

David Nocenti

From: Hon. David M. Brockway
Sent: Wednesday, April 17, 2024 1:28 PM
To: rulecomments
Subject: Comment-Preamble to Rules 25-33
Attachments: Rules-Preamble to Rules 25-33-Comment.pdf

Categories: Red category

Purpose is fine (though it is sad to think a further rule is needed for this!).

Being a former 10+-year member of the Family Court Advisory & Rules Committee, I still seem to catch syntax or typo issues.

See attached as to a suggested fixing of a missing "to."

Otherwise, the syntax reads incorrectly, assuming that what is meant is that the purpose of these trial rules is two-fold: (1) to emphasize the importance of pre-trial preparation [a noun] and (2) to remind [a verb] the practitioner that such preparation is an essential element of successfully litigating and conducting a complex commercial case and trial.

-db

Hon. David M. Brockway
Horseheads Village Justice
Director, NYS Magistrates Assn
NYS Family Court Judge (Retired)
Acting Supreme Court Justice (Retired)
Supervising Judge, Town & Village Courts (Retired)

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MEMORANDUM

TO: Administrative Board of the Courts
FROM: Commercial Division Advisory Council
DATE: January 19, 2024
RE: Proposed Preamble to Commercial Division Rules 25-33 Relating to Trial Preparation and Procedure

The Commercial Division Advisory Council respectfully submits for consideration by the Administrative Board of the Courts the following proposed Preamble to Commercial Division Rules 25-33 relating to trial preparation and procedure:

Preamble to Rules 25-33. The Commercial Division operates in accordance with a series of well-crafted rules and principles designed to achieve and promote the goals of efficient and cost-effective case management. These rules stress organization, preparation and cooperation as well as the use of innovative techniques where appropriate. Rules 25-33, which address trial preparation and procedure, reflect these important concepts. These trial rules emphasize the importance of pre-trial preparation and remind the practitioner that such preparation is an essential element of successfully litigating and conducting a complex commercial case and trial. Rules 25-33 identify a series of key items that must be addressed or completed before commencing a trial in the Commercial Division and include: accurately estimating the length of the trial so that the court, counsel and parties can properly allocate their time; preparing and communicating to the court motions in limine in advance of the trial date; reviewing, assembling, and pre-marking exhibits; addressing issues that may arise in connection with the use of deposition testimony at trial; agreeing on a schedule for witnesses and the manner in which each witness will testify (including giving consideration to direct testimony by affidavit in a non-jury trial); and preparing and negotiating jury instructions and verdict sheets. The successful completion and efficiency of the trial depends upon counsel adhering to a key component of the Commercial Division rules to meet and confer and resolve issues without the need for court intervention. When there is compliance with the rules, the result is an efficient and cost-effective proceeding that will ensure that the court's time and attention will be used in the manner in which it is intended and avoid unnecessary delay and unintended consequences.

and
to
remind

David Nocenti

From: Hon. Reginald A. Boddie
Sent: Monday, April 22, 2024 11:15 AM
To: rulecomments
Subject: Request for Comment

Categories: Red category

Dear Ladies and Gentlemen,

I fully concur with the language, intentions and goals of the proposed Preamble to Commercial Division Rules 25-33.

Respectfully submitted,

Hon. Reginald A. Boddie
Presiding Justice of the Commercial Division,
NYS Supreme Court, Kings County
360 Adams Street, Brooklyn, NY 11201

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THE COPPOLA FIRM
Attorneys & Counselors At Law

April 22, 2024

VIA EMAIL ONLY: rulecomments@nycourts.gov

David Nocenti, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 10th Floor
New York, New York, 10004

Dear Mr. Nocenti:

Re: Commercial Division Rules 25-33 – Proposal for Preamble

This letter constitutes our comment to the proposal for a preamble to that section of the Commercial Division Rules relating to trial preparation and practice.

We are in full support of this preamble.

Thank you for the opportunity to comment on same.

Respectfully yours,

Lisa A. Coppola

**NEW YORK
CITY BAR**

May 22, 2024

**COUNCIL
ON JUDICIAL
ADMINISTRATION**

FRAN R. HOFFINGER
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**COMMITTEE ON
STATE COURTS OF
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Office of Court Administration
25 Beaver Street, 10th Fl.
New York, NY 10004
rulecomments@nycourts.gov

Re: Comments in opposition to proposed Preamble, Rules 25-33

Dear Mr. Nocenti:

Thank you for giving us the opportunity to comment on the proposal by the Commercial Division Advisory Council (CDAC) to add a preamble before Rules 25-33 of the Rules of the Commercial Division of the Supreme Court. The Council on Judicial Administration and the State Courts Committee of the New York City Bar Association are comprised of attorneys across a broad spectrum of the legal profession, with many members who litigate commercial matters. We understand that the preamble was proposed with the intent of further articulating the philosophy behind Rules 25-33 in order to increase understanding and compliance by litigants and attorneys. In our view, however, the proposed preamble is flawed; it is unnecessary, at best, and confusing, at worst. We also are concerned that, if adopted, parties or their lawyers may attempt to use the preamble to undermine rather than to buttress compliance with Rules 25-33. Since the proposal is not a rule change, and since it may actually increase confusion about the rules, we recommend that it not be adopted.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Please feel free to contact us if we can be of any further assistance.

Respectfully,

Fran R. Hoffinger

Fran R. Hoffinger, Chair
Council on Judicial Administration

Amy D. Carlin

Amy D. Carlin, Chair
State Courts of Superior Jurisdiction Committee