

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Jacqueline Silbermann  
Administrative Order

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DELMARVA ONLINE, LLC,

Plaintiff,

- v -

INDEX NO. 111175/2006

AT&T CORP.,

Defendant.

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Administrative Order:

By letter dated August 24<sup>th</sup>, counsel for plaintiff applies for a transfer of this action from I.A.S. Part 35 (Edmead, J.) to the Commercial Division pursuant to Uniform Rule 202.70(e). Defendant joins in plaintiff's application.

Plaintiff commenced this action on August 9, 2006 by filing a summons and complaint, together with an order to show cause for injunctive relief. Plaintiff's counsel designated this action on the Request for Judicial Intervention (RJI) as "Other Commercial," but failed to annex a "brief signed statement justifying the Commercial Division designation" as required by Uniform Rule 202(d). The action was accordingly assigned to a non-commercial judge, the Hon. Marilyn Diamond, who signed the order to show cause on August 11th, and directed that by hand service of the motion papers be made by August 11th,<sup>1</sup> with the motion returnable on August 24, 2006. On August 22nd, Judge Diamond recused herself based on her ownership of AT&T stock. On August 24th, the action was re-assigned to I.A.S Part 35.

Plaintiff's counsel contends that the action should be reassigned to the Commercial Division, because it satisfies the standards of Uniform Rule 202.70 and attaches a "Statement in Support of Request For Assignment to Commercial Division" dated August 24, 2006. He further contends that the request is timely since it is made within 10 days of receiving notice of Judge Diamond's recusal.

However, plaintiff failed to follow the proper procedures for assignment to the Commercial Division when he filed the RJI on August 9th, and cannot use Judge

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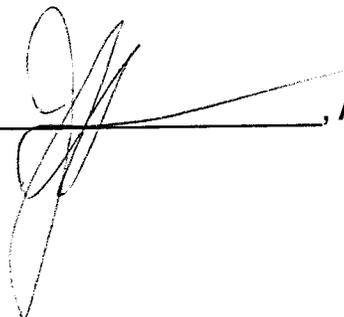
<sup>1</sup>Since the order to show cause is dated August 11th, the August 10th service deadline for the moving papers must be construed as August 11th.

Diamond's recusal as an excuse to do so now. Defendant is also untimely. Any party aggrieved by the assignment of a case to a non-commercial party may seek review by letter application to the Administrative Judge within 10 days of receipt of the designation of the case to a non-commercial part. Judge Diamond directed by hand service of the order to show cause and supporting papers -- which would have alerted defendant that the case had been assigned to a non-commercial part -- by August 11th, and thus defendant had until August 21st to apply for transfer to the Commercial Division.

Accordingly, for these reasons, the request is denied.

Dated: August 31, 2006

ENTER: \_\_\_\_\_, A.J.

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Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION