

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

KIMBERLY SEELBREDE,

Plaintiff,

- v -

INDEX NO. 603154/2006

NEIL COLE, in his individual capacity and in his
capacity as Trustee F/B/O Brandon Cole and
Alexander Cole,

Defendant.

Administrative Order:

By letter dated February 6, 2007, plaintiff requests a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. Defendant opposes the request on the grounds that it is untimely and the case does not qualify for the Commercial Division.

The request is denied as untimely, as the Request For Judicial Intervention (RJI) was filed in this action on November 2, 2006 by the plaintiff. The time to challenge the failure of the clerk's office to assign this case to the Commercial Division, as had been requested on the RJI, was within ten (10) days of plaintiff's counsel's knowledge that the case had been assigned to a non-commercial part (see Uniform Rule 202.70[f][2]). Moreover, the original assignment was correct in that plaintiff's counsel failed to submit with the RJI the requisite forms for assignment of cases to the Commercial Division (see Uniform Rule 202.70[d][2]).

The fact this action has recently been ordered to be re-assigned to a matrimonial part does not cure the untimeliness. Even were the court to consider the transfer request, I am in complete agreement with Justice Ling-Cohan that this action, which is a dispute between a former husband and wife relating to their prior matrimonial proceeding, belongs in a matrimonial part.

Dated: February 9, 2007

ENTER: _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION