



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
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MEMORANDUM

June 27, 2014

To: All Interested Persons

From: John W. McConnell

Re: Proposed adoption of a Preamble to the Rules of the Commercial Division (22 NYCRR § 202.70(g)) relating to sanctions.

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The Commercial Division Advisory Council has recommended adoption of a Preamble to the Rules of the Commercial Division addressing the imposition of sanctions for dilatory litigation conduct, failure to appear for scheduled matters, undue delay in producing relevant documents and other conduct causing unnecessary expense and delay (Exh. A). The Advisory Council's proposal follows up on the 2012 Report of the Chief Judge's Task Force on Commercial Litigation in the 21st Century, which recommended that Commercial Division Justices be encouraged to consider the imposition of authorized sanctions where litigants and counsel ignore case management orders or other deadlines. The Advisory Council believes that the best way to implement this recommendation is to adopt a Preamble in the Rules of the Commercial Division acknowledging the problems caused by dilatory tactics, directing litigants and counsel to familiarize themselves with existing provisions authorizing sanctions, and advising that Commercial Division Justices will impose sanctions when warranted to enforce case management orders and discovery schedules. The proposed Preamble is not "intended to expand or alter the scope and/or remedies available under [existing] sanction rules."

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than August 26, 2014.**

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

EXHIBIT A

MEMORANDUM

TO: Commercial Division Advisory Council

FROM: Subcommittee on Best Practices for Judicial Case Management

RE: Proposed New Rule Regarding Sanctions

DATE: April 29, 2014

The Subcommittee on Best Practices for Judicial Case Management in the Court System has prepared a new Rule addressing dilatory litigation conduct and sanctions, which would be included as a preamble to the Rules of the Commercial Division of the Supreme Court. The Chief Judge's Task Force on Commercial Litigation in the 21st Century recognized that the Commercial Division needs to make reasonable efforts to better accommodate clients who can be frustrated with the wasted time and resources expended in getting parties and their counsel to comply with case management orders and deadlines.

In its June 2012 report, the Chief Judge's Task Force on Commercial Litigation in the 21st Century concluded that sanctions were often underutilized in Commercial Division cases and issued the following recommendation regarding *Imposition of monetary and non-monetary sanctions for failure to adhere to case management orders and other deadlines*:

While sanctions have long been available in New York State courts, they are often underutilized. The integrity of the judicial process is compromised when litigants and counsel ignore or defy case management orders or other deadlines. Further erosion of judicial trust occurs when the court fails to sanction a litigant or counsel who incessantly engages in behavior of this type. The Task force recommends that Commercial Division Justices be encouraged to consider monetary and non-monetary sanctions already provided for where parties fail to comply with case management orders or other deadlines.

The Task Force also notes the importance of how orders imposing sanctions are viewed by appellate courts, and suggests that stronger pronouncements from the Appellate Division will result in the imposition of more meaningful sanctions orders and, in turn, reduce frivolous practice. (Report at p. 24).

In light of the fact that there is already substantial authority to allow judges to impose sanctions in the Commercial Division, the Subcommittee believes the best way to implement the Task Force's recommendation is to reinforce the existing rules with a preamble to the Commercial Division Rules that (a) acknowledges the problems caused by dilatory tactics and counsel who fail to appear for conferences, (b) directs litigants and their counsel who use the Commercial Division to familiarize themselves with the numerous sanctions provisions in the Rules, and (c) advises that Commercial Division judges will impose sanctions as the circumstances warrant in order to enforce compliance with case management orders and discovery schedules. Accordingly, the following proposed Rule would be an addition to the

Commercial Division Rules (Section 202.70 of the Uniform Rules for N.Y.S. Trial Courts), inserted at the end of the current text of §202.70(g), before Rule 1.

Proposed Preamble to Commercial Division Rules:

The Commercial Division understands that the businesses, individuals, and attorneys who use this Court have expressed their frustration with adversaries who engage in dilatory tactics, fail to appear for hearings or depositions, unduly delay in producing relevant documents, or otherwise cause the other parties in a case to incur unnecessary costs. The Commercial Division will not tolerate such practices. The Commercial Division is mindful of the need to conserve client resources, promote efficient resolution of matters, and increase respect for the integrity of the judicial process. Litigants and counsel who appear in this Court are directed to review the Rules regarding sanctions, including the provisions in Rule 12 regarding failure to appear at a conference, Rule 13(a) regarding adherence to discovery schedules, and Rule 24(d) regarding the need for counsel to be fully familiar with the case when making appearances. Sanctions are also available in this Court under Rule 3126 of the Civil Practice Law and Rules and Part 130 of the Rules of the Chief Administrator of the Courts. The judges in the Commercial Division will impose appropriate sanctions and other remedies and orders as is warranted by the circumstances. Use of these enforcement mechanisms enables the Commercial Division to function efficiently and effectively, and with less wasted time and expense for the court, parties and counsel. Nothing herein is intended to expand or alter the scope and/or remedies available under the above-cited sanction rules.

This language has been revised from an earlier version to respond to the views expressed during our last Advisory Council meeting that (a) the Subcommittee should not propose language that moves too dramatically toward increasing applications for sanctions, but (b) the proposed Rule should have more force than simply an aspirational statement that judges can avail themselves of the sanctions tools available to them. We believe the language above takes a moderate approach in addressing the sanctions issue. If this proposal is deemed insufficient over time, the Advisory Council can revisit the issue to formulate more strict sanctions provisions in the future.

Overall, we believe that the proposed Rule adequately appropriately addresses the point that litigants and their counsel need to attend to case management obligations in the Commercial Division with the utmost diligence and appropriately warns users of the court that failure to abide by the court rules can lead to sanction orders and other remedies. We ask the Commercial Division Advisory Council to consider the proposed sanctions Rule for approval at our next meeting.