

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**

Minutes of the Annual Meeting of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on January 19, 2021.

**Members Participating via Zoom**

Jonathan Fellows, Chair	Emma Frean	Kevin Quaratino
Daniel Wiig, Chair Elect	Hon. Helen Freedman	Hon. Sylvia Hinds Radix
Ignatius Grande, Vice Chair	Suzanne Galbato	Courtney Rockett
Jessica Moller, Secretary	Marilyn Genoa	Lesley Rosenthal
Dana Alamia	Margarite Grays	William Russell
Joan Alisme	Rachel Gupta	Sonia Russo
Gregory Arenson	Sarah Haddad	Jay Safer
L. Austin	Helene Hechtkopf	Paul Sarkozi
Edward Beane	Maury Heller	Ted Semaya
Mark Berman	Jay Himes	Roy Simon
Constance Boland	Robert Holtzman	Michael Starr
Amanda Burns	Kathy Kass	Kathy Suchocki
Michael Cardello	Laurel Kretzing	Laura Swain
Ralph Carter	Bernice Leber	Vincent Syracuse
Vincent Chang	Hon. Debra A. Livingston	Lauren Wachtler
Edward Copeland	Jonathan Lupkin	Tara Ward
Melissa Crane	Frank Maas	Soraya Watkins
Pierre de Ravel d'Esclapon	Scott Malouf	Joshua Wurtzel
Richard Dircks	Christie McGuinness	Melissa Yang
D. Kusakab	Brem Moldovsky	Jeffrey Zaino
Bridget Donlon	Hon. Andrew Peck	Hon. Debra A. Livingston*
Hon. Cenceria P. Edwards	Peter Pizzi	Catherine Carl (NYSBA)*
Meaghan Feenan	Sharon Porcellio	Simone Smith (NYSBA)*
Clara Flebus	Erica Powers	

\*Guest Attendee

Section Chair, Jonathan Fellows, called the meeting to order at 6:35 p.m. A quorum was present.

**Guest Speaker**

***Hon. Debra A. Livingston, Chief Judge, U.S. Court of Appeals for the Second Circuit***

Judge Livingston spoke to the Section about the operations of the Second Circuit during the COVID-19 pandemic. Although it has been a difficult time for the courts, the pandemic has been a time of innovation in public service. Of necessity, the courts have had to find new ways to engage in oral advocacy, and both judges, staff and the bar have adapted. At the Second Circuit,

operation shifted to almost entirely remote, nearly overnight, in early-March 2020. The shift to remote was so seamless that the Court did not need to postpone a single argument date.

Since then, the Second Circuit's work has continued uninterrupted. Judges could hold argument conferences with one another, and work with their staff. Some judges experimented with green screens and virtual backgrounds; others worked socially distant from chambers. Briefs were shipped to some judges who liked to work with hard copy documents, and some shifted to paperless for the first time. Approximately half of the oral arguments are telephoned and half are conducted over Zoom, at the option of the panel. All oral arguments are open to the public who can listen live over the Internet.

Currently, there are approximately 4,300 pending cases before the Court, and remote operations did not slow anything down. Over the Summer 2020, the Court exceeded its productivity for the same period in 2019, and issued 108 opinions and 223 summary orders. During the Fall 2020, the Court was similarly productive, issuing 50 opinions and disposing of over 300 cases by summary order. The Court is optimistic that at the end of the pandemic, it will emerge without a backlog and be essentially up to date.

Judge Livingston closed her remarks with some comments on oral advocacy in the age of Zoom. In many circuits, there is a presumption that attorneys will not orally argue regardless of whether or not counsel want oral argument. However, the Second Circuit has a long history of oral advocacy and there is a presumption that counsel *will* be able to argue if they so desire. That has not changed in the virtual context. She has noticed that the remote format has given advocates more of an opportunity to develop their points without being interrupted by questions from the panel. Ironically, the virtual oral arguments conducted during the pandemic have been more comprehensive and more helpful to the judges than in the live context. Although Judge Livingston is looking forward to being able to return to the live courtroom, the remote argument may survive the pandemic to some degree.

### **Hon. Judith S. Kaye Commercial and Federal Litigation Scholarship Recipients**

Daniel Wiig announced the recipients of the Hon. Judith S. Kaye Commercial and Federal Litigation Scholarship Recipients as follows: Amanda Burns, a Partner at Ward Greenburg Heller & Reidy LLP; Meaghan Feenan, an Associate at Harris Beach PLLC; Sonia Russo, an Associate at Farrell Fritz P.C.; and Tara Ward, a Senior Associate at Phillips Lytle LLP.

### **Scheidlin Award for Excellence in Trial Practice**

Ignatius Grande announced the recipients of the Scheindlin Award for Excellence in Trial Practice as follows: Bernice Leber, a Partner at Arent Fox LLP; and Lauren Wachtler, a Partner at Barclay Damon LLP.

### **Message from the New York Bar Foundation**

Lesley Rosenthal, President of the New York Bar Foundation, gave an update on the work of the Foundation. Last year was a very different year for the Bar Foundation. With the arrival of the pandemic, the Foundation raised close to \$100,000 for COVID-19 emergency legal relief, and 27

grants were awarded by the Foundation with the funds raised. The Foundation also set forth an action plan regarding racial injustice. Close to \$750,000 in seed money was provided to innovative and groundbreaking legal services initiatives, and the Foundation funded a total of 60 Summer Fellowships from every law school in New York State. In addition, 38 new Fellows joined the Foundation, and unfortunately a number of Fellows were lost to COVID-19.

### **Report of the Nominating Committee**

Jonathan Lupkin presented the Nominating Committee's slate of proposed officers for the upcoming 2021-2022 term as follows: Daniel Wiig as Chair; Ignatius Grand as Chair Elect; Anne Sekel as Vice Chair; Helene Hechtkopf as Treasurer; and Jessica Moller as Secretary. Sharon Porcellio presented the Nominating Committee's proposed delegates to the House of Delegates for the 2021-2022 term as follows: Jonathan Fellows and Laurel Kretzing as Delegates; and Robert Holzman as Alternate Delegate. Jonathan Fellows asked if there were any additional nominations from the floor per the Section's bylaws. No additional nominations were presented. Jonathan Lupkin made a motion for the Section to adopt the Nominating Committee's slate of proposed officers for the 2021-2022 term, Sharon Porcellio seconded that motion, and the motion was unanimously approved.

The meeting adjourned at 7:15 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on January 27, 2021.

**Members Participating via Zoom**

Jonathan Fellows, Chair	Jeffrey Zaino	Lesley Rosenthal
Ignatius Grande, Vice Chair	Laurel Kretzing	Kevin Quaratino
Anne Sekel, Treasurer	Peter Pizzi	Jeffrey Harradine
Jessica Moller, Secretary	Paul Sarkozi	Stephen Roberts
Hon. Sylvia Hinds Radix	Ralph Carter	Alan Brody
Hon. Helen Freedman	Steve Hochman	Kathy Kass
Hon. Karla Moskowitz	Maryann Stallone	Hon. Jennifer G. Schechter*
Vincent Syracuse	Helene Hechtkopf	Joshua Wurtzel*
Mark Berman	James Wicks	Samantha Ettari*
Natasha Shishov	Jay Safer	Jason Lichter*
Viktoriya Liberchuk	Charles Moxley	Gina Sansone*
Robert Holtzman	Gregory LaSpina	Catherine Carl (NYSBA)*
Jay Himes	Michael Fox	
Gregory Arenson	Courtney Rockett	

\*Guest Attendee

Section Chair, Jonathan Fellows, called the meeting to order at 6:03 p.m.

**Guest Speaker**

***Hon. Jennifer G. Schechter, Supreme Court New York County***

Justice Schechter spoke to the Executive Committee about the operation of the Commercial Division during the COVID-19 pandemic, and noted that it has largely been “business as usual.” Except for jury trials, most everything else can be done in a remote/virtual setting, and it is “full steam ahead” with most of their cases. Justice Schechter commended both her staff and the Bar generally for the work they have done to keep cases moving “full steam ahead” during the pandemic.

Justice Schechter also discussed things that attorneys can do to adjust to the new normal of virtual court proceedings. For example:

- Make sure to look at the particular court’s part rules. Judges will often have temporary rules in place for operations during the pandemic. For example, Justice Schechter has temporary rules in place regarding communicating with the Court by email as opposed to by phone. She also requires that proposed orders/stipulations be sent to Chambers

as a Word document so that they can be easily signed and uploaded to the docket by the Court without the need of any paper.

- Be aware of background noise during virtual proceedings.
- Although bench trials are currently being conducted virtually, do not anticipate that bench trials will necessarily continue to be conducted virtually after the pandemic. However, Justice Schechter expects that when the pandemic is over, she will be much more open to do certain things, including certain witness testimony and oral argument, virtually if all parties consent. Although there are some cases that would be very hard to try in a virtual setting, Justice Schechter encourages all attorneys to be open to virtual proceedings.
- Be understanding and courteous of those who may have difficulties with technology or who have health conditions that may impact their ability to do in-person proceedings.

Justice Schechter also answered various questions posed by members of the Executive Committee, including the following:

- *How have the budget cuts in the judiciary impacted the Commercial Division?* The most impactful budget cut has been on the clerks. Previously, the “norm” was that each Commercial Division justice had three law clerks. But then there was a hiring freeze. Currently, a justice can seek permission to hire a clerk, but will need to justify why additional staff should be provided. Justice Schechter had only one clerk for a long time. Although she recently got permission to bring on a second clerk, that is still not full staff. She hopes the retiring justices will be replaced, but foresees caseloads will increase as a result of the retirements.
- *How do you see increased ADR coming to the Commercial Division?* It depends on the attorneys and their willingness to go through the process. She had sent every case on her docket information about the availability of mediation on consent, but although she got some participation she did not see vast participation. It is really about the willingness of attorneys and the parties to use ADR.
- *Have you seen more cases go to mediation or use of special master during the pandemic?* Justice Schechter does not have many cases where a special master is involved. There is possibly a little more mediation with the pandemic, but not materially so.
- *Is it appropriate to have presumptive mediation early on in CD, in light of the fact that parties often desire discovery prior to mediation?* Justice Schechter looks at each case and what makes sense in a particular case. She does not require every case go to mediation before a preliminary conference because each case is different and she wants mediation to be efficient and make sense in the circumstances of the particular case. It may make sense to mediate at the outset of litigation, but it may not make sense at that point in which case she will wait to refer the case to mediation until after documents have been exchanged.

## **Report on Annual Meeting**

Ignatius Grande reported on the NYSBA Annual Meeting that was held last week. Although it was conducted virtually due to the pandemic, it was a good event with good participation. Approximately 60-70 individuals attended the Section's reception that held in the evening of January 19, 2021, and there was approximately 165 attendees for the Section's CLE panels on January 20, 2021. The Section has received positive feedback on the event.

## **Update on Spring Meeting**

Jonathan Fellows gave an update on this year's Spring Meeting. Unfortunately, it will not be in-person due to the on-going COVID-19 pandemic, but it will proceed virtually on May 6-8, 2021. There will be CLEs and virtual socialization. Stay tuned for more details.

## **Reports from the Commercial Division Committee on Proposed Rules**

- (1) Ralph Carter reported on the proposed amendment to Commercial Division Rule 3(a) regarding the court's ability to refer cases to ADR and to expressly permit parties to agree to pursue neutral evaluation. The draft report that was circulated to the Executive Committee suggests that separate rosters be maintained for neutral evaluators and mediator panels. The draft report also suggests that parties be provided an appropriate period of time to consent to neutral evaluation, and if consent is not obtained that the parties then be referred to mediation. A motion was made by Jonathan Fellows, and seconded by Gregory Arenson, to accept the Committee's draft report as a report of the Section. The motion was approved unanimously.
- (2) Joshua Wurtzel reported on the proposed Commercial Division rule that would require the filing of corporate disclosure statements and the Committee's draft report regarding same. The proposed rule is virtually identical to Rule 7.1 of the Federal Rules of Civil Procedure, except that proposed rule also applies to interveners and not just parties. One modification to the proposed rule that the Committee is suggesting is that the disclosure requirement not be limited to corporations and instead be expanded to cover all entities regardless of form (corporations, LLCs, partnerships, etc.). A motion was made by Jonathan Fellows, and seconded by Ignatius Grande, to accept the Committee's draft report as a report of the Section. There was one abstention, but the motion was otherwise unanimously approved.
- (3) Mark Berman reported on the proposed amendment to Commercial Division Rule 30 to require mandatory settlement conferences post-note of issue, and the Committee's draft report regarding same. Currently the rule permits but does not require the court to schedule a settlement conference at the time a case is certified as trial ready. The proposed amendment would make a settlement conference mandatory. The proposed rule would also give the parties some options on consenting to different mechanisms for the settlement conference (private mediation, court ADR, etc.). The Committee's report endorses the proposed amendment. A motion was made by Jonathan Fellows, and seconded by James

Wicks, to accept the Committee's draft report as a report of the Section. The motion was approved unanimously.

### **Plans for Scheindlin Award and Mock Trial Event**

Jonathan Fellows provided an update on the Scheindlin Award and Section's mock trial event. We had hoped to honor the Scheindlin Award recipients and Kaye Scholars in-person at the mock trial event on April 22<sup>nd</sup>. But unfortunately the mock trial event will not be going forward either in-person or remotely in April. We are hoping to honor the recipients at an in-person event in the fall.

### **Report on Progress of Mentoring Program**

Maryann Stallone reported that the Section's mentoring program has been launched. Mentors and mentees have been introduced and are moving forward with connections. She expect a meeting will be held in mid-February, and some virtual social events will be hosted thereafter. There has been great feedback on the program so far.

### **Section Committee Appointments**

Ignatius Grande discussed a desire to change the name of the Cybersecurity Committee to the Privacy Data Security and Information Technology Committee, and to have Samantha Ettari named as a new Co-Chair of the renamed committee. He also discussed a desire to have Jason Lichter and Gina Sansone named as the new Co-Chairs of the Electronic Discovery Committee. A motion to approve the name change and Co-Chair appointments was made by Jonathan Fellows, seconded by Gregory Arenson, and unanimously approved.

### **Other Business**

Ignatius Grande reported on administrative order from Chief Administrative Judge Lawrence Marks that incorporates many Commercial Division rules into the Unified Rules for the Supreme Court effective February 1, 2021.

Ignatius Grande also provided an update on a program that he is working on concerning stress testing democracy and the rule of law. The program is expected to be held in either April or May, and will likely be co-sponsored with another section and the New York Bar Foundation. If anyone knows of potential speakers please let Ignatius know.

Jonathan Fellows reminded everyone of the Section's upcoming events listed in agenda, and encouraged everyone to participate.

The meeting adjourned at 7:52 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on February 24, 2021.

**Members Participating via Zoom**

Jonathan Fellows, Chair	Richard Dircks	Stephen Roberts
Ignatius Grande, Vice Chair	Claire Gutekunst	Courtney Rockett
Anne Sekel, Treasurer	Jeffrey Harradine	Maryann Stallone
Jessica Moller, Secretary	Helene Hechtkopf	James Wicks
Hon. Helen Freedman	Jay Himes	Hon. Robert Reed*
Hon. Frank Maas	Laurel Kretzing	Catherine Carl (NYSBA)*
Gregory Arenson	Scott Malouf	Simone Smith (NYSBA)*
Mark Berman	Kan Nawaday	
Ralph Carter	Kevin Quaratino	

\*Guest Attendee

Section Chair, Jonathan Fellows, called the meeting to order at 6:05 p.m.

**Guest Speaker**

***Hon. Robert Reed, Supreme Court New York County***

Justice Reed spoke to the Executive Committee about his background and the path he followed to reach his current position as a Commercial Division justice. Justice Reed grew up in Compton, CA, where his parents had settled after migrating from a sharecropping community in the South. Justice Reed attended public school until the tenth grade, at which point he went to a parochial school in an attempt to avoid the gang violence that was plaguing the Compton public schools at the time. Justice Reed subsequently attended Stanford University and Harvard Law School, where he met his wife at a meeting of the Black Law Students Association. After law school, he worked in private practice focusing on the areas of employment discrimination and product liability at different firms in New Jersey and New York. He subsequently went to the New York Attorney General's Office, where he first worked in the Litigation Bureau, then in the Criminal Prosecutions Bureau where he handled white collar crime matters, and then he became the Deputy Chief of the Civil Rights Bureau where he primarily handled discrimination matters. Justice Reed thereafter returned to private practice working first at a minority owned firm and then at another firm doing all matters of litigation before leaving private practice and becoming a judge. Justice Reed started his judicial career as a justice in Bronx Family Court, and has since spent fourteen years on the bench in various courts, including New York County Civil Court and New York County Supreme Court. He is honored and excited to now be serving as a Commercial Division justice of the Supreme Court.



Justice Reed also answered various questions posed by members of the Executive Committee, including the following:

- *What is the compliment of staff that you are currently working with?* It is a work in progress. Justice Reed had a principal law clerk and assistant law clerk when he first came to the Commercial Division, and was looking forward to having a third clerk. However, the hiring freeze and some turnover in the clerks he came to the Commercial Division with has resulted in Justice Reed currently working with a principal law clerk, an open assistant law clerk position, and sharing another clerk with another justice. He is in the process of reviewing applicants for the open assistant clerk position. Once that position is filled, Judge Reed will be working with two and a half clerks rather than the full complement of three clerks that would have previously been assigned to a Commercial Division justice.
- *What do you see as the biggest difference between the IAS Part and being on the bench in the Commercial Division?* Justice Reed has still have seen the “reality” of the Commercial Division because of the pandemic. But one of the noticeable differences being in the Commercial Division is not needing to shift back and forth between different causes of action. It is nice to be able to consistently be dealing with commercial matters, and be able to focus preparation and research to that area.
- *What is your expectation of what your case load will be?* He expects to have between 300 and 325 cases.
- *Do you think it makes sense to apply the Commercial Division rules to other IAS parts?* Justice Reed believes the rules make sense generally, referring to them as “common sense rules.” For example, the rule requiring the attorney appearing on a case have knowledge about the case makes sense. It is very frustrating from a case management perspective when you are trying to engage the attorney about issues in the case but the attorney appearing is per diem and is unfamiliar with what is going on with the case. Hopefully these rules will make things more efficient.
- *What to you foresee for when the pandemic is over?* Justice Reed expects that virtual preliminary and status conferences will likely continue post-pandemic. However, he is looking forward to getting back to the courtroom and expects that oral arguments will go back to being conducted in-person.

### **Review of Minutes**

A motion to approve the minutes of the December 2, 2020 Executive Committee meeting was made, seconded and approved unanimously. A motion to approve the minutes of the Section’s January 19, 2021 annual meeting was made, seconded and approved unanimously. A motion to approve the minutes of the January 27, 2021 Executive Committee meeting was made, seconded and approved unanimously.

### **Application of Commercial Division Rules to Non-Commercial Cases**

Ralph Carter gave a presentation on the application of the Commercial Division rules to non-commercial cases. Effective February 1, 2021, the Uniform Rules for the Supreme and the County Courts were amended to apply many of the Commercial Division's rules for non-commercial cases pending in the Supreme and County Courts. Although the impact is still to be seen, the rules regarding discovery practice in the general courts may have the biggest difference in the day-to-day workings of the general courts. The hope is that the application of these rules in non-commercial cases will make case management more efficient. The Section will be presenting a CLE on the extension of these rules in the spring.

### **Update on Spring Meeting**

Jonathan Fellows gave an update on the Section's annual spring meeting. It is scheduled for May 6-8, 2021 and will be entirely virtual. Dan Wiig has organized several CLE panels, with registration being offered both as a package and à la carte. There will also be two events in addition to the CLE panels. On Thursday May 6<sup>th</sup> at 6:00 p.m., the Section will be awarding the George Bundy Smith Award. On Friday May 7<sup>th</sup> also at 6:00 p.m., the Section will bestow the Robert L. Haig Award to Loretta Lynch, former Attorney General of the United States. Please register for the CLE panels and other events, and encourage others to participate as well.

### **Update on the George Bundy Smith Award**

Kan Nawaday gave an update on the Section's presentation of the George Bundy Smith Award. This year's honoree is Judge Peter Tom, retired justice of the Appellate Division First Department. Justice Tom was the first Asian American jurist on the bench in New York State, and holds the honor of several other judicial "firsts." The award will be presented at a virtual awards ceremony on May 6<sup>th</sup> during the Section's spring meeting. Please register and encourage others to attend.

The meeting adjourned at 7:29 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on April 29, 2021.

**Members Participating via Zoom**

Jonathan Fellows, Chair	Samantha Ettari	Stephen Roberts
Daniel Wiig, Chair Elect	Gregory Arenson	Michael Rakower
Ignatius Grande, Vice Chair	Helene Hechtkopf	Viktoriya Liberchuk
Anne Sekel, Treasurer	Vincent Syracuse	Gregory LaSpina
Jessica Moller, Secretary	Jay Himes	Jeffrey Zaino
Hon. Karla Moskowitz	Stephen Hochman	Scott Malouf
Hon. Helen Freedman	Lou DiLorenzo	Jeremy Vest-Mintz
Hon. James Wicks	Kan Nawaday	Hon. Scott Odorisi*
Jeffrey Harradine	Jay Safer	Catherine Carl (NYSBA)*
Maryanne Stallone	Paul Sarkozi	Simone Smith (NYSBA)*

\*Guest Attendee

Section Chair, Jonathan Fellows, called the meeting to order at 6:02 p.m.

**Guest Speaker**

***Hon. Scott Odorisi, NYS Supreme Court, Commercial Division***

Justice Odorisi spoke with the Executive Committee about his service on the Commercial Division bench thus far, and some of the issues that he has seen come up in connection with the pandemic:

- Commercial Leases – A lot of tenants are trying to get out of leases based on factors relating to the pandemic and ordered shutdowns that occurred. In those kinds of cases, Justice Odorisi looks to a variety of factors, including when the lease was signed and the length of the lease. If a lease was signed several years ago when COVID was not a thought, that will be an important factor. The length of the lease is also going to be important, particularly if a multi-year lease and only a relatively short period of shutdown is involved.
- Choice of Venue Provisions – The downstate courthouses were closed for a number of months, but the 7<sup>th</sup> Judicial District where Judge Odorisi sits was only shut down for about 60 days (mid-March to mid-May 2020). Consequently what occurred is that, as a result of choice of venue provisions that allow for venue to be proper in any venue within the State, a lot of cases were filed in the 7<sup>th</sup> Judicial District when other courts were closed.
- Executive Orders re: Statutes of Limitations – Attorneys will need to be mindful for several years that there was a tolling/suspension period for statutes of limitations under the COVID-related executive orders that were issued by the Governor.

Justice Odorisi also spoke about the new e-filing requirements, including hyperlinking to previously filed documents, in Commercial District cases. He said that hyperlinking is very helpful to the court, and he would like to also see hyperlinking to caselaw in papers filed with the court. But hyperlinking does not automatically incorporate those previously filed documents into summary judgment or other motions, so attorneys should be sure to incorporate by reference into their motions all of those previously filed court documents.

In addition, Justice Odorisi spoke about some of the COVID-related protocols in his court. There was a recent change in protocol for judges that now requires virtual proceedings be conducted in a courtroom. They are also starting to open up jury trials in his court, with in-person criminal trials and at least one in-person civil trial per week being conducted. They are trying to maintain social distancing for the juries, so it cuts down the number of juries that can be in the courthouse at any one time, but they are trying to increase in-person proceedings. There will be full staffing in the courthouse as of May 24<sup>th</sup>.

Justice Odorisi also answered various questions posed by members of the Executive Committee, including the following:

- *What do you think of the export of the Commercial District rules to non-Commercial District cases?* He think it will raise the bar because it forces attorneys to take things more seriously and to prepare more thoroughly beforehand.
- *How many cases in the 7<sup>th</sup> Judicial District come from the surrounding counties?* He estimated that there are probably about 20-25% of cases from outside of Monroe County where the 7<sup>th</sup> Judicial District sits.
- *In a case that starts in the Third Department and gets transferred to the Fourth Department, which Department cases do you cite?* That is a unique situation because it involves centralized asbestos cases. He suggests contacting the law clerk for the judge handling the case for guidance because of the uniqueness of the situation.
- *When do you expect cases that are only now becoming trial ready will be slated for trial?* It is hard to predict. In his court, they are currently scheduling about 12 months out.

### **Review of Minutes**

A motion to approve the minutes of the March 25, 2021 Executive Committee meeting was made, seconded and approved unanimously.

### **Congratulations to Jim Wicks**

Jonathan Fellow congratulates former Section Chair James Wicks on his recent elevation to the bench as a new Magistrate Judge in the U.S. District Court for the Eastern District of New York.

### **Update on Spring Meeting**

Dan Wiig gave an update on the Section's spring meeting that will be held virtually next week. Five CLEs will be presented over three days, and the Section's two awards are being presented to Hon. Peter Tom and Loretta Lynch. All are encouraged to attend.

### **Update on *Gesmer v. Administrative Board* litigation**

Hon. Helen Freedman gave an update on the *Gesmer v. Administrative Board* litigation that involves the judiciary budget cuts and non-certification of judges in 2020. The case is currently proceeding to the Court of Appeals, after the Third Department issued a 3-2 decision in favor of the Administrative Board. There has been some discussion that the litigation may have been mooted by the passing of the State's budget and invitation that was extended to the affected parties to reapply, but it is not clear. In response to the litigation, the House of Delegates passed (at a margin of 80% in favor) a motion for NYSBA to form a committee to review whether NYSBA should join as an amicus in support of the judges involved in the litigation. There is also a bill currently pending in the State legislature to take away some discretion from OCA and the Administrative Board in not re-certifying judges. The House of Delegates also passed (at a margin of 71%) a motion for NYSBA to support the bill.

### **Report on Sections Caucus and House of Delegates Meeting, including HOD Resolution on Application of the Commercial Division Rules in Supreme Court Cases**

Gregory Arenson reported on the Sections Caucus that was held on April 2, 2021. During that meeting, there was a discussion of the finances of the sections. Revenue was down in 2020, but costs were also down, leaving the surplus basically stable. Membership for the Section was down by approximately 8% from 2019 to 2020, consistent with what was also experienced by other sections. There was also discussion on whether NYSBA should remain at the historic building at One Elk Street in Albany, or whether other less expensive space should be obtained. The Sections Caucus also discussed the cost of meetings and CLEs and the issue of who gets the revenue that is generated from those events. For destination meetings, like the Section's spring meeting, 25% of registration fees and 100% of sponsorships will go to the sections. However, for CLEs, Section members will get a 25% discount on the registration cost for CLEs being presented/sponsored by the Section, but fees will not be coming to the Section. There was also a discussion about the application of Commercial District rules in non-Commercial District cases in the Supreme Court, and the House of Delegates passed a resolution to ask OCA to halt the implementation of the Commercial District rules to non-Commercial District cases.

### **Update on the Rule of Law Event**

Ignatius Grande gave an update on the Section's upcoming Rule of Law event. It will be held on June 3, 2021. Jay Johnson, the former Secretary of Homeland Security will be the keynote speaker. There will also be three panels: one panel will be on the press/social media and the rule of law; one panel will be on education and the impact of the rule of law; and one panel will be on free and fair elections, gerrymandering and the rule of law.

### **Appointment of New Co-Chairs of the Corporate Litigation Counsel Committee**

Dan Wiig nominated Matt Maron and Marc Madonia to be the new Co-Chairs of the Corporate Litigation Counsel Committee. A motion to that effect appoint was made, seconded and approved unanimously.

## **Other Business**

Jonathan Fellows reported that there will be a meet-and-greet for the Section's committees on May 19, 2020 at 6:00 p.m., where Committee Chairs will have an opportunity to speak to the Section's members about their committees and recruit new members.

The meeting adjourned at 7:33 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on June 17, 2021.

**Members Participating via Zoom**

Daniel Wiig, Chair	Nicole McGregor	Viktoriya Liberchuk
Ignatius Grande, Chair Elect	Stephen Ginsberg	Marc Madonia
Anne Sekel, Vice Chair	Alan Brody	Mark Berman
Helene Hechtkopf, Treasurer	Charles Scibetta	Mathew Davis
Hon. Helen Freedman	Clara Flebus	Melissa Livingston
Hon. Andrew Peck	Connie Boland	Michael Cardello
Hon. Karla Moskowitz	Damian Cavaleri	Michael Rivera
Hon. Melissa Crane	Danielle Rose	Kan Nawaday
Jay Safer	Doug Tabachnik	Peter Pizzi
Isabel Knott	Gregory Arenson	Ralph Carter
Jeffrey Zaino	Kate Wald	Richard Dircks
Jeremy Vest	Kevin Quaratino	Robert Holzman
Jim Beha	Laurel Kretzing	Stephen Brodsky
Joseph Facciponti	Mahnoor Misbah	Stephen Ginsberg
Suzanne Messer	Mara Afzali	Catherine Carl (NYSBA)*
Theresa Levine	Vincent Syracuse	Simone Smith (NYSBA)*

\*Guest Attendee

Section Chair, Dan Wiig, called the meeting to order at 6:01 p.m.

**Guest Speaker**

Hon. Melissa Crane discussed various issues with the Executive Committee, including her decision not to have her own Part rules, her use of Microsoft Teams to conduct proceedings, disputes that arise under discovery orders and Special Masters programs, and asked for the members of the Executive Committee for feedback on these issues. With regard to her decision not to have her own Part rules, Justice Crane explained that she feels Part rules add an extra layer of complexity which is not necessary with all of the other rules (including the Commercial Division rules) that are out there. Instead of Part rules, she builds everything into the conference order. Justice Crane also said that she uses Microsoft Teams a lot, including for bench trials. She has not found it difficult to gauge credibility on Teams, and has found that she actually catches things on Teams that she would have never seen before. Technical issues have been infrequent. Regarding disputes that arise under discovery orders, Justice Crane said that litigants should be mindful that if they wait on raising an issue under a discovery order the issue can be waived. If a dispute does arise that needs the court's attention, she will schedule a call with the parties at 5 p.m. and continues as late as may be needed to resolve the dispute. Regarding Special Masters programs, Justice Crane

thinks there is a real need to have a program in commercial cases that are pending outside the Commercial Division, and discussed the question about whether it should be free.

### **Review of May 25, 2021 Minutes**

A motion to approve the minutes of the May 25, 2021 Executive Committee meeting, with a correction to the spelling of Jeremy Vest's name, was made, seconded and approved.

### **NYSBA Task Force on Uniform Rules**

Dan Wiig reported that Jonathan Fellows was recently appointed to serve on NYSBA'S Task Force on Uniform Rules. Jonathan reported that the Task Force issued a preliminary report on June 7, 2021, prior to his appointment, regarding the export of Commercial Division rules to non-Commercial Division cases. There is some concern with the preliminary report because it says that at least five of the rules that have been adopted from the Commercial Division Rules violate the CPLR. The Task Force has asked for commentary on its preliminary report to be submitted no later than July 1, 2021. This Section should issue comments on this report to the extent it impacts the Commercial Division and says the Commercial Division rules violate the CPLR.

### **Update on *Gesmer v. Administrative Board* Litigation**

Judge Freedman gave an update on the *Gesmer* litigation that deals with the failure to recertify 49 judges who were over age 70 and had applied for recertification. The lawsuit continues, even though Judge DiFiore and the Administrative Board have offered most of the judges to now apply and said that their applications would be considered. There is an expectation that Judge DiFiore and the Administrative Board will make a motion to dismiss the lawsuit as moot. Judge Freedman also reported that there is legislation that passed the State Assembly and State Senate regarding certification that would limit OCA's discretion on certifying judges, but the Governor has not yet signed that legislation.

### **11<sup>th</sup> Judicial District Leader Appointment**

Dan Wiig nominated Nicole McGregor to serve as the 11<sup>th</sup> Judicial District Leader for a two year term effective June 1, 2021. A motion to approve that appointment was made, seconded and approved unanimously.

### **House of Delegates Appointments**

Dan Wiig reported that NYSBA has informed the Section that it is permitted to have three delegates serve on the House of Delegates. The Section previously appointed two Delegates at this year's annual meeting, so there is currently one Delegate vacancy. Dan nominated Robert Holzman (currently the Alternate Delegate) to serve as the Section's third Delegate, and to appoint Hon. James Wicks as the Alternate Delegate and a motion to do so was made, seconded and approved unanimously.

### **Update on June 12, 2021 House of Delegates Meeting**

Laurel Kretzing reported that the most pressing issue discussed at the House of Delegates meeting was what to do with the Bar Center in Albany. The building needs substantial renovations and to



be made accessible, which is going to cost a significant amount of money. The House of Delegates approved a MOU to transfer the center from the NYS Bar Foundation back to NYSBA. There was also discussion at the House of Delegates meeting regarding the preliminary report issued by the NYSBA Task Force on Uniform Rules and NYSBA making a request to Chief Administrative Judge Marks to rescind the extension of the Commercial Division rules to non-Commercial Division cases.

### **Renaming of the CLE Committee**

Dan Wiig reported that he would like to change the name of the CLE Committee to the Programming Committee, and nominated Hamutal Liberman to serve as the Chair of the renamed committee. A motion to approve the name change and to appoint Hamutal Liberman as Chair of the renamed committee for a three year term retroactively effective June 1, 2021 was made, seconded and approved.

### **Membership Committee**

Dan Wiig reported that he would like to create a new Section committee, the Membership Committee, and nominated Peter Sluka and Michael Cardello to serve as Co-Chairs of the Membership Committee. A motion to create the Membership Committee and to appoint Peter and Michael as Co-Chairs of the Membership Committee, with Peter to serve a two year term retroactively effective June 1, 2021 and Michael to serve a three year term retroactively effective June 1, 2021 was made, seconded and approved unanimously.

### **Report on the Rule of Law Event**

Ignatius Grande reported on the Section’s Rule of Law event that was held on June 3, 2021. It was well attended with over 100 attendees, and a big success. Thank you to everyone who helped put the event together.

### **Committee Chair/Co-Chair Appointment/Reappointments and Restructuring**

Dan Wiig reported that back in 2018 the Section amended its by-laws to have committee chairs serve staggered three year terms. As a result of that, we had a number of committee chairs who had terms just expire. We have also had some confusion over the start and end dates of terms for committee chairs. In order to have a clear record of who is served as a committee chair and for what term, Dan asked the Executive Committee to approve the following chair/co-chair appointments:

<b>Committee</b>	<b>Name</b>	<b>Term</b>
Appellate Practice	Hon. Karla Moskowitz	6/1/2021-5/31/2024
	Natasha Shishov	6/1/2020-5/31/2023
Programming	Hamutal Liberman	6/1/2021-5/31/2024
Litigation Academy	Kevin Smith	6/1/2021-5/31/2022
	Isabell Knott	6/1/2021-5/31/2024
Diversity	Kan Nawaday	6/1/2020-5/31/2023
	Hon. Sylvia Hinds-Radix	6/1/2021-5/31/2022
International Litigation	Clara Flebus	6/1/2021-5/31/2023

	Charlie Scibetta	6/1/2021-5/31/2024
Alternative Dispute Resolution	Charles Moxley	6/1/2021-5/31/2023
	Jeffrey Zaino	6/1/2021-5/31/2024
Antitrust	Jay Himes	6/1/2021-5/31/2023
	Kate Wald	6/1/2021-5/31/2024
Civil Prosecution	Richard Dircks	6/1/2021-5/31/2023
	Neil Getnick	6/1/2021-5/31/2023
	Courtney Finerty-Stelzner	6/1/2021-5/31/2024
Commercial Division	Ralph Carter	6/1/2021-5/31/2024
	Mark Berman	6/1/2021-5/31/2023
Corporate Litigation Counsel	Matt Maron	6/1/2021-5/31/2024
	Marc Madonia	6/1/2021-5/31/2023
Creditors' Rights and Bankruptcy Litigation	Alan Brody	6/1/2021-5/31/2024
	Sheryl Giugliano	6/1/2021-5/31/2023
Electronic Discovery	Jason Lichter	6/1/2021-5/31/2024
	Gina Sansone-Driscoll	6/1/2021-5/31/2023
Employment and Labor Relations	Theresa Levine	6/1/2021-5/31/2024
	Gerald Hathaway	6/1/2021-5/31/2023
Ethics and Professionalism	Vincent Syracuse	6/1/2021-5/31/2024
	John Mastando	6/1/2021-5/31/2023
Federal Judiciary	Stephen Brodsky	6/1/2019-5/31/2022
	Jay Safer	6/1/2021-5/31/2024
Federal Procedure	Stephen Roberts	6/1/2021-5/31/2023
	Stephen Ginsberg	6/1/2021-5/31/2024
Hedge Fund and Capital Markets Litigation	Benjamin Nagin	6/1/2021-5/31/2024
	Danielle Rose	6/1/2021-5/31/2023
Privacy Data Security & Information Technology Law	Joseph Facciponte	6/1/2021-5/31/2024
	Peter Pizzi	6/1/2021-5/31/2023
Legislative & Judicial Initiatives	Anthony Harwood	6/1/2021-5/31/2024
	Michael Rakower	6/1/2021-5/31/2023
Mentoring	Maryanne Stallone	6/1/2020-5/31/2023
	Maverick James	6/1/2020-5/31/2022
Membership Committee	Michael Cardello	6/1/2021-5/31/2024
	Peter Sluka	6/1/2021-5/31/2023
Securities Arbitration	James Yellin	6/1/2021-5/31/2024
Securities Litigation	James Beha	6/1/2021-5/31/2024
Social Media	Scott Malouf	6/1/2019-5/31/2022
	Damian Cavaleri	6/1/2021-5/31/2024
State Court Counsel	Michael Rivera	6/1/2021-5/31/2024
	Mahnoor Misbah	6/1/2021-5/31/2023
White Collar Criminal Litigation	Evan Barr	6/1/2021-5/31/2023
	Kathleen Cassidy	6/1/2021-5/31/2024
Young Lawyers	Viktoriya Liberchuk	6/1/2021-5/31/2023
	Kevin Quaratino	6/1/2019-5/31/2022

A motion to approve the above appointments was made, seconded and approved unanimously.

## **Other Business**

Peter Pizzi reported that the Privacy Data Security & Information Technology Law Committee is going meet on July 22, 2021 to discuss the US Supreme Court's decision in *Van Buren v. United States* which cut back the Computer Fraud and Abuse Act.

The meeting adjourned at 7:29 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Special Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on June 30, 2021.

**Members Participating via Zoom**

Dan Wiig, Chair	Stephen Roberts	Kevin Quaratino
Ignatius Grande, Chair Elect	Douglas Tabachnik	Joam Alisme
Anne Sekel, Vice Chair	Laurel Kretzing	Hon. Frank Maas
Helene Hechtkopf, Treasurer	Jay Safer	Hon. Karla Moskowitz
Jessica Moller, Secretary	Marc Madonia	Jay Himes
Gregory Arenson	Mahnoor Misbah	Scott Malouf
Jonathan Fellows	Hamutal Lieberman	Catherine Carl (NYSBA)*
Hon. Helen Freedman	Jim Beha	Simone Smith (NYSBA)*
Courtney Finerty-Stelzner	Michael Cardello	

\*Guest Attendee

Section Chair, Dan Wiig, called the meeting to order at 6:03 p.m.

**Report on the Preliminary Report of the Task Force on Uniform Rules**

Jonathan Fellows presented a draft report prepared by the Section regarding the preliminary report issued on June 7, 2021 by the Task Force on Uniform Rules. The Task Force's preliminary report relates to the importation of certain Commercial Division rules to the Uniform Rules applicable to non-Commercial Division cases, and notes that the Task Force believes several of the imported Commercial Division rules violate the CPLR. The intent of the draft report prepared by the Section in response to the Task Force's preliminary report is to make clear that the Section does not believe the Commercial Division rules violate the CPLR. A discussion regarding the draft report occurred, during which amplification of certain aspects of the draft report were proposed and accepted as follows: (i) in the order to show cause section, address what happens when an adversary is not represented; (ii) in the TRO section add citation from rules dating back to 2007 that notice is required to be given when seeking a TRO; (iii) in the statement of undisputed material facts section include a discussion about the statement of undisputed material facts is essentially equivalent to a request to admit under CPLR 3123; (iv) regarding privilege logs, add a footnote that in June 2012 NYSBA's House of Delegates adopted a report of the Special Committee on Discovery and Case Management in Federal Litigation that indicated its support for categorical privilege logs. A typo on pg. 11 of the draft report was also corrected. A motion to adopt the draft report as a report of the Section to be submitted to the Task Force was made, seconded, and unanimously approved.

The meeting adjourned at 6:21 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Special Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on July 29, 2021.

**Members Participating via Zoom**

Dan Wiig, Chair	Theresa Levine	Suzanne Messer
Ignatius Grande	Peter Sluka	Gregory LaSpina
Anne Sekel, Vice Chair	Gregory Arenson	Marc Madonia
Hon. Helen Freedman	Jason Lichter	Kevin Quaratino
Hon. Andrew Peck	Gina Sansone-Driscoll	Marcella Jayne
Jonathan Fellows	Viktoriya Liberchuk	Richard Dircks
Stephen Ginsberg	Joam Alisme	Claire Gutekunst
Michael Cardello	Mahnoor Misbah	Jay Safer
Jeffrey Zaino	Scott Malouf	Michael Rivera
Laurel Kretzing	Peter Pizzi	Catherine Carl (NYSBA)*
Damian Caveleri	Jonathan Lupkin	Simone Smith (NYSBA)*
Courtney Finerty-Stelzner	Maryann Stallone	

\*Guest Attendee

Section Chair, Dan Wiig, called the meeting to order at 6:01 p.m.

**Draft Report on Potential Changes to Privilege Log Practice in Federal Court**

Stephen Ginsberg, Jason Lichter and Gina Sansone reported that the Federal Procedure Committee in conjunction with the E-Discovery Committee drafted comments requested by the Judicial Conference of the United States' Committee on Rules of Practice and Procedure regarding potential amendments to the Federal Rules of Civil Procedure on privilege log practices. The draft comments recommend amendment to the rules to permit categorical privilege logs and metadata privilege logs depending on the circumstances of a particular case. In addition to describing what categorical and metadata logs are, the draft comments recognize the somewhat limited value of document-by-document logs to the receiving party and note that the rules currently do not specifically require a document-by-document privilege log. The draft comments also discuss the history dating back to 1993 of the Advisory Committee recognizing the potential undue burden of preparing a document-by-document privilege log when the documents could instead be described by category. The draft comments propose modest revisions to FRCP Rule 26(b)(5)(a) to explicitly permit proportionality in FRCP 26(b)(5)(a), to FRCP Rule 26(f)(3) to have the discovery plan set forth a plan for privilege logs, and corresponding changes to FRCP Rule 16(b)(3)(a). A motion to approve and adopt the draft comments prepared by Federal Procedure Committee and E-Discovery Committee was made, seconded and approved unanimously.

## **Other Business**

Jonathan Fellows updated the Executive Committee on the Task Force on Uniform Rules. The Task Force issued a final report on July 19, 2021, which differs in several respects from the preliminary report that was previously issued. The final report makes clear that the Task Force is not calling into question the validity of the Commercial Division rules as applied in the Commercial Division and is not saying that the Commercial Division rules violate the CPLR, which were the concerns that the Section had with the Task Force's preliminary report.

The meeting adjourned at 6:21 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on September 23, 2021.

**Members Participating In-Person**

Dan Wiig, Chair	Kevin Quaratino
Ignatius Grande, Chair Elect	Marcella Jayne
Anne Sekel, Vice Chair	

**Members Participating via Zoom**

Jessica Moller, Secretary	Stephen Ginsberg	Vincent Syracuse
Hon. Joseph F. Bianco	Jane O'Brien	Michael Rivera
Hon. Victor Marrero	Jay Himes	Moshe Boroosan
Hon. Andrew Peck	Jay Safer	Natasha Shishov
Hon. Helen Freedman	Jeffrey Zaino	Kan Nawaday
Hon. Sylvia Hinds Radix	Jenice Malecki	Nicole Mundy
Hon. Karla Moskowitz	Jeremy Feinberg	Paul Sarkozi
Hon. Frank Maas	Joam Alisme	Peter Pizzi
Benjamin Nagin	Jonathan Fellows	Ralph Carter
Connie Boland	Laurel Kretzing	Rich Trotter
Charles Scibetta	Mahnoor Misbah	Richard Dircks
Claire Gutekunst	Marc Madonia	Richard Trotter
Clara Flebus	Mark Berman	Scott Malouf
Courtney Finerty-Stelzner	Maryann Stallone	Stephen Brodsky
Damian Cavaleri	Michael Cardello III	Suzanne Messer
David Robbins	Steve Hochman	Hon. Lawrence K. Marks*
Joseph Facciponti	Hamutal Lieberman	Margarita Echevarria*
Gina Sansone	Theresa Levine	Catherine Carl, NYSBA*

\*Guest Attendee

Section Chair, Dan Wiig, called the meeting to order at 6:02 p.m.

**Guest Speaker**

***Chief Administrative Judge Lawrence K. Marks***

Judge Marks spoke to the Executive Committee primarily about how the Commercial Division has done well continuing to operate effectively and efficiently during the COVID-19 pandemic. Judge Marks thought that the fact the Commercial Division is ideally suited for a virtual approach has helped with its operations during the pandemic. For example, cases and litigants in the Commercial Division are almost always represented by counsel (unlike in other sectors of the court

system), the attorneys are generally comfortable with technology, it is a heavy motion practice court and even with trials there tends to be more bench trials. All of these factors have contributed to the Commercial Division being able to readily adapt to virtual proceedings and to thrive during the pandemic. Judge Marks also said that virtual court proceedings have an absolute role and will play an important role post-pandemic.

Judge Marks also shared some data regarding the Commercial Division within Manhattan. For example, so far in 2021, 3,135 motions have been filed, 3,103 motions have been decided, and 1,330 cases have been fully disposed. Judge Marks shared similar data for prior years.

Judge Marks also thanked the Section for its commentary on proposed amendments to the Commercial Division rules. He said the Section's comments are always reviewed carefully and are very helpful. He also mentioned NYSBA's recent taskforce report on the expansion of certain Commercial Division rules to broader civil practice, which he characterized as very critical of the initiative. Although Judge Marks said that he disagrees with the report, it did have some good suggestions which are being considered and will be put out for further public comment.

Judge Marks also answered various questions posed by members of the Executive Committee, including:

- *How can the Section best support the Commercial Division?* Be champions for the Commercial Division. Resources are really important, but it is a big court system and there is a lot of competition for resources. The more champions there are for the Commercial Division, the more it will help in being able to bring more resources to the Commercial Division.
- *Do you see things like preliminary conferences and compliance conferences remaining virtual post-pandemic?* Yes. Many if not most of the conferences can be effectively carried out virtually. Being able to conduct conferences virtually can save money and time, and eliminate delays.

### **Review of Minutes**

A motion to approve the minutes of the Special Meeting held on June 30, 2021 and the Special Meeting held on July 29, 2021 was made, seconded and approved unanimously.

### **Proposed Annual Judge Robert Katzmann Memorial Essay Contest**

Dan Wiig reported that when Judge Katzmann passed away in June, he appointed a small group of Executive Committee members who had worked with Judge Katzmann to discuss what the Section could do to honor his memory. That led to the Section working with Judge Joseph Bianco, Judge Victor Marrero and the Justice for All Network to hold an essay contest, with equal protection as the selected topic for the essays. Judge Bianco said this is a wonderful way to honor Judge Katzmann's memory. Judge Bianco explained that when essay submissions come in the Section will provide some reviewers to assist in reviewing the submissions, and that the end goal is to have a memorial for Judge Katzmann at the Second Circuit courthouse in Spring 2022 at which there will be an awards ceremony for the three essay contest winners. Judge Scheindlin has graciously offered to personally fund the award for the three winners (thank you Judge Scheindlin!), and the winning essays can be published in either the Section's newsletter or The



Litigator. A motion to approve the Section's participation as described was made, seconded and approved unanimously.

### **Committee Spotlight: Social Media**

Scott Malouf and Damian Cavaleri reported on the Social Media Committee's program, Business Development Q&A: Boost Your Reputation, Relationships and Referrals Using LinkedIn, that was held on September 9<sup>th</sup>. There were 50 attendees, and although the program was scheduled for thirty minutes it lasted about 50 minutes due to the great questions and discussion. Scott and Damian also reported that the Section has new social media manager coming on board who will be helpful for publicizing the Section's activities and events.

### **Committee Spotlight: State Court Counsel**

Michael Rivera reported that the State Court Counsel Committee been hard at work. The Committee is attempting to help streamline the process of filling law clerk vacancies. Thus far the Committee has helped to placed one law clerk, and is working with several Commercial Division judges in Manhattan to fill open law clerk positions. The Committee is also planning an event with Section's Young Lawyers Committee for January 2022 about what to expect when you go before the First Department.

### **Appointment of Courtney Rockett as 9th Judicial District Leader**

Dan Wiig explained that Jeremy Vest has stepped down from his position as 9<sup>th</sup> Judicial District Leader, and nominated Courtney Rockett, who previously held the position, to be appointed as the 9<sup>th</sup> Judicial District Leader for a two year term retroactively effective June 1, 2021. A motion to appoint Courtney Rockett was made, seconded and approved unanimously.

### **Memo to Committee Co-Chairs**

Dan Wiig reported that he had sent a memo to the Section's Committee Co-Chairs about tools that are available to assist in managing committees and other administrative matters. One such tool was NYSBA's Community Groups, which Catherine Carl explained can be used as list-serves to communicate with committee members. A guide on how to use Community Groups is being prepared.

### **Appointment of Jenice Merkel and Margarita Ecceverde as Securities Arbitration Co-Chairs**

Dan Wiig nominated Jenice Merkel and Margarita Ecceverde to serve as new co-chairs of the Securities Arbitration Committee, with Margarita nominated for a two year term retroactively June 1, 2021 and Jenise nominated for a three year term retroactively effective June 1, 2021. A motion to approve those appointments was made, seconded and approved unanimously.

### **Creation of Cannabis Litigation Committee and Appointment of Paul Sarkozi and Richard Trotter as Co-Chairs**

Paul Sarkozi presented on the creation of a new Section committee, the Cannabis Litigation Committee. He discussed that the committee will hopefully be comprised of individuals participants with a broad range of skill sets to help develop an effective and efficient approach to cannabis litigation. A motion to approve the creation of a Cannabis Litigation Committee effective June 1, 2021 and to appoint Paul Sarkozi and Richard Trotter as Co-Charis, with Paul serving a two year term effective June 1, 2021 and Richard to serve a three year term effective June 1, 2021, was made, seconded and approved unanimously.

### **Committee Name Change: Employment Litigation Committee**

Theresa Levine reported that the Labor & Employment Litigation Committee wanted to change its name to be the Employment Litigation Committee. A motion to that effect was made, seconded and approved unanimously.

### **Digital Distribution of the Section Newsletter and NY Litigator and Possible Partnership with Bloomberg**

Moshe Boroosan discussed the potential of taking The Litigator digital. He reported that going digital will be a cost savings for the Section, and that the money saved will stay with the Section. The first online only edition will hopefully be by January 2022. A motion for The Litigator to be a digital online only publication was made, seconded and approved unanimously. Moshe also reported that they are exploring whether Bloomberg Law may partner with Section/NYSBA to have The Litigator as one of Bloomberg's third party sources.

### **Proposed Comment on the Federal Judiciary Security & Privacy Act**

Peter Pizzi presented on draft comments on the Federal Judiciary Security & Privacy Act that is pending in Congress. This bill seeks to protect judicial personally identifiable information (JPPI) from disclosure on the internet. Essentially the bill directs government not to disclose personally identifiable information (for example, address, home, cars, photos of home or license plates) of active judges, retired judges and the immediate family that live with such judges, and to take JPPI down from the internet/social media upon the request of a jurist. The draft comments propose that the Section support the bill. Discussion about potential First Amendment implications of the bill was had, and a correction to the spelling of Tony Harwood's name in the draft comments was requested. A motion to adopt the draft comments as the position of the Section was made, seconded and approved with one abstention.

### **Diversity Fellowship**

Justice Hinds-Radix spoke about the process for the diversity fellowship, and advised that the New York Bar Foundation will begin accepting applications in the beginning of December.

### **Update on the Special Master Project**

Mark Berman reported that several organizations, including the Section, are working on Special Master programs. The Section has proposed a Special Masters program for non-Commercial Division judges who are handling commercial cases, and will be putting together guidelines, policies and procedures, and a list of qualified attorneys to serve as special masters for the program.

### **Annual Meeting 2022 Update and Announcement of Fuld Award Recipient**

Anne Sekel reported that the Section's Nominating Committee has selected Hon. Leonard Austin to receive the Fuld Award at the Section's 2022 Annual Meeting. Assuming the luncheon will be able to be held in-person, the Fuld Award will be bestowed at the luncheon on January 19, 2022. Anne also reported on the programming for annual meeting, which will consist of two panels like in past years – one on the strategic growth and succession planning for litigators, and one that will present an overview and analysis of pandemic related business litigation in New York (including insurance matters, consumer and securities litigations and employment litigation). They are currently planning for the annual meeting to be in-person with a remote streaming option, but there is a contingency plan if we need to transition to full remote.

### **Spring Meeting 2022 Update**

Ignatius Grande reported that the Spring Meeting is scheduled to be held in-person at the Statler Hotel in Ithaca on May 13-15, 2022. He is in the process of developing the programs, and hopes to attract younger attorneys who have never been to the spring meeting to attend.

### **Other Business**

A motion for Jane O'Brien to serve as the Co-Chair of the Securities Litigation Committee, was made seconded and approved unanimously.

The meeting adjourned at 7:26 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on October 20, 2021.

**Members Participating via Zoom**

Dan Wiig, Chair	Mara Afzali	Suzanne Messer
Ignatius Grande, Chair Elect	Joam Alisme	Mahnoor Misbah
Hon. Helen Freedman	Gregory Arenson	Gina Sansone
Hon. Frank Maas	Constance Boland	Katherine Suchocki
Hon. Karla Moskowitz	Alan Brody	Charles Moxley
Hon. Andrew Peck	Michael Cardello	Ben Nagin
Steven Ginsberg	Ralph Carter	Kan Nawaday
Claire Gutekunst	Richard Dircks	Peter Pizzi
Jeffrey Harradine	Jonathan B. Fellows	Michael B. Smith
Helene Hechtkopf	Clara Flebus	Maryann Stallone
Steve Hochman	Renee Plexousakis	Jeffrey Zaino
Marcella Jayne	Michael Rivera	Hon. Laura Taylor Swain*
Laurel Kretzing	Stephen Roberts	Catherine Carl, NYSBA*
Viktoriya Liberchuk	Courtney Rockett	Simone Smith, NYSBA*
Hamutal Lieberman	Jay Safer	
Marc Madonia	Scott Malouf	

\*Guest Attendee

Section Chair, Dan Wiig, called the meeting to order at 6:04 p.m.

**Guest Speaker**

***Hon. Laura Taylor Swain, Chief Judge SDNY***

Judge Taylor Swain spoke to the Executive Committee primarily about adaptations the Court has made due to COVID and the extent to which such adaptations should (or should not) remain. In particular, Judge Taylor Swain solicited feedback from the Executive Committee Members' experiences with remote proceedings and what they would like to see continue, if anything. Judge Taylor Swain mentioned that the SDNY is now conducting jury trials in person but bench trials remain at the discretion of the particular judge. She also solicited feedback from the Executive Committee Members on their opinion of telephonic versus visual virtual proceedings, and whether they have found courts to be more receptive to emails than phone calls.

Judge Taylor Swain also shared that she is presiding over the financial restructuring proceedings in Puerto Rico and will be conducting an entirely virtual confirmation hearing to accommodate the parties and interests, and the limitations on court room occupancy.

Judge Taylor Swain was asked if she ever sees a day where jury trials are conducted remotely. She replied that jury trials have been conducted remotely, but they require a certain amount of sophistication among jury members and court house staff. The SDNY is more focused on returning to in-person trials.

### **Review of Minutes**

A motion to approve the minutes of the meeting held on June 17, 2021 and the special meeting held on September 23, 2021 was made, seconded and approved unanimously.

### **Appointment of Nominating Committee**

Dan Wiig reported that he assembled a Nominations Committee to select the Vice Chair, Treasurer, and the Executive Committee's Delegates to NYSBA. Per the bylaws, he and Ignatius Grande as the Chair Elect have to be on the Nominations Committee, and Claire Linquist, Judge Melissa Crane and Elizabeth Emerson have been appointed as Co-Chairs. Nominations must be completed by December 19, 2021.

### **Proposed Comment on Commercial Division Rule**

Gina Sansone reported that the Commercial Division Advisory Council requested comments on proposed amendments to the Commercial Division Rules that relate to discovery of electronically stored information that brings the Rules more in line with Federal Court Rules.

Renee Plexousakis from the Rules Subcommittee of the E-Discovery Committee reported that the goal of the proposed amendments is to streamline the Rules and encourage parties to be proactive about e-discovery rather than waiting until discovery begins. She further reported that neither she nor Renee Sansone found anything controversial about the proposed amendments, noting that for instance that while the Commercial Division already has guidelines in place for non-parties, the Rules would be extended to parties. The proposed amendments address inadvertent waivers not previously addressed by the CPLR (only case law), to clarify that privilege is not automatically waived in the event of an inadvertent disclosure, provided the parties took reasonable precautions. Renee Plexousakis reported that her and Gina Sansone found this beneficial and endorse the proposed amendments. Another noteworthy change would be that requesting parties need to defray costs to non-parties responding to subpoenas, which is already in the CPLR but is helpful for parties that may be practicing in the Commercial Division for the first time. Renee Plexousakis reported that in their comments they suggest that it would be helpful to provide examples of how to defray such costs.

Dan Wiig solicited comments from the Commercial Division Committee. Ralph Carter reported that the Commercial Division Committee had minor comments including to make it clear that the proposed amendments encompass not just the CPLR but the common law as well, and that his committee agrees that the proposed amendments are beneficial.

One Executive Committee Member asked if defraying costs would apply to parties as well, and Renee Plexousakis replied that it would not.

A motion to adopt the proposed report as a report of the Section was made, seconded and approved unanimously.

### **Mentoring Committee/Program Update**

Maryann Stallone reported that they sent out an email soliciting participants who would be interested in the mentorship program and had thus far received ten mentees. They are hopeful that this year they can conduct programs in-person.

### **Committee Spotlight: ADR**

Jeff Zaino, reported that the ADR Committee is more of a programs committee, rather than a meetings committee, hosting over 40 programs since 2017 including an annual program at Fordham Law School. The ADR Committee hopes to conduct programs in person soon, though they have had excellent turn out for virtual programs. Charles Moxley requested help from Executive Committee Members to encourage litigators to attend the ADR Committee's programs, as they are underrepresented as attendees yet would likely benefit the most from the programs. On March 14, 2022, the ADR Committee plans to host an in-person panel at Fordham to foster a conversation on how the bar can facilitate presumptive mediation.

### **Committee Spotlight: Commercial Division**

Ralph Carter reported that the Commercial Division Committee had the opportunity to comment on a host of proposed amendments, had a very well attended meeting in September, and is hopeful to engage those members in actively participating in a host of upcoming projects. One of those projects will be a comparison analysis of Chancery Court Rules that might merit inclusion in the Commercial division rules. Another project will be a bi-monthly program where judges from upstate and downstate will analyze different sections of the Commercial Division Rules. Ralph solicited recommendation for opportunities to recruit new members from law schools.

### **Committee Spotlight: Privacy, Creditors' Right and Bankruptcy Litigation**

Alan Brody reported that the Privacy, Creditors' Rights and Bankruptcy Litigation Committee deals with issues related to state and federal credit rights litigation and bankruptcy law, and hosts quarterly meetings which include current news and events, with a presentation and then time to network. The Privacy, Creditors' Rights and Bankruptcy Litigation Committee will be hosting a presentation by Michael Amato on a recent case in which the bankruptcy court granted relief on an issue of New York State law on November 10, 2021, and is planning a CLE on cannabis in bankruptcy law in February of 2022.

### **Update on the 2022 Litigation Academy**

Dan Wiig reported the Executive Committee is planning on having a litigation academy in 2022 on March 31, 2022 and April 1, 2022 at the SDNY Bankruptcy Court House.

### **Postponement of the Excellence in the Courtroom/Kaye Scholar Presentations/Taking the Lead**

Dan Wiig reported that the Executive Committee planned to have the Excellence in the Courtroom and Kay Scholar Awards award presentations at the SDNY courthouse, but due to their change in policy for in person events, these events have been adjourned to May 3, 2022.

### **Update on Annual Meeting 2022 and An Evening at the Thurgood Marshall Courthouse**

Dan Wiig reported that, as of now, due to the Second Circuit's policy An Evening at the Thurgood Marshall Courthouse will be adjourned. The Annual Meeting will still occur with the traditional programs, but there is a concern about the actual attendance to meeting. A poll was taken of the Executive Committee Members on who would be willing to attend in-person.

### **Update on Spring Meeting 2022**

Ignatius Grande reported that the Spring Meeting would be held in May at the Statler Hotel in Ithaca, NY. He solicited recommendations for encouraging younger attorneys to attend in addition to the reduced rate for younger attorneys.

### **Other Business**

Simone Smith reported that on November 18, 2021, there would be a program titled "Witness Preparation When Does it Cross the Ethical Line." Simone Smith reported that there is a new student liaison, Michaela Han and that Executive Committee members should reach out to her if there is an event that students should be invited to.

The meeting adjourned at 7:20 p.m.

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on November 16, 2021.

**Members Participating via Zoom**

Daniel Wiig, Chair	Hamutal Lieberman	Kevin Quaratino
Ignatius Grande, Chair Elect	Clara Flebus	Steven Ginsberg
Anne Sekel, Vice Chair	Constance Boland	Brian Lavin
Helene Hechtkopf, Treasurer	Greg Arenson	Stephen Roberts
Jessica Moller, Secretary	Ralph Carter	Kan Nawaday
Hon. Karla Moskowitz	Mark Berman	Rich Trotter
Hon. Helen Freedman	Theresa Levine	Jay Himes
Hon. Frank Maas	Paul Sarkozi	Michael Smith
Hon. Andrew Peck	Laurel Kretzing	Scott Malouf
Vince Syracuse	Jeffery Zaino	Jenice Malecki
Michael Cardello	Jay Safer	Charles Scibetta
Evan Barr	Tony Harwood	Viktoriya Liberchuk
Joam Alisme	Marcella Jayne	Courtney Finerty-Stelzner
Richard Dircks	Margie Echevarria	Catherine Carl (NYSBA)*
Jonathan Fellows	Jim Beha	Simone Smith (NYSBA)*
Kate Cassidy	Peter Pizzi	

\*Guest Attendee

**Guest Speaker**

*Michael D. Jordan, Circuit Executive for the Second Circuit*

Michael Jordan spoke to the Executive Committee about what he characterized as a non-traditional path to his current position. After pursuing degrees and employment in fields unrelated to law, he obtained his law degree from NYU in 2001. He began his legal career as a law clerk to Judge Dennis Jacobs who was then on the Second Circuit, and then spent time in private practice and as an enforcement attorney with the SEC. In 2006, Judge Jacobs asked if he would be interested in returning to the Second Circuit as his counsel, and he has been there ever since. He became Circuit Executive in 2019. In that role, he oversees HR/personnel, information technology, space/facilities, budget and procurement for the Second Circuit, and serves as the principal advisor on judicial ethics. He also answered various questions posed by members of the Executive Committee, including:

- *How has the Second Circuit been handling COVID-related matters?* The court went virtual in March 2020, and did not miss a single argument. It continued in virtual format until August 2021 when the court moved to a hybrid format.



- *Do you feel the court is a “less hot” bench when holding arguments virtually?* He has not heard that, but if that was anyone’s experience it may have been due to the judge’s familiarity with the technology at the time.
- *Do you anticipate that some practices, such as conducting proceedings virtually, will continue post-pandemic?* He thinks some of the practices will likely continue, but anticipate that oral argument will ultimately return to fully in-person.

### **Committee Spotlight: Young Lawyers**

Viktoriya Liberchuk and Kevin Quaratino presented on the Young Lawyers Committee. The main event they are planning currently is an evening with the justices of the Appellate Division, First Department, which will be held on January 12, 2022 as a hybrid in-person/zoom event.

### **Committee Spotlight: Privacy, Data Security & Information Technology Litigation**

Peter Pizzi and Joe Facciponti presented. They are working on two events currently. The first is being planned for February or March and will focus on crypto-crimes. The second is being planned for later in the Spring and will focus on hot topics on cybersecurity. They are also exploring a possible presentation on application of the False Claims Act in the cybersecurity realm.

### **Election of Greg Arenson as Member-at-Large**

Dan Wiig congratulated Greg Arenson on his election as a Member-at-Large for the NYSBA Executive Committee

### **House of Delegates Update & Uniform Rules Update**

Jonathan Fellows gave an update on the House of Delegates meeting and on NYSBA’s Task Force on Uniform Rules. At the recent House of Delegates meeting, they passed the budget for next year, as well as a report on well-being and a report of solo and small firm practitioners that are available on the NYSBA website. A motion was also made for NYSBA to seek a stay of the expansion of Commercial Division rules to non-commercial cases that took effect 2/1/2021, but the motion did not pass. Regarding the Task Force on Uniform Rules, the Task Force’s final report was sent to the Office of Court Administration. Judge Marks met with the Task Force leadership, and then issued new amendments to the rules that are now out for public comment.

### **Committee Spotlight: Securities Arbitration**

Margie Echevarria and Jenice Malecki presented on the Securities Arbitration Committee. It has not been an active committee for several years, but they are working to revive it. There are currently twenty two members on the committee, and they have held a couple of meetings so far and with five future meetings scheduled. An event on arbitrators using social media is scheduled for December 6, 2021, and they are working on other events.

### **Committee Spotlight: White Collar Litigation**

Evan Barr and Kate Cassidy presented on the White Collar Litigation Committee. They try to have speaker-driven meetings about once a month. There is meeting scheduled for December 9, 2021, during which a presentation is planned on deferred prosecution. Another meeting is scheduled for January, during which they will have a speaker present on insider trading. Other meetings are in the works.

### **Proposed Amendment to Rule 11 of the Commercial Division Rules**

Ralph Carter presented proposed amendments to Rule 11. The amendments are intended to reinforce ideas of proportionality in discovery, and will add an opportunity for the plaintiff or proponent of a counter claim to set forth the facts that are necessary to establish a cause of action. The Commercial Division Committee is recommending supporting the proposed amendments. A motion to approve the Commercial Division Committee's draft comments supporting the proposed amendments was made, seconded and approved unanimously.

### **Proposed Amendment to Rule 19-a of the Commercial Division Rules**

Brian Levin presented on a proposed amendment to Rule 19-a regarding the statement of material facts on a summary judgment motion. The amendment would require a direct paragraph by paragraph response to the movant's statement. The Commercial Division Committee is recommending supporting the proposed amendment. A motion to approve the Commercial Division Committee's draft comments supporting the proposed amendments was made, seconded and approved unanimously.

### **Proposed Amendment to Rule 4 of the Commercial Division Rules**

Catherine Santos presented on a proposed amendment to Rule 4. The amendment would change the rule by deleting all reference to faxes. The Commercial Division Committee is recommending supporting the proposed amendment. A motion to approve the Commercial Division Committee's draft comments supporting the proposed amendments was made, seconded and approved unanimously.

### **Update on Innovation Tournament 2022**

Mark Berman gave an update on the Innovation Tournament 2022, which will be the second annual tournament. It is scheduled to be held January 10-11, 2022. The theme is dispute resolution, and law students will design apps connected to that theme. JAMS and AAA are co-sponsors of event with the Section, as well as Hofstra Law School and School of Engineering. Please help promote this event and consider being a facilitator for the event. Reach out to Mark Berman with any questions.

### **Update on Judge Katzmann Memorial Essay Contest**

Dan Wiig gave update on Judge Katzmann essay contest. The Section received approval from NYSBA to proceed. Marketing materials are prepared and are being circulated. The event is planned for Spring 2022.

### **Update on Annual Meeting 2022 and An Evening at the Thurgood Marshall Courthouse**

Anne Sekel gave update on Annual Meeting 2022. We had been planning on proceeding in-person, but it is no longer going to be in-person. CLEs will now be presented remotely 1:30-5:00pm on January 19, 2022. Two will be two CLE panels – the first is on strategic planning and growth for litigators, the second is an overview/analysis of pandemic related litigation. We are also looking to incorporate some virtual networking. Because the luncheon will not be held, we are looking at options on how to present the Fuld Award in-person in the future rather than at the annual luncheon. The Thurgood Marshall event is going to be cancelled because not able to be held in-person.

### **Update on Spring Meeting 2022**

Ignatius Grande gave an update on the Spring Meeting 2022. It is scheduled to be held in-person on May 13-15, 2022 at the Statler Hotel in Ithaca, NY. He is working on putting CLE panels together.

### **Update on Membership**

Michael Cardello gave an update on Section membership. We are working on some long-term initiatives, which will be reported on early next year. But in the short term, the Section has lost members – NYSBA membership is down 22% from last year, and the Section is down 12%. This may result in the Section potentially losing a delegate to the House of Delegates if we don't bring in additional members to the Section. He encouraged each member of the EC to try to recruit at least one member to the Section. If someone joins today, they will get Section membership through the end of 2022.

### **Other Business**

Mark Berman reported on a very successful event that was held in Brooklyn that Joam Alisme hosted. Dan Wiig reminded everyone that there will be no EC meeting in January and encouraged everyone to attend the View from the Bench Series.

Meeting adjourned at 7:21 pm

**THE NEW YORK STATE BAR ASSOCIATION**  
**COMMERCIAL AND FEDERAL LITIGATION SECTION**  
**EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial and Federal Litigation Section held in accordance with the rules of the New York State Bar Association on December 7, 2021.

**Members Participating via Zoom**

Dan Wiig, Chair	Laurel Kretzing	Kevin Quaratino
Ignatius Grande, Chair Elect	Courtney Finerty-Stelzner	Stephen Brodsky
Anne Sekel, Vice Chair	Jonathan Fellows	Stephen Roberts
Helene Hechtkopf, Treasurer	Clara Flebus	Kan Nawaday
Jessica Moller, Secretary	Claire Gutekunst	Gina Sansone
Hon. James Wicks	Jay Safer	Michael Smith
Hon. Helen Freedman	Gregory Arenson	Jason Lichter
Hon. Frank Maas	Maryann Stallone	Neil Getnick
Ralph Carter	Joam Alisme	Michael Rivera
Hamutal Lieberman	Richard Dircks	Theresa Levine
Jonathan Lupkin	Paul Sarkozi	Hon. Marcia M. Henry*
Courtney Rockett	Marcella Jayne	Hon. Taryn Merkl*
Stephen Ginsberg	Michael Cardello	Hon. James Cho*
Jay Himes	Scott Malouf	Catherine Carl, NYSBA*

\*Guest Attendee

Section Chair, Dan Wiig, called the meeting to order at 6:01 p.m.

**Guest Speakers**

***Hon. James Wicks, Hon. James Cho, Hon. Taryn Merkl, and Hon. Marcia Henry, U.S. Magistrate Judges EDNY***

Hamutal Liberman moderated a discussion with the judges. Each of the judges gave a brief introduction, including giving a brief summary of each of their paths to the bench, and asked for feedback from the Executive Committee on their individual rules of practice. Various questions were posed to the judges, including, for example:

- *When should communications with the court be by phone as compared to via ECF? If there is an emergency situation and a phone call to chambers would be beneficial, it is fine to call chambers. Be careful of ex parte communications though. Some judges review ECF bounces in real time, others may review all of their ECF bounces together in a summary report that is delivered at 12:01 a.m. every day.*

- *Do you have any pet peeves with virtual appearances?* Not being dressed properly and using distracting virtual backgrounds.
- *Have you used remote technology to conduct hearings or a bench trial?* Status conferences may be telephonic or virtual. Judge Wicks has given the litigants the option of holding hearings virtually or in-person and generally litigants have preferred to appear in-person. Judge Cho is open to virtual hearings if there are not a lot of exhibits, but it may be more efficient to conduct the hearing in-person.
- *What is your approach to oral argument and what do you consider in determining whether to grant requests for oral argument?* Judge Cho has oral argument on every motion. He prefers it because he can rule from the bench, whereas if a oral argument is not held a written decision is required. The other judges agreed. Judge Merkl said she finds oral argument very useful to clarify the pertinent issues, and will often rule from the bench for efficiency. The judges also like to have newer attorneys and attorneys of all backgrounds participate in oral argument, but they are often not informed in advance who will argue.

### **Review of Minutes**

A motion to approve the minutes of the meeting held on October 20, 2021 was made, seconded and approved unanimously.

### **Update on Programming Committee and Activity**

Hamutal Lieberman gave an update on her activities with the Programming Committee. The intent is to present interesting and engaging programming, to help brainstorm and work out logistics, and to potentially connect committees for particular programming. Feel free to reach out to her with any questions or to discuss programming ideas.

### **Committee Spotlight: Federal Procedure**

Stephen Roberts and Stephen Ginsburg presented on the Federal Procedure Committee. The committee met about two weeks ago and have two reports/articles planned for the next 6-8 months. The first is a survey for judges on their likes and dislikes on virtual proceedings and virtual procedures, and where they see things going in regarding virtual/in-person proceedings going forward. The second is going to focus on the privilege between attorneys and experts, which is currently in flux.

### **Committee Spotlight: Federal Judiciary**

Jay Safer and Stephen Brodsky presented on the Federal Judiciary Committee. They are planning a CLE program with Judge Richard Berman, SDNY, about helping criminal defendants re-enter society for Fall 2022. They are also holding a meeting on January 20, 2022 at 2:00 p.m. to solicit interest from committee members on their topics and willingness to present CLEs.

### **Committee Spotlight: Electronic Discovery**

Gina Sansone and Jason Lichter presented on the Electronic Discovery Committee. They took over as co-chairs in March and have tried to reinvigorate the committee. They have successfully

held committee meetings every six to eight weeks. About half of the committee's 50 members are active participants. The committee has worked on two comments, both in collaboration with other Section committees. The committee is currently planning a webinar for late-January 2022 on emerging technologies. Also hoping to roll-out an E-Discovery 101 series that focuses on the basics of e-discovery.

### **Update on Mentorship Program and Appointment of Yi-Hsin Wu as Co-Chair**

Maryann Stallone reported that there have been a number of mentees and mentors who have signed-up. They are planning to pair mentees with mentors in January.

Dan Wiig reported that Maverick James stepped down as co-chair of the Mentoring Committee, and nominates Yi-Hsin Wu as co-chair retroactively effective to June 1, 2021. A motion to confirm that appointment was made, seconded and approved unanimously.

### **Update on Publications**

Marcella Jayne updated on the publications team. They are looking to match more experienced litigators with less experienced litigators to work together on articles. They have a lot of attorneys who are interested in writing articles who don't have a topic for an article, and other attorneys who have topic ideas but don't have the capacity to do the legwork that is needed for writing the article.

### **Comment on Proposed Amendment to Rules 15, 72 and 87 of the Federal Rules of Civil Procedure**

Stephen Roberts and Stephen Ginsburg presented on the Federal Procedure Committee's draft comment on the proposed amendment to Rules 15, 72 and 87 of the Federal Rules of Civil Procedure. Two of the proposed amendments are fairly straightforward -- the proposed amendment to Rule 15 is just clarifying the rule, and the proposed amendment to Rule 72 relates service by ECF of a Magistrate Judge's report and recommendation. The more complicated proposed amendment is the proposed change to Rule 87 relating to the empowering the Judicial Conference to declare a Civil Rules Emergency. As currently drafted, the proposed amendment to Rule 87 does not provide criteria for when a "rules emergency" can be declared. The committee believes there should be explicit criteria under which the Judicial Conference may determine that a rules emergency exists. A motion to approve the draft comment was moved, seconded and approved unanimously with one abstention (Judge Wicks).

### **Comment from Civil Prosecution Committee on Senate Bill 4730 / Assembly Bill 2543**

Courtney Finerty-Stelzner presented on the Civil Prosecutions Committee's draft comment on S4730/A2543 regarding the New York State False Claims Act. The committee strongly supports the bill. It is intended to close a loophole that currently exists in the law, which enables individuals/corporations who knowingly fail to file tax returns evade liability. A motion to approve the draft comment was made, seconded and approved unanimously with one abstention (Judge Wicks).

### **Annual Meeting 2022 Update**

Anne Sekel reported that the Fuld Award is going to be deferred until it is able to present the award in-person. The Section's business meeting will be held on the evening of January 18, 2022, and there will be two CLEs presented on January 19, 2022. The first CLE will be on succession planning for litigators. The second CLE will be on pandemic litigation in New York. Immediately following the second CLE, there will be a short virtual networking.

### **Spring Meeting 2022 Update**

Ignatius Grande reported that the Spring Meeting is still scheduled to be held in-person at the Statler Hotel in Ithaca on May 13-15, 2022.

The meeting adjourned at 7:38 p.m.