



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

September 3, 2019

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposal to Repeal Commercial Division Rule 23 (“60-day Rule”)

=====

The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Commercial Division Advisory Council (the “Advisory Council”), to repeal Commercial Division Rule 23 (22 NYCRR § 202.70[g], Rule 23). Currently, Rule 23 (known as the “60-Day Rule”) requires movant’s counsel to notify the court and other parties whenever a motion has not been decided within 60 days of its submission or oral argument. As described in a memorandum in support of the rule repeal (Exh. A), the Advisory Council cites three reasons for repeal: (1) the rule puts attorneys in the difficult position of reminding judges of their failure to make a decision and is therefore rarely followed; (2) an analogous rule applicable more broadly to Supreme and County Court (22 NYCRR § 202.8[h]) was rescinded in 2006; and (3) judges currently receive notice of such unresolved motions through other channels.

=====

Persons wishing to comment on the 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 November 1, 2019.

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

TO: Commercial Division Advisory Counsel
FROM: Subcommittee on Procedural Rules to Promote Efficient Case Resolution
RE: Proposed Repeal of Statewide Commercial Division Rule 23 -- The "60 Day Rule")
DATE: June 7, 2019

RECOMMENDATION

Rule 23 of the Statewide Rules of the Commercial Division, also known as the "60-Day Rule", currently provides as follows:

If 60 days have elapsed after a motion has been finally submitted or oral argument held, whichever was later, and no decision has been issued by the court, counsel for the movant shall send the court a letter alerting it to this fact with copies to all parties to the motion.

By all accounts, practitioners seldom follow the rule. From the practitioners' standpoint, there is understandable reluctance about complying with a rule that might be perceived by the presiding justice in a pending matter as a presumptuous, not-so-subtle, reminder that he or she is out of compliance with "Standards and Goals". And for the judiciary, receiving Rule 23 letters arguably creates undue pressure and generates no small amount of irritation.

In addition to these attitudinal concerns, Rule 23 also appears to be vestigial. The drafters modelled it on a similar (if not identical) rule -- 22 NYCRR §202.8 (h) -- that applied briefly to *all* cases once pending in New York's Supreme and County Courts. On October 1, 2006, though, 202.8 (h) was repealed, and bar groups, including the Commercial and Federal Litigation Section of the New York State Bar Association, urged that Commercial Division Rule 23 follow suit. *See* Vincent J Syracuse, "The End of the 60 Day Rule or at Least So We Thought!", *Commercial and Federal Litigation Section Newsletter*, at 15 (Winter 2006). For whatever reason, it has not, and Rule 23 has remained on the books until today.

Given the almost universal displeasure with the rule, the repeal of an identical rule of general application about 13 years ago, and the reality that judges already receive notices from OCA about motions pending for longer than 60 days (*id.*), we respectfully submit that Commercial Division Rule 23 should be repealed as well.

JDL