



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons
From: David Nocenti
Re: Request for Public Comment on a proposal to add a new Part 53 to the Rules of the Chief Judge continuing the Litigation Coordinating Panel
Date: December 28, 2023

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The Administrative Board of the Courts is seeking public comment on a proposal to add a new Part 53 to the Rules of the Chief Judge to continue the Litigation Coordinating Panel, with one minor procedural change.

The Litigation Coordinating Panel (LCP) was created in 2002 for the purpose of considering and deciding when the activities of related proceedings that are pending in more than one district should be coordinated. *See* 22 NYCRR § 202.69.

The provisions governing the LCP are being moved from 22 NYCRR § 202.69 to 22 NYCRR § 53.1, with one modification. In particular, the LCP will be required to consult with the Chief Administrative Judge prior to issuing any coordinating orders. The new proposed rule is set forth below, marked to show the changes from the current rule [deletions ~~stricken~~ and additions underscored].

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22 NYCRR ~~§ 202.69~~ Part 53. Litigation Coordinating Panel

§ 53.1. Coordination of related actions pending in more than one judicial district.

(a) Application.

This section shall apply when related actions are pending in the courts of the Unified Court System in more than one judicial district and it may be appropriate for these actions to be coordinated pursuant to the criteria and procedures set forth in this section. Coordination pursuant to this section shall apply to pretrial proceedings, including dispositive motions.

(b) Litigation coordinating panel.

(1) Composition. The Chief Administrator of the Courts, in consultation with the Presiding Justice of each Appellate Division, shall create a Litigation Coordinating Panel composed of one justice of the Supreme Court from each judicial department of the State.

(2) Procedure. The panel shall determine, *sua sponte* or upon application of a party to an action, a justice before whom such an action is pending, or an administrative judge, whether the related actions should be coordinated before one or more individual justices. The panel shall provide notice and an opportunity to be heard to all parties to the actions sought to be coordinated and shall inform the justices before whom such actions are pending of the initiation of proceedings before the panel.

(3) Standards for coordination. In determining whether to issue an administrative order of coordination, the panel shall consider, among other things, the complexity of the actions; whether common questions of fact or law exist, and the importance of such questions to the determination of the issues; the risk that coordination may unreasonably delay the progress, increase the expense, or complicate the processing of any action or otherwise prejudice a party; the risk of duplicative or inconsistent rulings, orders or judgments; the convenience of the parties, witnesses and counsel; whether coordinated discovery would be advantageous; efficient utilization of judicial resources and the facilities and personnel of the court; the manageability of a coordinated litigation; whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; and the pendency of related matters in the Federal courts and in the courts of other states. The panel may exclude particular actions from an otherwise applicable order of coordination when necessary to protect the rights of parties.

(4) Determination.

(i) The panel shall issue a written decision on each application. If the panel determines to direct coordination, it shall issue an administrative order identifying the actions that shall be coordinated. The order may address actions subsequently filed or not otherwise then before the panel.

(ii) The order of the panel, following consultation with the Chief Administrative Judge, shall specify the number of Coordinating Justices and the county or counties in which the coordinated proceedings shall take place. In making this decision, the panel shall consider, among other things, the venues of origin of the cases to be coordinated; whether the actions arise out of an accident or events in a particular county; judicial caseloads in prospective venues; fairness to parties; the convenience of the parties and witnesses; the convenience of counsel; and whether the purposes of this section can best be advanced by coordination before more than one Coordinating Justice.

(c) Coordinating Justice.

(1) Designation. The Administrative Judge charged with supervision of the local jurisdiction within which coordinated proceedings are to take place shall select the Coordinating

Justice or Justices, in consultation with the appropriate Deputy Chief Administrative Judge. In deciding whom to designate, the Administrative Judge shall consider, among other things, the existing caseload of each prospective appointee and the overall needs of the court in which that justice serves; the familiarity of that justice with the litigation at issue; the justice's managerial ability; and the previous experience of the justice with the field of law involved and with coordinated litigation. The Administrative Judge may designate a justice from another local jurisdiction as a Coordinating Justice with the approval of the Administrative Judge thereof.

(2) Authority. The Coordinating Justice shall have authority to make any order consistent with this section and its purposes, including to remand to the court of origin any portion of a case not properly subject to coordination under the administrative order of the panel; assign a master caption; create a central case file and docket; establish a service list; periodically issue case management orders after consultation with counsel; appoint and define the roles of steering committees and counsel of parties and liaison counsel, provided that the committees and counsel shall not deprive any party of substantive rights; issue protective orders pursuant to article 31 of the Civil Practice Law and Rules; establish a document depository; direct the parties to prepare coordinated pleadings and deem service upon liaison counsel or steering committee service upon the respective parties; require service of uniform requests for disclosure and establish a uniform method for the conduct of physical and mental examination; rule upon all motions; require the parties to participate in settlement discussions and court-annexed alternative dispute resolution; and try any part of any coordinated case on consent of the parties to that action.

(3) Coordination with Federal or other states' actions. If actions related to those pending before a Coordinating Justice are proceeding in Federal courts or in the courts of other states, the Coordinating Justice shall consult with the presiding judge(s) in an effort to advance the purposes of this section. Where appropriate, the Coordinating Justice, while respecting the rights of parties under the Civil Practice Law and Rules, may require that discovery in the cases coordinated pursuant to this section proceed jointly or in coordination with discovery in the Federal or other states' actions.

(d) Termination of coordination.

The Coordinating Justice, *sua sponte* or upon motion by any party, may terminate coordination, in whole or in part, if the Justice determines that coordination has been completed or that the purposes of this section can be best advanced by termination of the coordination. Upon termination, the actions shall be remanded to their counties of origin for trial unless the parties to an action consent to trial of that action before the Coordinating Justice.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than February 2, 2024.

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.