

**NEW YORK STATE BAR ASSOCIATION  
COMMERCIAL AND FEDERAL LITIGATION SECTION  
COMMENT ON AMENDMENT TO COMMERCIAL DIVISION RULE 4<sup>1</sup>**

**SUMMARY**

The Administrative Board of the Courts has requested comments on a proposed amendment to Commercial Division Rule 4 proffered by the Commercial Division Advisory Council (“CDAC”) (the “Amendment”). The Commercial and Federal Litigation Section of the New York State Bar Association (the “Section”) recommends that the proposed rule amendment be adopted, as further explained below.

**COMMENT**

**I. OVERVIEW**

The Section is comprised of a wide cross-section of practitioners, including members in the private and public sectors, solo practitioners, and members of small, mid-size, and large law firms, who actively litigate in state and federal courts in New York and adjacent states, and in national and international forums. Thus, in offering the following comments, the Section is drawing on a broad range of experience.

It is important that the Commercial Division rules be modernized to reflect up-to-date technological developments and practices, particularly in light of the advancements achieved during covid. With that in mind, the Section supports the Amendment proposed by the CDAC.

**II. THE AMENDMENT**

The amended Commercial Division Rule 4 would delete references to communicating and filing with the Court by fax and would replace such outdated means of communication with the Court by permitting parties to communicate with the court by email for cases not pending in the Court’s e-filing system. In addition, for cases not pending in the e-filing system, the rule would delete references to submitting memoranda of law via computer disk and would instead allow more generically for the electronic submission of papers as the Court directs. The Section believes that this amendment reflects current technological realities and widespread practices already adopted by the bar. The proposed amendment provides counsel and courts with more flexibility in communicating with each other, especially as court personnel and counsel may be working remotely.

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<sup>1</sup> Opinions expressed in this memorandum are those of the Section and do not represent the opinions of the New York State Bar Association unless and until the memorandum has been adopted by the Association’s House of Delegates or Executive Committee.

### **III. CONCLUSION**

The Section recommends the adoption of the proposed Amendment. The Amendment comports with the Commercial Division's goal to use technology effectively to adjudicate complex commercial matters.

Respectfully submitted,

New York State Bar Association  
Commercial and Federal Litigation Section  
Daniel K. Wiig, Section Chair

November 17, 2021

Approved by the Commercial & Federal Litigation Section Executive Committee, November 16, 2021

Commercial Division Committee

Mark Berman, Co-Chair  
Ralph Carter, Co-Chair  
Katharine Santos\*

\*Denotes Principal Author(s) of Comment