

# Commercial and Federal Litigation Section Newsletter

A publication of the Commercial and Federal Litigation Section of the New York State Bar Association

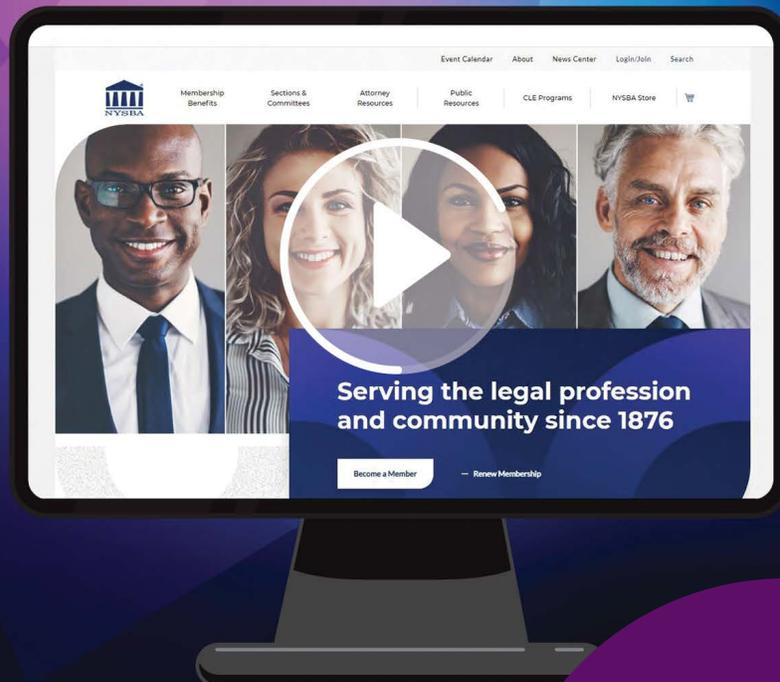


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# Message From the Chair

I am honored to succeed Dan Wiig as Chair of this Section. We all owe Dan a great deal for the incredible time and effort that he put in as Section Chair. Even though many of the events during Dan's term as Chair were remote, that did not stop him from overseeing an impressive number of CLEs and programs and from accomplishing so much.

He oversaw a well-attended virtual Annual Meeting earlier this year, and our Spring Meeting in May was a great success. The "View from the Bench" sessions that he instituted have been a great way to connect judges with our membership, and we will definitely continue that program this fall.

In the early spring, the Section hosted a successful in-person event in Manhattan—the first large in-person Section gathering in more than two years! "An Evening With New York's Commercial Division Justices" was a great event that allowed us to bring together all of the Manhattan-based New York State Commercial Division justices on one dais to talk through a wide range of issues. Over 100 attorneys attended the event, which was moderated by Jonathan Lupkin and hosted by Bob Haig and Kelley Drye & Warren.

Dan also helped to rejuvenate our committees along with Hamutal Lieberman, who stepped into the challenging role of programming chair over the past year. We are looking forward to a very active year for the Section and our committees as we finally return back to life as we knew it before the pandemic

I also want to acknowledge Jonathan Fellows, who was Dan's predecessor as Chair. Jonathan also had to put on virtual events during his 2020-2021 term as Chair due to the pandemic, but he rose to the occasion and put on some great programming and issued several important reports during his term.

It truly is a great honor to be the Section's 34th Chair. One of the things that makes our Section special is that our former Chairs remain involved with the Section—from our most recent former Chair, Jonathan Fellows, to the Section's first Chair and founder, Robert Haig. All of our former chairs have continued to be involved with the Section in some way, and I am grateful for their continued commitment to the Section.

Since some of you do not know who I am and what led me to become Chair of the Section, I wanted to let you know

who I am and why I think that getting involved with this Section can be so important to an attorney's career.



Ignatius Grande

I first became active in the Section about 15 years ago when I was a junior litigation associate at Clifford Chance, and I became a member of the Section's Securities Litigation and Arbitration Committee. I enjoyed attending committee meetings, and I got to know several of the other committee members.

One of the contacts that I made while participating in the Securities Litigation and Arbitration Committee later became a full-time professor at St. John's Law School, and it was thanks to her that I was asked to serve as an adjunct professor there, where I taught a course for several years.

Later in my career, I developed an interest and expertise in the technology aspects of litigation, including e-discovery. I became involved with the Section's Electronic Discovery Committee, where I got to know former Section Chair Mark Berman. When Mark was asked to find a co-chair for the newly formed Social Media Committee, he asked me to be his co-chair. We proceeded to make the Social Media Committee one of the more active Section committees, and we issued Social Media Ethics Guidelines that have been cited by numerous ethics boards and committees across the country.

I cannot emphasize enough the incredible dividends that our younger members can earn by way of getting more involved with the Section. In recent years, I have seen more and more younger attorneys get involved with the Section, and I hope that the numbers will increase during my term as Section Chair.

I encourage all of our members (and especially our younger members) to get involved with at least one committee; and if you are interested in taking on a leadership role, please let me know! Also, when you get involved with a committee, I encourage you to get to know some of the other committee members by volunteering to work on a report or by speaking at a CLE or by presenting on a topic at a committee meeting. These are just a couple of the ways in which our members can get more involved.

Also, make an effort to attend our Annual Meeting in January and our spring meeting, which takes place in May. I have always met new Section contacts at these events, and they are also a lot of fun.

Especially in light of the pandemic and the fact that attorneys have not been able to network in the same ways that they had been able to prior to March 2020, now is the ideal time for attorneys (especially younger attorneys) to get more involved in the Section. There are many New York attorneys who do not know that our Section exists. I challenge all of you to identify at least one person and encourage them to join you at several Section events in the coming year and encourage them to get involved with the Section. Our Section will continue to thrive only if we continue to add new and diverse members from a variety of backgrounds, who bring new ideas as to how the Section can best serve the judiciary and our members. Also, as is evident by my background, there is a place for everyone in our Section—even if your practice is not a “typical” commercial litigation practice.

Knowing that we are finally emerging from the pandemic, we are anticipating a busy year for the Section and its committees. Stay tuned for information on upcoming fall events, but we are already looking forward to having our Commercial Litigation Academy on November 3-4, 2022, and once again hosting “Taking the Lead: Excellence in the Courtroom” and awarding the Shira A. Scheindlin Award for Excellence in the Courtroom and the Hon. Judith S. Kaye Commercial and Federal Litigation Scholarship at the Ceremonial Courthouse of the Southern District of New York on the evening of Nov. 10, 2022.

As some of our members know, the Section was founded in 1988, so 2023 will be the Section’s 35th anniversary, and we are looking forward to celebrating the anniversary in style.

In addition to thanking Dan Wiig for his countless hours of service to the Section, I also want to thank our outgoing Section Secretary Jessica Moller, who has contributed so much to the Section over the past two years. Jessica contributed in many ways to the operations of the Section, and we look forward to her serving the Section in different roles in the coming years.

I am joined this year by Anne Sekel (Chair-Elect), Michael Cardello (Vice-Chair), Helene Hechtkopf (Treasurer), and Kevin Quaratino (Secretary). Please reach out to any of us with your ideas on how the Section can best provide content to its members throughout the state and beyond. Thank you also to our many other Section leaders, including our committee chairs, our district representatives, our former Chairs, and our other Executive Committee members who all help to make our Section the great organization that it has become. We look forward to seeing many of you soon, either in-person or via Zoom.

**Ignatius Grande**  
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## ***NYLitigator* Invites Submissions**

The *NYLitigator* welcomes submissions on topics of interest to members of the Section. An article published in the *NYLitigator* is a great way to get your name out in the legal community and advertise your knowledge. Our authors are respected statewide for their legal expertise in such areas as ADR, settlements, depositions, discovery, and corporate liability.

MCLE credit may also be earned for legal-based writing directed to an attorney audience upon application to the CLE Board.

If you have written an article and would like to have it considered for publication in the *NYLitigator*, please send it in electronic document format (pdfs are NOT acceptable), along with biographical information to its Editor:

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# 2022 Spring Meeting

## Friday Evening Dinner Presentation

### Welcoming Remarks by Incoming Chair

#### Ignatius Grande

Good evening, everyone. Thank you so much for joining us this weekend! It is a great pleasure to welcome you all to the Statler Hotel in Ithaca, N.Y., on behalf of the New York State Bar Association Commercial and Federal Litigation Section.

We have partnered this year with the Young Lawyers Section and put together what I think is a very exciting program, which you will hear more about tomorrow.

I also want to thank our sponsors, whom you may have seen at the cocktail reception. They are JAMS, Remote Legal, Counsel Press, Withum, and Berkeley Research Group.

This is the first spring meeting that our Section has been able to hold in person since May 2019. As we could all tell by the cocktail reception, people have been anxious to get back together in person. I saw more than one meeting of folks who had only met previously on a Zoom call. We avoided having the spring meeting overlap with Mother's Day, and we couldn't have asked for better weather this week.

There have been many challenges during the pandemic, but our Section has stayed incredibly active over the past two-and-a-half years, thanks to our committees and the leadership of our current Chair, Daniel Wiig, and his predecessor, Jonathan Fellows.

I did want to quickly say a couple of words about the hotel where we are staying. As many of you know, the Statler Hotel has gained international renown as one of the world's best "teaching hotels."

The origins of the Statler Hotel go back to 1923, when the American Hotel Association proposed a 200-room hotel be built adjacent to the Cornell campus to serve as a "practice hotel" for Cornell's newly established hotel program.

The original Statler Inn was actually not built until 1950, and it only had 36 rooms. It was not until 1989 that the Statler Hotel as we know it was built.

Today, about 200 Nolan School of Hotel Administration students are part-time hotel employees, working side by side with professional staff members, earning both income and experience.

I want to begin by introducing Anne LaBarbera to say a couple of words. Anne is the Co-Chair of NYSBA's Young Lawyer's Section. The ComFed Section has enjoyed working closely with Anne and the Young Lawyers Section, and I look forward to working closely with Anne and her successor to continue to find ways to collaborate and look to bring young lawyers into the NYSBA family.

I learned recently that our Section's first spring meeting took place 27 years ago, about eight years after the Section's founding back in 1995. I don't know how many, if any of you, were there for that first spring meeting, but the first ComFed spring meeting featured a panel of newly appointed federal judges moderated by NYU Law Professor Burt Neuborne and a keynote address by Second Circuit Judge Roger Miner. This year we are pleased to have another law school professor speak to us, Professor Muna Ndulo. I would like to call up Courtney Finerty-Stelzner to introduce our guest speaker.

It is my pleasure here to thank the many judges and dignitaries from across New York State who have joined us this evening. This will be a very special weekend for our Section.

## Presentation of Alcott-Leber-Younger Committee of the Year Award

#### Daniel Wiig

Greetings and welcome.

It is so very good to see many old friends and some new ones in person. Well, most of you at least. Who looked over at Mark Berman when I said that?

Truth be told, Mark has been an invaluable asset and friend during my term as Chair, and I am very grateful for him, Ignatius, Anne, Jessica, and Helene and so many people in this room who helped move the Section along this year.

As many of you know, the Executive Committee approved the creation of the Alcott-Leber-Younger Committee of the Year Award, named after our former Section Chairs Mark Alcott, Bernice Leber, and Steve Younger, who also went on to serve as presidents of NYSBA. The award is presented to a ComFed committee or committees that excelled in providing programming for our members, the association, and the legal community in general.

The review committee selected two committees to receive this year's inaugural award.

The first recipient is our ADR Committee, chaired by Jeff Zaino and Charles Moxley. This year, the ADR Committee presented a number of dispute resolution-related programs, including a roundtable on hot topics and the annual training program at Fordham Law School. Here to accept on the committee's behalf is Jeff Zaino

The second recipient is our Commercial Division Committee, chaired by former Section Chair Mark Berman and Ralph Carter. This committee was recognized for the significant number of comments drafted in response to proposed changes to the Commercial Division rules and the proposed cybersecurity CLE requirement. Here to accept are Mark Berman and Ralph Carter.

Thank you.

## **Saturday Gala Dinner Presentation**

### **Introductory Remarks by Incoming Chair**

#### **Ignatius Grande**

It is my pleasure to welcome you all to the 2022 NYSBA ComFed Spring Meeting Gala Dinner. As most of you know by now, my name is Ignatius Grande, and I am the Chair-Elect of the Section.

We have a couple of presentations this evening, which will culminate with the awarding of the Robert L. Haig Award to Justice Rolando Acosta, presiding justice of the Appellate Division, First Department.

I hope that everyone has had a great weekend so far. When one plans a Spring Meeting, you always hope for good weather, but we couldn't have asked for a more beautiful weekend here in Ithaca. We had a great morning of programming, and it sounds like everyone enjoyed themselves this afternoon, whether it be on the golf course, boating, hiking to waterfalls, or exploring the Cornell campus.

We are privileged to have with us today the incoming president of the New York State Bar Association, Sherry Levin Wallach.

As I mentioned to Sherry earlier, I understand that this is not the first time that Sherry has addressed a ComFed spring meeting. She also addressed us years ago as the Chair of the Young Lawyers Section. We are privileged to have her join us today as the President-Elect of NYSBA.

## **Presentation of Plaque to Outgoing Chair**

### **Ignatius Grande**

It is my pleasure here on behalf of the Section to recognize Dan Wiig's outstanding contribution to our Section over the past year as chair.

I have known Dan for a number of years, thanks to the Section, and also as a result of both of our serving as adjunct professors at St. John's Law School.

Dan truly has put in an incredible effort over the past year as Chair, and I have enjoyed working with him over the past two years as an officer of the Section.

Dan, I am very pleased to present this award to you. It says: "Presented to Daniel Wiig in recognition of exceptional service and leadership, Chair of the Commercial and Federal Litigation Section, New York State Bar Association, 2021-2022."

### **Remarks by Outgoing Chair**

#### **Daniel Wiig**

So, I understand that this is the time when the outgoing Section Chair makes end-of-term remarks. I promise that I will be brief—I know everyone says that.

To Justice Acosta, please accept my congratulations on your receipt of this year's Fuld Award.

Sherry—thank you for joining us. I too share your desire to be a young lawyer, and I intend to stay a young lawyer for as long as I can.

I would like to acknowledge my two immediate predecessors—Laurel Kretzing and Jonathan Fellows. Neither had the opportunity to bask in the glory of looming retirement as ComFed chair during an in-person spring meeting. If you please indulge me, a round of applause for Laurel and Jonathan.

I never looked for, sought, or campaigned for this role. So, when Jonathan Lupkin called me in November 2018 to say I was nominated by the Nominating Committee to serve as vice chair and get on the ladder, so to speak, to say I was surprised would be the understatement of the century.

By show of hands, who served on the Nominating Committee that put me in this position? I am fairly certain I have a cause of action against you for intentional infliction of emotional distress for putting me here, so please be on notice.

Jokes aside, it has truly been humbling and an honor for me to follow the giants of the legal community who previ-

ously served as Section Chairs. And, in Paul Sarkozy's case, I mean that literally.

I would also like to acknowledge our former Section Chairs here with us tonight. Would you please stand and be recognized: Bob Haig, Mark Zauderer, Paul Sarkozy, Jon Lupkin, Sharon Porcelli, Lauren Wachtler, David Tennent, Jim Wicks, Mark Berman, and Robert Holtzman.

I do not believe we ever had the chance to publicly congratulate the Honorable James Wicks upon his appointment to the bench. Please join me in a round of applause.

And I have to apologize to Jon Lupkin, who I understand is having withdrawal symptoms because there was no mention of *My Cousin Vinny* this weekend. Our old timers will know what I mean. For those of you who are unaware, Jon will do a re-enactment for you after dinner.

I am told by NYSBA staff that they constantly point to us as the benchmark of what a Section can and should be, and that's because of the dedicated members in this room.

Briefly, I would like to mention those with NYSBA who help make this happen—Catherine Carl, our liaison, who is here tonight with us, and Simone Smith, who helps with our programming. They are truly dedicated to assisting us make it all happen. So, please join me in acknowledging their service.

A brief word about our officers. Ignatius always managed to find the answer to questions about NYSBA or ComFed that no one else could. I have to publicly apologize to Helene because every time I mentioned spending money I made her twitch. And to Anne and Jessica, who were many times the voice of reason in our conversations. Thank you. It truly was a pleasure and honor for me to work with you, in some cases over the past three years.

And to our next slate of officers: Ignatius, Anne, Michael Cardello, Kevin Quaratino, and Helene. Congrats and thank you for your service. If I have nothing to do on Mondays at 3:30, I may crash your weekly call.

So thank you again for this honor and I hope I served you well.

## **Presentation of the Chair's Award**

### **Daniel Wiig**

Historically, the Section Chair has the distinct privilege of selecting a member or members who reflect what active Section members should do, and bestow upon him or her the chair's award. I am very happy to bestow this award on two deserving individuals.

The first awardee is a person who not only loyally served ComFed as the third woman Section Chair, but continued to

make contributions as former Section Chair for years—Sharon Porcellio. A graduate of Northwestern University School of Law and the University of Rochester, prior to her retirement in late 2021, Sharon was a partner in Bond Schoeneck & King. She was routinely counted among the best of the best of lawyers in New York and has been a staunch advocate for equality in the courtroom and a role model for rising female lawyers, and indeed for all of us. I am happy to present the Chair's Award to Sharon.

Mark Berman told me that Sharon holds a very unique position—she is the only person who can get Mark to pipe down. Sorry, Brenda Berman. And, in consideration of Sharon's retirement and partial relocation to Florida, Mark asked if he could say a few words in Sharon's honor. Because I do not want to deal with saying no to Mark, I acquiesced. Mark, please come up and say a few words.

Our second awardee, Hamutal Lieberman, first came to ComFed by way of being the liaison from the Young Lawyers Section. She immersed herself in Section activities, and last year I appointed her chair of the rebranded Programming Committee, for which she tirelessly works in galvanizing our committees to present programs. Hamutal is a 2013 grad of Pace University School of Law, and, despite having less than a decade in practice, is chair of her firm's—Helbraun Levy's—trademark practice and co-chair of its litigation practice.

Hamutal could not join us this weekend. If you could, please join me in recognizing Hamutal in absentia.

Finally, for those of you who did not join us last evening, I had the pleasure of presenting the inaugural Alcott-Leber-Younger Committee of the Year Award to the ADR Committee, chaired by Jeff Zaino and Charles Moxley, and the Commercial Division Committee, chaired by Mark Berman and Ralph Carter. If you could please acknowledge these two committees and their leaders for service to the Section.

Thank you.

## **Remarks by Incoming Chair**

### **Ignatius Grande**

I wanted to take few moments to thank everyone who has made this weekend a success. I know that I am not the only one who has missed having in-person meetings. The success of this weekend is the result of the hard work of many people, especially our guest speakers, who have joined us from across New York State. Let's thank them all.

I want to thank our sponsors: JAMS, Remote Legal, Withum, Counsel Press, and BRG.

Last, but not least, I want to thank the attorneys and firms who have sponsored tables at the dinner here tonight. They are Bob Haig of Kelley Drye & Warren, Mark Zauderer of

Ganfer Shore Leeds & Zauderer, and Jonathan Lupkin of Lupkin PLLC.

Thanks to all of our former Chairs who are in attendance, whom Dan mentioned earlier. We are also happy to have with us two former recipients of the Robert L. Haig Award, Hon. William Skretny and the Hon. Glenn Suddaby.

One of the nice parts about being involved with the Commercial and Federal Litigation Section is the opportunity to have a relationship with the judiciary.

Let me please thank Hon. James Wicks, Hon. Elizabeth Emerson, Hon. Sharon Aarons, Hon. Rolando Acosta, Hon. Barbara Kapnick, Hon. Joel Cohen, Hon. Tanya Kennedy, Hon. William Skretny, Hon. Robert Reed, Hon. Melissa Crane, Hon. Andrea Masley, Hon. Glenn Suddaby, Hon. Deborah Karalunas, and Hon. Ellen Gesmer.

Thank you, judges.

It is an honor for me to take the reins as Chair of the Section. I first got involved with the Section as a junior associate who joined the Securities Litigation and Arbitration Committee, but in more recent years, it was my involvement with the Electronic Discovery Committee, which was chaired by Connie Boland at the time, that really got me involved with the section. That was where I met Mark Berman, who eventually conscripted me to be his co-chair of the newly formed Social Media Committee.

During my year as Chair, I will have the help of Anne Sekel, who will be our Chair-Elect, and Michael Cardello, Vice-Chair. I also look forward to continue working with Helene Hechtkopf, our Treasurer, and our new secretary, Kevin Quaratino.

Our goal in this Section is to help connect the state's leading litigators with one another and with the judges deciding the cases in order to improve the quality of the representation of our clients and provide a forum for the development of law and procedure in areas of the commercial and federal litigation practice.

We have many active committees, and I look forward to working closely with our committees over the upcoming year to plan educational programming. The Section also provides the bench and the bar with a laboratory in which rule changes can be proposed, vetted, and discussed. Most importantly, our Section offers an opportunity for the judges and lawyers to sit down and talk to each other, as in our Evening with the New York County Commercial Justices.

There are many areas that we need to focus on, but one of my objectives is the attraction of members who will participate in the activities of our Section. The pandemic has posed a challenge to NYSBA and all bar associations. I believe that

it has also presented our Section with an opportunity to attract younger attorneys who are looking for the networking opportunities that this Section can provide. I also look forward to our continued partnership with the Young Lawyers Section, because I believe working with the young lawyers in the state is a way of bringing more membership into the Association and into our Section. I want to work toward developing a greater upstate representation in our Section and work toward the development of more diversity among our membership and in the commercial bar as a whole.

I am looking forward to serving as Chair of the Section over the coming year. I encourage you all to reach out to me with your ideas on how the Section can continue to grow and be a valuable contributor to the commercial bar in New York State.

It is my pleasure to introduce Roger Maldonado, who will present the Haig Award to Justice Acosta. As many of you know, Roger is a partner and the head of the commercial litigation practice at Smith Gambrell Russell LLP. From May 2018 until May 2020, Mr. Maldonado served as the 68th president of the New York City Bar Association (City Bar), notably as its first Hispanic president.

*Please turn to page 16 to read Roger Maldonado's remarks.*

# 2022 Spring Meeting

## Highlights

By Katharine Smith Santos

More than 100 attendees enjoyed the hospitality of Cornell University's famed Statler Hotel during the Section's spring meeting held in Ithaca, New York, on May 13-15, 2022. This was the first in-person spring meeting that the Section has held since May 2019. In addition to providing invaluable networking opportunities, the weekend offered 6.0 MCLE credits (including 0.5 credits in Ethics and 1.0 credit in Diversity, Inclusion and Elimination of Bias) for both experienced and newly admitted attorneys.

Spring Meeting Chair and Chair-Elect of the Section, Ignatius Grande of Berkeley Research Group, was thrilled with the "full crowd" in attendance. He said that "attendees were excited to see each other in person after more than two years of mostly virtual events and programs."

"The excitement that people seemed to feel about reuniting with colleagues in-person after such a long hiatus was palpable," agreed panelist and Section Vice-Chair Anne B. Sekel of Foley & Lardner LLP. Sekel added that "Cornell's campus is beautiful and the Statler provided a great venue for our meetings and dinners."

Hon. Sylvia Hinds-Radix, the recently appointed New York City Corporation Counsel and Chair of the Section's Diversity Committee, appreciated the Section's efforts to include families in the weekend event. "The integration of family members, especially the younger children, was gratifying to me because I was able to see the next generation of attorneys," she said.

For those who could not attend, Section Social Media Manager Naomi Jawahar of Connell Foley LLP kept up a steady commentary on the Section's Twitter feed (@NYSBAComFed).

The Young Lawyers Section co-sponsored the spring meeting, scheduling a hybrid meeting of its Executive Committee to occur during the same weekend. Leaders of both Sections would like the co-sponsorship to continue on an ongoing basis.

"The Young Lawyers Section is really grateful to ComFed for its efforts to liaise with younger and recently admitted attorneys," said immediate past Young Lawyers Section Chair Anne LaBarbera of Anne LaBarbera P.C. Emphasizing the particular challenges faced by young lawyers, LaBarbera stressed that "every time a Section helps us it's magical be-



A former journalist and intellectual property attorney, **Katharine S. Santos** now practices real estate and commercial litigation as of counsel and trial attorney for Valiotis & Associates PLLC in New York City.

cause we can't do it on our own." ComFed "really worked with us," she added. Chair-Elect Ignatius Grande agreed that it is crucial for ComFed to attract and involve young attorneys in the Section and that collaborating with the Young Lawyers Section is a great way to make that happen.

The spring meeting kicked off with a cocktail reception and dinner on Friday night with remarks by outgoing Section Chair Daniel K. Wiig, associate general counsel of the City University of New York, who welcomed "many old friends and some new ones."

Wiig presented the inaugural Alcott-Leber-Younger Committee of the Year award to two committees "who excelled in providing programming for our members, the association, and the legal community in general." First was the Section's Alternative Dispute Resolution Committee, chaired by Jeffrey T. Zaino of the American Arbitration Association and Charles J. Moxley, Jr. of MoxleyADR LLC. The committee was recognized for having a very active year, which included numerous training and educational offerings. The second recipient of the award was the Commercial Division Committee, chaired by Ralph Carter, Senior Counsel for Workday, and former Section Chair Mark Berman of Ganfer Shore Leeds & Zauderer LLP. The Commercial Division Committee was honored for work in drafting a significant number of comments on proposed amendments to the Commercial Division Rules.

The Friday night dinner also featured a presentation by Cornell Law School Professor Muna B. Ndulo, an internationally recognized scholar in the fields of international law and foreign direct investments. His timely commentary on

the devastating conflict in Ukraine focused on possible military and economic consequences, as well as what diplomatic and legal resolutions might be available under current treaty regimes.

The following morning, Wiig opened the general session with remarks stressing how essential collaboration is to the success of any group, including this one. “It’s not just one person who makes it happen,” he later summed up. Chair-Elect Grande then gave the audience an overview of the weekend’s CLE presentations, which included programs on new technologies in commercial disputes, expert witness best practices, fostering diversity, equity and inclusion in a post-COVID-19 environment, and a comparison of procedures in the Commercial Division and Delaware’s Chancery Court.

In arranging the program, Grande aimed at “picking a range of topics that would appeal to all Section members and to the judges who participated.”

“The programming was high quality,” confirmed outgoing Young Lawyers Section Chair LaBarbera.

Half of the panels featured judges as presenters, and approximately 15 members of the federal and state judiciary participated in the weekend. “The ratio of judges to practitioners was incredible,” enthused Marcella Jayne of Foley & Lardner LLP, co-chair of the Publications Committee.

## **New Technologies in Commercial Disputes**

The first Saturday morning panel, starting at 9 a.m., focused on “Addressing New Technologies in Commercial Disputes and Investigations.” Speakers included Ralph Carter, senior counsel, Litigation & Cybersecurity at Workday in New York City; Michael Farina of Robert & Robert PLLC in Uniondale, Long Island; and Scott L. Malouf of the Office of Scott L. Malouf in Pittsford, New York.

The topics were broken down in the following areas: Zoom, Microsoft Teams, and other videoconferencing platforms; cryptocurrency; ephemeral messaging (such as Snapchat) and emojis and hyperlinking. According to panelist Carter, the overarching themes were “(1) the need to be aware of these emerging technologies; and (2) some of the challenges they present in our efforts to apply our existing legal and regulatory frameworks.”

Farina took the lead on the videoconferencing presentation, which generated a lively 45-minute discussion with audience members. “Everybody volunteered something,” noted Farina’s co-panelist Malouf. For example, several arbitrators in the audience freely commented on what they did and didn’t like about Zoom hearings in the alternative dispute resolution context, stated Malouf.

Bitcoin expert Peter Kamminga of JAMS had to cancel at the last minute, so the other panelists pitched in to explain the basics of cryptocurrency such as “what backs bitcoin” and “what’s an NFT,” said Malouf.

The remarks on cryptocurrency resulted in enthusiastic participation from the listeners, including outgoing Young Lawyers Section Chair LaBarbera. “How to teach lawyers what NFTs are” is a hot topic “because clients are asking about it,” LaBarbera later said.

LaBarbera’s comments to the panel touched on how artists can sell their work under a “Smart Contract” prepared by a software coder, usually without a lawyer’s input. The Smart Contract can entitle the artist to a percentage royalty every time the art changes hands, and those royalties can amount to big money in a few decades if the artist becomes famous. These Smart Contracts “will cause a lot of litigation,” she predicted. “Well,” responded a panel member to laughter, “we have a lot of litigators here.”

Panelist Malouf then dug into the growing body of case law on emojis. “There was an emoji decision rendered on May 9, only a couple of days before the meeting,” by the Texas Court of Appeals in *In re State*, 2022 Tex. App. LEXIS 3119 (Tex. Ct. App. May 9, 2022), Malouf explained. The 30-year-old lawsuit underlying the *In re State* decision involved a real property dispute between the State of Texas and plaintiff Jimmy Glen Riemer and others.

A young associate at the law firm representing the state billed one hour on the litigation and then, after two years spent working for an interim firm, switched jobs to the law firm representing the plaintiffs. The associate’s former mentor at the firm representing the state sent the associate a text: “Glad you will be there. Now I can disqualify [plaintiffs’ attorney]!” The mentor added a smiley emoji, Malouf told the crowd.

When Malouf mentioned the desire to conflict out the long-standing plaintiff’s firm, “you could hear the shudder go through the room,” he chuckled as he recollected.

After the plaintiffs’ firm had billed more than 4,000 hours to the file, the firm representing the state did indeed file a motion for disqualification. The trial court denied the motion and the Court of Appeals ultimately upheld that decision on several grounds, including that a smiley-face emoji is prone to multiple interpretations.

The panel discussion concluded with some brief remarks on hyperlinking in the context of discovery of electronically stored information.

## Diversity and Inclusion in a Post-COVID-19 Environment

The second Saturday morning presentation was titled “How Law Firms and Attorneys Can Help Foster Diversity and Inclusion in the New Normal.” Deborah Martin Owens, the newly appointed global director of diversity, equity and inclusion at Vinson & Elkins LLP, acted as moderator. On the panel were Courtney Finerty-Stelzner of Getnick & Getnick LLP; Courtney R. Rockett of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; and Mahnoor Misbah of Morrison Cohen LLP, all of New York City.

The key takeaway of the discussion, according to Finerty-Stelzner, was that diversity needs to be “the responsibility of every attorney at all seniority levels” in any firm or legal organization “no matter how big or how small.”

The speakers offered helpful information on how to “get attorneys the experience they had missed” during the time spent working at home and “how to address the hybrid environment as attorneys come back to the office,” stated Section Chair-Elect Grande.

The all-female panel was organized to include speakers at every seniority level. While moderator Martin Owens holds the position of diversity director at a major national law firm, Misbah is a relatively new associate, Finerty-Stelzner is a senior associate, and Rockett is a partner.

The differences in seniority led to a helpful breadth of perspective. Misbah, for example, talked about what newer attorneys can do to get noticed. Finerty-Stelzner, on the other hand, stressed that senior associates and other lawyers up the chain “should be on the lookout for ways to include newer associates who are not so outgoing.” As a mother expecting her second child, Finerty-Stelzner also spoke movingly about the needs of parents with young children.

New Technologies panelist Malouf characterized the diversity and inclusion presentation as both “effective and affecting,” expressing admiration for the “story-based” and “experience-based” approach. The speakers shared important mentoring experiences from early in their career, demonstrating what employers and mentors can do right, he continued.

Finerty-Stelzner described the panel talk as an “open-ended conversation” guided by questions from the moderator and the audience. The panel took questions from the audience throughout. For that reason, “we couldn’t get to everything we wanted to talk about” such as key issues centered on race and gender and the microaggressions that can be more glaringly apparent in an in-person context, explained Finerty-Stelzner.

## Expert Witnesses in Federal and State Practice

The third CLE event of the morning highlighted “Expert Witness Best Practices in Federal Court and the Commercial Division.” The panel featured two active judges: Hon. James M. Wicks of the U.S. District Court for the Eastern District of New York, Central Islip courthouse, and Hon. Deborah H. Karalunas of the Supreme Court of the State of New York Commercial Division for Onondaga County. They were joined by Manhattan-based attorneys Tom M. Fini of Catafago Fini LLP and Anne B. Sekel of Foley & Lardner LLP. The expert witness presentation was a “Rules-driven panel—that’s Rules with a capital R,” such as the Federal Rules of Civil Procedure and the Rules of the Commercial Division, an attendee observed.

“We discussed the federal rule on expert disclosure (FRCP 26), Commercial Division Rule 13 and CPLR 3101(d)(1),” panelist Sekel explained, since those rules reflect “the substantial differences between the scope and timing of expert disclosure in federal court and the Commercial Division, on the one hand, and the non-Commercial Division, on the other hand.”

“The progress of a case, and what expert discovery the parties will have in time for early settlement discussions and summary judgment motions, can vary widely depending on the forum of the litigation, as do the creative approaches the litigators may be able to convince the court to take where robust expert discovery rules are lacking,” Sekel later noted.

Additional topics addressed by the panel ranged from the comparative usefulness of experts in settings such as bench trials, jury trials, mediation and settlement conferences, to the practical process of locating suitable experts, engaging them, and guiding them through discovery and testimony.

Chair-Elect Grande was very pleased with the content and format of the presentation. “How to deal with expert witnesses is an important topic,” he said, and the panel included “a nice cross-section of speakers to compare and contrast” the different procedures in state and federal court.

Attendee LaBarbera similarly enjoyed the talk and was especially happy to re-encounter panelist Judge Karalunas, whom LaBarbera praised as “always very involved in ComFed.”

After the expert witnesses panel concluded at 12:30 p.m., Section members were free to enjoy themselves at a pre-arranged golf tournament or impromptu boating, hiking to local waterfalls, or exploring the Cornell University campus before reconvening at the Saturday night gala. The Section was fortunate to visit Ithaca during one of the first beautiful weekends of the spring season.

## Gala Awards Dinner Honoring First Department Presiding Justice Acosta

A high point of the spring meeting has traditionally been the Gala Awards Dinner, and this year's did not disappoint. In addition to giving Section members a chance to catch up with each other, the gala featured wines from Lakewood Vineyards, a family-owned Finger Lakes winery, complete with a special wine tasting during the cocktail reception. Outgoing Section Chair Daniel Wiig expressed surprise that some people drove all the way from New York City to Ithaca just for the Saturday night event.

The Section was privileged to hear from President-Elect of NYSBA Sherry Levin Wallach, who was introduced by Chair-Elect Grande. During his remarks, Grande further recognized Dan Wiig's outstanding contributions as Chair of ComFed for 2021 to 2022, presenting Wiig with an award for his "exceptional service and leadership."

Wiig in turn bestowed the Chair's Award in Recognition of Leadership and Contributions to the Commercial and Federal Litigation Section on "two deserving individuals" whose service to the Section "reflects what active section members should do." The first awardee, Sharon Porcellio, formerly of Bond Schoeneck & King PLLC, "not only loyally served ComFed" as past Section Chair, but "continued to make contributions" after stepping down. Wiig characterized Porcellio as "a role model for rising female lawyers and certainly for all of us."

The second awardee, Hamutal Lieberman, "first came to ComFed by way of being the liaison from the Young Lawyers Section." She is currently chair of Helbraun Levey, LLP's trademark practice and co-chair of its litigation practice. The award recognized her "tireless work in galvanizing our committees to present programs."

The evening culminated in a ceremony in which Roger J. Maldonado of Smith, Gambrell & Russell LLP, a former president of the New York City Bar Association, represented the Section in conferring the Robert L. Haig Award for Distinguished Public Service on Hon. Rolando Acosta, presiding justice of the Supreme Court of the State of New York, Appellate Division, First Department.

Maldonado's introductory remarks touched upon "only some of the highlights" of Justice Acosta's "incredibly active and successful career as a jurist, advocate and community leader."

After immigrating to the United States with his family from the Dominican Republic at the age of 14, Judge Acosta went on to attend Columbia University and Columbia Law School, eventually being inducted into the university's Athletics Hall of Fame for his star baseball pitching skills. When

Maldonado hired Justice Acosta as a summer intern in the housing unit of South Brooklyn Legal Services, "the truth is that we offered Rolando the position with hopes of bolstering—at least for one summer—the fortunes of South Brooklyn's softball team," he joked.

Prior to being elected to the bench, Justice Acosta held the positions of attorney-in-charge of the Legal Aid Society's largest civil trial office and director of government and community affairs, as well as first deputy commissioner and deputy commissioner for law enforcement at the New York City Commission on Human Rights, stated Maldonado.

Since Justice Acosta took the helm as presiding justice of the Appellate Division, First Department in 2008, "the Court has enjoyed its highest level of productivity in its history," Maldonado announced.

Justice Acosta currently serves as the chair of the Working Group on Appellate Practices of the Commission to Reimagine the Future of New York's Courts, "where he has taken on the unenviable task of leading an effort to modernize . . . the entire state court system's electronic filing procedures. Only someone with Rolando's drive and people skills would dare to take on this challenge—and have any hope of succeeding," opined Maldonado.

As a recipient of the Haig Award, Justice Acosta joins the ranks of prior distinguished honorees, including Hon. Judith S. Kaye and Hon. Jonathan Lippman, as well as two jurists who were present in the audience, Hon. William M. Skretny and Hon. Glenn T. Suddaby.

The gala dinner was the favorite part of the weekend for many. Attendees enjoyed catching up with each other at both the cocktail reception and during the dinner. Attendees at the gala were thus able to foster or deepen their connections with colleagues and numerous participants from the judiciary.

Jayne, co-chair of the Publications Committee, had the opportunity to "pick the brains" of a retired state Supreme Court justice and an active judge from the U.S. District Court for the Western District of New York as they enjoyed the food and drink provided in the Statler Hotel's Carrier Ballroom. "You don't get that at every bar association event," she added.

At the end of the gala dinner, a slide show of past spring and Annual Meetings brought smiles to many of the attendees' faces. People were having such a good time that they didn't want to leave the ballroom. The evening continued for many of the attendees in the hotel bar area although a contingent journeyed into Ithaca for a short pub crawl.

## Delaware Chancery and Commercial Division Contrasted

In order to allow attendees to depart earlier than has been the case in the past, the Section had three CLEs on Saturday and just one extended CLE on Sunday morning. The final CLE of the spring meeting, “Practice and Procedures Contrasted: New York State Commercial Division and Delaware Chancery Court,” provoked a positive reaction in many attendees. Hon. Melissa A. Crane of the Supreme Court of the State of New York Commercial Division for New York County spoke to Commercial Division procedures, and Hon. Vice Chancellor Lori W. Will of the Delaware Court of Chancery spoke to the corresponding Delaware practices. Jonathan D. Lupkin of Lupkin PLLC in New York City and Oderah C. Nwaeze of Faegre Drinker Biddle & Reath LLP in Philadelphia, Pennsylvania presented the practitioner’s perspective.

Publications Committee Co-Chair Jayne commended the interactive format, which laid out a hypothetical case with a specific storyline and polled the audience members as to what strategic choice they would make based on the circumstances. The polling “showed how savvy the group was as a whole,” Jayne remarked, since the audience members either selected the optimal strategy, according to the panel, or raised “reasonable grounds to disagree.”

It was “powerful watching the give-and-take between the judges (both on panels and those attending) and the really knowledgeable attendees,” agreed Malouf, who has been to at least five spring meetings. It’s “what we do so well as Com-Fed,” he said.

Panelist Lupkin, who presented the hypothetical, said it was “designed to flesh out differences in practice” between two very sophisticated fora for litigating commercial disputes. Due to the tremendous collective knowledge of the audience members, the session turned into “not just a Q&A between me on the one hand and the panelists on the other hand, but a Q&A between the panelists and the audience,” he said.

The judges on the panel were “unreserved in sharing with the audience the benefit of their wisdom,” emphasized Lupkin. Moreover, the audience included many sitting or retired judges from the Commercial Division and the Appellate Division, he said.

Some issues raised during the session were sealing documents, which takes place through a time-consuming and laborious process in New York but a more streamlined process in Delaware, and e-discovery, which can happen in a more cost-effective and straightforward fashion in New York than in Delaware because of recent amendments to the Commercial Division Rules.

The discussion had something for everyone. “I loved Judge Melissa Crane’s plug for the New York State courts throughout the CLE,” stated first-time attendee May Li, senior product counsel at Berkshire Hathaway Specialty Insurance’s legal and compliance team. Judge Hinds-Radix, who has attended the spring meeting almost every year since 2010, found the New York-Delaware “presentation . . . new and interesting.”

## Conclusion

The spring meeting marked the start of Grande’s new term as Section Chair together with Anne Sekel of Foley & Lardner LLP as Chair-Elect; Michael Cardello III of Moritt Hock & Hamroff LLP as vice-chair; Helene Hechtkopf of Hoguet Newman Regal & Kenney, LLP as treasurer; and Keven Quarantino of Foley & Lardner LLP as secretary.

Grande’s goals for the Section include increasing the active participation of current Section members and engaging in greater outreach to potential members, especially younger attorneys and those who practice upstate.

Grande looks forward to the Section continuing to “provide the bench and the bar with a laboratory in which rule changes can be proposed, vetted and discussed” and to offer “an opportunity for the judges and lawyers to sit down and talk each other” in events such as the spring meeting and in-person events throughout the upcoming year.

As for the 2023 spring meeting, Grande and Wiig both wholeheartedly join in extending an invitation to all Section members, potential members, jurists, and guests: “Come next year!”

# *Spring Meeting 2022 Ithaca, New York*



Outgoing Chair Daniel Wiig (r) presents Chair's Award to Sharon Porcellio.



Incoming Chair Ignatius Grande (r) presents award to Outgoing Chair Daniel Wiig for exceptional leadership.



Above (l-r): Roger J. Maldonado, Hon. Rolando T. Acosta, Hon. Sylvia Hinds Radix (Ret.), NYSBA President Sherry Levin Wallach



Robert L. Haig (r) presents the Haig Award to Hon. Rolando T. Acosta.



Diversity and Inclusion Panel (l-r): Deborah Martin Owens, Vinson & Elkins; Courtney R. Rockett, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo; Mahnoor Misbah, Morrison Cohen; and Courtney Finerty-Stelzner, Getnick & Getnick



Mark Berman (l) and Ralph Carter, recipients of the Alcott-Leber-Younger Committee of the Year award for the Commercial Division Committee



Expert Witness Panel (l-r): Hon. James Wicks, E.D.N.Y.; Hon. Deborah Karalunas, Commercial Division, Onondaga County; Anne Sekel, Foley & Lardner and Tom Fini, Catafago Fini



Above (l-r): Hon. Ellen Gesmer, Hon. Rolando T. Acosta, Hon. Barbara Kapnick, and Hon. Tanya Kennedy, all of Appellate Division, 1st Dep't



Above: New York-Delaware Panel (l-r): Jonathan Lupkin, Lupkin PLLC; Oderah Nwaeze, Faegre Drinker Biddle & Reath; Hon. Melissa Crane, Commercial Division, New York County; Hon. Vice-Chancellor Lori Will, Delaware Court Chancery



Right (l-r): Chair Ignatius Grande and Hon. Andrea Masley, Commercial Division, New York County

# Presentation of Robert L. Haig Award for Distinguished Public Service to Hon. Rolando T. Acosta

By Roger Maldonado

I have the honor of presenting the Robert L. Haig Award for Distinguished Public Service to this year's recipient, the Hon. Rolando T. Acosta.

The award has been conferred by the NYSBA Commercial and Federal Litigation Section since 1995 to a “long-standing member of the legal profession who has rendered distinguished public service.”

The first recipient of the award, fittingly, was Robert L. Haig. Other recipients include the Hon. Judith S. Kaye and the Hon. Jonathan Lippman and two other distinguished jurists who are present here tonight—the Hon. William M. Skretny and the Hon. Glenn T. Suddaby.

Justice Acosta has served since May 2017 as the presiding justice of the New York State Supreme Court, Appellate Division, First Department. But I have known Rolando since his days as a Columbia law student, when he worked as a summer intern in the housing unit of South Brooklyn Legal Services. Chip Gray—the then-director of South Brooklyn—and I were duly impressed with Rolando's academic achievements—but the truth is that we offered Rolando the position with hopes of bolstering—at least for one summer—the fortunes of South Brooklyn's softball team. We both noted that Rolando's resume proudly proclaimed that he earned four straight All-Eastern League (and All-Ivy League) honors as a star pitcher, leading the Columbia Lions to two Ivy League championships, all of which led to Rolando becoming a member of the Columbia University Athletics Hall of Fame.

Upon graduation from Columbia Law School, Rolando joined the Legal Aid Society, where he held various positions, including attorney-in-charge of Legal Aid's largest civil trial office, and director of government and community affairs. At Legal Aid, Rolando advocated forcefully for the rights of tenants to live securely in their homes, free from harassment and wrongful evictions, among many other policy initiatives he pursued to promote the interests of those members of his community who most needed assistance.

Thereafter, Rolando served as first deputy commissioner and deputy commissioner for law enforcement at the New York City Commission on Human Rights, where he continued to work passionately to secure the civil rights of the residents of the city Rolando had come to call home, since he immigrated with his family from the Dominican Republic at the age of 14.

Justice Acosta's legal career began when he was elected in 1997 to a county-wide civil court judgeship in New York County. In 2001, I visited Rolando at the Justice Center for Harlem, where he presided over cases involving different matters, including housing, family and criminal proceedings, with the goal of fashioning creative solutions to these inter-related issues. You could tell from Rolando's facial expression and the tone of his voice just how proud—and grateful—he was to be in a position to provide such meaningful service to the members of the community, many of whom he communicated with directly in Spanish.

Rolando served as a Supreme Court justice in the First Judicial District from 2002 through 2008, when he was appointed to serve as justice of the Appellate Division, First Department. Rolando took the helm as presiding justice of the Appellate Division, First Department with the goal—which he has accomplished—of modernizing its systems and making the administration of justice more efficient and accessible to the public. During Rolando's term as the First Department's presiding justice, the court has enjoyed its highest level of productivity in its history.

Rolando currently serves as the chair of the Working Group on Appellate Practices of the Commission to Reimagine the Future of New York's Courts, where he has taken on the unenviable task of leading an effort to modernize and make more efficient and uniform the entire New York State court system's electronic filing procedures. Only someone with Rolando's drive and people-skills would dare to take on this challenge—and have any hope of succeeding.

Rolando is deeply committed to community involvement and has long been active in the development of the social service infrastructure for the Washington Heights/Inwood community. Rolando co-founded the Latino Commission on Aids and served as the legal adviser to the founding board of Alianza Dominicana. Rolando was a founding member of the Upper Manhattan Empowerment Zone and has served on that organization's executive committee and chaired its human capital development committee.

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It is my great pleasure and honor to ask Presiding Justice Rolando T. Acosta to come forward to receive the 2022 Robert L. Haig Award for Distinguished Public Service.

# International Litigation: Inbound Cross-Border Discovery

By Clara Flebus

The globalization of business has expanded the need for cross-border discovery in litigation and arbitration proceedings. In view of the complex scenarios U.S. and foreign counsel may have to face to collect evidence in multi-national cases, the International Litigation Committee has planned a series of continuing legal education programs aimed at increasing familiarity with procedural mechanisms to obtain evidence from individuals or entities located in jurisdictions different from where a proceeding is, or will be, pending.

The first program of the series focused on “inbound” cross-border discovery—a scenario in which the request for evidence comes to the U.S. from parties based outside the U.S. A panel of experts including Charlene Sun, a partner at DLA Piper; Chris Paparella, a partner at Steptoe & Johnson; and Alan J. Lipkin, a partner at Chaffetz Lindsey, discussed U.S. procedural tools available to gather evidence located in the United States for use in foreign proceedings. Specifically, the speakers addressed discovery standards set forth in § 1782 of 28 U.S.C., § 3102 of C.P.L.R., and Chapter 15 of the U.S. Bankruptcy Code. This dynamic panel was moderated by Gretta Walters, who is a partner at Chaffetz Lindsey handling domestic as well as international commercial and investment disputes. The online program was broadcast live on May 3, 2022.

## Section 1782

The panel discussion kicked off with Charlene Sun explaining that § 1782(a) is a federal statute allowing any interested person involved in a foreign proceeding or investigation, or a “foreign tribunal” itself, to request a district court to issue an order compelling discovery from a person or entity that resides or is found in the district in which the court sits. The typical situation in which § 1782 should be used is when counsel has identified a witness or custodian located in the United States with information relevant to the foreign proceeding, and the witness or custodian is outside the reach of the foreign tribunal. As § 1782 offers discovery in accordance with U.S. standards and the Federal Rules of Civil Procedure, a foreign litigant is likely to benefit from gathering evidence that is broader in scope and different in kind from what is available in foreign jurisdictions. An additional benefit is that U.S. courts have the ability to enforce discovery orders by imposing contempt fines.



**Clara Flebus** is an appellate court attorney in the New York Supreme Court, where she also focuses on the disposition of international arbitration-related matters. She co-chairs the International Litigation Committee of the Commercial and Federal Litigation Section. Ms. Flebus holds an LL.M. degree in International Business Regulation, Litigation and Arbitration, and is a prolific writer who authors articles regularly on arbitration, commercial litigation, and court procedures for various bar journals and other legal publications.

A U.S. court applies a two-part analysis to decide the merits of discovery requests pursuant to § 1782. First, an applicant must satisfy three statutory requirements that are considered mandatory. The first is that the person from whom discovery is sought must reside or be found in the district where the application is made. Sun explained that federal courts have construed this requirement to mean that the person must be subject to general or specific personal jurisdiction. The second statutory requirement is that the person seeking discovery must be an interested person, to wit: the foreign tribunal, a party to the foreign proceeding, or any other person with a reasonable interest in the outcome of that proceeding. The third statutory requirement is that the discovery must be for use in the foreign proceeding, which may be pending or within reasonable contemplation.

It should be noted that the question of whether § 1782 can be used to obtain evidence in aid of a foreign *arbitration* tribunal, as opposed to a foreign court, has generated a circuit split which was recently resolved by the U.S. Supreme Court in *ZF Automotive US, Inc. v. Luxshare, Ltd.* (\_\_\_ S.Ct. \_\_\_, 2022 WL 2111355 (June 13, 2022)). The court held that private adjudicatory bodies do not fall within the scope of § 1782, as the term “foreign tribunal” reflected in the statute means a “tribunal imbued with governmental authority by one nation,” and not a commercial arbitration panel privately constituted pursuant to a contract between the parties.

Sun went on to discuss the four discretionary factors supplied by the U.S. Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.* (542 U.S. 241 (2004)), which come into play only if the statutory requirements are met. The first



factor is whether the discovery sought is within the foreign tribunal's jurisdictional reach. A U.S. court will be more inclined to grant the application if it seeks discovery from a third party that is not accessible to the foreign tribunal. The parties to the foreign proceeding presumably are already subject to the authority of the foreign tribunal, which could order them to produce evidence as it deems necessary, and the need for a U.S. court to get involved is less apparent. The second factor includes the nature and character of the foreign proceeding, which needs to comport with the notion of due process, and receptivity. The party opposing discovery has the burden of proving that the evidence would not be received by the foreign tribunal.

The third factor considers whether the application conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the U.S. It is not necessary for the evidence sought to have been discoverable in the foreign forum or that remedies were exhausted there. But a foreign court's prior rejection of the request weighs against the granting of the § 1782 application. Lastly, the fourth factor looks to whether the request is unduly intrusive or burdensome. In this respect, a U.S. court has broad discretion to trim a request and may protect privilege through an order of protection.

Sun concluded by commenting on the extraterritorial reach of § 1782 discovery. She stated that, according to Second Circuit jurisprudence, if a custodian is in New York and has access to a company's computer system that has information on an account that is managed in Paris (France), that information can be produced through a § 1782 request, because there is no *per se* bar to extraterritorial application of the statute (see *In re del Valle Ruiz*, 939 F.3d 520 (2d Cir. 2019)).

## Section 3102

Chris Paparella examined methods to obtain evidence using the civil procedure rules of the State of New York, which

use the term "disclosure" in lieu of "discovery." Section 3102 of the New York Civil Practice Law and Rules provides for typical discovery devices such as depositions, interrogatories, document production, requests for admission, etc. Subsections (c) and (e) are relevant for international cases. Section 3102(c) provides for discovery *before* an action is commenced, without specifying whether it applies to proceedings abroad. Meanwhile, § 3102(e) allows for discovery in an action pending in another jurisdiction (i.e., states other than New York), and expressly includes actions in a "foreign jurisdiction." In view of New York State's adoption of the "Uniform interstate depositions and discovery" statute (see CPLR 3119), currently § 3102(e) can arguably only be used to collect evidence in aid of foreign actions.

Paparella explained that the scope of pre-action discovery under § 3102(c) is limited. This rule cannot be used to determine *if* a party has a cause of action. In other words, the rule cannot serve to conduct a fishing expedition to ascertain if a cause of action exists. However, it can be employed to "frame a complaint" if a party can make a *prima facie* showing of a potentially viable cause of action. For the most part, the rule is used to identify potential defendants and witnesses. Although § 3102(c) does not state specifically whether it can be employed to gather evidence in aid of a *foreign* action, at least one lower court decision stated that there is no reason the statute should not apply in that scenario (see *Murray v. Society for Worldwide Interbank Financial Communication*, Index No. 102794/12, 2012 N.Y. Slip Op. 32810[U] (N.Y. Sup. Ct. Nov 5, 2012)). In that case, the petitioner sought an order to compel production of documents to be used to frame a complaint against the Bank of New Zealand in an action to be litigated in New Zealand.

The text of § 3102(c) also provides for discovery "to aid in arbitration." However, Paparella commented that the rule has been applied only where the arbitration was already un-

derway, and not before it was commenced. With respect to requests for discovery in aid of domestic arbitration, courts generally have held that a party needs to show “extraordinary circumstances” that would warrant judicial intervention (*see, e.g., De Sapio v. Kohlmeyer*, 35 N.Y.2d 402 (N.Y. 1974)). Discovery of “books and records” was granted in a commercial dispute on the grounds that the documents were required “to present a proper case to the arbitrator” (*Hendler & Murray, P.C. v. Lambert*, 511 N.Y.S.2d 941 (N.Y. App. Div. 1987)). However, Paparella could not find any case discussing a § 3102(c) application to obtain evidence in aid of *foreign* arbitration.

Section 3102(e) offers an easier standard to meet, and provides that discovery may be ordered by a New York court where “any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction” or “whenever upon notice or agreement, it is required to take the testimony of a witness in the state.” Upon making the necessary showing, an applicant may obtain an order to take the deposition of a witness “in the same manner and by the same process” in which the testimony would be collected if it were to be used in an action pending in New York. As a practical matter, although contemplating only testimonial evidence, the statute can be employed to obtain documents by relying on § 3111 of New York Civil Practice Law and Rules, which permits a party seeking a deposition to require production of documents in the deposition notice subpoena. A party opposing a discovery application has the burden to show that the evidence sought is unfair or prejudicial, violates fundamental rights (including due process), or is not relevant or necessary.

The text of § 3102(e) does not mention whether it applies in relation to *foreign arbitration* proceedings and there is no case law on point. Paparella suggested that, potentially, a party could obtain a discovery order from the arbitrators, have it confirmed by the foreign court at the seat of the arbitration, and then annex that foreign court order to a § 3102(e) application in New York.

A court decision on a discovery matter can be appealed, and the applicable standard of review is abuse of discretion. However, Paparella noted that the New York State appellate courts have not shied away from reversing the grant of discovery by the lower courts. He added that, by contrast, it is much harder to obtain a reversal of an order refusing to grant discovery because the courts prefer to interpret the discovery statute narrowly.

## Chapter 15 Discovery

Alan Lipkin discussed discovery mechanisms available to gather evidence in aid of, or in connection with, foreign insolvency, liquidation, or debt restructuring proceedings.

Generally, to obtain recognition of such foreign proceedings in the United States, which is a precondition to utilizing U.S. bankruptcy law and its discovery tools, a representative of a foreign entity that is the subject of the foreign proceeding must commence an ancillary case pursuant to chapter 15 of the U.S. Bankruptcy Code. While the request for recognition is pending, there is a mechanism for solely the “foreign representative” to obtain discovery. Upon recognition of the foreign insolvency proceeding, the foreign representative, and in limited instances creditors of the foreign debtor, will have access to discovery tools designed to help address U.S.-related matters relevant to the administration of the foreign entity’s estate. These tools include the ability to seek discovery concerning the foreign debtor’s property and affairs for the purpose of gathering information potentially relevant to the administration of the foreign insolvency proceeding. Notably, globalization means that many foreign businesses have a presence in the United States, and the U.S. Bankruptcy Court for the Southern District of New York is the most common venue for commencing chapter 15 cases.

Lipkin focused on three basic discovery approaches in a cross-border insolvency case under chapter 15. First, § 1521(a)(4) of the U.S. Bankruptcy Code provides for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations, or liabilities. A bankruptcy court, acting as gatekeeper, may grant an order authorizing such discovery if it deems it to be “necessary and appropriate.” However, the court may limit the scope of a discovery request to prevent abuse and harassment. Relief under § 1521 is subject to § 1522, which provides that a court may grant relief only if the relevant parties’ interests “are sufficiently protected.”

The second discovery tool is § 542(e) of the U.S. Bankruptcy Code, which may be relied upon even though it is not in chapter 15. Section 542(e) provides the foreign debtor or its representative the power to recover the debtor’s property (including books, documents, records, and papers, relating to the debtor’s property or financial affairs) held by a third party.

The third discovery mechanism is Rule 2004 of the Federal Rules of Bankruptcy Procedure, which affords broad fishing expedition-type discovery. Essentially, if no litigation is pending between the parties (i.e., between the foreign debtor or its representative and the discovery target) related to the scope of requested discovery under Rule 2004, that Rule authorizes a party in interest, such as a foreign representative, to obtain “broad and unfettered” discovery by examining an entity or subpoenaing documents relating “to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate.” In effect, Rule 2004 may be used to determine if litigation would be necessary or appropriate.

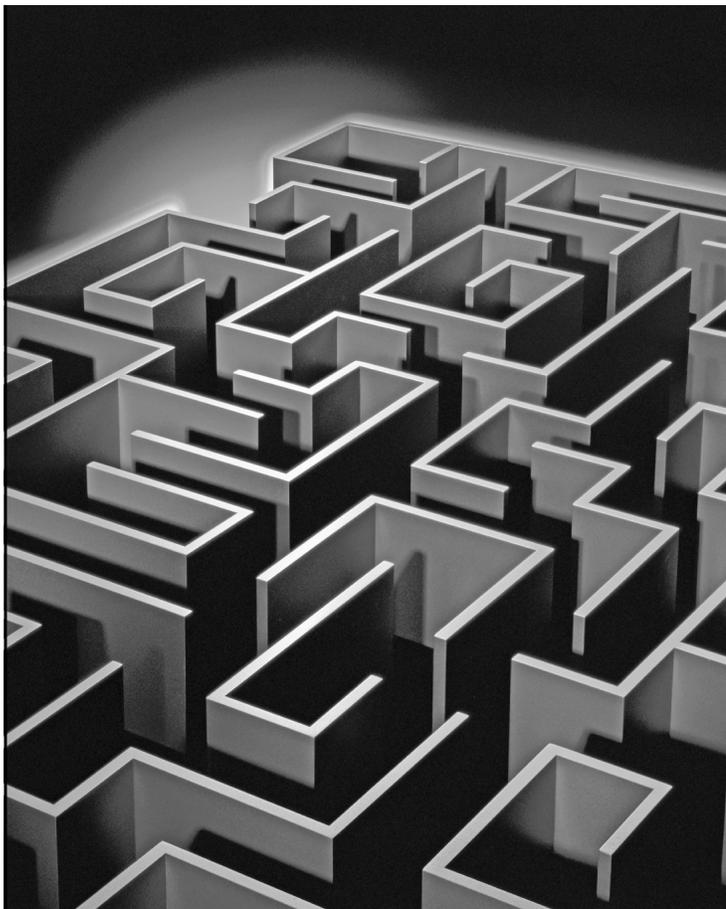
Lipkin noted that bankruptcy courts routinely consider whether Rule 2004 discovery may be utilized in conjunction with § 1521(a)(4) to determine the appropriate scope of discovery requested in aid of foreign proceedings. If Rule 2004 discovery is permissible, then bankruptcy courts generally look unfavorably on attempts to limit discovery under Rule 2004. As Rule 2004 is primarily used to investigate potential claims and other assets as well as potential liabilities, it is *unavailable* in matters that are already the subject of litigation between the foreign debtor and the discovery target. In the latter case, parties are confined to more traditional discovery under the Federal Rules of Civil Procedure (as made applicable in bankruptcy cases) and, therefore, discovery is limited to the subject-matter of the litigation.

An interesting advantage is that discovery in chapter 15 cases, whether or not Rule 2004 is utilized, is not limited to materials located in the U.S. The criterion is whether the materials are in the “possession, custody or control” of the party from whom discovery is sought, “including documents held by a party’s [foreign] attorneys or agents” (*In re Markus*, 607 B.R. 379, 389 (Bankr. S.D.N.Y. 2019), *aff’d in part, vacated in part on other grounds, remanded sub nom. Markus v. Rozhkov*, 615 B.R. 679 (S.D.N.Y. 2020)). Another advantage of chapter 15 discovery is that U.S. bankruptcy courts have not limited the discovery requests simply because the informa-

tion sought is beyond the scope of permissible discovery in the country where the main insolvency proceeding is pending. Thus, unlike § 1782, a discovery objection that the foreign representative is seeking to circumvent the unavailability of discovery in the foreign jurisdiction is unlikely to succeed in a chapter 15 proceeding.

Chapter 15 discovery, while generally broader than that available under §§ 1782 and 3102, likely requires more complexity, time, and expense necessitated by having to commence a chapter 15 case. Thus, the attractiveness of pursuing chapter 15 recognition, and gaining access to its discovery tools, depends significantly on whether the availability of broader discovery would be likely to yield a practical benefit in the form of additional material information unavailable under §§ 1782 or 3102. Still, Mr. Lipkin suggested that “if a chapter 15 case is already pending or needs to be commenced for other reasons, then chapter 15 might be the best forum for discovery.”

The inbound cross-border discovery panel presentation was well attended and concluded with a Q&A session with the attendees. Programs in the cross-border discovery series are offered free of charge to members of the International Litigation Committee and law students. Please contact committee Co-Chair Clara Flebus ([clara.flebus@gmail.com](mailto:clara.flebus@gmail.com)) to join the committee and participate in future activities.



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# Observational Notes: An Evening With New York’s Commercial Division Justices

By Quinn D’Isa

On April 26, 2022, the Commercial and Federal Litigation Section hosted a judicially star-studded event in its first in-person event since the onset of the COVID-19 pandemic. The event was hosted at Kelley Drye & Warren at its World Trade Center offices. The panelists consisted entirely of New York County’s Commercial Division justices. In alphabetical order, the speakers were: Hon. Andrew Borrok, Hon. Margaret Chan, Hon. Joel M. Cohen, Hon. Melissa A. Crane, Hon. Andrea Masley, Hon. Barry Ostrager, Hon. Robert R. Reed, and Hon. Jennifer G. Schechter. The eight justices of New York County’s Commercial Division and Section members gathered for a lively conversation between the justices, moderated by Jonathan D. Lupkin, founding member of Lupkin PLLC. Conversation topics ranged from discovery, ethics, ADR, and trials to the changes wrought by the pandemic. Following the panel was a networking reception with refreshments.

This article highlights just a few of the illuminating and insightful discussions between the justices. However, before getting to those discussions, on a more humorous note, the judges shared horror stories of worst practices on the topic of issues related to legal practitioners’ transition to virtual practice. The best or rather most memorable was one anecdote of an attorney lighting up a cigarette and smoking while on camera during an oral argument. Practitioners should note that even virtual courtrooms are no-smoking areas.

On the first topic of virtual courtrooms, Justice Cohen called them a tool that, while convenient, changes the mindset of litigators—that being in-person grants a sense of formality to proceedings and a sense of urgency in time regarding oral advocacy that is lacking in virtual proceedings. Justice Cohen particularly highlighted how virtual courtrooms affect



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newer litigators. He found that many young attorneys were just reading their arguments off their computer screens. And while Justice Cohen said he could see how that’s “very tempting,” he found that such tactics stunt the growth of a young litigator. Justice Reed shared that oral arguments have taken longer in virtual courtrooms than in person. He agreed with Justice Cohen that there is a loss of pressure from virtual trials. On the topic of remote jury trials, Judge Chan shared that she thought the prospect of holding a remote trial would make it hard for judges to monitor the jury. Imagine a judge watching 12 Zoom boxes playing teacher to make sure that each juror is observing the trial. However, litigators will not have to imagine for long. Judge Masley applauded New York State for getting a grant to test remote jury trials.

Lupkin next presented the topic of sealing and redacting court records. Lupkin asked the justices for a sense of what they believed would ameliorate problems in the court systems concerning record sealing. Many justices shared their chambers’ current practices for reviewing applications to seal records and what they wished were best practices. Of note,





Judge Cohen, and many other justices, found a great deal of overreach in applications to seal or redact. On the question of redacting and if there is anything attorneys can do better, the answer was a resounding yes. Redact thoughtfully and be targeted with your redactions. Submissions of almost entirely redacted documents do not appear to have those qualities the justices found.

Two other hot topics among the justices were dispute resolution and case management. On the subject of case management and discovery, Justices Borrok, Chen, Cohen, Crane, and Ostrager shared opinions on cost-shifting amongst parties. Justice Crane, on the topic of third-party discovery, found that if parties want to spend \$200,000, they should be allowed to do it. Justice Chen found that cost itself is a check on third-party discovery, noting that without the cost being an issue, the discovery process would become all the more daunting.

Moving to alternative dispute resolution, Justice Ostrager shared his opinion that the state's ADR system is broken in requiring a six-month wait for parties to get a state ADR mediator. He instead encourages parties to do mediation with paid mediators, to which many talented former justices are available to mediate. When litigants accept Judge Ostrager's suggestion to do paid mediation, he has found that the paid mediator resolves 70% of cases, which he noted is a cheaper cost than a motion for summary judgment. Justice Reed spoke to the reality that New York courts just don't have enough people in its ADR system to do it for free and that parties could resolve some of their disputes if they did sit down together more to discuss the issues. Justice Borrok shared that he believes ADR to be a helpful tool for parties

but that courts might not want to demand that parties engage in the ADR process. As a whole, the panel members encouraged the bar at large to consider ADR. Considering ADR is best for clients, cases, and the court—the justices agreed that attorneys should sit down and hash things out. If nothing comes of it, the justices noted that they are at least pleased that the parties attempted to resolve the dispute. And if they do resolve the dispute, it highlights how ADR is better for clients, cases, and the court than churning out motions and discovery demands and having needless depositions.

Lastly, Lupkin opened the floor to questions. The most practical question was: "What can we as practitioners do better?" Justice Borrok advised parties to assume that the justice has read the papers and to focus on the critical issues of a case when arguing. Judge Ostrager urged parties to meet and confer before coming to the court, finding it comical that parties end up meeting and conferring at many status conferences and settling. Judge Reed advises attorneys to answer the questions a judge asks during oral argument. He stressed that good oral advocacy is not about obfuscating or answering around a question but instead answering the specific question asked. Judge Chan noted that she also would prefer parties to meet and confer, especially on discovery motions. Parties should narrow down the issues to those materially disputed and then come to the court.

Lupkin then closed the event, thanking the justices and remarking on how special it was for ComFed to finally be back in person.

# Book Review: *Business and Commercial Litigation in Federal Courts*, Fifth Edition (Vols 1-16)

Robert L. Haig, Editor-in-Chief (Thomson Reuters, 2021)

Reviewed by Jonathan D. Lupkin

Perusing Robert L. Haig's *Business and Commercial Litigation in Federal Courts* reinforces the critical importance of a quality treatise to the legal research process. In my experience, routine use of these learned compilations authored by experts in their respective fields has, all too often, given way to the expediency of haphazard keyword searches. This observation, of course, is not intended as a polemic against computerized legal research; after all, the speed, scope and sophistication of research facilitated by the computer cannot seriously be disputed. My point is simply this: using treatises generally (and Haig's specifically) enhances the efficacy and quality of search-based research by providing the practitioner with a broad overview of, and perspective on, the subject matter at issue.

Haig's treatise is really something special. This most recent release is the fifth edition of Haig's masterwork, and a few noteworthy statistics bear mention. This current iteration comprises 19,866 pages of text (2,724 more than the fourth edition) and a staggering 180 chapters. As compared with the fourth edition, Haig's fifth edition includes 26 entirely new chapters on varied topics ranging from virtual currencies to climate change, from fraudulent transfers to political law, and from artificial intelligence to space law (who knew that such a body of law even existed?).

But there are three aspects of the treatise that make it particularly useful. The first is that it collects and curates the knowledge and insight of 373 contributing authors, including 32 members of the judiciary from both the trial and appellate benches. They are among the elite of the elite in the country. Apart from the fact that corralling this large group of legal denizens is, in itself, extraordinary and reflective of Haig's prodigious organizational skills, having so many contributors means, of necessity, that the reader will benefit from a wide variety of perspectives.

Second, it provides insight into the complex procedural rules that govern federal practice, in-depth coverage of 93 areas of substantive law, and, critically, the interplay between the substantive and procedural. And because most of the contributing authors are frontline practitioners, they can (and do) share real-world insights that contribute to the practitioner's approach and overall strategy.



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Third, *Business and Commercial Litigation in Federal Courts* also contains several chapters on the business of law, including "Budgeting and Controlling Costs," "Marketing to Potential Business Clients," and "Litigation Avoidance and Prevention." The inclusion of these nuts-and-bolts practical treatments reflects a critical acknowledgment that, while a learned profession, law is, in many ways, a commercial venture that requires skills they simply don't teach in law school.

Taken together, along with the myriad procedural and practice checklists, not to mention sample litigation forms, Mr. Haig's treatise provides one-stop shopping for federal litigators, both weathered veterans and newcomers alike.

There are few secondary sources to which every New York commercial litigator must have ready access, and *Business and Commercial Litigation in Federal Courts* along with its state law counterpart, *Commercial Litigation in New York Courts*, are among them. Both treatises (and, of course, the venerable *New York Practice*, by the late Professor David Siegel), are well worth the allocation of shelf space. I have certainly made that investment.

# A Picture of Success: ComFed’s Mentoring Program

By Anne Louise LaBarbera

Almost all of NYSBA’s Sections indicate a desire to create and run a successful mentor program, yet many have struggled to keep such programs going once they have been started. The nearly unique success of ComFed’s mentorship program is perhaps attributable to the program’s frequent group activities. This year the pandemic led to most of our mentorship program activities being held online, but on June 2, 2022, as the bar year came to a close, Yi-Hsin Wu put together a successful event, this time in person at Muse Paintbar, called a “Sip and Paint,” which attendees enjoyed immensely.

Team-building activities are almost inherently awkward, as they typically involve an unusual activity with which the majority of the participants are unfamiliar and quite unskilled at. It’s the perfect vehicle for bonding. As lawyers we love to be in control and make a habit of avoiding vulnerability. As litigators we almost have an addiction to maintaining control in high pressure and unpredictable circumstances. Bonding as a group requires vulnerability. Nothing has the potential to make a group of lawyers, largely litigators, vulnerable like asking them to do something they are entirely unskilled at.

At the Sip and Paint we were able to enjoy the low-stakes comfort zone of creating individual re-creations of the same mediocre painting, the original almost entirely lacking in aesthetic appeal and each re-creation more pedestrian than the



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next. As imperfect—read hideous—as our paintings were, the shared experience was what every lawyer chases and rarely achieves. Perfection.

We laughed, we talked, we had snacks, and we learned how bad we all are at painting, with the possible exception of Marcella Jayne, who went with the “rules are meant to be broken” rebel-without-a-cause-of-action route, adding flair and detail not contemplated in the original design.

**Please stay tuned for announcements about the next Mentorship Program.**



# CPLR Amendments: 2022 Legislative Session

(2022 N.Y. Laws ch. 1-375)

CPLR	Chapter (Part) (Subpart, Item)	Change	Eff. Date
105(s-1)	346	Extends expiration date to 6/30/2023	6/30/22
214-j	203(1)	Adds revival for certain sexual offense actions	12/31/21
3101(f)	136	Amends requirements for disclosure of contents of insurance agreements	12/31/21
3119(g)	219(4)	Adds a new suivision on out-of-state abortion proceedings	6/13/22
3102(e)	219(5)	Adds prohibition on issuance of order in connection with out-of-state proceeding relating to certain abortion services or procedures	6/13/22
3403(a)(7)	203(2)	Adds a cross-reference to CPLR 214-j	5/24/22
3410(a)	9(6)	Adds an exception as provided in CPLR 3410(i)(1)	5/30/22
3410(b)	9(7)	Deletes “recovery” in opening sentence of CPLR 3410(b)	5/30/22
6340(2)	208(1)	Adds certain additional professionals to definition of “petitioner”	7/6/22
6341	208(2)	Adds mandates for filing of application by certain professionals	7/6/22
6348	208(3)	Adds a section on protections for health care providers applying for an extreme protection order	7/6/22

## Proposed Rules of Interest to Civil Litigators (2021-2022)

(For more information, please see <http://ww2.nycourts.gov/rules/comments/index.shtml>.)

Note: The comment periods for the following proposed rules have expired.

**April 6, 2022: Request for Public Comment on Proposal to Amend Part 523 to Add a Provision That Permits a Lawyer Licensed in a Jurisdiction Outside New York to Practice Remotely from a New York Location**

**February 18, 2022: Request for Public Comment on Proposal to Amend Commercial Division Rules 2, 5, 15, 16, and 19**

**February 3, 2022: Request for Public Comment on Proposal to Adopt a New Part 60 and a New Part 160 to Establish General Statewide Rules for the Referral of Civil Disputes in the Trial Courts to Alternative Dispute Resolution**

**February 2, 2022: Request for Public Comment on Proposal to Amend Commercial Division Rule 6 to Require the Interlineation of Responsive Pleadings**

**October 26, 2021: Request for Public Comment on Proposal to Harmonize Matrimonial Rules with new Uniform Civil Rules**

**October 1, 2021: Request for Public Comment on Proposal to Amend the Uniform Civil Rules for the Supreme Court and the County Court**

**March 19, 2021: Request for Public Comment on the Proposal to Adopt ABA Model Rule 8.4 (g) in New York’s Rules of Professional Conduct**

# 2022 Amendments to the Uniform Rules for Supreme and County Courts, Rules Governing Appeals, and Certain Other Rules of Interest to Civil Litigators

(West's 2022 N.Y. Orders 1-7, 9-15; Adopted Rules on OCA website, at <http://ww2.nycourts.gov/rules/comments/index.shtml>; amended rules on appellate court websites)

22 N.Y.C.R.R.	Court	Subject (Change) Link to Order	Eff. Date
202.5(a)(2)	Sup.	Requires preparation of documents using computer software program AO-141-22.pdf (nysba.org)	7/1/22
202.6(b)	Sup.	Adds an application for change of sex designation <a href="https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-009-22.pdf">https://www.nycourts.gov/LegacyPDFS/RULES/trialcourts/AO-009-22.pdf</a>	2/1/22
202.8-b	Sup.	Adds provisions on typewritten and handwritten papers and for cross-motions AO-141-22.pdf (nysba.org)	7/1/22
202.8-g	Sup.	Permits court to allow amendment or withdrawal; adds compliance provisions AO-141-22.pdf (nysba.org)	7/1/22
202.12-a(b)(1)	Sup.	Adds requirement for listing of alternate addresses AO-141-22.pdf (nysba.org)	7/1/22
202.16	Sup.	Provides for harmonization of rules governing matrimonial actions AO-141-22.pdf (nysba.org)	7/1/22
202.16-b	Sup.	Provides for harmonization of rules governing matrimonial actions AO-141-22.pdf (nysba.org)	7/1/22
202.20	Sup.	Permits parties to agree to additional interrogatories AO-141-22.pdf (nysba.org)	7/1/22
202.20-a(b)(b)	Sup.	Makes court order discretionary AO-141-22.pdf (nysba.org)	7/1/22
202.20-c(c)(c)	Sup.	Shifts verification to end of document AO-141-22.pdf (nysba.org)	7/1/22
202.20-h	Sup.	Requires submission only upon direction of court AO-141-22.pdf (nysba.org)	7/1/22
202.20-i	Sup.	Requires request of a party for the court order AO-141-22.pdf (nysba.org)	7/1/22
202.20(j)	Sup.	Amends Section V of Appendix A to require adherence to ESI guidelines AO-141-22.pdf (nysba.org)	7/1/22
202.26(c)	Sup.	Specifies that “the court” is the one presiding over a non-jury trial or hearing AO-141-22.pdf (nysba.org)	7/1/22
202.34	Sup.	Authorizes court to direct otherwise AO-141-22.pdf (nysba.org)	7/1/22
202.37	Sup.	States that order of witnesses is advisory only and court may permit different order AO-141-22.pdf (nysba.org)	7/1/22
202.70(g), Rules 1(b)	Sup.	Changes cross-reference to Rule 11-c <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf</a>	4/11/22

22 N.Y.C.R.R. §	Court	Subject (Change) Link to Order	Eff. Date
202.70(g), Rules 4	Sup.	Deletes subdivision (a) and authorizes court to permit submission as the court directs <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-89.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-89.pdf</a>	4/18/22
202.70(g), Rules 8(a)	Sup.	Deletes subdivision (b) and adds cross reference to Rule 11-c <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf</a>	4/11/22
202.70(g), Rules 9(d)	Sup.	Deletes paragraphs (i) and (iii) and adds cross reference to Rule 11-c <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf</a>	4/11/22
202.70(g), Rule 11	Sup.	Authorizes court to require parties to submit documents stating issues in case and elements and causes of action and to revise the documents after partial dismissal; descriptions are not binding <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-117.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-117.pdf</a>	5/31/22
202.70(g), Rules 11-c	Sup.	Adds procedures on discovery of electronically stored information from non-parties <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf</a>	4/11/22
202.70(g), Rules 11-c(f)	Sup.	Deletes subdivision (f) <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf</a>	4/11/22
202.70(g), Rules 11-g(c)	Sup.	Changes cross-reference to Appendix B, Paragraph 18 <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-72-22.pdf</a>	4/11/22
202.70(g), Rules 19-a(b)	Sup.	Requires movant, upon request, to provide respondent with movant's statement in word processing form and respondent to include the movant's statements in the response <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-98.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-98.pdf</a>	5/2/22
202.70(g), Rule 30	Sup.	Adds a new subdivision (b) on mandatory settlement conferences and renumbers existing subdivisions (b) and (c) as (c) and (d), respectively <a href="https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-10-22.pdf">https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO-10-22.pdf</a>	2/1/22
850.3	3rd Dep't	Provides that initial filing rules of 1250.3 do not apply to transferred CPLR Article 78 proceedings	7/15/22
850.4	3rd Dep't	Adds deadline for return date for amicus curiae motions	7/15/22
850.5	3rd Dep't	Provides that all causes in the 3rd Dep't are subject to mandatory e-filing, with certain exceptions	7/15/22
850.13	3rd Dep't	Amends filing requirements in original special proceeding	7/15/22
850.14(a)	3rd Dep't	Provides that where undertaking is required under Labor Law § 625 appeal is not perfected until proof of undertaking has been filed with Commissioner of Labor	7/15/22

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