

**NEW YORK
CITY BAR**

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**REPORT BY THE COMMITTEE ON
STATE COURTS OF SUPERIOR JURISDICTION**

**COMMENT ON PROPOSED AMENDMENT OF 22 NYCRR § 202.70(d)
(RULES OF THE COMMERCIAL DIVISION), RELATING TO THE ASSIGNMENT OF
CASES TO THE COMMERCIAL DIVISION**

THE PROPOSED RULE AMENDMENT IS OPPOSED

The New York City Bar Association (the “City Bar”) is grateful for the opportunity to provide comments on the April 7, 2014 proposal (the “Proposal”) by the Unified Court System’s Commercial Division Advisory Council to amend the Rules of the Commercial Division to require that, absent “good cause shown,” a party wishing to have a case assigned to the Commercial Division file a Commercial Division RJI within 90 days of service of the Complaint. These comments reflect the input of the City Bar’s Committee on State Courts of Superior Jurisdiction.

The City Bar opposes the Proposal.¹ We recognize that cases may proceed more efficiently with the involvement of a Commercial Division Justice. But if the parties are content to conduct discovery without such involvement and do not have any issues that actually require judicial resolution, we do not see a reason to penalize them by making a Commercial Division assignment unavailable simply because they were able to proceed for some time without the aid of the courts. Although this may in some instances result in the case not being assigned to a Commercial Division Justice until much later in the process (and sometimes as late as a motion for summary judgment), there does not seem to be any evidence that this presents any real problem either in terms of court dockets as a whole or in terms of the management of any individual case once a Commercial Division Justice is assigned.

On the other hand, there may be good reasons why parties do not wish to file an RJI in the first 90 days after the Complaint is served. They may be exploring settlement – and may, in that connection, agree to extend the time to respond to the Complaint or to hold discovery in abeyance during the course of negotiations. Alternatively, they may be proceeding efficiently with discovery on their own. It could also be that each party has its own reasons for not wanting the case to be accelerated through the involvement of a Commercial Division Justice at an early juncture. Whatever the basis, if all parties are willing to proceed without such involvement, we

¹ The City Bar’s Council on Judicial Administration also reviewed the Proposal and did not favor its adoption for substantially the reasons set forth in this comment.

do not believe that the Commercial Division Rules should force it on them.² The moment any party ceases to be willing to proceed in that manner, that party will presumably file an RJI. In this way, judicial intervention will occur as early as it is actually needed.

May 2014

² We recognize that the Proposal would allow for late assignment to the Commercial Division upon a showing of “good cause.” Such a showing, however, would have to be made by letter to the Administrative Judge requesting reassignment following an initial assignment to a non-Commercial Division Justice. In practice, we doubt that parties would be willing to take the risk that their reasons for waiting to seek early judicial intervention will not be deemed sufficient “good cause.” Instead, the result will be that those who want to ensure their cases are assigned to the Commercial Division will file their RJIs within the 90-day period regardless of whether they actually need or want the court’s assistance.



Pamela L. Gallagher
Co-Chair
Brian D. Graffman
Co-Chair
Supreme Court Committee

June 2, 2014

**Proposed adoption of amendment to 22 NYCRR 202.70(d)
relating to assignment of cases to the Commercial Division**

The Supreme Court Committee¹ reviewed the Office of Court Administration ("OCA") proposal regarding the adoption of an amendment to 22 NYCRR 202.70(d) relating to assignment of cases to the Commercial Division within 90 days of service of the complaint.

A majority of members of the Supreme Court Committee at our meeting on May 20, 2014 voted in favor of the proposal following a presentation by members of the Commercial Division Advisory Council.

The amendment to 22 NYCRR 202.70(d) would permit a party to seek assignment of a case to the Commercial Division by filing a Request for Judicial Intervention ("RJI") within 90 days of service of the complaint and attaching a completed Commercial Division RJI Addendum. Assignment to the Commercial Division after the 90 days following service of the complaint would require letter application demonstrating good cause to the Administrative Judge or *sua sponte* transfer.

The Committee discussed the concern that the 90-day time limit may prompt an RJI to be filed for a case that may ultimately settle, resulting in a waste of judicial resources. However, the Committee decided that the provision allowing parties to make a letter application showing good cause for late assignment was a sufficient safeguard against this potential problem.

¹ The views expressed are those of the Supreme Court Committee, have not been approved by the New York County Lawyers' Association Board of Directors and do not necessarily represent the views of the Board.

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April 8, 2014

John W. McConnell, Esq.
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Re: Proposed Amendment of 22 NYCRR §202.70(d)

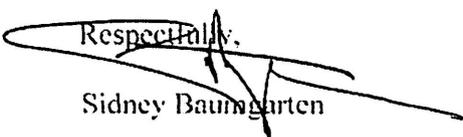
Dear Mr. McConnell.

This proposed rules change is puzzling. I fail to see the benefit of placing more pressure on the private practitioner.

I would venture to suggest that once a complaint is served there are often extensions of time to answer or move with respect to the complaint. If issue is not joined at the end of the 90 day period it seems unwarranted to have either side under a mandate to file an RJJ merely to have it assigned to a commercial part.

While I have many other objections to the increasing burden on small practitioners to comply with unrealistic time demands under the current rules in all the courts, I will limit my suggestion on this one to requesting that the 90 period run from the joinder of issue, and not from the service of the complaint.

Respectfully,


Sidney Baumgarten

Cc: Brian Graifman, Esq.