

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 Wednesday, October 26, 2016.

MEMBERS PRESENT

Mark Berman, Chair (Albany)
Mitch Katz, Chair-Elect (Albany)
Robert Holtzman, Vice-Chair
Deborah Edelman, Treasurer
Jamie Sinclair, Secretary

Thomas Bivona
Joseph Drayton
Richard Friedman
Ignatius Grande (Albany)
Jay Himes
Simonne Isaac*
Charles Moxley
James Potter
Paul Sarkozi
Natasha Shishov***
Hon. Leslie Stein**
Douglas Tabachnik
Princess Uchekwe*
James Wicks
Isaac Zaur

Members Participating By Phone:

Hon. Sylvia Ash
Teresa Bennett
Maura Grossman
Ron Hedges
Carla Miller
Courtney Rockett
David Tennant

* indicates non-executive committee member guest

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

***indicates Section Liaison

The meeting came to order at 6:02 p.m.

Section Chair Mark Berman's Welcome Remarks

Section Chair Mark Berman welcomed the Executive Committee Members to the meeting. It was the Section's first Executive Committee meeting held by videoconference. Section Chair Mark Berman participated from Albany along with Chair-Elect Mitch Katz, as well as Guest Speaker Judge Leslie Stein. Other members of the Section and attendees at NYSBA's Women on the Move program also participated from Albany. The Executive Committee participated via video conference at Kramer Levin Naftalis & Frankel LLP in Manhattan, and Executive Committee members not in attendance in Albany or in New York were able to webcast Judge Stein's remarks from their own computers.

Section Chair Mark Berman asked all Executive Committee Members attending the meeting by webcast or 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.

Mr. Berman introduced the guest speaker for the evening, and provided a background of Judge Leslie Stein's illustrious career.

Guest Speaker: Hon. Leslie Stein, Judge of the New York State Court of Appeals

Judge Stein began her remarks by discussing the New York Court of Appeals' work and the procedural rules applicable to appeals. She provided an overview of the Court's review power; the jurisdictional and other requirements of appealability; appeals as of right versus by permission; and *sua sponte* dismissal of appeals where the court lacks subject matter jurisdiction. Judge Stein also described common errors in applications for leave to appeal, including failure to show finality and relying upon documents not in the record. She noted that the Court will most commonly hear appeals where: (1) there is a split in Appellate Divisions rulings on an issue, (2) the appeal asks the Court to construe statutes in appellate areas of regulation, (3) the appeal addresses an emerging area of the law seeking development or re-evaluating outdated precedent, (4) there are erroneous statements of law in an appellate division decision, or (5) there is a need to correct an error to cure substantial justice.

Judge Stein also discussed what a "normal day" at the Court is like, how decision writing responsibilities are assigned, the role of tradition on the Court, and the new word limits applicable to the parties' main and reply briefs. Finally, Judge Stein described what oral argument at the Court of Appeals is like and took questions from the audience.

Approval of May 2016 Executive Committee Meeting Minutes

The September 2016 minutes were unanimously approved by all Executive Committee Members present.

November 14, 2016 Shira A. Scheindlin Award for Excellence in the Courtroom (Women's Initiative Event)

Section Chair Mark Berman informed the Committee that 140 individuals have registered to date for the event, which is packed with a list of great speakers, a CLE program led by the former women chairs of the Section, and the Kaye Scholars award program. Mr. Berman also advised that the 5 Kaye Scholarship award winners have been chosen. The event will be held in the Ceremonial Courtroom at 500 Pearl Street, and 200-300 people are expected to attend. The entire New York Federal Judiciary and Judges and Justices from the New York State Court of Appeals, Appellate Divisions and Commercial Divisions have been invited. Over 30 judges have already confirmed their attendance.

Annual Meeting, January 25, 2017

Section Vice-Chair Robert Holtzman provided an update on the Annual Meeting, which will include two CLE panels running from 9 a.m. – 12 p.m. The CLE program topics include an ethics portion addressing current ethical issues in commercial litigation and an appellate practice portion, focusing on attacks on arbitration awards. At the annual meeting luncheon, the entire Second Circuit will be given the Fuld Award in honor of its 125th anniversary. Chief Judge Katzmman will accept the award on behalf of the Second Circuit.

Evening at the Thurgood Marshall Courthouse, January 24, 2017

Chair-Elect Mitch Katz described an upcoming program called "Evening at Thurgood Marshall Courthouse with the Second Circuit." The purpose of the event is to foster a relationship between the Second Circuit and the Section, as well as with younger members of the State Bar. The event will include self-guided tours of the courthouse after remarks by Chief Circuit Judge Katzmman, District Judge Castel and NYSBA President Claire Gutekunst. *Hors d'oeuvres* and cocktails will be served. It will run from 5:00 to 7:30 pm.

JAMS Partnership and "Practical Tips to Achieve Success in Mediating Employment Disputes" CLE event

Vice-Chair Robert Holtzman described a successful October 13, 2016 program titled "Practical Tips to Achieve Success in Mediating Employment Disputes." Panel discussions tracked the mediation process from who first raises the topic of mediation (and with whom), how the mediation process flows, managing client expectations, and the dynamics of mediation, including dealing with both successful and unsuccessful outcomes at the end of the mediation session. Panelists included Carol A. Wittenberg, Gerald T. Hathaway, Robert N. Holtzman, Charles Fournier and Debra L. Raskin. The Program was a successful partnership with JAMS.

"Legal Ethics in the Digital Age" CLE Event

Committee Member Ronald Hedges described a CLE event held on September 29, 2016 that featured renowned speakers on ethics, social media and electronic discovery. Topics covered included issues involving managing records in the cloud, organizing client files, and the do's and don'ts of attorney social media use and advice to clients, among other things. Speakers and panelists including Maura R. Grossman, Esq., Steven C. Bennett, Anthony J. Harwood, Ignatius Grande, and others. The Section plans to repeat the program in the Spring.

Women on the Move Event

Section Chair Mark Berman provided an overview of the Women on the Move event hosted by the NYSBA Committee on Women in the Law and co-sponsored by the Section, held on October 26, 2016, just prior to the Executive Committee Meeting. The event focused on social media use. The Section had recommended many of the panelists who participated in the program.

Treasurer's Report

Section Treasurer Deborah Edelman informed the Committee that the Spring Meeting held in Cooperstown lost approximately \$22,000. She advised the Executive Committee that the Section surplus will be calculated at the end of the year, and that moving forward the Committee will be considering reducing venue costs and increasing sponsorships as a way to maintain a balanced budget. After hearing the report, Committee members discussed ways to save money and the status of the surplus.

Fordham International Arbitration and Mediation Conference

Section Member Charles Moxley provided a summary of the 11th Annual Conference on International Mediation and Arbitration, held on October 14, 2016, at Fordham Law School. Topics included the arbitrator's role in settlement, emergency arbitrators and interim measures, the enforceability of awards set aside, issues in Latin America, and technology and arbitration. Mr. Moxley also described a future program embodying a collaboration between the Alternative Dispute Resolution and Commercial and Federal Litigation Sections where they will share their collective knowledge with one another. The event will be a full day program at Fordham with speakers from each Section. It is currently scheduled for March 13, 2017.

Membership Report- Law School Initiative

Section Chair Mark Berman and Section Officers Mitch Katz and Jamie Sinclair met with deans and students at Albany Law School on October 26, 2016, seeking to encourage them to get involved in the Section through internships on committees and writing opportunities. Officers will also meet with law students at Pace and Syracuse Law Schools in the coming months. Additionally, it was reported that the Section participated in both the "Pathways to the Profession" and "Dinner with a Student" programs.

New Calendar of Events in Newsletter

Section Chair Mark Berman informed Committee members that the Section's newsletter now features a two page color calendar of events that lists events through March. There is also a new tab on the webpage linking directly to the Section's calendar.

New Business & Announcements

Section Chair Mark Berman described reports from the EDiscovery, Social Media and Commercial Division Committees, which are expected to be submitted in the upcoming months. Additionally, two upcoming CLEs by the eDiscovery Committee will be a Best Practices CLE that will focus on the Committee's soon to be issued third version of its Best Practices Report and a webinar in February directed to smaller firms with smaller ediscovery projects.

The meeting adjourned at approximately 7:40 p.m.