



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposal to add a preamble before Commercial Division Rules 25-33

Date: April 17, 2023

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The Administrative Board of the Courts is seeking public comment on a proposal, recommended by the Commercial Division Advisory Council (CDAC), to add a preamble before Rules 25-33 of the Rules of the Commercial Division of the Supreme Court.

Attached as Exhibit A is a memorandum from CDAC which contains the text of the proposed preamble and the reasons for the recommendation. As noted in the memorandum, Rules 25-33 provide guidance on trial preparation, alternative dispute methods and expediting proceedings, and CDAC believes that the preamble will help business litigants and practitioners better understand the philosophy underlying those rules. In addition, CDAC notes that two preambles have previously been adopted – one preceding the entire set of Commercial Division rules, and one that applies to the discovery provisions set forth in Rules 11 through 11-g.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than Friday, May 24, 2024.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance

of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

MEMORANDUM

TO: Administrative Board of the Courts

FROM: Commercial Division Advisory Council

DATE: January 19, 2024

RE: Proposed Preamble to Commercial Division Rules 25-33 Relating to Trial Preparation and Procedure

The Commercial Division Advisory Council respectfully submits for consideration by the Administrative Board of the Courts the following proposed Preamble to Commercial Division Rules 25-33 relating to trial preparation and procedure:

Preamble to Rules 25-33. The Commercial Division operates in accordance with a series of well-crafted rules and principles designed to achieve and promote the goals of efficient and cost-effective case management. These rules stress organization, preparation and cooperation as well as the use of innovative techniques where appropriate. Rules 25-33, which address trial preparation and procedure, reflect these important concepts. These trial rules emphasize the importance of pre-trial preparation and remind the practitioner that such preparation is an essential element of successfully litigating and conducting a complex commercial case and trial. Rules 25-33 identify a series of key items that must be addressed or completed before commencing a trial in the Commercial Division and include: accurately estimating the length of the trial so that the court, counsel and parties can properly allocate their time; preparing and communicating to the court motions in limine in advance of the trial date; reviewing, assembling, and pre-marking exhibits; addressing issues that may arise in connection with the use of deposition testimony at trial; agreeing on a schedule for witnesses and the manner in which each witness will testify (including giving consideration to direct testimony by affidavit in a non-jury trial); and preparing and negotiating jury instructions and verdict sheets. The successful completion and efficiency of the trial depends upon counsel adhering to a key component of the Commercial Division rules to meet and confer and resolve issues without the need for court intervention. When there is compliance with the rules, the result is an efficient and cost-effective proceeding that will ensure that the court's time and attention will be used in the manner in which it is intended and avoid unnecessary delay and unintended consequences.

The purpose of this proposed Preamble is to help business litigants and practitioners better understand the philosophy underlying Rules 25-33, which is to be efficient and organized with respect to pre-trial preparation and trial execution. In the spirit of the two Preambles previously adopted as part of the Commercial Division Rules—the general Preamble to the Commercial Division Rules and the more specific discovery-related Preamble which precedes Rule 11—this Preamble will serve as a proper introduction to the nine trial-based rules that follow it and communicate to lawyers and their clients the Commercial Division's expectations for their conduct before and during trials. The Advisory Council's proposal for a Preamble to the trial-based rules is motivated in part by the success of the other Preambles, which have been helping litigants and practitioners navigate cases in the Commercial Division since their adoption.

Rules 25-33 provide guidance on trial preparation, alternative dispute methods, and expediting proceedings. The proposed Preamble to Rules 25-33 further extols the virtues of the Court by emphasizing the need for organization, preparation and cooperation, as well as the use of innovative techniques where appropriate. The Preamble also appropriately assures businesses considering litigation in the Commercial Division that the result of compliance with the rules will be an efficient and cost-effective proceeding that avoids unnecessary delay.

The concepts described in this proposal are included in a Preamble so that no party or counsel may argue that those concepts are modifying any legal standards or Rules that apply to trials.

We thank you for your consideration of this proposed Preamble.