

To: Eileen D. Millet,
Counsel, Office of Court Administration

From: Commercial and Federal Litigation Section of the New York State Bar Association

Date: March 30, 2020

Re: Proposal to Revise Commercial Division Rule 31

The Commercial and Federal Litigation Section of the New York State Bar Association (“Section”) is pleased to submit these comments in response to the Memorandum of Eileen D. Millet, Counsel, Office of Court Administration, dated March 5, 2020, (“Memorandum”), which propose revisions to Rule 31 (“Rule 31”) of the Rules of the Commercial Division (the “Rules”).

The propose revisions include: (1) requiring pretrial submissions in Microsoft Word instead of WordPerfect format, (2) changing page limits on memoranda to word limits in order to be consistent with Commercial Division Rule 17, and 3) setting forth procedures for submission of pre-trial information in paperless parts.

The current version of Rule 31 refers to an indexed binder of trial exhibits that parties shall submit at a pre-trial conference. The proposed revised Rule 31 takes out many of the references to the exhibit binder and includes a new section (d) to reflect that many Commercial Division justices operate paperless parts and may prohibit paper submissions to the Court. The formal proposal by the Commercial Division Advisory Committee (“CDAC”) is attached as Exhibit A.

I. EXECUTIVE SUMMARY

The CDAC’s proposal seeks to revise Rule 31 entitled, *Pre-Trial Memoranda, Trial Exhibits and Requests for Jury Instructions*, to address that:

- a) The Supreme Court of the State of New York is/has converted to Word software from WordPerfect software;

- b) The limit on memoranda in Rule 17 of the Commercial Division Rules was converted from a page limit to a word number limit and Rule 31 should be consistent; and
- c) Many Commercial Division justices are now entirely paperless, and specifically prohibit paper copies of documents, pleadings, and other submissions to the Court. Revised Rule 31 now sets forth a procedure for submission of pre-trial information in paperless commercial division parts.

II. PROPOSED NEW RULE

Rule 31. Pre-Trial Memoranda, Trial Exhibits and Requests for Jury Instructions

- (a) If requested by the Court, counsel shall submit pre-trial memoranda at such time as the court may set. Counsel shall comply with CPLR 2103(e). A single memorandum of no more than 7,000 words shall be submitted by each side. No memoranda in response shall be submitted.
- (b) At the pre-trial conference or at such other time as the court may set, counsel shall submit a copy of trial exhibits for each attorney's and the court's use. Unless otherwise directed in the Court's individual part rules, plaintiff's exhibits shall be tabbed numerically, and defendant's exhibits shall be tabbed alphabetically.
- (c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions--Civil, a reference to the PJI number will suffice.
- (d) In cases brought before paperless commercial parts, counsel shall submit the pre-trial memoranda, copy of trial exhibits and requests to charge on a USB flash drive. In all other commercial parts, counsel shall submit the pre-trial memoranda and requests to charge in a Word document, 12-point type, and submit the copy of trial exhibits in an indexed binder or notebook.

III. COMMENTS

The Section views favorably the suggestions made by the CDAC and endorses its proposal to revise Rule 31. Each proposed change reflects an acknowledgment that the courts of the Commercial Division need to adapt and, in fact, are adapting, to changes in technology in the courtroom. The Rules need to be kept current and reflect this new reality. The revisions to Rule 31 seek to accomplish the task



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

MEMORANDUM

EILEEN D. MILLETT
COUNSEL

March 5, 2020

To: All Interested Persons

From: Eileen D. Millett

Re: Request for Public Comment on a Proposed Revision of Rule 31 of the Rules of the Commercial Division

The Administrative Board of the Courts is seeking public comment on a proposal by the Commercial Division Advisory Council to revise Rule 31 of the Rules of the Commercial Division (22 NYCRR § 202.70(g), Rule 31) (Exhibit A). The revisions include: 1) requiring pre-trial submissions in Microsoft Word instead of WordPerfect format, 2) changing page limits on memoranda to word limits in order to be consistent with Rule 17, and 3) setting forth procedures for submission of pre-trial information in paperless parts. Exhibit B is attached as a redline of the proposed changes.

The current version of Rule 31 refers to an indexed binder of trial exhibits that parties shall submit at a pre-trial conference. The proposed revised Rule 31 takes out many of the references to the exhibit binder and includes a new section (d) to reflect that many Commercial Division justices operate paperless parts and may prohibit paper submissions to the Court.

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: Eileen Millett, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than April 6, 2020.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

MEMORANDUM

TO: COMMERCIAL DIVISION ADVISORY COUNCIL
FROM: TECHNOLOGY SUBCOMMITTEE
SUBJECT: PROPOSED REVISIONS TO COMMERCIAL DIVISION RULE 31
DATE: JANUARY 24, 2020

We attach a proposed revised Rule 31 of the Rules of the Commercial Division (Pre-Trial Memoranda, Trial Exhibits and Requests for Jury Instructions). Proposed Rule 31 has been revised to: require pre-trial submissions in Word format; set forth pre-trial submission rules for paperless commercial division parts; and convert pre-trial memoranda page limits to word count limits.

These revisions reflect that:

- a) The Supreme Court of the State of New York is/has converted to Word software from WordPerfect software;
- b) The limit on memoranda in Rule 17 of the Commercial Division Rules was converted from a page limit to a word number limit. Rule 31 should be consistent; and
- c) Many Commercial Division justices are now entirely paperless, and specifically prohibit paper copies of documents, pleadings, and other submissions to the Court. Revised Rule 31 now sets forth a procedure for submission of pre-trial information in paperless commercial division parts.

For comparison, we have also attached a copy of unrevised Rule 31.

Current Rule 31

Rule 31. Pre-Trial Memoranda, Exhibit Book and Requests for Jury Instructions

(a) Counsel shall submit pre-trial memoranda at the pre-trial conference, or such other time as the court may set. Counsel shall comply with CPLR 2103(e). A single memorandum no longer than 25 pages shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference or at such other time as the court may set, counsel shall submit an indexed binder or notebook of trial exhibits for the court's use. A copy for each attorney on trial and the originals in a similar binder or notebook for the witnesses shall be prepared and submitted. Plaintiff's exhibits shall be numerically tabbed and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions--Civil, a reference to the PJI number will suffice. Submissions should be by hard copy and disk or e-mail attachment in WordPerfect 12 format, as directed by the court.

Proposed Revised Rule 31

Rule 31. Pre-Trial Memoranda, Trial Exhibits and Requests for Jury Instructions

- (a) If requested by the Court, counsel shall submit pre-trial memoranda at such time as the court may set. Counsel shall comply with CPLR 2103(e). A single memorandum of no more than 7,000 words shall be submitted by each side. No memoranda in response shall be submitted.
- (b) At the pre-trial conference or at such other time as the court may set, counsel shall submit a copy of trial exhibits for each attorney's and the court's use. Unless otherwise directed in the Court's individual part rules, plaintiff's exhibits shall be tabbed numerically, and defendant's exhibits shall be tabbed alphabetically.
- (c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions--Civil, a reference to the PJI number will suffice.
- (d) In cases brought before paperless commercial parts, counsel shall submit the pre-trial memoranda, copy of trial exhibits and requests to charge on a USB flash drive. In all other commercial parts, counsel shall submit the pre-trial memoranda and requests to charge in a Word document, 12-point type, and submit the copy of trial exhibits in an indexed binder or notebook.

EXHIBIT B

Rule 31

Rule 31. Pre-Trial Memoranda, ~~Exhibit Book~~ Trial Exhibits and Requests for Jury Instructions

(a) ~~Counsel~~ If requested by the Court, counsel shall submit pre-trial memoranda at the ~~pre-trial conference, or such other time as the court may set.~~ Counsel shall comply with CPLR 2103(e). A single memorandum ~~of no longer~~ more than 25 pages/7,000 words shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference or at such other time as the court may set, counsel shall ~~submit an indexed binder or notebook~~ a copy of trial exhibits for each attorney's and the court's use. A copy for each attorney ~~on trial and the originals~~ Unless otherwise directed in a similar binder or notebook for the witnesses shall be prepared and submitted. ~~Plaintiff's~~ the Court's individual part rules, plaintiff's exhibits shall be tabbed numerically ~~tabbed,~~ and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions--Civil, a reference to the PJI number will suffice. ~~Submissions should be by hard copy and disk or e-mail attachment in WordPerfect 12 format, as directed by the court.~~

(d) In cases brought before paperless commercial parts, counsel shall submit the pre-trial memoranda, copy of trial exhibits and requests to charge on a USB flash drive. In all other commercial parts, counsel shall submit the pre-trial memoranda and requests to charge in a Word document, 12-point type, and submit the copy of trial exhibits in an indexed binder or notebook.