



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

April 15, 2014

To: All Interested Persons

From: John W. McConnell

Re: Proposed adoption of a new Commercial Division Rule, relating to staggered court appearances

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The Commercial Division Advisory Council has recommended adoption of a new Rule of the Commercial Division providing that each court appearance before a Commercial Division Justice for oral argument on a motion shall be assigned a time slot, the length of which shall be in the court's sole discretion (Exh. A). This proposal was first discussed in the June 2012 Report of the Chief Judge's Task Force on Commercial Litigation in the 21st Century, which urged regularization of the growing practice of scheduling motions and other court appearances on a given date at specific, staggered time slots as opposed to requiring all lawyers on all cases to appear at the same time on a given day.

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 May 30, 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

Proposed Commercial Division Rule on Staggered Court Appearances

Preamble:

Staggered court appearances are a mechanism to increase efficiency in the courts and to decrease lawyers' time waiting for a matter to be called by the courts. While this rule is intended to streamline the litigation process in the Commercial Division, it will be ineffectual without the cooperation and participation of litigants. Improving the process of litigating in the Commercial Division by instituting staggered court appearances of matters before the court, for example, requires not only the promulgation of rules such as this one, but also, and more importantly, the proactive and earnest adherence to such rules by parties and their counsel.

Rule on Staggered Court Appearances:

(a) Each court appearance before a Commercial Division Justice for oral argument on a motion shall be assigned a time slot. The length of the time slot allotted to each matter is solely in the discretion of the court.

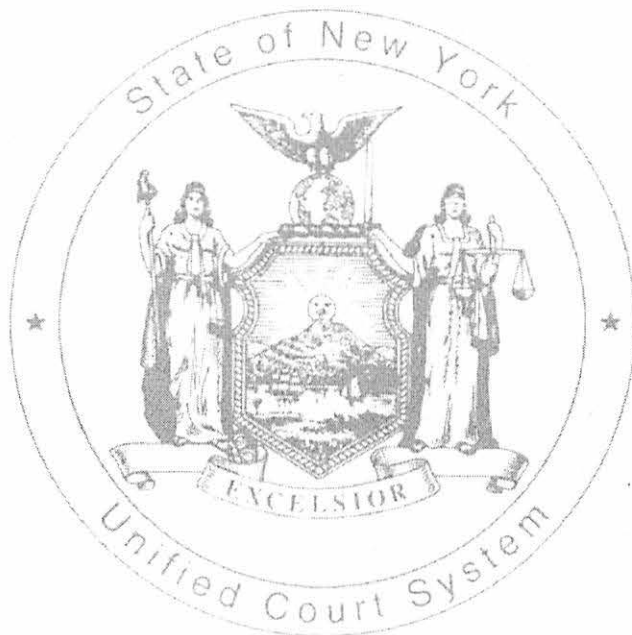
(b) In order for the court to be able to address any and all matters of concern to the court and in order for the court to avoid the appearance of holding *ex-parte* communications with one or more parties in the case, even those parties who believe that they are not directly involved in the matter before the court must appear at the appointed date and time

assigned by the court unless specifically excused by the court. However, if an individual is appearing as a self-represented person, that individual must appear at each and every scheduled court appearance regardless of whether they anticipate being heard.

(c) Since the court is setting aside a specific time slot for the case to be heard and since there are occasions when the court's electronic or other notification system fails or occasions when a party fails to receive the court-generated notification, each attorney, who receives notification of an appearance on a specific date and time, is responsible for notifying all other parties by e-mail that the matter is scheduled to be heard on that assigned date and time. All parties are directed to exchange e-mail addresses with each other at the commencement of the case and to keep these e-mail addresses current, in order to facilitate notification by the person(s) receiving the court notification.

(d) Requests for adjournments or to appear telephonically must be e-filed and received in writing by the Court by no later than 48 hours before the hearing.

**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*

June 2012

6. *Improve courtroom efficiency.*

We recommend several changes to the manner in which Commercial Division Parts are run on a day-to-day basis. These changes will make the Commercial Division more “user-friendly” and efficient.

Staggered Court Appearances. We urge regularization of the growing practice of Commercial Division Justices to schedule motions and other court appearances on a given date at specific, staggered times, either individually or in small clusters. This would significantly reduce unnecessary attorneys’ fees and dramatically improve the atmosphere of the court when each case is heard. This practice is far preferable to asking all lawyers on all cases for a given day to appear at the same time.

Using Letter Submissions for Discovery Motions. Although letter submissions are encouraged in many Commercial Division Parts, they are not universally permitted. Experience, however, shows that letter submissions are often the most effective way to present discovery disputes: they are cheaper and more efficient than formal motions, and more balanced and less subject to “ambush” than oral presentations at conferences. We recognize that letter submissions, unless e-filed, often do not become part of the official court record, and this may be something that needs to be changed. For now, letters frequently remain the best way to address discovery disputes in the first instance.

Conducting Discovery Conferences by Telephone. We encourage judges to conduct at least routine discovery and status conferences by telephone rather than requiring the attorneys to travel to court. We recognize that some conferences (for example, the initial discovery conference and post-Note of Issue conferences) should be handled in person, but most others need not be. This is particularly true when the discovery process is proceeding smoothly, or an