



MEMORANDUM

To: All Interested Persons

From: Anthony R. Perri

Re: Request for Public Comment on Amending Commercial Division Rule 32
Pertaining to the Scheduling of Witnesses

Date: December 6, 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 32 (Exhibit A – CDAC memo). CDAC recommends changing the rule “to allow for identification of witnesses whose testimony may be taken at trial by the use of video technology.” (Ex. A.) The proposed rule change also includes a modification to state that rebuttal witnesses only need to be identified to the court, not exchanged with other counsel (Ex. A).

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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 February 6, 2023.

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 32

This memorandum provides suggested modifications to Commercial Division Rule 32 that the Commercial Division Advisory Council's Subcommittee on Best Practices for Judicial Case Management has recommended. The Advisory Council is mindful of the issues created by the COVID-19 pandemic and how that could impact the functioning of the Commercial Division going forward. The Advisory Council now respectfully submits the following proposed Rule revision for the Administrative Board's consideration and approval.

Rule 32. Scheduling of Witnesses.

A. Current Version of Rule 32

Rule 32. Scheduling of witnesses. At the pre-trial conference or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility.

B. Proposed Revision to Rule 32

Rule 32. Scheduling of witnesses. At the pre-trial conference or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify, and the estimated length of their testimony **and whether the witness will testify in person or through the use of video technology**, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court **only (and not to be exchanged with other counsel)** a list of the witnesses who may be called solely for rebuttal or with regard to credibility.

C. Rationale for Revision

The Advisory Council recommends Rule 32 be modified to allow for identification of witnesses whose testimony may be taken at trial by the use of video technology. The Advisory Council further recommends Rule 32 be modified to affirmatively state that rebuttal witnesses must only be identified to the court, not exchanged with other counsel.

We thank you for your consideration of these proposed changes to Rule 32.