

To: John W. McConnell
Counsel, Office of Court Administration

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

Date: April 26, 2018

Re: Proposed Amendment to Commercial Division Rule 17, Relating to Word Limits in Papers Filed With the Court

The Commercial and Federal Litigation Section of the New York State Bar Association (“Section”) is pleased to submit these comments in response to the Memorandum of John W. McConnell, counsel to the Chief Administrative Judge Lawrence K. Marks, dated March 14, 2018, (“Memorandum”), proposing an amendment to the Rules of the Commercial Division (the “Rules”) to substitute word limits in place of the page limits set forth in the current rules.

The proposal of the Commercial Division Advisory Council (“Advisory Committee”) seeks to amend the Rules to so as to eliminate incentives to squeeze additional content into allotted page limits under the current rule. The formal proposal by the CDAC (“CDAC Memorandum”) is attached as Exhibit A.

I. EXECUTIVE SUMMARY

The Advisory Committee’s proposal seeks to amend Commercial Division Rule 17, which “specifies that briefs and memoranda may be no longer than 25 pages, that reply memoranda may be no longer than 15 pages, and that affidavits and affirmations may be no longer than 25 pages...” to read as follows:

Length of Papers. Unless otherwise permitted by the court: (i) briefs or memoranda of law shall be limited to 7,000 words each; (ii) reply memoranda shall be no more than 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits and affirmations shall be limited to 7,000 words each. The word count shall exclude the caption, table of contents, table of authorities, and signature block. The signature block of every brief, memorandum, affirmation, and affidavit shall

include the phrase “Words” followed by the number of words in the document. That phrase constitutes a certification by the signatory that the document complies with the word count limit. The signatory may rely on the word count of the word-processing system used to prepare the document.

II. SUMMARY OF PROPOSAL

As stated in the Memorandum, the Advisory Committee believes that “[a] length limit encourages attorneys to focus on strong, concise arguments, and ensures that judges and opposing counsel are not overwhelmed with meandering, repetitious briefs.” *Memorandum at* 1. To that end, according to the Advisory Committee, “[a] word limit serves this purpose better than a page limit because a word count is a much more precise way of measuring the amount of content in a brief.” *Id.* The Advisory Committee goes on to state that “the advent and wide adoption of word-processing software with one-click word-count functionality means that the burden on practitioners to comply with the new standard will not be high.” *Id.*

The Advisory Committee’s position is that, under Commercial Division Rule 17, “attorneys have incentives to unfairly squeeze additional content into the allotted pages” (*Id.*) and “have developed techniques to ‘cheat’ the limit, which include moving text into footnotes and block quotes, widening page margins, decreasing font size, and changing line spacing.” *Id.* It is the Advisory Committee’s belief that “[t]hese techniques undercut the page limit rule’s purpose and decrease readability of papers” (*Id.*) and that “[c]hanging to a word limit will eliminate these incentives since these strategies will no longer be effective.” *Id.*

The Memorandum goes on to state that “the amended rule ensures that both sides have equal space for argument, regardless of the capabilities of their software” (*Id.* at 2) and that “[m]oving to a word limit will also harmonize the Commercial Division with the New York Court of Appeals and the Appellate Departments for the First and Second Department, which set word limits for briefs.” *Id.* at 2.

III. COMMENTS

The Section views favorably the positions taken by the Advisory Committee and fully endorses its proposal to incorporate the aforementioned language into Commercial Division Rule 17 which would specify word limits in lieu of page limits for papers filed in Commercial Division cases. The Section therefore recommends that the amendment to Rule 17 be adopted.