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## A Must Guide for Litigators in the Commercial Division

Litigators in New York state now have a new arsenal at their disposal.

BY MARK A. BERMAN

**L**itigators in New York state now have a new arsenal at their disposal. Stephen P. Younger and Muhammad U. Faridi of Patterson Belknap Webb & Tyler, who are editors of the firm's NY Commercial Division Law blog, have put together the "New York Commercial Division Practice Guide" (the Guide). The Guide is part of the Litigation Practice Portfolio Series available from Bloomberg Law. The Guide, which will be updated yearly, provides valuable direction to both experienced and less experienced New York commercial litigators. With a foreword by former Chief Judge Jonathan Lippman and footnoted through 2017, the Guide supplements its text with useful "practice tips" and model forms.



New York Supreme Court, Commercial Division, at 60 Centre Street

The Guide starts off with the basics—setting out the rules of each Commercial Division justice and providing commentary on each of the rules of the Commercial Division as a whole, and containing crucial footnotes to the Commercial Division Advisory Council's memoranda that provide the rationale behind

many of the Commercial Division rules. The Guide then provides a roadmap of how to get your case into the Commercial Division and what to do if an attorney filing a Request for Judicial Intervention fails to designate the matter as a commercial case.

Attorneys may think "one size fits all" when it comes to a prelim-

inary conference in state court, but the Guide breaks down each Commercial Division justice's varying approaches and scheduling rules with regard to conferences, which is critical to know for an attorney who has not been previously before that particular justice. For those less experienced in practicing before the Commercial Division, the Guide reminds attorneys that there is no automatic stay of discovery upon the filing of dispositive motions and of the streamlined discovery process required in the Commercial Division, including limitations on interrogatories, notices to admit and depositions. Importantly, it makes clear that in the Commercial Division, there are specific requirements when responding to a document request and that boilerplate and blunderbuss objections are not permissible and that specific, tailored objections are required. The Guide also provides a helpful form for a notice of deposition of a corporate entity.

For those litigators with no experience with the categorical privilege log now required by the Commercial Division, rather than stumble and have to create your own, the Guide provides such a form. Of course, as this author writes the column on state e-discovery for the New York Law Journal, I very much appreciate the guidance provided on how to approach

party and non-party e-discovery in the Commercial Division and the Guide also attaches a form electronic discovery order.

The chapters on motion practice, the "bread and butter" of commercial litigation, are required reading, as motion practice is very particular and individualized to the county in which an attorney is litigating and the Commercial Division justice before which an attorney is appearing, and the Guide nicely lays out these issues. Rule 24 pre-motion conference letter procedures are discussed in detail, a submission not required in non-commercial cases, and which, if not followed, could be prejudicial to the movant. In addition, the Guide reminds counsel of the need to properly comply with Rule 19-a when filing a motion for summary judgment, which requires a short and concise statement of material facts not in dispute, and the various justices' approaches to such rule. As to emergency ex parte applications, the Guide advises practitioners that the standard to be met for their issuance is very high, and that the "game playing" of not timely providing opposing counsel with a copy of the papers in support of such temporary restraining orders are over, as the Commercial Division rules now prohibit such tactics.

The Guide's discussion of trials is significant in that it advises attorneys that the Commercial

Division requires counsel to provide the court 10 days prior to trial with a realistic estimate of the expected length of the trial, including direct and cross-examination, and the special rules regarding the submission of proposed jury instructions. The Guide provides a "nuts and bolts" approach to the expedited adjudication, arbitration and mediation processes in the Commercial Division, as well as to appeals from Commercial Division decisions.

Finally, the Guide closes out with a chapter entitled "Key Differences Between Commercial Division and Federal Court Practice." For those litigators who litigate in both forums, this chapter is a very helpful reference to the distinguishing features of both forums.

In sum, the Guide is a "must have" for those who practice in the Commercial Division.

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