

To: Eileen D. Millet,
Counsel, Office of Court Administration

From: Commercial and Federal Litigation Section of the New York State Bar Association

Date: January 27, 2021

Re: Proposal to Amend Commercial Division
Rule 30 to Provide for a Mandatory Settlement Conference

The Commercial and Federal Litigation Section of the New York State Bar Association (“Section”) is pleased to submit these comments in response to the Memorandum of Eileen D. Millet, Counsel, Office of Court Administration, dated December 10, 2020 (“Memorandum”), which propose revisions to Rule 30 (“Rule 30”) of the Rules of the Commercial Division (the “Rules”).

I. Executive Summary

The proposed revisions seek to amend Commercial Division Rule 30 to mandate participation in a settlement conference following the filing of a Note of Issue and to require the parties to submit a joint request or separate requests for the type of neutral who will oversee the settlement conference (the assigned judge, another judge in the Commercial Division, JHO or Special Referee, neutral or mediator from the roster under Part 46, or a private neutral).

The current Rule 30(a) of the Commercial Division permits a court to schedule a settlement conference at the time a case is certified ready for trial. However, there is no rule that mandates a settlement conference before the court or any other neutral. The Commercial Division Advisory Council (“CDAC”) believes that the proposed amendments to Rule 30 will assist the parties in reaching a voluntary resolution of disputes and conserve party and court resources.

The proposed amendments provide parties the options to request different types of neutrals to conduct the mandatory settlement conference and provides the assigned justice with the authority to make the ultimate decision on who will conduct it. Under the proposed amendments, the assigned justice retains the authority to require parties to participate in a settlement conference at any time. The assigned justice will also have discretion to exempt cases from the mandatory settlement conference, and the neutral will determine what type of submissions will be provided to the neutral.

The formal proposal by the CDAC is attached as Exhibit A.

II. PROPOSED RULE

See Exhibit A at pages 4-6.

III. SECTION COMMENTS

The Section views favorably the suggestions proposed by the CDAC and endorses its proposed amendments to revise Rule 30, even though many can debate when a mandatory settlement conference (“MSC”) should be held, and that it perhaps should occur earlier than proposed by the CDAC. The Section believes that a rule requiring a mandatory settlement conference is needed. The Section further applauds the flexibility that is formally incorporated into the proposed amendments which provide the parties and counsel with the four different alternative tracks noted below that would satisfy the proposed amended rule:

- A settlement conference before the assigned justice or another judge pursuant to Commercial Division Rule 3(b); or
- Referral to a Judicial Hearing Officer/Special Referee office for assignment of a Judicial Hearing Officer or Special Referee to conduct the MSC; or
- The assigned justice will refer the case to the Alternative Dispute Coordinator or other designated court official for appointment.; or
- The parties agree to engage a private neutral.