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UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

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MEMORANDUM

July 14, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed amendment of Commercial Division Rule 3 (22 NYCRR § 202.70(g)), relating to summary jury trials.

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The Commercial Division Advisory Council has recommended an amendment of Commercial Division Rule 3 formally recognizing summary jury trials as an available ADR mechanism (Exh. A). After conferring with Justices who have presided over summary jury trials, the Advisory Council believes that this form of ADR can be an efficient and expeditious means of resolving commercial disputes in appropriate cases. Presently, six of ten Commercial Division locations employ summary jury trials pursuant to local rules. Data regarding the number of summary jury trials conducted statewide is attached (Exh. B). Summary jury trials are undertaken with the parties' consent and generally involve a one-day jury trial with relaxed rules of evidence, limited time for jury selection and opening statements and summations, a limited number of live witnesses, and waivers of appeals and motions for directed verdicts.

The proposed amendment would read as follows:

Rule 3. Alternative Dispute Resolution (ADR). At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation. Additionally, counsel for all parties may stipulate to having the case determined by a summary jury trial pursuant to any applicable local rules or, in the absence of a controlling local rule, with permission of the court.

The proposed amendment would preserve the requirement of party consent, emphasize that any local rules concerning summary jury trials would apply, and, in jurisdictions without such rules, require court approval of the procedures agreed to by the parties.

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 September 10, 2015.**

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: Alternative Dispute Resolution Subcommittee

RE: Proposed Amendment to Commercial Division Rule 3 Concerning Summary Jury Trials

DATE: June 11, 2015

In its June 2012 Report and Recommendations to the Chief Judge of the State of New York, the Chief Judge's Task Force on Commercial Litigation in the 21st Century recognized the importance of ensuring that the Commercial Division "will facilitate the cost effective resolution of disputes." Consistent with that objective, the Subcommittee on Alternative Dispute Resolution recommends a small change to Rule 3 to address the availability of summary jury trials as an ADR mechanism.

A summary jury trial is generally a binding one-day jury trial employing relaxed rules of evidence. Consent of the parties is required. Jurors are selected from among the existing jury pool. Most often, in consenting to a summary jury trial, the parties waive motions for directed verdict and their right to appeal. Parties typically call a maximum of two live witnesses apiece, and have limited time for jury selection, opening statements and summations.

Currently six of the ten counties or judicial districts with Commercial Division courts have rules governing summary jury trials. These counties include New York, Kings, Queens, Westchester, Suffolk and the 8th Judicial District. In addition, the 7th Judicial District identifies Justice Rosenbaum as the regional summary jury trial coordinator, and a review of attorney websites discloses that summary jury trials have been used successfully in Nassau County. No reference is made in the local rules of Albany or Onondaga Counties to summary jury trials.

Although commonly used in personal injury cases, summary jury trials have the potential to provide an efficient and expeditious way to resolve commercial disputes. Members of the ADR subcommittee conferred with several justices who have presided over summary jury trials, who confirmed that the procedure can be used effectively in appropriate commercial cases. Information compiled by the Office of Court Administration reporting the frequency of summary jury trials by judicial district is annexed.

The subcommittee thus proposes an amendment to Rule 3 of the Commercial Division Rules to ensure that the commercial bar and judiciary recognize the availability of this procedure in commercial cases. Because several judicial districts already have rules governing the procedures to be used in summary jury trials, the subcommittee is not proposing a rule change that would establish uniform procedures for the conduct of summary jury trials in the Commercial Division, but rather proposes that the local rules regarding such trials will control.

Rule 3 currently reads:

Alternative Dispute Resolution (ADR). At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation.

The subcommittee proposes to amend Rule 3 by adding the following language to the end of the existing text in the Rule:

Additionally, counsel for all parties may stipulate to having the case determined by a summary jury trial pursuant to any applicable local rules or, in the absence of a controlling local rule, with permission of the court.

The proposed rule change is designed to address several concerns.

First, it provides that summary jury trials require the consent of counsel for all parties. This is the starting point for the summary jury trial process in each judicial district that provides for summary jury trials in the local rules.

Second, the proposed rule change emphasizes that any local rules concerning summary jury trials will apply. The mention of local rules will alert counsel that local rules may exist and will avoid confusion where they do exist.

Third, in jurisdictions without existing local rules establishing procedures for summary jury trials, the court will need to establish the rules or approve the procedures agreed to by the parties.

EXHIBIT B

SJTs - Statewide - 2014

<u>Judicial District</u>	<u>Total</u>	<u>County(ies)</u>	<u>Subtotal by County</u>
1st	14	New York	14
2d	166	Kings	166
3d	0	Albany	none reported
		Columbia	none reported
		Greene	none reported
		Rensselaer	none reported
		Schoharie	none reported
		Sullivan	none reported
		Ulster	none reported
4th	3	Clinton	none reported
		Essex	none reported
		Franklin	none reported
		Fulton	none reported
		Hamilton	none reported
		Montgomery	none reported
		Saratoga	1
		Schenectady	2
		St. Lawrence	none reported
		Warren	none reported
		Washington	none reported
5th	3	Herkimer	none reported
		Jefferson	none reported
		Lewis	none reported
		Oneida	2
		Onondaga	1
		Oswego	none reported
6th	1	Broome	none reported
		Chemung	none reported
		Chenango	none reported
		Cortland	none reported
		Delaware	none reported
		Madison	none reported

		Otsego	1
		Schuyler	none reported
		Tioga	none reported
		Tompkins	none reported
7th	2	Cayuga	none reported
		Livingston	none reported
		Monroe	2
		Ontario	none reported
		Seneca	none reported
		Steuben	none reported
		Wayne	none reported
		Yates	none reported
8th	43	Allegany	none reported
		Cattaraugus	none reported
		Chautauqua	none reported
		Erie	36
		Genesee	1
		Niagara	6
		Orleans	none reported
		Wyoming	none reported
9th	12	Dutchess	1
		Orange	none reported
		Putnam	none reported
		Rockland	7
		Westchester	4
10th	98	Nassau	0
		Suffolk	98
11th	176	Queens	176
12th	175	Bronx	175
13th	<u>25</u>	Richmond	25
SJT Total 2014	718		
SJT Total 2013	730		
SJT Total 2012	745		
SJT Total 2011	566		
SJT Total 2010	460		
SJT Total 2009	543		
SJT Total 2008	382		
SJT Total 2007	<u>113</u>		
Cumulative Total	4,257		