



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

**JOHN W. McCONNELL**  
Counsel

## MEMORANDUM

April 7, 2014

To: All Interested Persons

From: John W. McConnell

Re: Proposed amendment of 22 NYCRR § 202.70(d) (Rules of the Commercial Division), relating to the assignment of cases to the Commercial Division.

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The Commercial Division Advisory Council has recommended an amendment of section 202.70(d) of the Rules of the Commercial Division that would encourage earlier assignment of cases to the Commercial Division (Exh. A). According to the Advisory Council, many commercial cases are not benefitting from early judicial case management because they are not assigned to the Commercial Division until discovery is well under way or a motion for summary judgment is made. Under this proposal, any party would be able to seek assignment of a case to the Commercial Division by filing, within 90 days of service of the complaint, a Commercial Division RJI certifying that the case meets the requisite jurisdictional requirements. Failure to file an RJI within 90 days would preclude the party from later seeking transfer of the case to the Commercial Division, except by written application to the Administrative Judge for "good cause shown." If an RJI is filed within 90 days without seeking assignment to the Commercial Division, any other party would have ten days to apply to the Administrative Judge for a transfer of the case to the Commercial Division. In addition, a non-Commercial Division Justice may request transfer of a case to the Commercial Division where jurisdictional requirements are met.

Persons wishing to comment on this proposal should e-mail their submissions to [rulecomments@nycourts.gov](mailto: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 June 2, 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**

# Memorandum

**To:** Commercial Division Advisory Council  
**From:** Subcommittee on Procedural Rules to Promote Efficient Case Resolution  
**Date:** January 23, 2014  
**Re:** Proposed Amendments to New York Commercial Division Assignment Rules

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The Subcommittee on Procedural Rules to promote Efficient Case Resolution has given consideration to amending the Commercial Division assignment rules, and the proposed amendments are set forth below.

## **BACKGROUND**

In the June 2012 report of the Chief Judge's Task Force on Commercial Litigation in the 21<sup>st</sup> Century (excerpt attached), the Task Force recommended a rule change with respect to the assignment of cases to the Commercial Division. Under the rules as currently drafted, a case is not assigned to the Commercial Division until a Request for Judicial Intervention (RJI) is filed. Yet, it is often the case that RJIs are not filed until after discovery is well underway. Indeed, in some circumstances, cases are not assigned to a Commercial Division judge until the time of summary judgment motions. The amendments would achieve the benefit of getting a case before a Commercial Division judge soon after service of the complaint. As noted in the enclosed excerpt, early and continued judicial involvement will assist in streamlining discovery by facilitating prompt resolution of disputes and monitoring compliance with discovery obligations. The proposed amendments are as follows:

## **PROPOSED AMENDMENTS**

### **Section 202.70 Rules of the Commercial Division of the Supreme Court**

...

(d) Assignment to the Commercial Division

**Within 90 days following service of the complaint, any party may seek assignment of a case to the Commercial Division by filing a** ~~A party seeking assignment of a case to the Commercial Division shall indicate on the Request for Judicial Intervention (RJI) the appropriate Nature of Action or Proceeding~~

~~category and shall that~~ attaches a completed Commercial Division RJI Addendum certifying that the case meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section. **Except as provided in subsection (e) below, failure to file an RJI pursuant to this subdivision precludes a party from seeking assignment of the case to the Commercial Division.**

(e) Transfer into the Commercial Division

If **an RJI is filed within the 90-day period following service of the complaint and a** the case is assigned to a non-commercial part because the filing party did not designate the case as “commercial” on the RJI, any other party may apply by letter application (with a copy to all parties) to the Administrative Judge, within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division. **Further, notwithstanding the time periods set forth in subdivisions (d) and (e) of this section, for good cause shown for the delay a party may seek the transfer of a case to the Commercial Division by letter application (with a copy to all parties) to the Administrative Judge. In addition, a non-Commercial Division justice to whom a case is assigned may sua sponte request the Administrative Judge to transfer a case that meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section to the Commercial Division.** The determinations of the Administrative Judge **with respect to any letter applications or requests under this subsection** shall be final and subject to no further administrative review or appeal.

(f) Transfer from the Commercial Division

(1) In the discretion of the Commercial Division justice assigned, if a case does not fall within the jurisdiction of the Commercial Division as set forth in this section, it shall be transferred to a non-commercial part of the court.

(2) Any party aggrieved by a transfer of a case to a non-commercial part may seek review by letter application (with a copy to all parties) to the Administrative Judge within ten days of receipt of the designation of the case to a non-commercial part. The determination of the Administrative Judge shall be final and subject to no further administrative review or appeal.

**THIS PROPOSAL WAS APPROVED BY THE COMMERCIAL DIVISION  
ADVISORY COUNCIL ON JANUARY 23, 2014.**

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**THE CHIEF JUDGE'S TASK FORCE  
ON COMMERCIAL LITIGATION IN THE 21<sup>ST</sup> CENTURY**



*Report and Recommendations to the  
Chief Judge of the State of New York*

**June 2012**

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period of budgetary restriction. Further, the Commercial Division's Support Office has merged with other back offices, making support for the Division diluted and less accessible than in the past. The Task Force urges that this Support Office be revitalized with key personnel and moved back to its standalone status with its own office space.

### **III. PROCEDURAL REFORMS**

Reforming the procedures of the Commercial Division is another way to reduce delay and eliminate unnecessary costs in commercial litigation in New York. In identifying these potential reforms, the Task Force focused specifically on the following objectives: facilitate prompt and cost-effective resolution of pretrial proceedings and expedited trial procedures; improve courtroom efficiency; consider the impact of the appellate process on litigants' consideration of the Commercial Division as a forum for their disputes; and enhance the use of technology tools to support the Commercial Division and Bar.

#### ***1. Earlier assignment of cases to the Commercial Division.***

A hallmark of the Commercial Division has been its interactive, hands-on case management, which helps the Justices process cases more efficiently. Accordingly, the Task Force recognizes the importance of having a judicial officer involved as early in the case as possible. Yet many cases that end up in the Commercial Division do not reach a judge until discovery is well under way, even as late as a summary judgment motion. The Administrative Board should consider promulgating a new rule to modify the current selection mechanism for assignments to the Division. The rule would state that, within 90 days following service of the complaint, any party may seek assignment of the case to the Commercial Division. Failure to file an RJI with such a request by that time would preclude later assignment to the Division.

subject to a *sua sponte* determination by the judge to whom the case is assigned to transfer the case to the Commercial Division.

Among other benefits, early and continued judicial involvement will assist in streamlining discovery by facilitating prompt resolution of disputes and monitoring compliance with discovery obligations.

**2. *Adopt uniform procedure for more robust and timely expert disclosure.***

For many years, commercial litigators have expressed concern about the C.P.L.R.'s limitations on expert disclosure.<sup>2</sup> In particular, there is a lack of predictability and efficiency that results from the requirement to disclose only limited information about an expert's qualifications and opinion, and the failure to impose deadlines by which expert disclosure must be made. These place the Commercial Division at a significant disadvantage when parties consider where to litigate their business disputes. Commercial Division cases often involve controversies where expert opinion is necessary to quantify valuation or damages, full and timely disclosure of which allows parties to assess the risks of trial and the benefits of potential settlement. Since the Commercial Division generally does not require the type of expert disclosure necessary for parties to undertake this analysis, parties who can control forum selection may choose to litigate in Delaware or the federal courts, both of which provide substantially more robust and timely expert discovery. Just as important, the absence of robust and timely disclosure of expert opinions contributes to the inefficiency of cases brought in New York and may delay resolution.

On April 26, 2012, the Office of Court Administration solicited public comment on two amendments to the Uniform Rules of the Commercial Division proposed by the New York State

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<sup>2</sup> Commercial and Federal Litigation Section, New York State Bar Association. *A Proposal for Enhanced Expert Disclosure in the New York State Commercial Division* (Feb. 7, 2011), available at [http://www.nysba.org/AM/Template.cfm?Section=Commercial\\_and\\_Federal\\_Litigation\\_Home&ContentID=46334&Template=/CM/ContentDisplay.cfm](http://www.nysba.org/AM/Template.cfm?Section=Commercial_and_Federal_Litigation_Home&ContentID=46334&Template=/CM/ContentDisplay.cfm).