

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 30, 2019.

Members Participating in Person

Robert Holtzman, Chair
Natasha Shishov, Secretary
Hon. Melissa Crane
Paul D. Sarkozi
Gregory K. Arenson
Jay Safer
Gerald Hathaway
Jeremy R. Feinberg
James Wicks
Michael Cryan
Christie McGuinness
Alan Brody
Douglas Tabachnik
Kevin J. Quaratino
Hon. Andrea Masley
Hon. Helen Freedman
Jay Himes
Hon. Jennifer Schecter**

Members Participating by Telephone

Laurel Kretzing, Chair-Elect
Jonathan Fellows, Vice-Chair
Matthew Maron
James Potter
Clair P. Gutekunst
Courtney R. Rockett
Alan Mansfield

***Indicates Guest Speaker for the meeting*

Section Chair, Robert Holtzman, called the meeting to order at 6:05 pm and welcomed the Honorable Jennifer Schecter, Justice of the Supreme Court, Commercial Division, New York County, as guest speaker at the meeting.

Guest Speaker: Honorable Jennifer Schecter (Justice of the Supreme Court, Commercial Division, New York County)

Justice Schecter discussed her practices within her part. She explained that she prepares a lot before taking the bench and that her decision is usually clear before oral argument. She further discussed her desire to give attorneys an opportunity to argue cases and encourages junior attorneys to argue cases. To further

this goal, she permits multiple attorneys to argue in the same case. Since her decisions are usually made based on the motion papers and the applicable law, she encouraged practitioners to send a junior attorney to argue so they gain experience.

Tribute to Justice Ira Gammerman

Douglas Tabachnik spoke about the career of Justice Ira Gammerman, who passed away earlier this week. Judge Gammerman loved what he did. He was a mentor to his colleagues and the lawyers.

Annual Meeting Review

Jonathon Fellows gave a review of the annual meeting. Two great CLE programs were presented, and the lunch was a success. Second Circuit Judge Richard Sullivan gave a wonderful speech in accepting his award.

Resolving E-Discovery Disputes Efficiently in Arbitration and in Court CLE Program Review

The program was held on January 29, 2019. This was the second program of its kind, with last year's program being held at JAMS in April 2018. This year the program was held at Kramer Levin with 45 people attending, including neutrals, practitioners and law students. JAMS co-sponsored and Mark Berman and Judge Frank Mass were recognized for their hard work in putting this program together.

Evening at Thurgood Marshall Courthouse Review

Laurel Kretzing gave a review of this program, which was co-sponsored by the Young Lawyers Section. She thanked to the Second Circuit for hosting the event during the government shutdown.

Spring Meeting Update

The Spring Meeting will be held on May 3rd through 5th, 2019 at the Equinox in Vermont. The programs are being coordinated, which include a program on arbitration and trials, featuring Judge Timothy Driscoll and Jonathon Fellows, which will be themed after the My Cousin Vinny movie. There will also be a business development panel presented by the Women's Task Force and an Ethics program.

Other Business

Upcoming programs include: 1) Smooth Moves, scheduled for May 23, 2019 from 5pm to 8pm at Lincoln Center. The CLE program will deal with diversity among arbitration panels. Preet Bharara will be receiving the Honorable George Bundy Smith Award, 2) March 12, 2019 CLE program run by Women's Initiative Taskforce, 3) Ethics and Civil Program will be held in April 2019.

Meeting was adjourned at 7:14pm.

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
March 21, 2019

Members Participating in Person

Robert Holtzman, Chair
Laurel Kretzing, Chair-Elect
Anne Sekel, Treasurer
Natasha Shishov, Secretary
Hon. Melissa Crane**
Hon. Nancy Bannon**
Jeremy R. Feinberg
Hon. Karla Moskowitz
Daniel Wiig
Hon. Helen Freedman
Helene Hechtopf
Douglas Tabachnik
Vincent J. Syracuse
Kathy Kass
Deborah Edelman
Richard J. Dircks
Jay L. Himes

Members Participating by Telephone

Jonathan Fellows, Vice-Chair
Paul D. Sarkozi
Laura Sedlak
Rachel Morgenstern
Alan Mansfield
Carla Miller
Michael Fox
Lauren Wachtler

***Indicates Guest Speaker for the meeting*

Section Chair, Robert Holtzman, called the meeting to order at 6:03 pm and welcomed the Honorable Melissa Crane and Honorable Nancy Bannon, Justices of Supreme Court, New York County, as guest speakers at the meeting.

Guest Speaker: Honorable Melissa Crane and Nancy Bannon (Justices of the Supreme Court, New York County)

There are currently four Judges in the New York County Supreme Court that preside over non-Commercial Division commercial cases. By comparison, out of the last 5,983 commercial cases commenced in New York County, 1,870 were in the Commercial Division and 4,113 were not. Justices Bannon and Crane both incorporate some of the Commercial Division rules and practices into their management of commercial cases.

The Judges discussed the practices within each of their parts and addressed the statistics and nuances of dealing with non-Commercial Division commercial cases. For instance, Justice Crane hears oral argument on every motion and tries to rule from the bench. She also incorporates technology by communicating with parties via e-mail. Justice Bannon has a motion day. She assumes everyone want oral argument unless they say otherwise.

Next addressing tips for lawyers who appear in their Courtroom, the Judges suggested that litigants generally follow the Commercial Division rules and try to discuss discovery issues at conferences rather than filing a motion.

Review of Minutes

December 19, 2018 and January 30, 2019 minutes were unanimously approved.

Appointment of New Executive Committee Members

Robert Holtzman moved to appoint two new Executive Committee Members at Large: Kevin Quarantino, who will facilitate and work on enrollment of young attorneys in ComFed, and Steven A. Hochman. The motion was unanimously approved.

Appointment of New Committee Chair

Robert Holtzman moved to appoint Orna Artal as Co-Chair of the Publications Committee and Editor of the Litigator, which motion was unanimously approved. Dan Wiig, who will become Vice-Chair of the Section on June 1, 2019 is stepping down from these positions.

Review of Taking the Lead 2019: Winning Strategies and Techniques Trial Practice CLE

Lauren Wachtler reported on this program, which took place on March 11, 2019 at the Southern District of New York. This was the third annual program wherein less experienced female attorneys conducted a “Mock Trial” with more experienced women lawyers on the opposing side. Four judges presided over the Mock Trial, two of one which were Federal and two of which were State Judges. Robert Holtzman stated that if anyone is interested in running the program next year to reach out to Laurel Kretzing, the current Section Vice-Chair and Chair for the 2019 through 2020 bar year.

Spring Meeting Update

The Section's Spring Meeting will be held May 3rd through May 5th at the Equinox in Manchester, Vermont. Chief Judge Colleen McMahon of the Southern District will be the honoree. Panels are set and scheduled, and will include a commercial arbitration panel; a Women's Initiative program on working with men to advance women in the profession, which will focus on the business aspect of litigation; a trial techniques program; and social media update CLE. If any member has ideas for vendor sponsors, please reach out to Laurel Kretzing.

Smooth Moved Program Update

Carla Miller reported on this upcoming program on May 23, 2019 from 5-8pm at Lincoln Center. The George Bundy Smith Pioneer Award honorees will be Preet Bharara and Joon Kim. The CLE program will deal with increasing diversity in the alternative dispute resolution sector. A letter was sent to firms and other NYSBA Sections to encourage sponsorship. If any firm wishes to be a sponsor, please reach out to Carla Miller.

Other Business

Upcoming program were discussed:

Ethics and civility program will be held across five venues on April 9th and April 12th.

On April 30, 2019 there will be a program at 60 Centre Street entitled "The Electronic Courtroom comes to 60 Centre Street: Using Integrated Courtroom Technology in the Commercial Division."

Bench Bar Forums scheduled throughout May and June. The NYC Bench/Bar Forum will be scheduled for the end of May/beginning of June.

Meeting Adjourned at 7:18.

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, 2019.

Members Participating in Person

Robert Holtzman, Chair
Laurel Kretzing, Chair-Elect
Anne Sekel, Treasure
Natasha Shishov, Secretary
Orna Artal
Mark Berman
Louis DiLorenzo
Ignatius Grande
Jay L. Himes
Hon. Frank Maas
Hon. Karla Moskowitz
James Wicks
Carla M. Miller
Kevin J. Quaratino

Members Participating by Telephone

Jonathan Fellows, Vice-Chair
Douglas T. Tabachnik
Michael Fox
Rachel Morgenstern
Courtney Rockett
Laura Sedlack
Jay Safer

Section Chair, Robert Holtzman, called the meeting to order at 6:05 pm.

Review of Minutes

March 21, 2019 minutes were unanimously approved.

Treasurer's Report – Year End 2018

Anne Sekel presented the treasurers report for 2018. Income has decreased over the last bar year by 5%, due to a small dip in dues and sponsorship. There was an increase in income generated from meetings. Expenses have also decreased by 3%. The overall costs and income were less

than 2% off from the proposed budget (under budget by \$4,500). The Section also has a surplus of approximately \$159,000.

Spring Meeting Update

Laurel Kretzing presented an update on the Section's Spring Meeting, which will be held May 3rd through May 5th at the Equinox in Manchester, Vermont. Chief Judge of the Southern District, Honorable Colleen McMahon, will be the honoree of the Robert L. Haig award, on Saturday May 4th. Panels are set and scheduled, which will include a commercial arbitration panel, a Women's Task Force program: Working with Men to Advance Women in the Profession, a trial techniques program from "My Cousin Vinny", and a social media update CLE, geared towards the bench and the bar.

Review of 2019 Social Media Legal Ethics Guidelines

Ignatius Grande presented the report on the 2019 Social Media Legal Ethics Guidelines (Social Media and New Communications Technologies Committee created the guidelines). The last time it was updated was in 2017. Areas where there have been changes: Attorney competence, attorney advertising, online research of jurors and contacting judges.

Mark Berman commented that these guidelines are the leading guidelines for social media ethics. The updated guidelines will go to the NYSBA House of Delegates in June as an informational report. There will be a CLE on 6/17 regarding the guidelines, with the goal of getting a younger audience. The CLE can be attended virtually and will be taped.

One change was suggested to footnote 149, to indicate that the People v Newlander matter is currently pending before the Court of Appeals. With this change, the report was unanimously approved.

Smooth Moved Program Update

Carla Miller reported on this upcoming program, scheduled for May 23, 2019 from 5-8pm at Lincoln Center. There will be a 5pm CLE followed by an awards presentation. The George Bundy Smith Pioneer Award honorees will be former US Attorneys for the SDNY, Joon Kim and Preet Bharara. The CLE program, which will offer one credit in diversity and inclusion, will deal with increasing diversity in the alternative dispute resolution sector. A letter was sent to firms and other NYSBA Sections to encourage sponsorship. If any firm wishes to be a sponsor, please reach out to Carla Miller. Two former 1L Commercial Division Fellows will be featured to highlight the success of the program.

User-Friendly Innovative Courtroom Technology CLE Program

April 30, 2019, in Judge Scarpulla's courtroom from 2-4pm. The program will feature one of the most technologically advanced courtrooms in the State. There will be a presentation of how the

technology works, then refreshments and a networking portion, followed by a “hands on” portion, allowing attendees to access the technology.

Upcoming Bench-Bar Forums

The following bench/bar forums are scheduled and/or are being planned: 1) May 14th in Kings County, Justice Ash and Knipel will preside over diversity and inclusion program in Brooklyn Law School; 2) May 23rd Albany program; 3) June 5th there will be a NYC Commercial Division Bench/Bar Forum; 4) June 14 Westchester Breakfast; and 5) additional programs are being coordinated for Queens and Nassau county.

Ethics and Civility Programs Update

This was the 20th year of the program. Robert Holtzman presented Vincent Syracuse with a plaque at the last Ethics program to celebrate its success. The program has educated more than 6,000 individuals over the years.

Other Business

There will be a program co-sponsored with the Dispute Resolution Section on June 11th at 6pm concerning international arbitration.

Meeting Adjourned at 6:42.

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 26, 2019.

Members Participating in Person

Laurel Kretzing, Chair
Natasha Shishov, Secretary
Daniel Wiig, Vice-Chair
Mark Berman
Robert Holtzman
Hon. Helen Freedman
Gregory Arenson
Viktoriya Liberchuk
Stephen T. Roberts
Mark Davis
Kevin J. Quaratino
Hon. Karla Moskowitz
Stephen Hochman
Paul Sarkozi
Ignatius Grande
Michael S. Oberman
Douglas T. Tabachnik
Jay Himes

Members Participating by Telephone

Jay Safer
Richard Friedman
Clair Gutenkunst
Michael Fox
Rachel Morgenstern

Section Chair, Laurel Kretzing, called the meeting to order at 6:05 pm.

Welcome Remarks

Laurel Kretzing welcomed the EC to the first meeting of the 2019-2020 bar year.

Review of April 29, 2019 Meeting Minutes (Tab 1)

April 29, 2019 minutes were unanimously approved.

Creation of Young Lawyers Committee

Laurel Kretzing suggested the creation of a committee where young commercial litigators will have a say in structuring the events and programming. Creation of the ComFed Young Lawyers Committee and the appointment of Kevin Quarantino and Viktoriya Liberchuk, as co-chairs of the committee, was unanimously approved.

Appointment of new Committee Chairs

The appointments of Scott Malouf, as co-chair of the Social Media Committee, and Stephen L. Brodsky, as co-chair of the Federal Judiciary committee, were unanimously approved.

Spring Meeting Review

Laurel Kretzing presented a report on the 2019 Spring Meeting. Four panels/programs were put on at the meeting, which discussed the topics of arbitration, the women's initiative, ethics, through example lead by "My Cousin Vinny", and a social media update.

Report from the NYSBA House of Delegates

Robert Holtzman reported on the June NYSBA House of Delegates, whereat Hank Greenberg was installed as President of the NYSBA for the 2019-2020 bar year. During his address, Mr. Greenberg discussed the building of a Virtual Bar Center Bar and plans to upgrade NYSBA's technology, which will include developments in five areas: (1) the NYSBA website; (2) Content; (3) Products such as CLE programming and publications; (4) the Communities portal; and (5) a concentration on global membership, which would expand the membership and participation of non-NY resident, but NY admitted, attorneys to participate in the bar.

Laurel received an e-mail from the Section Caucus, requesting that ComFed complete a questionnaire concerning the redesign of the NYSBA website. Any member interested in providing input should e-mail Laurel.

Also announced at the HOD was the formation of the committee on the association's structure, which will examine how to best restructure the association to benefit current members and attract new members, and the report by the committee on immigration, which proposed to adopt, as NYSBA policy, the statutory right to counsel in immigration proceedings.

The Mental Health task force also presented to the Section Caucus. They are looking for input. Anyone who is interested should reach out to Robert Holtzman.

This year, there will be a NYSBA Gala dinner (1/30/20) during the Annual Meeting, instead of a president's dinner, which will be held at the Museum of Natural History.

Report on Smooth Moves Program

Laurel Kretzing reported on this program, whereat Preet Bharara and Joon Kim were the recipients of the George Bundy Smith Pioneer award. The CLE presentation, “The Color of Neutrality: Increasing Diversity in Alternative Dispute Resolution”, was a success.

Mark Berman noted that the event is great, but it fails as a membership tool. ComFed must do better in converting those that are in attendance to become members. Suggestions included a post-event outreach and using the check-in list to contact people after events and offer reduced membership.

NYSBA Reception with Federal Law Clerks Update

Mark Berman provided an update of this event, which will be held on July 10th. The event is an informal cocktail party for the clerks that are ending their federal clerkships. This is the second year we are participating in this NYSBA event. Ambassadors from NYSBA are there to speak to the clerks. An e-mail will be sent out to the EC seeking ambassadors.

Bench Bar Forum Programs Update and Review

Mark Berman provided an update on the various bench/bar forums across the State, which included programs in NY County (170 attendees), breakfast in Westchester (65 attendees) and Albany County (27 attendees).

Mark Berman also discussed the successful Technological Courtroom program in Justice Scarpulla’s courtroom. A reprise of that program is being scheduled to take place in Queens County in the Fall and in Nassau County when Justice Driscoll has the technology installed in his courtroom.

Young Lawyers Mixer Update

Rachel Morgenstern provided an update on the upcoming young lawyer’s mixer, which is being co-sponsored by ComFed and the Women in the Law Committee.

Other Business

The Shira A. Scheindlin Excellence in the Courtroom event is scheduled for November 13, 2019 in the ceremonial courtroom of the SDNY. Application for the Kay Scholarship will be uploaded to the ComFed website.

The ComFed EC meetings going forward will be held at Foley & Lardner LLP.

Laurel Kretzing requested that committee chairs email her and Natasha Shishov with the most recent contact information and plans for the upcoming bar year.

Meeting Adjourned at 7:20.

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 25, 2019.

Members Participating in Person

Laurel Kretzing, Chair

Jonathan Fellows, Chair-Elect

Natasha Shishov, Secretary

Anne Sekel, Treasurer

Robert Holtzman

Hon. Stephen Crane

Richard J. Dircks

Helene Hechtkopf

Stephen A. Hochman

Hon. Linda Jamieson**

Kevin Quarantino

Courtney Rockett

Maryann Stallone

Hon. Gretchen Walsh**

Travis Mock

Jeremy Vest

Marcella Jayne**

Jim Wicks

Matthew R. Maron

Members Participating by Telephone

Hon. Helen Freedman

Hon. Karla Moskowitz

Akan J. Brody

Michael Fox

Rachel Morgenstern

Stephen T. Roberts

Claire Gutekunst

Douglas T. Tabachnik

Michael S. Cryan

Viktoriya Liberchuk

Suzanne Galbato

Ignatius Grande

**Indicates guest attendees and speakers at the meeting

Section Chair, Laurel Kretzing, called the meeting to order at 6:03 pm.

Guest Speakers:

Hon. Linda Jamieson and Hon. Gretchen Walsh

Westchester County Supreme Court, Commercial Division

The Judges discussed the new presumptive ADR program that will be implemented in civil cases in Westchester Supreme Court, which will impact cases relating, but not limited to, corporate dissolutions, derivative actions, actions concerning closely held entities, employment agreements, commercial real estates (except Yellowstone injunctions), and construction litigation. A committee has been formed and draft rules for the Commercial Division in the 9th Judicial District, concerning this required mediation program. The rules will include protocols for mediation disclosure and set forth temporal guidelines, such as requiring completion of mediation within 45 days from the Order of Reference. The underlying litigation will not be stayed pending mediation. The program will contemplate an opt-out provision, which will require a showing of good cause and an imbalance of power.

The Judges also discussed their observation that there is a big difference in the quality of lawyering between commercial case and other cases. Both Judges have smart boards in their courtrooms, which make a difference for the attorneys that appear before them. They encourage attorneys to come in and test out the technology. When addressing the question of how the Bar can do better, both Judges responded that they would like to see more women appear before them and encourage firms to send female attorneys to court.

Review of June 26, 2019 Meeting Minutes (Tab 1)

With one change to the minutes (the addition of Jonathan Fellows to the attendance list) the minutes were unanimously approved.

Draft Report on Remote Conferencing in the Commercial Division

Travis Mock presented the report on the proposed changes to Rule 1 of the Commercial Division rules, which would permit, but not mandate, parties and attorneys to attend conferences remotely. An amendment to change the word “will” to “may” in the Rule and add a third paragraph to the Section recommendation portion of the Report was voted on and approved, with one abstention. After the amendment, the Report was unanimously adopted, with one abstention.

Shira A. Scheindlin Award for Excellence in the Courtroom Update

This annual event is scheduled for November 13, 2019 in the Ceremonial Courtroom of the Southern District of New York. Applications for the Kaye Scholarship have been distributed and the deadline to respond is October 16, 2019. The EC is encouraged to distribute the application to associates within their firms.

Annual Meeting Update

This year’s annual meeting is scheduled for January 29, 2020. Two panels have been lined up including panels on “Emerging Technologies in Litigation” and “Developments in Cannabis Litigation”. The EC is encouraged to purchase a table for the Section’s Annual Luncheon.

Report on the Kings Country Bench/Bar Forum

Barry Wadler presented on this program, which concentrated on diversity and how to improve your appearance in court by understanding implicit bias. CLE credit was offered. There were 30 people in attendance. Justice Ash and Knipel presented and light refreshments were served after the fact.

Commercial Litigation Academy Update

The Commercial Litigation Academy is scheduled for November 14-15, 2019. Rachel Mortgenstern will reach out to the Young Lawyers Section concerning co-sponsorship.

The Electronic Courtroom Program Update

This program, which follows the same program that was presented in New York County, is tentatively scheduled to take place in the Queens County Supreme Court on October 22, 2019.

Other Business

Justice Leonard B. Austin is updating the Pattern Jury Instructions. If anyone is interested in helping with the update, please reach out to Laurel.

The next EC meeting is scheduled for October 23, 2019. Justice Joel Cohen from the New York County Supreme Court, Commercial Division, will be our guest. A lot of reports will be presented. All members of the EC are encouraged to attend in person.

Kevin Quaratino discussed the program being prepared by the Young Lawyers Committee (scheduled for February 5, 2020), which will concentrate on tips for how young attorneys can navigate the work place. The goal of the program is to bring young attorneys and decision makers together to discuss topics specifically relevant to young attorneys.

Meeting Adjourned at 7:25.

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Members Participating in Person

Laurel Kretzing, Chair
Jonathan Fellows, Chair-Elect
Natasha Shishov, Secretary
Anne Sekel, Treasurer
Daniel Wiig, Vice-Chair
Jay L. Himes
Stephen A. Hochman
Matthew Maron
Hon. Frank Maas
Kevin Quarantino
Vincent Syracuse
Teresa Bennett
Paul Sarkozi
Hon. Joel M. Cohen**

Members Participating by Telephone

Alan J. Brody
Stephen T. Roberts
Alan Mansfield
Hon. Karla Moskowitz
Mark Berman
Douglas T. Tabachnik

**Indicates guest attendees and speakers at the meeting

Section Chair, Laurel Kretzing, called the meeting to order at 6:10 pm.

Guest Speakers:

Honorable Joel M. Cohen

New York County Supreme Court, Commercial Division

Justice Cohen provided insight into his chamber's practices. He first commented on the quality of people and attorneys before him and praised the Section for being involved in the Commercial Division process. His chambers, which operates as a paperless part, has a universal e-mail address. When an e-mail is sent to one person in chambers, it goes to everyone in chambers.

With respect to motion practice, Justice Cohen explained that motions get divided into three categories: 1) a decision can be written without a hearing; 2) the motion needs a substantial

written decision; or 3) the decision can go either way and can be decided either on the papers or from the bench. His clerks write bench memos and draft opinions for the last category of cases. When he receives a motion, his practice is to read the reply brief first.

With respect to oral argument, the Judge encouraged the Section to send young attorneys to deal with small motions or smaller issues. His part rules will soon include this language to make it easier for practitioners to explain to clients why sending a younger lawyer would be beneficial. During oral argument, the Judge will typically ask a lot of questions and emphasized that just because he asks hard questions does not mean that he has already made up his mind. He encouraged practitioners not to avoid the hard questions.

The Judge then addressed the importance of discovery conferences in his part. In instances when the parties have a dispute before one of his law clerks, they have the option, pursuant to Rule 14-a of the Commercial Division Rules, to write up the decision made by the law clerk after the conference, which would be so-ordered by the Judge. One of his main pet peeves is the lack of professional courtesy. He explained that his part will always recognize the attorney who is a “problem solver” when dealing with discovery disputes.

The Judge also addressed the procedure for filing cases under seal and explained that the Commercial Division Judges are trying to come up with a common system, where everything can be done electronically. Finally, the Judge explained that the proposed “attorneys eyes only” provision, which could be included in all confidentiality stipulations, is an important change and explained how most big cases have this requirement anyway.

Review of September 25, 2019 Meeting Minutes (Tab 1)

The minutes were unanimously approved.

Draft Report on the Proposal to Repeal Commercial Division Rule 23, Relating to the “60-Day Rule” (Tab 2)

Teresa Bennett presented the report, which recommends that Rule 23 of the Commercial Division Rules, also known as the “60 day rule”, be repealed. A similar rule was repealed for cases filed in Supreme Court 13 years ago. An amendment was suggested to include an article published by Vince Syracuse on the topic be included with the report. The report, with annexed exhibit, was unanimously approved.

Draft Report on Proposed Amendment of Commercial Division Rule 6 Relating to Font Usage in Papers Filed with the Court (Tab 3)

Teresa Bennett presented the report, which recommends that font 12 and Serif typeface font be used in both footnotes and the text of all documents submitted to the Court. There was a proposed amendment to list suggestions of Serif typeface in the report. The report, with the amendment, was unanimously approved.

Draft Report on Proposed Amendment of the Commercial Division Standard Form Confidentiality Order (Tab 4 & Tab 5)

Teresa Bennett presented the report. The current proposed confidentiality stipulation does not distinguish between confidentiality. A second option would be included that permits attorneys to include standard “attorneys eyes only” language. The current rule requires court approval. These types of provisions are more standard in commercial cases. Where there is a difference of opinion between attorneys, the proposed rule would permit the party seeking the language to make an application to the court. The report was approved with thirteen members voting in favor, one member voting against and one abstention.

Shira A. Scheindlin Award for Excellence in the Courtroom Update

This annual event is scheduled for November 13, 2019 in the Ceremonial Courtroom of the Southern District of New York. The Honorees will be Sharon Porcellio of Bond Schoeneck King and Sharon Nelles of Sullivan & Cromwell LLP. There will be five Kaye Scholar recipients and the keynote speaker will be NYSBA President, Hank Greenberg.

Annual Meeting Update

This year’s annual meeting is scheduled for January 29, 2020. Two panels have been lined up including panels on “Emerging Technologies in Litigation” and “Developments in Cannabis Litigation”. The EC is encouraged to purchase a table for the Section’s Annual Luncheon. If anyone has suggestions for sponsors, they should contact Dan Wiig. This year’s Stanley H. Fuld award will be given to the Honorable John G. Koeltl, District Court Judge of the Southern District of New York.

Other Business

The Section remembered Michael Oberman and expressed condolences for his recent passing.

Electronic Courtroom program was offered a second time in New York County and was again very successful, as was the program that was presented in Queens County.

Meeting Adjourned at 7:57.

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 4, 2019.

Members Participating in Person

Laurel Kretzing, Chair
Natasha Shishov, Secretary
Daniel Wiig, Vice-Chair
Hon. Karla Moskowitz
Mark Berman
Hon. William H. Pauley**
Kevin Quarantino
Robert Holtzman
Gregory Arenson
Viktoria Liberchuk

Members Participating by Telephone

Jonathan Fellows, Chair-Elect
Hon. Helen Freedman
Rachel Morgenstern
Scott Malouf
Jessica Moller**
Ignatius Grande
Lara Nowicki

**Indicates guest attendees and speakers at the meeting

Section Chair, Laurel Kretzing, called the meeting to order at 6:15 pm.

Guest Speakers:

Honorable William H. Pauley - *Southern District of New York*

The Honorable William H. Pauley presented on the issue of sealing documents. He commented that lawyers frequently attempt to wholesale seal for no reason other than client driven confidentiality concerns. The frequency with which attorneys are attempting to seal documents has increased in the last 25 years; potentially due to the expansion of ECF and the popularity of arbitration proceedings, which are generally confidential.

Since arbitrations are generally confidential, an application to vacate or confirm arbitration awards are filed under seal, which requires a visit to the courthouse. The emergency Judge routinely grants these emergency sealing applications. In such an instance, even the Judge that is ultimately assigned to case cannot see the sealed documents on ECF.

The Judge commented that wholesale sealing can infringe on the public's right to access the courts and lets cases dealing with large companies to go unnoticed. The public has a right to know when these cases are in Federal Court. Pursuant to the Federal Arbitration Act, parties are free to contract to resolve issues in arbitration. However, when parties resort to courts they have to be bound by the rules of the court; they cannot contract to avoid the court rules. The Second Circuit has recently held that judicial documents include all documents filed, which may include settlement agreements and documents filed in support of motion to vacate or confirm arbitration awards. Thus, even though arbitration proceedings may be confidential, the parties cannot circumvent public access to documents that are filed with the Court. In short, once litigants ask the court to exercise their Article III rights, the documents are entitled to the presumption of public access unless stated otherwise by statute or under limited instances, such as cases that deal with national security.

Review of October 23, 2019 Meeting Minutes

The minutes were unanimously approved.

Report on NYSBA Website Rollout

Scott Malouf reported on NYSBA plans to redesign of the virtual bar center, which will be better adapted for mobile access. Additionally, NYSBA can now track when individuals are engaged in the website, but don't join NYSBA, and can track what people are searching for on the NYSBA website. With this updated technology, NYSBA would target and provide information based on what people are searching. The anticipated date to launch these new features is undetermined. NYSBA is also hoping to include access to certain materials only for Section members. Phase two of the update will involve updates to Communities.

Report on Section Leaders Conference

Laurel Kretzing reported what occurred at the NYSBA Section Leaders Conference. A presentation was made about the new website and the new marketing team was introduced. NYSBA is committed to marketing and communications to be rolled out over the next year.

Laurel also commenced that there have been problems reported with the NYSBA website and if anyone has trouble registering or buying CLE programs/tables, they should let Laurel know and email Lara.

Report on Changes to Section Bylaws and Member at Large Positions

ByLaws were approved by the NYSBA EC in November. One substantive change includes limiting the Members at Large position to two year terms. There are currently 26 Members and Large, who should reach out to Laurel and let her know whether they are interested in staying on.

Report on November 2019 NYSBA House of Delegates

Robert Holtzman reported on the November 2019 NYSBA House of Delegates and Section Caucus. Changes include permitting paralegals to join the association after January 1st as "associates of the association" "non-attorney affiliates". The EC needs to examine the Section's ByLaws to determine how to integrate these potential new members into the Section. Robert also reported that Mark Berman presented an informational report to the HOD on the Sections' Social Media Guidelines.

Also discussed at the Section Caucus is the recommendation that Sections reach out to each other when considering reports that can be applicable and impact multiple Sections. Robert emphasized that this is good practice but is not mandatory and that those individuals working on Section reports should be mindful of that.

Report on Shira A. Schindlin Excellence in the Courtroom and Kaye Scholar Award Program

Laurel Kretzing reported on this annual program. We had good attendance and five Kaye scholars received scholarships to attend the Section's Commercial Litigation Academy and, for the first time, will also be Section guests at NYSBA's annual gala and meeting. We had 16 applicants for the Kaye Scholarship this year. Hank Greenberg provided the keynote address.

Mark Berman commented that attendance at this event, and other Section events, should be better and suggested that the Women in the Law Section join in hosting this event in future years.

Report on Commercial Litigation Academy

The Commercial Litigation Academy was held on November 14th and 15th. Attendance was discussed again and ideas were shared about how to increase attendance.

Annual Meeting Update

Daniel Wiig presented an update on the Section's upcoming annual meeting. The registration link is up. He is waiting for table numbers, has lined up three sponsors and is working on obtaining two more.

Other Business

The Section's Diversity Committee is in need of new members, including those who would help in organizing the annual Smooth Moves program.

The next EC meetings are tentatively scheduled for January 15th and February 4th (which will be held at Farrell Fritz, in Nassau County).

Meeting Adjourned at 8:08.