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

JOHN W. McCONNELL
Counsel

MEMORANDUM

January 14, 2013

TO: All Interested Persons

FROM: John W. McConnell

RE: Proposed amendment of 22 NYCRR §202.28, relating to notice to the court of settlement, mootness, or bankruptcy of a party.

In its 2012 report, the Advisory Committee on Civil Practice recommended amendment of 22 NYCRR § 202.28, addressing discontinuance of civil actions, to add a requirement that parties to a pending action notify the assigned judge when (1) the action is wholly or partially settled by stipulation; or (2) a motion has become wholly or partially moot; or (3) a party has died or become a bankruptcy debtor (Exhibit A). The amendment's purpose is to ensure that the court is promptly notified of dispositive events in matters *sub judice*, and to avoid needless expenditure of court time and resources.

Persons wishing to comment on this proposal should e-mail their submissions to OCArule202-28@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 March 1, 2013.

EXHIBIT A

3. Requiring Parties to Give the Court Notice of Discontinuance, Settlement, Mootness of a Motion or Death or Bankruptcy of a Party (22 NYCRR 202.28(a), (b)(new))

The Advisory Committee on Civil Practice recommends that the Uniform Rules for the Supreme Court and the County Court (22 NYCRR 202.00 *et seq.*) be amended to require the parties to a pending action to notify the assigned justice of the court when the action is wholly or partially settled by stipulation, or a motion has become wholly or partially moot, or a party has died or become a debtor in bankruptcy. It has been brought to the attention of the Committee that it is not uncommon that an assigned justice is not informed of the disposition by settlement between the parties, which frequently occurs while a difficult motion is *sub judice*. Time and effort becomes wasted while the judge and law clerk are busy in chambers, or amongst the pool clerks, preparing a decision or opinion on a moot issue or settled case.

Currently, there are similar rules in Section II of the General rules, Rule 2(a) of the Justices of the Supreme Court, Civil Branch, New York County and §670.2(g) of Part 670, Procedure in the Appellate Division, Second Department. Also, the Court of Appeals has ruled that parties must disclose the existence of a hi-low agreement and its terms to the court and any non-agreeing defendants (Matter of Eighth Jud. Dist. Asbestos Litig., 8 N.Y. 3d 717 (2007)). Currently, many practitioners voluntarily adopt a similar procedure in practice. However, the Committee believes that the matter is sufficiently serious that the parties' obligation under CPLR 2104 to notify chambers should be mandatory. The Committee also believes that adoption of the proposed rule will assist judges in getting out timely decisions and improving access to judicial resources.

Finally, the Committee believes it appropriate to include this requirement with the existing rule governing discontinuance of civil actions, and to make a distinction between the required filing with the county clerk and the additional notification of the judge.

Proposal

§ 202.28. Discontinuance of Civil Actions and Notice to the Court. (a) In any discontinued action, the attorney for the defendant shall file a stipulation or statement of discontinuance with the county clerk within 20 days of such discontinuance. If the action has been noticed for judicial activity within 20 days of such discontinuance, the stipulation or statement shall be filed before the date scheduled for such activity.

(b) If an action is discontinued under paragraph (a), or wholly or partially settled by stipulation pursuant to CPLR 2104, or a motion has become wholly or partially moot, or a party has died or become a debtor in bankruptcy, the parties promptly shall notify the assigned judge in writing of such an event.