



MEMORANDUM

To: All Interested Persons

From: Anthony R. Perri

Re: Request for Public Comment on Amending Commercial Division Rule 27 to Add a Deadline for the Service of Opposition Papers to Motions in Limine and to Provide Guidance on the Issues that Motions in Limine Should Address

Date: October 27, 2022

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Commercial Division Advisory Council (“CDAC”), to amend Commercial Division Rule 27 to add a deadline for the service of opposition papers to motions *in limine* and to provide guidance on the types of issues that motions *in limine* should address (Exhibit A). CDAC’s proposed amendment states that objections to the admissibility of specific exhibits or specific deposition testimony based on threshold issues such as lack of foundation or hearsay shall be made under Rule 28 or Rule 29. The rule amendment states that motions *in limine* are used to address broader case issues, such as the receipt or exclusion of evidence, testimony, or arguments of a particular kind, and should not be used as vehicles for summary judgment motions (Ex. A, p. 1-2).

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: Anthony R. Perri, Esq., Acting Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than December 30, 2022.

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

July 1, 2022

TO: Members of the Commercial Division Advisory Council
FROM: Subcommittee on Best Practices for Judicial Case Management
RE: Proposed Modifications to Commercial Division Rule 27

This memorandum provides suggested modifications to Commercial Division Rule 22 that the Commercial Division Advisory Council's Subcommittee on Best Practices for Judicial Case Management has recommended. Now, with two years of experience of the pandemic, we are particularly mindful of the potentially long-lasting impact of the pandemic on the functioning of the courts and how courtroom practices might be transformed going forward. The Advisory Council now respectfully submits the following proposed Rule revision for the Administrative Board's consideration and approval.

Rule 27. Motions in Limine

A. Current Version of Rule 27

Rule 27. Motions in Limine. The parties shall make all motions in limine no later than ten days prior to the scheduled pre-trial conference date, and the motions shall be returnable on the date of the pre-trial conference, unless otherwise directed by the court.

B. Proposed Revision to Rule 27

We suggest the following amendment to clarify both the timing of opposition papers and the appropriate subject matter of motions in limine.

Rule 27. Motions in Limine. The parties shall make all motions in limine no later than ten days prior to the scheduled pre-trial conference date, and the motions shall be returnable on the date of the pre-trial conference, unless otherwise directed by the court. Opposition papers, if any, shall be served and filed no later than two days before the return date of the motion, unless otherwise directed by the court. Objections to the admissibility of specific exhibits or specific deposition testimony based on basic threshold issues such as lack of foundation or hearsay shall be made under Rule 28 and Rule 29, respectively. Motions in limine should be used to address broader issues concerning, for example, (1) the receipt or exclusion of evidence, testimony, or arguments of a particular kind or concerning a particular subject matter, (2) challenges to the competence of a particular witness, or (3)

challenges to the qualifications of experts or to the receipt of expert testimony on a particular subject matter. Motions in limine should not be used as vehicles for summary judgment motions.

C. Rationale for Revision

The Advisory Council recommends Rule 27 be modified to add a deadline for service of opposition papers to motions in limine and to provide guidance on the types of issues that motions in limine should address. The Advisory Council directs attorneys to sponsor their objections to exhibits and deposition testimony under Rules 28 and 29 and to use motions in limine to address broader case issues, such as challenging the competence of a witness, the propriety of expert testimony, or evidence related to a particular subject matter. Last, the Advisory Council thought it wise to include an admonition to parties and their counsel not to use a motion in limine as an application to bring an untimely motion for summary judgment as the courts will not be receptive to such an initiative.