

FINAL MINUTES
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, January 10, 2017.

Members Present:
Mark Berman, Chair
Jamie Sinclair, Secretary
Deborah Edelman, Treasurer
James Bergin
Tom Bivona
Michael Cryan
Richard Dircks
Hon. Marcy Friedman*
Claire Gutekunst, NYSBA President
Kathy Kass*
Laurel Kretzing
Karen Greve Milton**
Tim Rode*
James Wicks
Steve Younger

Members Participating by Phone:
Mitch Katz, Chair Elect
Marc Ayala* o/b/o Courtney Rockett
Gregory Arenson
Jeremy Feinberg
Henry (Hank) Greenberg*
Beth Gould
James Potter
Stephen Roberts

**indicates non-executive committee member*

*** indicates guest speaker for the meeting*

The meeting came to order at 6:00 pm.

Welcoming Remarks

Section Chair Mark A. Berman welcomed attendees to the meeting and thanked them for their participation. He asked all members participating by phone to send Section Secretary Jamie Sinclair an email confirming their attendance, and all members present to sign in, before introducing the guest speaker for the meeting.

Annual Meeting and Evening with the Second Circuit Update

Mr. Berman advised that the Section is looking forward to its upcoming event on January 24th entitled “*An Evening with the Second Circuit at the Thurgood Marshall Courthouse*”. With 50 people already registered, the Section estimates 70-90 will attend. Mr. Berman advised that Chief Judge DiFiore will present the Fuld Award to Chief Judge Katzmman on behalf of the Second Circuit at the Annual Meeting on January 25, 2017. For the luncheon program, 24 tables already had been purchased, and there are some remaining. All Executive Committee members were encouraged to register for the CLEs and to purchase a table for their firm if they have not already done so. Leading up these great events, the Section invited Second Circuit Executive Karen Greve Milton to address the Executive Committee.

Remarks by Guest Speaker Karen Greve Milton, Circuit Executive, Second Circuit Court of Appeals

Ms. Milton began her remarks by noting that the Second Circuit is currently celebrating its 125th anniversary, and is taking time throughout the year to reflect on the court’s history, judges and jurisprudence. To that end, she distributed the Circuit’s calendar of events in commemoration of its 125th anniversary, and invited all Executive Committee members to participate in them. Among the upcoming events she highlighted are a re-enactment of three Second Circuit appeals on February 9, 2017, a lecture by NYU School of Law Professor Stephen Gillers, and a “Hands Lecture” on two great judges of the Second Circuit: Judges Learned and Augustus Hand. Ms. Milton, as a gift to all Executive Committee members present, handed out 125th anniversary commemorative pins, and also advised that a thumb drive full of law review articles and other relevant resources pertaining to the Second Circuit’s history and jurisprudence would be handed out at future events. She encouraged everyone to attend the January 24th event, noting that tours of the building will be given and they will focus on the architecture and history of the various rooms of the Courthouse.

Ms. Milton discussed the Circuit’s Civic Education Initiative, which was established by Chief Judge Katzmman and focuses on courts’ interaction with their surrounding communities and ways to engage judges, lawyers, educators and other interested members of the community in educating the next generation about the courts and court system. As part the initiative, exhibits, including audio tapes, will be on display in the Learning Center at the Second Circuit Courthouse, and the Court will

host several student contests and re-enactments, as well as mock trial competitions. One goal of the Initiative is to establish tools and best practices that other courts can model their civic engagement programs after. The Court is currently looking for volunteers, especially outside of NYC, to be part of its Civic Education Initiative. Ms. Milton took questions from EC members before concluding her remarks.

Draft Report on the Report and Recommendations of the NYSBA Committee on the New York State Constitution

Hank Greenberg discussed the Draft Report of the NYSBA Committee on the New York State Constitution, and provided background regarding the impetus for the drafting of the Report. The Report addresses issues that have been the subject of debate by court reform advocates for decades, and includes suggestions for improvement and reformation. The report is 70 pages, and includes over 230 footnotes. Executive Committee member Steve Younger further elaborated on the Report, noting that it contains 30 pages of constitutional history, beginning with how the colonial era court system based on the English court system evolved through the years. Among the report's recommendations are ways to restructure the court system, save money for clients and attorneys by simplifying access to the courts, modifying judicial retirement ages, removing caps on the number of Supreme Court Justices, and making changes to the Commission on Judicial Conduct.

Section Chair Mr. Berman then introduced and explained the Section's draft Report concerning the Draft Report of the NYSBA Committee on the New York State Constitution. He noted that the Section's Report limited its comments to issues concerning commercial litigation, and specifically addressed the caseload of the Appellate Division, Second Department, the cap on the number of Supreme Court Justices imposed by Article VI of the New York State Constitution, and the Judiciary Budget. A discussion took place among the Executive Committee members, and the following suggestions were made:

- Page 1, paragraph 4: change "[two years]" to more clearly express the magnitude of the delay concerning appeals in the Second Department; and
- Page 2, the first paragraph was modified so that it now read:

The Section believes that there is also value in the opportunity to evaluate the process by which the Judiciary Budget is debated among the three branches of our State Government, and ultimately decided by the Legislative and Executive branches. The Judiciary needs to receive sufficient funds to provide the level of service necessary to address litigation in the 21st century, noting that business clients and the legal service providers that serve them within the State of New York generate significant revenues, and the court system is an important component of that "ecosystem." As a coordinate branch of

State government, the Judiciary should not continue to be relegated to “second class” status in determining its budget. Many business clients have options where to litigate their disputes and their decision-making should be determined by legal principles, not by the inadequacy of court facilities, technology and the availability and work load of members of the Judiciary. Business disputes that could be resolved in New York State that are brought in other jurisdictions result in a direct loss of revenues to the New York State Budget and damage our State economy.

After adopting these changes, a vote was held on the adoption of the Section’s draft report, and all members voted in favor. Section members Deborah Edelman and Hon. Marcy Friedman abstained from voting.

Approval of the December 15, 2016 Meeting Minutes

Mr. Berman advised that upon the request of an Executive Committee member, a sentence was added to the 3rd full paragraph on page 4 of the draft December 15th minutes to read: “There was a discussion and questions were raised at the meeting regarding who was entitled to vote and the number of votes required to adopt a Section report, but that the officers’ view governed this meeting.” With this additional language, the December 15, 2016 meeting minutes were unanimously approved by all Executive Committee members present.

Upcoming Events and CLES

Section Chair Mark A. Berman provided further elaboration and detail regarding the upcoming Annual Meeting. Following the CLE programs in the morning, the cocktail hour and luncheon will be held, and afterwards the President’s Summit will begin at 2:00 pm. Claire Gutekunst, NYSBA President, invited all members present to attend the President’s Summit, which will focus on artificial intelligence and revenge porn, and 3 CLE credits will be offered for attendance. Section Chair Mark A. Berman also advised that three companies are sponsoring this year’s Annual Meeting, including an appellate printer, a forensic accountant, and an ediscovery vendor. The Section also invited the Federal Bar Council in honor of the Circuit’s anniversary to the Annual Meeting to sell its book on the Courthouses of Second Circuit Court of Appeals.

Upcoming CLE events

Section Chair Mark A. Berman advised that tomorrow, January 11, 2016, Jonathan Lupkin is providing an update on the Commercial Division rules, via webcast at 1:30pm. The program is titled “Amendments to the Statewide Commercial Division Rules.” Additionally, the Commercial Division Litigation Academy is scheduled for May 4-5, and has over 35 confirmed speakers. On February 16, an immigration webcast on Deferred Action for Childhood Arrivals would be held. On March 13, the

Section will host a joint program with the Dispute Resolution Section which will address quicker and less expensive arbitrations and how to handle difficult issues presented with electronically stored information in arbitrations. Finally, on March 30, a live CLE webcast will be held called "Legal Ethics in the Digital Age: Practical Strategies for Using Technology Ethically in Your Practice." Mr. Berman noted that the Advisory Committee's video on the Commercial Division is now posted on the Section's home page.

The meeting adjourned at 7:40pm.