

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

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on October 23, 2019.

Members Participating in Person

Laurel Kretzing, Chair
Jonathan Fellows, Chair-Elect
Natasha Shishov, Secretary
Anne Sekel, Treasurer
Daniel Wiig, Vice-Chair
Jay L. Himes
Stephen A. Hochman
Matthew Maron
Hon. Frank Maas
Kevin Quarantino
Vincent Syracuse
Teresa Bennett
Paul Sarkozi
Hon. Joel M. Cohen**

Members Participating by Telephone

Alan J. Brody
Stephen T. Roberts
Alan Mansfield
Hon. Karla Moskowitz
Mark Berman
Douglas T. Tabachnik

**Indicates guest attendees and speakers at the meeting

Section Chair, Laurel Kretzing, called the meeting to order at 6:10 pm.

Guest Speakers:

Honorable Joel M. Cohen

New York County Supreme Court, Commercial Division

Justice Cohen provided insight into his chamber's practices. He first commented on the quality of people and attorneys before him and praised the Section for being involved in the Commercial Division process. His chambers, which operates as a paperless part, has a universal e-mail address. When an e-mail is sent to one person in chambers, it goes to everyone in chambers.

With respect to motion practice, Justice Cohen explained that motions get divided into three categories: 1) a decision can be written without a hearing; 2) the motion needs a substantial

written decision; or 3) the decision can go either way and can be decided either on the papers or from the bench. His clerks write bench memos and draft opinions for the last category of cases. When he receives a motion, his practice is to read the reply brief first.

With respect to oral argument, the Judge encouraged the Section to send young attorneys to deal with small motions or smaller issues. His part rules will soon include this language to make it easier for practitioners to explain to clients why sending a younger lawyer would be beneficial. During oral argument, the Judge will typically ask a lot of questions and emphasized that just because he asks hard questions does not mean that he has already made up his mind. He encouraged practitioners not to avoid the hard questions.

The Judge then addressed the importance of discovery conferences in his part. In instances when the parties have a dispute before one of his law clerks, they have the option, pursuant to Rule 14-a of the Commercial Division Rules, to write up the decision made by the law clerk after the conference, which would be so-ordered by the Judge. One of his main pet peeves is the lack of professional courtesy. He explained that his part will always recognize the attorney who is a “problem solver” when dealing with discovery disputes.

The Judge also addressed the procedure for filing cases under seal and explained that the Commercial Division Judges are trying to come up with a common system, where everything can be done electronically. Finally, the Judge explained that the proposed “attorneys eyes only” provision, which could be included in all confidentiality stipulations, is an important change and explained how most big cases have this requirement anyway.

Review of September 25, 2019 Meeting Minutes (Tab 1)

The minutes were unanimously approved.

Draft Report on the Proposal to Repeal Commercial Division Rule 23, Relating to the “60-Day Rule” (Tab 2)

Teresa Bennett presented the report, which recommends that Rule 23 of the Commercial Division Rules, also known as the “60 day rule”, be repealed. A similar rule was repealed for cases filed in Supreme Court 13 years ago. An amendment was suggested to include an article published by Vince Syracuse on the topic be included with the report. The report, with annexed exhibit, was unanimously approved.

Draft Report on Proposed Amendment of Commercial Division Rule 6 Relating to Font Usage in Papers Filed with the Court (Tab 3)

Teresa Bennett presented the report, which recommends that font 12 and Serif typeface font be used in both footnotes and the text of all documents submitted to the Court. There was a proposed amendment to list suggestions of Serif typeface in the report. The report, with the amendment, was unanimously approved.

Draft Report on Proposed Amendment of the Commercial Division Standard Form Confidentiality Order (Tab 4 & Tab 5)

Teresa Bennett presented the report. The current proposed confidentiality stipulation does not distinguish between confidentiality. A second option would be included that permits attorneys to include standard “attorneys eyes only” language. The current rule requires court approval. These types of provisions are more standard in commercial cases. Where there is a difference of opinion between attorneys, the proposed rule would permit the party seeking the language to make an application to the court. The report was approved with thirteen members voting in favor, one member voting against and one abstention.

Shira A. Scheindlin Award for Excellence in the Courtroom Update

This annual event is scheduled for November 13, 2019 in the Ceremonial Courtroom of the Southern District of New York. The Honorees will be Sharon Porcellio of Bond Schoeneck King and Sharon Nelles of Sullivan & Cromwell LLP. There will be five Kaye Scholar recipients and the keynote speaker will be NYSBA President, Hank Greenberg.

Annual Meeting Update

This year’s annual meeting is scheduled for January 29, 2020. Two panels have been lined up including panels on “Emerging Technologies in Litigation” and “Developments in Cannabis Litigation”. The EC is encouraged to purchase a table for the Section’s Annual Luncheon. If anyone has suggestions for sponsors, they should contact Dan Wiig. This year’s Stanley H. Fuld award will be given to the Honorable John G. Koeltl, District Court Judge of the Southern District of New York.

Other Business

The Section remembered Michael Oberman and expressed condolences for his recent passing.

Electronic Courtroom program was offered a second time in New York County and was again very successful, as was the program that was presented in Queens County.

Meeting Adjourned at 7:57.