



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

EILEEN D. MILLETT
COUN SEL

MEMORANDUM

To: All Interested Persons

From: Eileen D. Millett

Re: Request for Public Comment on Proposal to Amend Commercial Division Rules 2, 5, 15, 16, and 19

Date: February 18, 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 Rules 2 (Exhibit A), 5 (Exhibit B), 15 (Exhibit C), 16 (Exhibit D), and 19 (Exhibit E). The proposed rule amendments are as follows (additions underlined, deletions in strikethrough):

Proposed Amendments to Rule 2:

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by ~~submission of e-filing~~ a copy of the stipulation ~~or~~ and by a letter directed to the clerk of the part along with notice to chambers via telephone or e-mail. This notification shall be made in addition to the filing of a stipulation with the County Clerk. The parties need not reveal the terms of a settlement, but must notify the court that a resolution has been reached and that both sides have agreed to discontinue the case. In addition to notifying the court of a settlement or discontinuance, counsel shall withdraw any pending motions and any pending appeals.

- CDAC recommends that Rule 2 be modified to provide that notice of settlements or discontinuances be e-filed in addition to being sent to the clerk of the part and chambers. The proposed amendment also emphasizes that parties may state that they reached a resolution without disclosing the terms of a settlement. The revised rule also requires counsel to withdraw any pending motions and pending appeals after settlement to clear the case docket and the court’s calendar. (Ex. A)

Proposed Amendments to Rule 5:

Rule 5. ~~(This rule shall apply only in the First and Second Judicial Departments)~~
Information on Cases. Information on future court appearances can be found at the court system's future appearance site (www.nycourts.gov/ecourts). Neither the court nor the

court clerk will be responsible for notifying the parties of scheduled court appearances, although the court or the court clerk may do so at their discretion. Decisions can be found on the Commercial Division home page of the Unified Court System's internet website: www.courts.state.ny.us/comdiv ~~or in the New York Law Journal.~~ The clerk of the part can also provide information about scheduling in the part (trials, conferences, and arguments on motions). ~~Where circumstances require exceptional notice, it will be furnished directly by chambers.~~

- CDAC recommends that Rule 5 be modified to reflect current practices by deleting the distinction between departments and to remove references to the New York Law Journal, as lawyers do not rely on it for recent court decisions. Language has also been inserted and amended to show that the court is not responsible for notifying counsel regarding scheduled court appearances (Ex. B).

Proposed Amendments to Rule 15:

Rule 15. Adjournments of Conferences. By leave of court as provided by Rule 1(d), attorneys are encouraged to use remote appearance technology in order to avoid adjournments of conferences. Adjournments on consent are permitted with the approval of the court for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the preliminary conference order, unless otherwise directed by the court.

- CDAC recommends that Rule 15 be modified to encourage attorneys to use remote appearance technology, rather than seek adjournments, when they are unable to appear in person (Ex. C).

Proposed Amendments to Rule 16:

Rule 16. Motions in General.

* * *

(a) Form of Motion Papers. The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should ~~use tabs when submitting papers containing~~ clearly separate exhibits from each other by using divider pages with the exhibit number. Counsel shall follow Rule 6 with respect to hyperlinking. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated. CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, ~~a the court may direct counsel to submit a copy and counsel shall otherwise follow Rule 6 with respect to hyperlinking copy of the case or of to pertinent portions of the authority shall be submitted with the motion papers.~~

- CDAC recommends that the Rule be modernized to reflect widespread usage of e-filing. (Ex. D) Additions and modifications have also been made to reflect the hyperlinking guidance in Rule 6. The amended Rule also makes submission of difficult to obtain authority in hard copy discretionary instead of mandatory.

Proposed Amendments to Rule 19:

Rule 19. Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. ~~See Rule 20~~ Absent advance permission, reply papers shall not be submitted on orders to show cause.

- CDAC recommends that the reference to Rule 20 be deleted because it is unclear and does not apply to all circumstances. (Ex. E)

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: Eileen D. Millett, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than April 18, 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

March 19, 2021

TO: The Administrative Board of the Courts
FROM: The Commercial Division Advisory Council
RE: Proposed Modifications to Commercial Division Rule 2

This memorandum provides suggested modifications to Commercial Division Rule 2 that the Commercial Division Advisory Council's Subcommittee on Best Practices for Judicial Case Management has recommended. The Advisory Council now respectfully submits the following proposed Rule revision for the Administrative Board's consideration and approval.

Rule 2 (Settlements and Discontinuances).

A. Current Version of Rule 2

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by submission of a copy of the stipulation or a letter directed to the clerk of the part along with notice to chambers via telephone or e-mail. This notification shall be made in addition to the filing of a stipulation with the County Clerk.

B. Proposed Revision to Rule 2

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by ~~submission of e-~~ **filing** a copy of the stipulation ~~or~~ **and by** a letter directed to the clerk of the part along with notice to chambers via telephone or e-mail. This notification shall be made in addition to the filing of a stipulation with the County Clerk. **The parties need not reveal the terms of a settlement, but must notify the court that a resolution has been reached and that both sides have agreed to discontinue the case. In addition to notifying the court of a settlement or discontinuance, counsel shall withdraw any pending motions and any pending appeals.**

C. Rationale for Revision

The Advisory Council recommends Rule 2 be modified to provide that notice of settlements or discontinuances be e-filed in addition to being sent to the clerk of the part and chambers. To protect any confidential information in these settlements, the parties may summarize the fact of the resolution rather than disclosing the terms of the settlement. Further, the Advisory Council recommends counsel be required to withdraw pending motions and appeals so that the clerk can clear the case docket and take the motions and appeals off the court's calendar.

We thank you for your consideration of these proposed changes to Rule 2.

EXHIBIT B

March 19, 2021

TO: The Administrative Board of the Courts
FROM: The Commercial Division Advisory Council
RE: Proposed Modifications to Commercial Division Rule 5

This memorandum provides suggested modifications to Commercial Division Rule 5 that the Commercial Division Advisory Council's Subcommittee on Best Practices for Judicial Case Management has recommended. The Advisory Council now respectfully submits the following proposed Rule revision for the Administrative Board's consideration and approval.

Rule 5. (Information on Cases).

A. Current Version of Rule 5

Rule 5. (This rule shall apply only in the First and Second Judicial Departments) Information on Cases. Information on future court appearances can be found at the court system's future appearance site (www.nycourts.gov/ecourts). Decisions can be found on the Commercial Division home page of the Unified Court System's internet website: www.courts.state.ny.us/comdiv or in the New York Law Journal. The clerk of the part can also provide information about scheduling in the part (trials, conferences, and arguments on motions). Where circumstances require exceptional notice, it will be furnished directly by chambers.

B. Proposed Revision to Rule 5

Rule 5. ~~(This rule shall apply only in the First and Second Judicial Departments)~~ Information on Cases. Information on future court appearances can be found at the court system's future appearance site (www.nycourts.gov/ecourts). **Neither the court nor the court clerk will be responsible for notifying the parties of scheduled court appearances, although the court or the court clerk may do so at their discretion.** Decisions can be found on the Commercial Division home page of the Unified Court System's internet website: www.courts.state.ny.us/comdiv ~~or in the New York Law Journal. The clerk of the part can also provide information about scheduling in the part (trials, conferences, and arguments on motions). Where circumstances require exceptional notice, it will be furnished directly by chambers.~~

C. Rationale for Revision

The Advisory Council recommends Rule 5 be revised to reflect current practice by (a) deleting the distinction among Departments, as the Third and Fourth Departments also use e-courts for information on future appearances, and (b) removing references to the New York Law Journal, as lawyers do not rely on it for recent court decisions. The

Advisory Council also recommends (a) inserting language to emphasize that it is not the responsibility of the court or court clerk to notify counsel of scheduled court appearances, although they may do so at their discretion and (b) deleting the language about part clerks and chambers providing information about scheduling so that counsel do not point to and rely on those sentences as an alternative means of receiving notice.

We thank you for your consideration of these proposed changes to Rule 5.

EXHIBIT C

March 13, 2021

TO: The Administrative Board of the Courts
FROM: The Commercial Division Advisory Council
RE: Proposed Modifications to Commercial Division Rule 15

This memorandum provides suggested modifications to Commercial Division Rule 15 that the Commercial Division Advisory Council's Subcommittee on Best Practices for Judicial Case Management has recommended. The Advisory Council now respectfully submits the following proposed Rule revision for the Administrative Board's consideration and approval.

Rule 15. (Adjournments of Conferences).

A. Current Version of Rule 15

Rule 15. Adjournments of Conferences. Adjournments on consent are permitted with the approval of the court for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the preliminary conference order, unless otherwise directed by the court.

B. Proposed Revision to Rule 15

Rule 15. Adjournments of Conferences. **By leave of court as provided by Rule 1(d), attorneys are encouraged to use remote appearance technology in order to avoid adjournments of conferences.** Adjournments on consent are permitted with the approval of the court for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the preliminary conference order, unless otherwise directed by the court.

C. Rationale for Revision

The Advisory Council recommends Rule 15 be modified to encourage attorneys to use remote appearance technology rather than seek adjournments when they are unable to attend in person. This will assist with avoiding unnecessary delay of proceedings.

We thank you for your consideration of these proposed changes to Rule 15.

EXHIBIT D

March 19, 2021

TO: The Administrative Board of the Courts
FROM: The Commercial Division Advisory Council
RE: Proposed Modifications to Commercial Division Rule 16

This memorandum provides suggested modifications to Commercial Division Rule 16 that the Commercial Division Advisory Council's Subcommittee on Best Practices for Judicial Case Management has recommended. The Advisory Council now respectfully submits the following proposed Rule revision for the Administrative Board's consideration and approval.

Rule 16. (Motions in General).

A. Current Version of Rule 16

Rule 16. Motions in General.

(a) Form of Motion Papers. The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should use tabs when submitting papers containing exhibits. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated. CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

(b) Proposed Orders. When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, pro hac vice admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion.

(c) Adjournment of Motions. Dispositive motions (made pursuant to CPLR 3211, 3212 or 3213) may be adjourned only with the court's consent. Non-dispositive motions may be adjourned on consent no more than three times for a total of no more than 60 days unless otherwise directed by the court.

B. Proposed Revision to Rule 16

Rule 16. Motions in General.

(a) Form of Motion Papers. The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should ~~use tabs when submitting papers containing~~ **clearly separate exhibits from each other by using divider pages with the exhibit number. Counsel shall follow Rule 6 with respect to hyperlinking.** Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated. CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, a **the court may direct counsel to submit a copy and counsel shall otherwise follow Rule 6 with respect to hyperlinking** ~~copy of the case or of~~ **to** ~~pertinent portions of the authority shall be submitted with the motion papers.~~

(b) Proposed Orders. When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, pro hac vice admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion.

(c) Adjournment of Motions. Dispositive motions (made pursuant to CPLR 3211, 3212 or 3213) may be adjourned only with the court's consent. Non-dispositive motions may be adjourned on consent no more than three times for a total of no more than 60 days unless otherwise directed by the court.

C. Rationale for Revision

The Advisory Council recommends the language in subpart (a) of Rule 16 be modernized to reflect the widespread use of electronic filing. Instead of referring to “tabs” for exhibits, we refer to using divider pages to separate exhibits. Further, the Advisory Council recommends an addition to have Rule 16 reflect the hyperlinking guidance in Rule 6. Last, we suggest modifying the last sentence of subpart (a) to provide courts with discretion to obtain copies of less-available case decisions and authorities (rather than having hard copy submission be mandatory) and to otherwise incorporate the hyperlinking guidance of Rule 6.

We thank you for your consideration of these proposed changes to Rule 16.

EXHIBIT E

March 19, 2021

TO: The Administrative Board of the Courts Council
FROM: The Commercial Division Advisory Council
RE: Proposed Modifications to Commercial Division Rule 19

This memorandum provides suggested modifications to Commercial Division Rule 19 that the Commercial Division Advisory Council's Subcommittee on Best Practices for Judicial Case Management has recommended. The Advisory Council now respectfully submits the following proposed Rule revision for the Administrative Board's consideration and approval.

Rule 19. (Orders to Show Cause).

A. Current Version of Rule 19

Rule 19. Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. See Rule 20. Absent advance permission, reply papers shall not be submitted on orders to show cause.

B. Proposed Revision to Rule 19

Rule 19. Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. ~~See Rule 20~~ Absent advance permission, reply papers shall not be submitted on orders to show cause.

C. Rationale for Revision

The Advisory Council recommends Rule 19 be modified to delete the reference to Rule 20. The reference is unclear and appears to relate to the language in Rule 20 that an “applicant must give notice to the opposing parties sufficient to permit them an opportunity to appear and contest the application.” The Advisory Council believes that this language does not necessarily apply to all circumstances where an order to show cause is appropriately used. We therefore suggest deleting the cross-reference.

We thank you for your consideration of this proposed change to Rule 19.