

## MEMORANDUM

TO: Office of Court Administration

FROM: New York State Bar Association  
Commercial and Federal Litigation Section

DATE: March 11, 2014

RE: "Special Masters" pilot program

The Executive Committee of the Commercial and Federal Litigation Section of the New York State Bar Association reviewed the memorandum from John W. McConnell dated February 3, 2014 which proposes the adoption of a pilot "Special Masters" program in the Commercial Division. The Section offers the following comments.

The Section generally endorses the proposed pilot program as a positive step toward easing the burden on the Commercial Division justices, with the following suggestions:

1. The pilot program, as written, does not specify the County(s) from which the volunteer justices will be sought. We assume that the pilot will be run in New York County but that should be specified.
2. As the program requires the consent of both parties, the parties should be provided with an election or consent form, which will only be submitted to the Court if both parties sign. This way, if either does not want to participate, the Court will not be aware of which party declined to consent.
3. As part of the consent process, the parties should be required to delineate in writing the agreed upon scope of the issues for referral to the Special Master.
4. As many discovery issues concern electronic discovery, we suggest that members of the Special Masters "pool" indicate their familiarity with electronic discovery issues so the Clerk may make an appropriate selection.
5. Consideration should be given to extending membership in the pool generally to very experienced and highly qualified attorneys regardless of whether they have retired if appropriate conflict concerns can be addressed.

6. Consideration should be given to allowing the parties to select a Special Master from the “pool,” and to allow the parties to agree to compensate the Special Master beyond reimbursement of costs.
7. If the Court determines that the Special Masters should receive training, the Section would be pleased to create and present programs on such topics as the Court deems appropriate.