



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

EILEEN D. MILLETT
COUNSEL

MEMORANDUM

To: All Interested Persons

From: Eileen D. Millett

Re: Request for Public Comment on Proposal to Amend Commercial Division Rule 4 to Delete References to Filing by Fax and to Update References to E-filing System

Date: September 29, 2021

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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 4 to delete references to filing by fax and to update the references to the UCS’ e-filing system (Exhibit A). The CDAC believes that the rule amendments will modernize Rule 4 by eliminating the references to outdated technology. CDAC also proposes deleting the references to computer disks and using more open-ended language when referring to electronic submissions.

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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 November 29, 2021.

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

June 30, 2021

TO: The Administrative Board of the Courts
FROM: The Commercial Division Advisory Council
RE: Proposed Modifications to Commercial Division Rule 4

This memorandum provides suggested modifications to Commercial Division Rule 4 that the Commercial Division Advisory Council's Subcommittee on Best Practices for Judicial Case Management has recommended. The Advisory Council now respectfully submits the following proposed Rule revision for the Administrative Board's consideration and approval.

Rule 4 (Electronic Submission of Papers).

A. Current Version of Rule 4

Rule 4. Electronic Submission of Papers.

(a) Papers and correspondence by fax. Papers and correspondence filed by fax should comply with the requirements of section 202.5-a except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. Correspondence sent by fax should not be followed by hard copy unless requested.

(b) Papers submitted in digital format. In cases not pending in the court's Filing by Electronic Means System, the court may permit counsel to communicate with the court and each other by e-mail. In the court's discretion, counsel may be requested to submit memoranda of law by e-mail or on a computer disk along with an original and courtesy copy.

B. Proposed Revision to Rule 4

Rule 4. Electronic Submission of Papers.

~~(a) Papers and correspondence by fax. Papers and correspondence filed by fax should comply with the requirements of section 202.5-a except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. Correspondence sent by fax should not be followed by hard copy unless requested.~~

~~(b) Papers submitted in digital format. In cases not pending in the New York State eCourts Filing by Electronic Means E-filing Ssystem, the court may permit counsel to communicate with the court and each other by e-mail. In the court's discretion, counsel may be requested to **provide submit a copy of any submitted papers** memoranda of law by e-mail or on a computer disk along with an original and courtesy copy as the court directs.~~

C. Rationale for Revision

The Advisory Council recommends Rule 4 be modernized by deleting subpart (a) regarding filing by fax and rewriting subpart (b) to update the references to the Court's e-filing system. The Advisory Council also recommends deleting references to computer disks and instead using more open-ended language to allow for electronic submissions and to accommodate new software programs created by the court that may be implemented. The last sentence provides for individual court discretion regarding the submission of documents **and avoids reference to hard copies given the covid restrictions on submitting physical materials to the courts.**

We thank you for your consideration of these proposed changes to Rule 4.