



**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 19-a

Date: October 6, 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 19-a (Exhibit A). In Commercial Division courts where motions for summary judgment are to include a statement of material facts, CDAC proposes a rule change that requires respondents to recite the movant’s paragraphs (in the material statement of facts) before providing a response to that paragraph. CDAC submits that this will allow the court to have all the material in one document.

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Persons wishing to comment on the proposal should e-mail their submissions to [rulecomments@nycourts.gov](mailto:rulecomments@nycourts.gov) or write to: Eileen D. Millett, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11<sup>th</sup> Fl., New York, New York, 10004. Comments must be received no later than December 6, 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**

March 13, 2021

**TO:** The Administrative Board of the Courts  
**FROM:** The Commercial Division Advisory Council  
**RE:** Proposed Modifications to Commercial Division Rule 19-a

This memorandum provides suggested modifications to Commercial Division Rule 19-a 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 19-a. (Motions for Summary Judgment; Statements of Material Fact).**

A. Current Version of Rule 19-a

Rule 19-a. Motions for Summary Judgment; Statements of Material Facts.

(a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion

B. Proposed Revision to Rule 19-a

Rule 19-a. Motions for Summary Judgment; Statements of Material Facts

(a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph statement responding to each numbered paragraph in the statement of the moving party ~~and, if necessary,~~ **In the response to the material statement of facts, the respondent shall recite the movant's paragraphs and then provide a response to that paragraph so the Court has all the materials in one document. The respondent may also include** additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

#### C. Rationale for Revision

The Advisory Council understands that not all Commercial Division courts require the use of material statements of fact, which is a discretionary provision. This Rule revision is being proposed for cases where the court has chosen to adopt the practice. In those circumstances, the Advisory Council recommends Rule 19-a be modified to require that in response to the material statement of facts, the respondent must recite the movant's paragraphs before providing a response to that paragraph. This allows the court to have all the material in one document.

We thank you for your consideration of these proposed changes to Rule 19-a.