

**Minutes of the April 30, 2014 Meeting of the  
Committee on the Commercial Division**

- In attendance at the meeting:
  - Syracuse:
    - Mitch Katz
    - Teresa Bennett
    - Jonathan Fellows
    - Suzanne Galbato
  - New York City:
    - Justine Beyda
    - Thomas Bivona
    - Andrew Cali-Vasquez
    - Kelly Mauceri
    - Michael Hensley
    - Tom Fini
    - Issac Zaur
    - John Lundin
    - Luisa Hagenerei
    - Benjamin Blum
  - Buffalo:
    - Justice Timothy J. Walker
    - Darryl J. Colosi
    - Sharon Porcellio
    - Scott Philbin
    - Jeremy Oczek
  - Telephone: Vincent J. Syracuse
  
- Guest Speaker—Honorable Timothy J. Walker—Commercial Division, 8th Judicial District
  - Law Clerks:
    - Darryl J. Colosi, Esq.
    - Anne S. Rutland, Esq.
  - Generally
    - Appointed to the NYS Court of Claims in December 2006
    - Designated acting Justice of the Supreme Court in 2007
    - Sitting in the CD for two years
  - The 8th Judicial District
    - Made up of eight counties (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans & Wyoming Counties)
    - \$50,000 jurisdictional limit
    - Most CD cases are from Erie County and Niagara County
    - 680 cases on the docket (second highest case load next to domestic violence)

- Presides over a wide variety of cases, including:
      - Commercial tax cert. cases in all eight counties (handled primarily by Anne Rutland)
      - Residential tax cert. cases under \$1 million in Erie County (handled primarily by Darryl Colosi)
    - Only 5% of cases are non-CD
    - Justice Walker volunteers to preside over non-CD trials
  - Justice Walker is able to give decisions on motions from the bench 99% of the time (either by reading the decision into the record or providing a written decision on return date) by:
    - Holding the bar to the briefing schedule
      - Majority of argument should be made in moving and answering papers
      - Requires courtesy copies of all moving and answering papers at least five days before return date by 2:00pm; reply papers at least one day before the return date by 2:00pm
      - Darryl Colosi and Anne Rutland review papers and prepare either detailed notes or memorandum of law for the judge
    - Holding the bar to the scheduling order
  - Discovery disputes
    - Handled primarily by Darryl Colosi and Anne Rutland
    - Should be addressed in the first instance by a letter or telephone call to chambers
    - If the issue is difficult, Justice Walker will assist
  - E-filing in 8th Judicial District
    - 80% of CD Addendums come electronically; Justice Walker reviews every one
    - Erie County has the same e-filing system as NY County and Onondaga County; the rest of the 8th Judicial District is using an antiquated system
    - Justice Walker requires courtesy copies in accordance with his court rules (see above)
  - Out of town Counsel
    - Accommodating—permits appearance at motion term by speaker phone
    - Trial must be held in the county in which the case was filed; motion term is held in Buffalo in most cases
  - 8th Judicial District does not deal regularly with electronic discovery issues
    - Less than 10% of cases
    - Matter should be addressed at the preliminary conference

- Sanction Motions
  - Not seen more often in CD cases
  - Try to avoid sanctions by encouraging resolution without court assistance
  - One caveat: Do not hide case law that is not favorable to your position; the clerks will find it, especially when it is Justice Walker that wrote the decision
- Open door policy until the attorneys cannot get out of their own way
  - Will accept communications by email
  - Settlement conferences held on weekends and after hours
- Comments from Darryl Colosi:
  - See far less trials in the CD
  - Motion practice is tremendous
  - Two things from a clerk's perspective:
    - Give advance notice if a matter will be adjourned, especially if the matter will be resolved, so that the clerks and judge can allocate prep time to other matters
    - Do not make discovery disputes for tactical reasons; motions must pass the straight face test
  - Often times, attorneys and clients in CD cases are too emotionally invested to see the big picture
- Update on Subcommittees:
  - Compilation of individual justice practices—expect to receive a draft within the next four weeks
  - New York County Bench Bar Forum
    - Plan to have it in the Rotunda at 60 Center Street from 5-7pm (informal)
    - Judge Sherry Klein Heitler has agreed to help coordinate
    - Originally planned for the summer, but has been pushed back to September/October
  - Upstate Bench Bar Forum
    - To be held in Rochester in early summer
    - Justices Walker, Rosenbaum, Greenwood and Karalunas to be invited to attend
- Update on Proposed Rules Changes from the Commercial Division Advisory Council: Mitch Katz to come up with recollection of roundtable discussion suggestion
- Review of and vote on OCA proposal concerning privilege logs
  - Thomas Bivona agreed with the proposal and suggested three main revisions:

- Assumes that the only remedy is cost shifting; suggests that a protective order pursuant to CPLR 3103 is also an appropriate remedy
  - Counsel should agree on what is presumptively privileged
  - Use of the term “specificity” invites argument; reference should be made to case law that defines what is sufficient explanation
  - Unanimous vote in favor of accepting report
- Ideas for Spring Programming: Suggestions are welcome by email to [mkatz@menterlaw.com](mailto:mkatz@menterlaw.com), [tbennett@menterlaw.com](mailto:tbennett@menterlaw.com), [JBeyda@cravath.com](mailto:JBeyda@cravath.com), and [JNorth@cravath.com](mailto:JNorth@cravath.com)
- Update on Progress of Goals for 2013-2014
  - Justice Hart (Queens County) has not responded to invitation to be guest speaker at future CD Committee meeting (invitation sent on December 20, 2013)
  - Other suggestions: Justices Scarpulla, Rosenbaum and Friedman
- Next meeting: 60 days