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 Rule 6 to Require the Interlineation of Responsive Pleadings

Date: February 2, 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 6 to require parties preparing responsive pleadings to interlineate the allegations which they are responding to within the responses themselves (i.e., restating the allegations in the complaint before responding to them in the answer) (Exhibit A). The CDAC submits that this practice "enables parties and the court to read the answer itself, as a single document, without having to refer back to the original pleading." (Ex. A, p. 1.) CDAC proposes making this practice mandatory in the Commercial Division.

The proposed Commercial Division Rule 6 subsection (d) would have the following text:

> (d) Interlineation of Responsive Pleadings
>
> (1) For every responsive pleading, the party preparing the responsive pleading shall interlineate each allegation of the pleading to which it is responding with the party's response to that allegation, and in doing so, shall preserve the content and numbering of the allegation.
>
> (2) The party who prepared a pleading to which a responsive pleading is required shall, upon request, promptly provide a copy of its pleading in the same word processing software application in which the pleading was prepared to the party preparing the responsive pleading.

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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 1, 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

MEMORANDUM

TO: Commercial Division Advisory Council

FROM: Subcommittee on Procedural Rules to Promote Efficient Case Resolution ("Subcommittee")

DATE: January 11, 2022

RE: Proposal to amend Commercial Division Rule 6 to require the interlineation of responsive pleadings

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Introduction

A responsive pleading discloses the relevant factual contentions that are in dispute and is an important document for the parties and the court to consider during discovery, at summary judgment, and at trial. Responses to allegations, however, are impossible to understand unless they are read in conjunction with the allegations to which they are responding. In many cases, practitioners conduct this laborious review lining up the complaint and the answer side-by-side, and comparing them allegation by allegation, at least up until the eve of trial, when they must prepare and submit "marked pleadings" under CPLR 4012.

To enhance the readability and utility of responsive pleadings, a growing number of practitioners have adopted a practice of interlineating the allegations to which they are responding with the responses themselves. This practice enables parties and the court to read the answer by itself, as a single document, without having to refer back to the original pleading. This consolidated format is demonstrably helpful in the context of discovery, summary judgment, and trial, and the Subcommittee proposes making this practice mandatory in the Commercial Division.

The Proposed Amendment

The Subcommittee proposes amending Commercial Division Rule 6 (Form of Papers) by adding a new subsection (d). The new subsection would have the following text:

(d) Interlineation of Responsive Pleadings

(1) For every responsive pleading, the party preparing the responsive pleading shall interlineate each allegation of the pleading to which it is responding with the party's response to that allegation, and in doing so, shall preserve the content and numbering of the allegation.

(2) The party who prepared a pleading to which a responsive pleading is required shall, upon request, promptly provide a copy of its pleading in the same word processing software application in which the pleading was prepared to the party preparing the responsive pleading.

Rationale

This proposed amendment to Rule 6 requires parties preparing responsive pleadings to interlineate the allegations to which they are responding with their responses to those allegations. The amendment is intended to affect only the *form* of such responsive pleadings, not the *content* of such pleadings or the substantive pleading standard, both of which are dictated by the CPLR and decisional law.

Without interlineation, answers and other responsive pleadings are difficult to use as stand-alone documents. Courts, parties, and their counsel can only utilize such pleadings by reviewing them side-by-side with the pleadings to which they respond. The amendment's interlineation requirement will solve this problem and, by so doing, facilitate the use of the answer (or, in the case of counterclaims, the reply) in any number of contexts:

- **Motions Directed to the Pleadings** – Interlineated pleadings will facilitate motions to correct pleadings under CPLR 3024, and motions challenging a party's response to a particular allegation as inconsistent with the requirements of CPLR 3018 (contemplating only denials, admissions, and specifications of allegations where the party lacks knowledge sufficient to form a belief). In making such motions, the movant will now be able to point the court precisely to the allegation-response pair which it deems to be inconsistent with the CPLR, without having to present two separate allegations to the Court.

- **Disclosure –** A party preparing disclosure demands will now be able to tell, at a glance, whether the adverse party has admitted or denied certain allegations, and consequently,

will be able to tailor its requests for disclosure more precisely The interlineated pleadings will also be invaluable in the context of meet-and-confers and motions to compel, as the parties and the court will be able more quicky to assess the propriety of a disclosure demand against the issues in the case, as those have been joined.

- **Depositions** – A party who wishes to question a deponent about admissions or denials in a responsive pleading will now be able to use a single exhibit to do so, rather than having to familiarize the deponent with both the original pleading and the response. This will save time during depositions.

- **Summary Judgment** – Interlineated pleadings will assist a party moving for summary judgment in preparing its Rule 19-a statement of material facts. They will also help the non-movant prepare its own response to the Rule 19-a statement.

- **Trial** – Interlineated pleadings will facilitate the parties' ability to prepare marked pleadings in advance of trial, as required by CPLR 4012.

The corresponding additional burden on a party imposed by the amendment is minimal, particularly in light of proposed section (d)(2), which will enable the party to obtain an editable copy of the pleading to which it is responding. Further, as noted above, the amendment does not purport to impose any substantive requirements on responsive pleading. If a party, in good faith, intends to prepare and serve a general denial of every allegation in the complaint, then this amendment requires only that they interlineate that "general denial" after every paragraph of the complaint. In a similar vein, some practitioners answer by summarily denying several paragraphs of the complaint while specifically admitting particular allegations. To the extent such a practice is consistent with CPLR 3018 in a particular case, the amendment will simply require the party to paste that response after each of the allegations to which it pertains.

Conclusion

The proposed amendment would help substantially increase the readability and usability of responsive pleadings without unduly increasing the burden on practitioners.