

Message from the Chair

By Laurel Kretzing

I must admit to a severe case of writer's block when it came time to choose a topic and write this message. Writing to me, as I suspect it is for most litigators, is confined to a format and topic: 25 pages to explain why my client is right and the other side is wrong. Always convinced (or at least by the end of the drafting process) that my position is the only possible correct outcome, the challenge is usually in keeping to the 25-page limit.

Having that litigator's mindset and the challenge that it is to take off the hat of zealous advocate led me to what seems like the topic that occupied us during 2019: presumptive mediation or presumptive ADR, as the New York Unified Court System refers to it. Back in May of 2019 Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence Marks announced that by the end of 2019 plans would be in place for the referral of nearly all civil cases—including commercial cases—to mediation or some form of alternative dispute resolution as the "first step in the case proceeding in court."¹

The Judicial Districts were charged with designing their own programs under the guidance of Administrative Judges George Silver and Michael Coccoma so presumptive mediation looks different in different places. Members of our Section and many of the Commercial Division judges that are friends of the Section worked hard on developing programs for Commercial Division cases and I have great confidence that concerns of our Section with respect to commercial cases have been taken into consideration.

My question is whether we as litigators, zealous advocates, masters of the pre-trial proceedings of interrogatories, document demands, depositions and summary judgment motions are equipped to participate in presumptive ADR as the first step in the court proceeding. It seems to me that we will need to adjust our approach to the case from its intake in order to make early, mandatory, mediation a productive first step, or possibly a last

step, rather than something to merely suffer through until we can get on with the litigation. Early ADR is a valuable, money-saving opportunity for clients and it is our obligation as zealous advocates for our clients' best interests to make sure that we are ready to wholeheartedly participate in the process. That means educating yourself and your clients about presumptive ADR and preparing for that new first step in the process, which includes thinking hard about the value of the case from the outset and what information that you will need in order to participate meaningfully in the process.² This Section and other Bar Association groups have presented and participated in programs on presumptive ADR this fall, and I anticipate that more CLE programs will be forthcoming as the presumptive ADR programs in each court are developed and rolled out. I urge you to attend a program on alternate dispute resolution and educate yourself on how to use presumptive ADR to your client's best advantage.

In other news, on November 13, 2019, the Section presented the Shira A. Scheindlin Award for Excellence in the Courtroom to Sharon L. Nelles, Esq., managing partner of Sullivan & Cromwell LLP's Litigation Group, and Sharon Porcellio, Esq., member of Bond Schoeneck & King, PLLC and a former Chair of this Section. We also presented the Judith S. Kaye Scholarship to five up-and-coming young female litigators: Erica Barrow of Baker & Hostetler LLP; Joanna Chen and Gabriela Wolfe, both from Phillips Lytle LLP; Melissa Meyler of Bond Schoeneck & King, PLLC, and Sarah Washington of Goldberg Segalla. As always, this was a very moving and inspirational evening with thought-provoking remarks by the award's namesake, Shira Scheindlin, and keynote speaker and NYSBA President Hank Greenberg.

We have a busy 2020 ahead of us. The Section's Annual Meeting will be held on January 29, 2020 at the Hilton in New York City. We have two cutting-edge topics for our panels: "Emerging Technologies in Litigation" and "Budding Cannabis and CBD Litigation: Are You Ready for the

SAVE THE DATE!

Commercial and Federal Litigation Section Spring Meeting

May 1-3, 2020

Otesaga Hotel | Cooperstown, NY

Please visit www.nysba.org/comfed/ for more information.

Green Wave Heading Towards New York.” Please join us for a morning of learning followed by our Gala Lunch. We are honored to have as our Stanley H. Fuld Awardee, the Honorable John G. Koeltl, District Judge, Southern District of New York. The award will be presented to him by Mary Jo White, Esq., Senior Chair of Debevoise & Plimpton LLP and former Chair of the Securities and Exchange Commission. The Fuld Award was created by the Section in honor of the late Chief Judge of the New York Court of Appeals. The Section presents the award annually to recognize outstanding contributions to the development of commercial law and jurisprudence. Judge Koeltl, as a former member of the Civil Rules Advisory Committee and chair of the subcommittee that focused on active judicial case management and the long-ignored principle of proportionality in discovery, preparing the bench and bar to deal with ever emerging technology issues impacting discovery, is a very well deserving recipient of the Fuld Award.

Once again, on the evening of January 28, 2020, the night before the Annual Meeting, we will be hosting an Evening at the Thurgood Marshall Courthouse from 5:00 to 7:00 p.m. There will be tours of selected spaces at the courthouse and cocktails and hors d’oeuvres will be served.

The following week, on February 5, 2020, the Section’s Young Lawyer’s Committee will hold their first CLE program: “Becoming an Ally: Four Trailblazing Jurists Discuss Diversity and Inclusion.” This free pro-

gram carries 1.5 Diversity & Inclusion credits and features Justices Joel Cohen and Saliann Scarpulla of the Commercial Division, Supreme Court, New York County; Judge Laura Taylor Swain, Judge of the United States District Court, Southern District of New York; and Chief Judge Dora Irizarry of the Eastern District of New York.

On April 22, 2020 we will be back in the Ceremonial Courtroom for the “Taking the Lead” mock trial program, the companion program to the Scheindlin Award program, pitting more experienced female trial lawyers against those less experienced. If you are interested in participating, either as a more experience lawyer, less experienced lawyer or as a witness please let me know.

Finally, please mark your calendars for our Spring Meeting to be held May 1, 2020 – May 3, 2020. We will gather in Cooperstown at the beautiful Otesaga Resort. Our Chair-Elect, Jonathan Fellowes, is putting together a great program for us. Stay tuned for details.

I wish you all a happy, healthy and productive 2020.

Regards, Laurel

Endnotes

1. May 14, 2019 Press Release https://ww2.nycourts.gov/sites/default/files/document/files/2019-05/PR19_09_0.pdf.
2. Hopefully, like the Southern District FLSA mediation program, there will be an opportunity for limited fact discovery in appropriate cases.

Upcoming CLE Programs

Securities Arbitration 2020: Deep Dive

Friday, March 6 | 9:00 a.m. - 4:45 p.m. | NYC & Webcast

Business Arbitration and Mediation 2020

Monday, March 30 | 9:00 a.m. - 7:00 p.m. | NYC

CLE Program from 9:00 a.m. to 5:30 p.m.

Reception from 5:30 p.m. to 7:00 p.m.

Introductory Lessons on Ethics & Civility 2020

Friday, March 20 | NYC

Friday, April 3 | Albany

Friday, April 17 | Long Island

Friday, April 24 | Syracuse

Friday, May 15 | Buffalo

**This program is from 9:00 a.m. to 12:30 p.m. at all locations*

To register: www.nysba.org/CLE/Upcoming_CLE_Programs