

THE NEW YORK STATE BAR ASSOCIATION
COMMERCIAL & FEDERAL LITIGATION SECTION
EXECUTIVE COMMITTEE

Minutes of the Meeting of the Executive Committee of the Commercial & Federal Litigation Section held in accordance with the rules of the New York State Bar Association on Tuesday, June 14, 2016.

MEMBERS PRESENT

Mark Berman, Chair
Robert Holtzman, Vice Chair
Deborah Edelman, Treasurer
Jamie Sinclair, Secretary
Hon Anil C. Singh**
Beth Gould*
Gregory Arenson
James Bergin
Thomas Bivona
Helen E. Freedman
Beth Gould
Jay Himes
Matthew Knouff
Charles Moxley, Jr.
Abigail Pessen
Stephen Roberts
Paul Sarkozi
Natasha Shishov
Daniel Wiig
Isaac Zaur
Matthew Ulmann*
Benjamin Nagin

MEMBERS PARTICIPATING BY PHONE

Mitch Katz, Chair Elect
Jonathan Fellows
Alan Mansfield
Jim Wicks
Laurel Kreitzing
Jonathan Mitchell

** indicates non-executive committee member guest*

***indicates guest speaker for the meeting and non-executive committee member guest*

The meeting came to order at 6:03 p.m.

Section Chair Mark Berman's Welcome Remarks

Mr. Berman welcomed the Executive Committee Members to the meeting, his first as new Chair of the Section. Mr. Berman introduced new attendees at the meeting as well as the new officers of the section. He asked all Executive Committee Members attending the meeting by telephone to send Section Secretary Jamie Sinclair an email so that she could record their attendance for the meeting's minutes. Mr. Berman also asked all Executive Committee Members attending the meeting in person to sign in on the meeting's attendance sheet.

Guest Speaker: Anil C. Singh, New York Supreme Court, Commercial Division

Section Chair Mr. Berman introduced Justice Singh to the Executive Committee and went over Justice Singh's illustrious background, which includes 15 years of service as the court attorney to the Hon. Alice Schlesinger. He also thanked him for speaking to the Executive Committee and invited him to begin his remarks.

Justice Singh began his remarks by introducing his two law clerks, also present at the meeting, and expressing his gratitude for the opportunity to address the Committee. Justice Singh has spent his career dedicated to the judiciary and addressed his views on such things as the efficient mechanisms for beginning a case in the Commercial Division, and the use and purpose of a temporary restraining order. Justice Singh encouraged all attorneys present to consider using mediation, while noting that many judges choose to encourage mediation at different stages in a case. The Judge also discussed various topics including the role his law clerks play in his chambers, mechanisms to address discovery disputes, the use of privilege logs and balancing of the new "proportionality" requirement appearing in the Commercial Division rules with the state policy of liberal discovery in all matters material and necessary. Justice Singh also discussed motion practice in his courtroom and his view on the use of sanctions.

Justice Singh then fielded questions from the Executive Committee Members.

Justice Singh concluded his remarks by thanking the Executive Committee Members for their time and for allowing him to speak at the Executive Committee Meeting. Mr. Berman thanked Justice Singh for taking the time to speak to the Section's Executive Committee and offered the Section's future help with any court initiatives that needed the Section's assistance.

Approval of May 2016 Executive Committee Meeting Minutes

The Minutes for the May 2016 Executive Committee Meeting were unanimously approved by all Executive Committee Members present.

Data Security for the New York Litigator: 2016 Law and Practice or How to Maintain Competence in the Face of Constant Threats - CLE Summary

Section member Matt Knouff provided an overview of a recent CLE held at Wilson Elser Moskowitz Edelman & Dicker LLP on June 2, 2016 from 8:00 a.m. to 12:00 p.m., titled “Data Security for the New York Litigator: 2016 Law and Practice or How to Maintain Competence in the Face of Constant Threats”. The half-day program assisted attorneys in developing their ability to completely identify and address issues associated with data security in the context of the modern practice of law. The program topics included “Key Federal and NYS Data Privacy and Security Laws and Trends”, “Enforcement Actions and New York Data Security Cases – Key Takeaways and Trends”, and “Practical Data Security: What are NY law firms doing”. Mr. Knouff noted that the program boasted over 40 participants, and the Committee’s enthusiasm for a follow-up program or online webinar to further the conversation on this important topic.

Hedge Fund and Capital Markets Litigation Committee Program

Co-chair of the NYSBA Committee on Hedge Funds and Capital Markets, Benjamin Nagin, gave a report on the recent program which featured a two-part panel discussion of the international aspects of hedge fund and capital markets litigation. The program was held on May 11, 2016 at Sidley Austin LLP. Panel discussions included “Key Choice of Law Considerations: Do You Really Have a Choice?” and “Strategic and Practical Considerations in Multi-Jurisdictional Disputes”. Mr. Nagin reported that the event brought over 70 registrants and addressed topics such as the choice of mediators, international issues in hedge fund and capital markets litigation, and choice of law issues. Additionally, a second panel addressed cross border litigation issues.

Section’s Women in Courtroom Initiative

Section Chair Mark Berman announced that in addition to the Fuld, Haig and Bundy awards, the Section will now award the Shira Scheindlin Award for Excellence in the Courtroom annually to a woman who has distinguished herself in state or federal courts. Mr. Berman explained that the award will be given on November 6, 2016, a day of distinction as it is close to the date when women in New York were afforded the right to vote. The event will be held in the ceremonial courtroom at the Southern District of New York courthouse. In addition to the awardee and Judge Scheindlin, various members of the selection committee will give their remarks. A proclamation by Chief Judge Janet DiFiore will be read, and State Bar President Claire Guteskunst will also be in attendance. The program will include the award, cocktail reception, and a CLE component regarding trial practice. Additionally, the Section will introduce a mentoring program and award scholarships for female attorneys to attend the commercial division academy, to be held in April or June 2017. A nominal charge will apply at registration to cover the price of food and drink for attendees.

Membership Report

Section Chair Mr. Berman reported on the Section's latest membership numbers. Mr. Berman stated that the Section currently has 2,022 members. To further the Section's membership goals, District leaders will send letters to members who dropped their membership in the Section since March of 2016 inviting them to rejoin. Beth Gould, Section Liaison, will assist in the preparation and dissemination of the list of dropped members. Mr. Berman also noted that the November women's courtroom initiative event will serve as driver to increase membership numbers. Additionally, later in the year the Section will be meeting upstate in Federal courthouses where judges and their law clerks will be invited to attend and join the Section.

Upstate Diversity Report

Section Chair-Elect Mitch Katz reported on his efforts to coordinate with upstate minority bar associations to create a diversity initiative conference in central New York. The purpose of the event is to create a dialogue and discussion on how to increase diversity in upstate legal practices. The program will be similar to the "Smooth Moves" program held in New York City in the Spring of 2016. The upstate diversity initiative is currently in the planning stages and the program is expected to take place in June 2017.

2016 Long Island and New York County Commercial Division Bench Bar Forums

Tenth District Representative Laurel Kretzing reported by phone on the status of the 2016 Long Island Bench Bar Forum. Ms. Kretzing reported that the event would take place on June 21, 2016 at 5:30 p.m. at the Melville, Long Island Marriott, located at 1350 Walt Whitman Rd, Melville, New York 11747. The event will feature a "Meet and Greet" with the Commercial Division Judges from 5:30 p.m. to 6:30 p.m., followed by a lively panel discussion with the Nassau and Suffolk County Commercial Divisions Justices.

Section Chair Mark Berman reported on the status of the 2016 New York County Bench Bar Forum. Mr. Berman reported that the event would take place on June 21, 2016, the same night as the Long Island Bench Bar Forum, at 6:00 p.m. at Cravath, Swaine & Moore LLP's office, located at 825 Eighth Avenue, New York, New York 10019. The evening will begin with an opportunity to network with Commercial Division judges and practitioners over snacks and drinks from 6:00 p.m. to 7:00 p.m. This will be followed by a lively panel discussion concerning lessons to be drawn from the implementation of recent rule changes and prospects for further innovation. Former Appellate Division First Department Justice James M. McGuire will moderate the panel discussion, which will be composed of members of the New York County Commercial Division Bench.

Commercial Division Committee Report on Proposed Commercial Division Rule (Vote Held and Report Approved)

Executive Committee Member and Commercial Division Co-Chair Isaac Zaur presented the Commercial Division Committee's Report on the Proposed Commercial Division Rule permitting the Court to require certain direct testimony to be submitted in affidavit form. Mr. Zaur gave a thorough overview of what the Report covered.

All Executive Committee Members present voted in favor of adopting the Report. Executive Committee Member Deborah Edelman abstained.

Other Business

Section Chair Mr. Berman announced a change to the Committee's website to include the new Commercial Division rules and amendments to the CPLR. Mr. Berman informed the Executive Committee Members that the next Executive Committee Meeting would be held on September 14, 2016 at Kramer Levin Naftalis & Frankel LLP's office located at 1177 Avenue of the Americas, New York, New York 10036, and will feature guest speaker Chief Judge Janet DiFiore.

The meeting adjourned at 7:45 p.m.