself, allowing for an intuitive and uninterrupted experience when managing evidence and related materials. Moreover, the VEC's architecture ensures data integrity and security through encryption, user authentication, and secure access protocols.

II. Benefits and Efficiencies of Virtual Evidence Courtrooms at Trial

Expanding VEC usage in Commercial Division trials offers numerous advantages, particularly given the inherently document intensive nature of most cases in the Division. These include:

1. **Streamlined Evidence Management and Organization.** VECs allow documentary evidence to be uploaded as PDFs, eliminating the need for physical binders and boxes and making it easy to locate and access exhibits. This digitization saves substantial time during trials, as exhibits can be immediately referenced on a laptop, with clear indications as to whether an exhibit has been admitted. And even for those justices who continue to require a hard copy set of exhibits, using the VEC will still facilitate the rapid location of documents and their use during witness examinations. While documents may be digitally exchanged and stored by attorneys and the assigned justice on their individual internal or external computer drives, the VEC has the advantage of offering a single shared location where all those involved in the case may access all of the documents and avoids the need for each individual to download and save each document to his or her individual computer.
2. **Enhanced Trial Efficiency.** VECs make trials more efficient by allowing counsel to display exhibits and other documents to witnesses and the court by electronic means. Counsel and the court may readily locate exhibits and other documents using the shared virtual library of materials in the VEC.
3. **Enhanced Pre-Trial Efficiency and Clarity of Evidence Scope.** VECs improve pretrial preparations by making exhibits readily accessible at trial and facilitating the exchange of proposed exhibits in advance of trial. This transparency permits both the parties and the court to assess the full scope of potential evidence.

- Having a holistic view of the evidence, in turn, ensures more accurate, efficient pre-trial planning and fosters more informed and precise adjudications.
4. **Optimized Trial Scheduling and Time Management.** By having all exhibits organized in advance, judges and lawyers can better estimate the time required for presenting evidence and calling witnesses, enabling more predictability in scheduling and efficiency at trial.
 5. **Improved Post-Trial Briefing and Verdict Analysis.** VECs also simplify post-trial processes by allowing admitted evidence to be accessed and organized easily for streamlined analysis. Lawyers can use this functionality to argue more effectively in the contexts of post-trial motions or verdict modifications, pointing directly to evidence that was admitted or excluded.
 6. **Elevating the Practice of Law and Court Efficiency.** By providing lawyers with this innovative technology, VECs add to the Commercial Division's already extensive array of innovations, all of which contribute to the Commercial Division's reputation as a technologically advanced, premier venue for complex litigation.

COMFED'S COMMENTS

ComFed concurs with the CDAC's reasoning and supports amending the Rules of the Commercial Division (22 NYCRR § 202.70) by adding a new Rule 25-a relating to Virtual Evidence Courtrooms ("VECs").

CONCLUSION

ComFed supports the proposed addition of Rule 25-a to the Rules of the Commercial Division (22 NYCRR § 202.70) and applauds the CDAC's continued efforts to improve the efficiency, accessibility, and innovation of the New York Commercial Division.

Respectfully Submitted,

*New York State Bar Association
Commercial and Federal Litigation Section*