Comprehensive Civil Justice Program 2005:

Study and Recommendations

Ann Pfau

First Deputy Chief Administrative Judge

TABLE OF CONTENTS

Executive Summary 1

Introduction 8

Civil Justice in 2005 and Recommendations for the Future

I. Differentiated Case Management 9

II. Tailored Justice - The Specialized Treatment of Cases 19

1. Commercial Division 19

2. Matrimonial Cases 21

3. Fiduciary Matters/Guardianship Proceedings 24

4. Medical Malpractice 28

5. Complex Litigation 31

6. New York City Cases 33

III. Civil Jury Selection 40

IV. Alternative Dispute Resolution 43

V. Foreclosure Proceedings 49

VI. New York City Civil Court and Nassau and Suffolk County District Courts 51

VII. Technology 54

Summary of Recommendations 56

APPENDICES

A. DCM Implementation Models i

B. Proposed Model Rules for the Commercial Division viii

C. New York State Bar Association, Commercial and Federal Litigation Section, Survey xxiii

D. Model Parenting Plan xxv

E. Part 36 of the Rules of the Chief Judge xxxvi

F. Proposed Foreclosure Legislation xliii

Executive Summary

The Comprehensive Civil Justice Program, which introduced Differentiated Case Management (DCM) to New York State in January 2000, has achieved dramatic results. Alternative dispute resolution has been incorporated into case processing, specialization has ensured that cases with unique needs receive appropriate attention, and automation has made the courts more accessible to the public. Most importantly, cases are being processed more efficiently and effectively.

The numbers tell much of the story. While civil filings remained steady over the past five years, the time between the filing of a Request for Judicial Intervention (RJI) and disposition decreased by 37%. The average time to resolve a case before DCM was 606 days. After DCM, that number has been reduced to 380 days. Courts are not only resolving cases more quickly, but resolving them in greater numbers. Since DCM, Judges in the Supreme Court disposed of almost 109,000 more cases than were filed. In short, the public, whose lives can be so deeply affected by the outcome of litigation, has been provided with improved, reliable case resolution.

These significant accomplishments are the result of the hard work and dedication of Judges, attorneys and non-judicial personnel throughout the State. Because of them, innovative programs have been implemented that accommodate local legal cultures and court resources. Judges, the bar and court staff also have been instrumental in suggesting improvements to facilitate case management and to enhance the services that are provided to litigants and jurors. This report is the result of their thoughtful comments and recommendations.

The recommendations contained in this report are summarized below.

I. Case Management

- The distinction between pre-Note of Issue and post-Note of Issue standards and goals for civil cases should be eliminated and replaced by **a standard and goal that runs from the Request for Judicial Intervention (RJI) to disposition.** By establishing a time frame that takes into account the entire life of a civil case, Judges will continue to monitor case progress but have more discretion in adjusting discovery schedules to the needs of individual cases. The current discovery periods for the case tracks should be retained as firm guidelines.
- The success in reducing the time to disposition under Differentiated Case Management should be recognized by **reducing the overall standards and goals** for civil cases to 20 months from RJI to disposition for an expedited case, 24 months for a standard case, and 27 months for a complex case.
- An **extended track** for exceptionally complex cases should be established with an overall standard and goal of 32 months and a discovery milestone of 20 months.
- The **tolling capacity**, currently available in the criminal and family standards and goals, should be extended to civil cases. Events such as bankruptcy, appellate stays, and insurance liquidations should toll the running of the standards and goals clock in civil cases.
- The role of **non-judicial staff** in case management should be expanded for Judges to devote their time to substantive issues. Non-judicial staff can identify the appropriate case track, assist counsel in resolving discovery disputes, and conduct compliance conferences, referring those issues to the Court that require judicial intervention.

II. Automation

- Automation should be used to replace court appearances where appropriate. A policy of **e-scheduling** should be implemented that would provide for automated preliminary conferences. Attorneys would be permitted to e-mail agreed-upon discovery schedules to the court for a Judge's approval. If successful, this concept could be extended to compliance conferences.
- **Bar code technology** should be tested to track the progress of orders and judgments from submission for signature to the County Clerk's Office. A pilot project in New York County should experiment with the use of this technology.
- All **local Court Part rules** should be readily available to the bar and public on the court system's website.

III. Specialized Parts/Tailored Justice

- The **specialized treatment** of commercial, matrimonial and guardianship cases has resulted in these cases being resolved more efficiently and should continue. **Medical malpractice actions** also benefit from specialized treatment and, where practicable, specialized parts should be established for these cases.
- A set of **Model Rules for the Commercial Division** has recently been drafted and should be considered for the standardization of practice in the Commercial Division.
- A **Center for Complex Litigation** should be established for the management of the most complex, non-commercial, civil cases.
- Methods to improve the handling of guardianship cases should be developed. A **Model Guardianship Part** in Suffolk County will soon consolidate all court proceedings concerning an incapacitated person before one Judge and incorporate the best practices developed nationwide in this area, including mediation and volunteer monitoring.

- A statewide **case management system for guardianship cases** will be introduced in Spring 2005. This automated system will track guardianship cases from the initial stage and monitor the filing of statutorily required reports and accountings. Most importantly, it will allow Judges to ensure that court-appointed guardians and court examiners are fulfilling their statutory responsibilities and take immediate corrective action when they are not.
- The court system should actively work with **not-for-profit organizations** to expand the use of **institutional guardians** throughout the State. This approach has worked successfully in Westchester County with the Family Service Society of Yonkers. Later this year, a similar program will begin in Kings County using the Vera Institute of Justice as the institutional guardian.
- A child-centered custody model should be developed to promote the resolution of custody disputes in a way that minimizes the negative impact on children. This year, a **Model Custody Part** will be developed that focuses on a "Children Come First" model. It will apply the best practices for custody disputes including mediation, stress management, counseling, and links to appropriate services.
- **Practice Groups** should be established for Judges who sit in specialized parts and for Judges who handle tort cases. The Practice Groups will develop best practices manuals for Judges, develop appropriate training, and provide forums for the exchange of ideas.

IV. New York City Cases

- Civil cases against the City of New York should be incrementally included in the **differentiated case management** program. Non-judicial **DCM Case Managers** should be assigned to high-volume City Parts to monitor compliance with DCM milestones.
- Motion practice for City tort cases should be reduced and streamlined. A pilot

project in Kings County will enforce a rule that **no discovery motion can be filed without first having a conference call with the assigned Judge**. As part of this project, the concept of an **essentially paperless motion** should also be explored for City cases.

- Meaningful post-Note of Issue settlement programs for City cases should be instituted in each county in New York City. The neutral evaluation program in New York County has generated a substantial number of dispositions on City cases. To that end, **Neutral Evaluators** should be designated and trained to conduct settlement conferences for post-Note City cases in other counties.

V. Alternative Dispute Resolution

- The use of **Summary Jury Trials,** pioneered in the Eighth Judicial District as an efficient, effective tool for the disposition of civil cases, should be expanded throughout the State.
- The use of **Neutral Evaluators for Tort Actions**, successfully employed in New York, Erie and Monroe Counties, should be expanded to the largest counties throughout the State.
- **Mediation** as a means of resolving **custody disputes** should continue to be explored. A pilot project in New York County has recently provided this alternative to litigants in contested matrimonial actions. A Supreme and Family Courts mediation program will soon begin in the Eighth Judicial District. Rosters of trained mediators should be available in every District.

VI. Civil Juries

- The court system should continue to explore methods to maximize the settlement of cases before jury selection. To that end, a pilot project in Bronx County will test whether, in a high-volume jurisdiction, **a mandatory conference before the**

assigned trial Judge, prior to jury selection, is an effective settlement tool that will reduce the need for a jury to serve as a catalyst for reaching an agreement.

- The court system should explore the feasibility of involving **Judges directly in the supervision of civil jury selection**. A pilot project should be considered to designate a Judge, as part of a rotational assignment, to welcome jurors, open voir dire in the empaneling rooms, monitor the progress of jury selection, and be available for juror questions.

VII. Foreclosure Procedures

- In those instances where foreclosure sales are conducted in or near a court facility, Administrative Judges should ensure that **the court provide adequate security and an orderly process at the site of the auction.**

The above recommendations are designed to build on the demonstrated success of the Comprehensive Civil Justice Program. While they are based on input from Judges, court staff, and practitioners throughout the State, further opportunity for comment is appropriate. Accordingly, there will be a 60-day period following the release of this report during which Judges, non-judicial staff, the bar and public are invited to comment on these recommendations.

Comments should be sent to:

Hon. Ann Pfau
First Deputy Chief Administrative Judge
25 Beaver Street
New York, New York 10004
E-mail: CCJP@courts.state.ny.us

Thereafter, implementation of those recommendations that are adopted will take place through a statewide operational committee that will include designees of the Administrative Judges and the Deputy Chief Administrative Judges for New York City and for the Courts Outside New York City and the individual courts.

Introduction

New York's management of civil cases advanced significantly in 1999 with the issuance of the Comprehensive Civil Justice Program (CCJP) by Chief Judge Judith Kaye and Chief Administrative Judge Jonathan Lippman. The core of CCJP was the adoption of a Differentiated Case Management (DCM) plan for civil caseloads–a modern, sophisticated approach that seeks to match the judicial and non-judicial resources of the court to the needs of the case.

Inherent in the DCM approach to case management is the concept that affirmative oversight of the entire case process–from assignment of a Judge to resolution–is essential. Further, DCM identifies milestone events in the life of a case and calls for the establishment of time frames for the completion of those events. Since not all cases are identical, key to the DCM approach is the designation of case management tracks that categorize cases by level of complexity. Tracking by complexity fulfills the primary DCM principle of matching court resources to case needs.

Beyond adopting the DCM case management model for New York, the 1999 Civil Justice Program set forth initiatives to address a host of issues that affected the timely and efficient resolution of civil cases. Those initiatives included the specialized treatment of specific case types: commercial cases, cases in which New York City is a defendant, matrimonial matters, and guardianship proceedings under Article 81 of the Mental Hygiene Law. The Program also focused on the more efficient use of jurors and the expansion of alternative dispute resolution.

In 2004, five years after adoption and implementation of CCJP, the Chief Judge directed a statewide review of its impact and success, as well as recommendations for the future. This report is the result of that year-long review.

I. Differentiated Case Management

1. Implementation of DCM

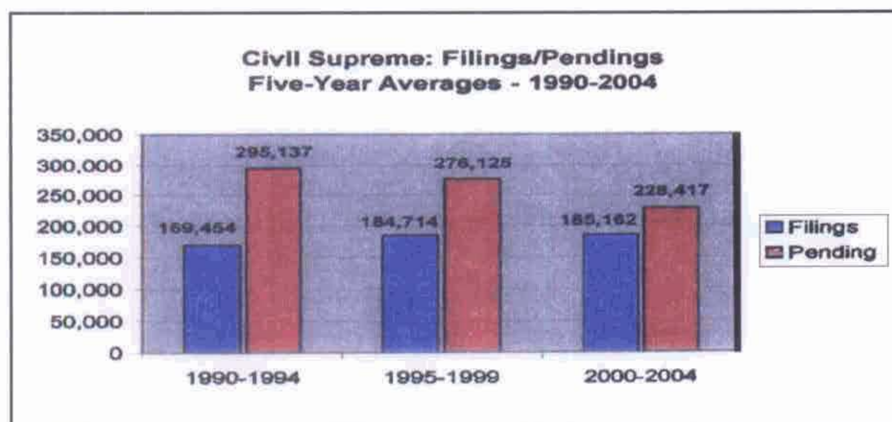
Implementation of the Comprehensive Civil Justice Program began immediately following the issuance of the Program in 1999. The Administrative Board of the Courts adopted Rule 202.19 of the Uniform Rules For Trial Courts, which established three tracks for the assignment of cases based on complexity. The Expedited Case Track requires discovery to be completed within eight months of the filing of the Request for Judicial Intervention (RJI); the Standard Track requires discovery to be completed within 12 months; and the Complex Track requires discovery to be completed within 15 months. The new Rule also established case management milestones covering the life of the case. Specifically, under the Rule, a preliminary conference must be held within 45 days of the filing of the RJI, at which time the case is placed on the appropriate track. No later than 60 days prior to completion of discovery, a compliance conference is to be scheduled to monitor discovery, explore settlement, and set a date for the filing of the Note of Issue. A pre-trial conference is called for within 180 days of the filing of the Note of Issue, and a trial date is to be fixed no later than eight weeks after the pre-trial conference.

Within this DCM-based framework, implementation of CCJP in the Supreme Courts throughout the State reflected the differing caseloads, available court resources and legal cultures of those courts. Some courts, often those with smaller caseloads, applied the provisions of Rule 202.19 to a straightforward Individual Assignment System (IAS), with a single Judge handling all phases of a case from the filing of the RJI to disposition. Other courts, generally those with somewhat larger volumes of cases, applied the DCM principles in a manner that provided for additional trial capacity, with

the actual trial of a case being handled by a different Judge if the IAS Judge was not available. Still other courts, usually the largest, introduced centralized parts for preliminary conferences and, at times, for compliance conferences. In many locations, courts also centralized the assignment of cases for trial to make maximum use of the available Judges and trial–ready cases.[1]

2. Impact of CCJP

By any objective measure, the Comprehensive Civil Justice Program has been an unqualified success. Factors traditionally used to measure the effectiveness of case management include reduction in the size of pending inventories, improvement in the time it takes to dispose of a case, the ratio of dispositions to filings, and timely compliance with scheduling orders.[2] January 2000, when CCJP was first introduced, serves as an appropriate baseline for measuring the effect of the program. For the five-year period prior to that date, civil filings increased an average of nine percent and pending caseloads remained high. Despite a comparable level of filings after CCJP was introduced, the volume of pending cases was reduced by 16%.

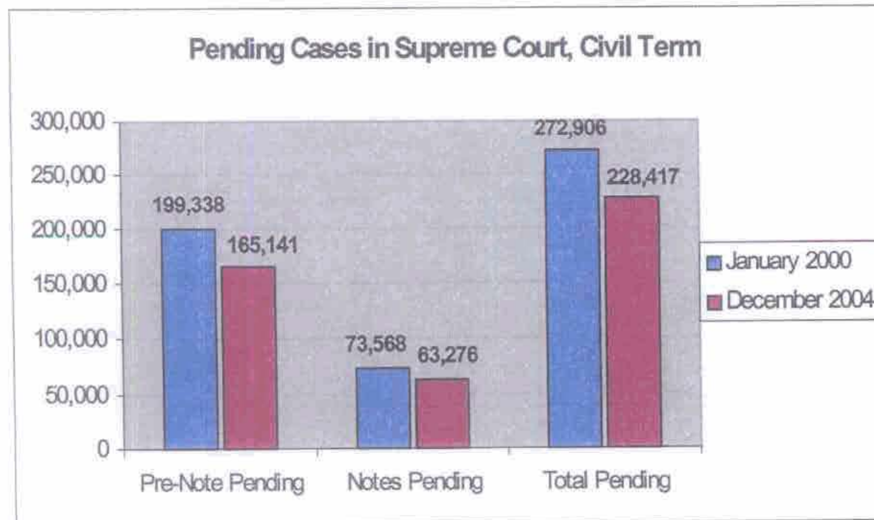


---

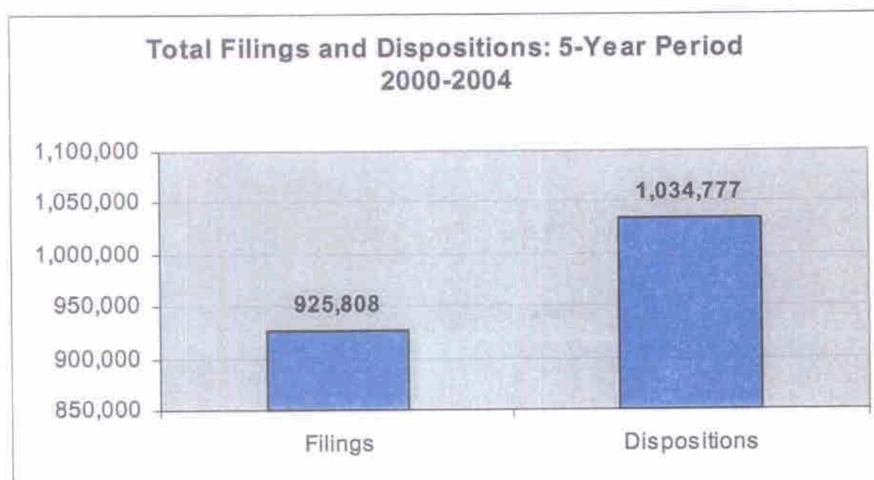
[1] Descriptions of some local DCM implementation programs are contained in Appendix A.

[2] Bureau of Justice Assistance and National Center for State Courts, *Trial Court Performance Standards and Measurement Implementation Manual,* (Monograph NCJ161567) (Washington D.C. : U.S. Department of Justice, 1997).

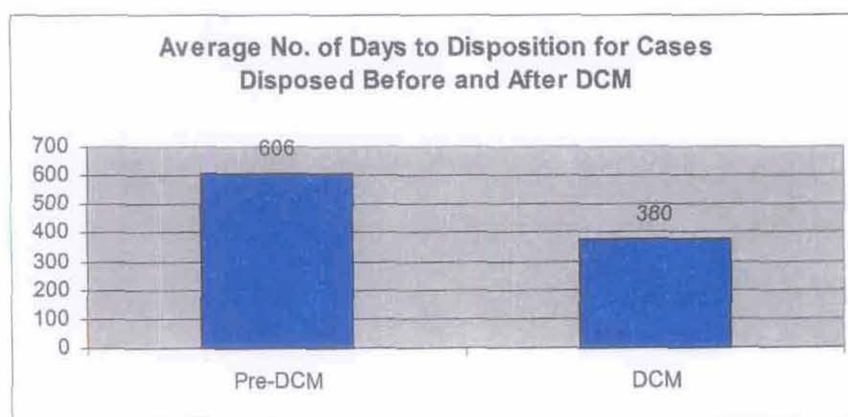
As indicated in the chart below, the number of pending cases was reduced–both pre-Note of Issue and post-Note of Issue.



Equally impressive is the change in the "clearance ratio," the ratio of dispositions to filings, over the five-year period that CCJP has been in place. Clearance ratio is a key indicator of court performance, with a goal of ensuring that courts dispose of as many cases as are filed each year. The New York courts under CCJP have far exceeded this goal, disposing of 11% more cases than were filed.



One of the key principles at the heart of CCJP is active case management–moving cases to resolution not for the sake of numbers but for the benefit of the litigants who should not have their matters languish in the legal system. Timely case resolution, is therefore vital. In this regard CCJP again has proved successful. As indicated in the following chart, there have been dramatic decreases in the time it takes civil cases to reach disposition. The average time it took to resolve a case before DCM was 606 days. After DCM, that number has been reduced to 380 days.



The Differentiated Case Management approach to New York's civil caseload has changed the landscape. A case is actively managed from the moment it is assigned to a Judge; the pre-trial discovery phase is completed more efficiently with more cases being resolved during that early phase; the life of a case in court has been shortened; and the number of cases disposed each year exceeds the number of annual filings. Notwithstanding these notable achievements, recommendations for continued progress are set forth below.

DCM Recommendations:

- **A set of standards and goals for civil cases that runs from the filing of the Request for Judicial Intervention to disposition should be adopted.**

Prior to 1986, the New York courts traditionally concentrated their efforts on resolving trial-ready cases. Accordingly, the earliest civil standards and goals–or the court system's standard for the reasonable completion of a civil proceeding–commenced when the case was ready for trial, at the filing of Note of Issue. That focus on trials and trial-ready cases shifted in 1986 with the adoption of IAS, a system in which the Judge managed the entire case from discovery through Note to disposition. Thereafter, in 1995 the court system adopted a standard and goal for the pre-Note of Issue stage of a civil case. Finally, with Rule 202.19 the pre-Note standard and goal was modified by case tracks–expedited, standard or complex. As a result, the current standards and goals for civil cases are bifurcated: eight, 12 or 15 months for the pre-Note of Issue period (from RJI through discovery) and 15 months for the period from the filing of the Note to disposition.

Standards and goals that are bifurcated in this manner have been very helpful in moving the focus from the post-Note stage of a case to the entire life of the case once it is in court. Under DCM, the preliminary conference, the discovery time frames, and the Note of Issue date all have become court-supervised events that move the case forward.

In short, under CCJP, the legal culture in New York has changed. Court oversight over case progress, beginning with the filing of the RJI, is accepted by the bench and the bar. Building on this success, it is now appropriate to look at civil litigation as a continuous process that runs from RJI to disposition and to establish a set

of civil standards and goals that reflects the entire court life of a case.

This is not to say that the discovery tracks will be eliminated. Rather, the time frame to file a Note of Issue will be retained as a firm milestone event within the DCM continuum, but not as a distinct standard and goal. By retaining the "Note due" date as a milestone event, the courts will continue to be able to monitor compliance with case management orders, but eliminate the sometimes severe consequences that have accompanied the failure to complete discovery within the mandated time frames. Pre-Note standards and goals were never meant to be a mechanism to dismiss cases that were not ready for trial within the discovery track. Rather, they were intended to reflect the reasonable expectations of the court, litigants and attorneys concerning the prompt and fair disposition of cases. There is no reason why a case should not have a more flexible discovery period if a Judge determines it appropriate, as long as the Judge continues to monitor the progress of discovery.

The adoption of standards and goals from RJI to disposition will provide for flexibility in the discovery process while still maintaining control of the caseload. Equally important, in some courts, better use can be made of the time between Note and trial. It makes little sense to rush attorneys to complete discovery, only to have cases languish for months as they make their way to a trial part.

- **Meaningful settlement conferences should take place after a Note of Issue is filed.**

Visits throughout the State have shown that DCM works best in high-volume jurisdictions when there is a monitored progression from discovery to a meaningful post-discovery settlement conference to a calendar control part. While the Comprehensive Civil Justice Program foresaw the elimination of TAP Parts, the reality is that for most

high-volume jurisdictions, a calendar control part makes the best use of judicial resources, guaranteeing a steady flow of ready cases to the trial parts. Of course, there are categories of complex cases that demand individualized attention, and local Administrative Judges are always empowered to exempt these cases from the mix.

Integral to the entire process is an early meaningful post-Note settlement conference. Whether held before the assigned Judge, a neutral evaluator or in a calendar part, these conferences have proven extremely effective in reducing the post-Note inventory of civil cases. It is therefore recommended that those jurisdictions that do not currently have a mechanism in place to conference cases after the Note is filed institute such a practice.

- **The overall Standards and Goals for civil cases should be modified to 20 months for an expedited case, 24 months for a standard case and 27 months for a complex case.**

With the advent of DCM, the courts' ability to dispose of Notes within one year of filing has greatly increased. In fact, Rule 202.19 contemplates a trial eight months after the Note of Issue (a pre-trial conference must be held within 180 days and the court must fix a firm trial date no later than eight weeks after the conference). Having made such progress, the disposition of post-Note cases within one year is a reasonable goal. Thus, the overall standard and goal for expedited civil cases should be established at 20 months (with the Note milestone retained at eight months); for standard cases 24 months (with the Note milestone at 12 months); and for complex cases 27 months (with the Note milestone at 15 months).

- **The role of non-judicial personnel in case management should be expanded.**

Under CCJP, non-judicial personnel in many larger courts have assumed greater responsibility for case management. Depending on the jurisdiction, they assist in track assignment, monitor compliance with discovery schedules, resolve discovery disputes, and conduct settlement conferences. Continued reliance on non-judicial personnel to provide case processing support to Judges should be encouraged. Judges, in turn, will then be available to decide substantiative motions, conduct settlement conferences, and try cases.

- **An extended track for exceptionally complex cases should be established.**

There are certain extraordinarily complex cases that require special judicial attention. They are often distinguished by the number of parties involved and/or the legal and factual difficulty of the issues raised. It was previously noted that Administrative Judges may wish to exempt these cases from assignment to a calendar control part. In a like manner, an option should be available for Judges to assign extremely complex cases to an extended discovery track, with the approval of the Supervising or Administrative Judge. The time frame for completing discovery for an extended track case would be 20 months from the RJI, so that the standard and goal for the extended track would be 32 months.[3]

- **Tolling provisions should apply to civil standards and goals.**

Finally, with regard to the civil standards and goals, it is recommended that the

---

[3]It is recommended that the 32-month standard and goal also be applied to foreclosure proceedings, which do not follow the more traditional case process.

tolling capacity that currently applies to both the criminal and family standards and goals be extended to civil cases. Thus, events that effectively stop the progress of the case, such as bankruptcy, appellate stays, and insurance company liquidation would toll the running of the standards and goals clock.

- **Automation should be used in the case process where appropriate to replace court appearances.**

In collaboration with the bar, the e-court concept should be expanded to include e-scheduling and, where appropriate, provide for automated preliminary conferences. Too often, attorneys appear for preliminary conferences only to agree on a track assignment and a discovery schedule without the need to see a Judge. Some courts have recognized how wasteful this practice can be. For example, New York County has successfully pioneered the use of computer generated orders for City and motor vehicle cases. Courts in some rural areas have encouraged the use of automation and telephone conferences to replace appearances by attorneys. It is recommended that the court system expand the policy of e-scheduling and allow attorneys to e-mail consent discovery schedules to non-judicial case managers. This approach could also be applied to compliance conferences: Attorneys would be permitted to advise the court electronically that discovery is on schedule or request a telephone conference to resolve any outstanding issues.

Members of the Commission to Examine Solo and Small Firm Practice have expressed concern that it is often difficult to ascertain the status of proposed orders and judgments submitted for signature. The sometimes labyrinthine path that these papers take from the clerk's office to chambers to the County Clerk's office can be frustrating to the uninitiated, especially when time is of the essence. To address this concern, a pilot project in New York County will experiment with the use of bar code technology

to track court papers.

Finally, the Commercial Division's practice of publishing its rules and guidelines on the court system's website should be expanded so that all Part rules will be readily available to the bar and public.

The DCM recommendations significantly effect the day-to-day operations of the courts. To ensure an orderly transition, implementation should take place through a statewide operational committee that would include designees of the Administrative Judges and the Deputy Chief Administrative Judges for New York City and for Outside of New York City and individual courts.

II. Tailored Justice - The Specialized Treatment of Cases

The Comprehensive Civil Justice Program recognized that certain categories of cases lend themselves to specialized treatment because of the unique legal issues and management complexities that characterize them. The Program called for expansion of case specialization for commercial and matrimonial cases and introduced statewide the concept of the specialized treatment of proceedings brought pursuant to Article 81 of the Mental Hygiene Law (Guardianship Cases).

The specialized treatment of cases, which began in 1993 on an experimental basis, is now a statewide approach that works. Across the categories of cases that specialization applies to, the in-depth knowledge and focus of a specialized part has resulted in cases being resolved efficiently and with more uniform treatment.

1. Commercial Division

The Commercial Division of the Supreme Court celebrated its tenth anniversary in 2004. Branches are now in place in Albany, Erie, Kings, Monroe, Nassau, New York, Suffolk and Westchester Counties. The Division, which handles solely commercial disputes, has been described by the Business Law Section of the American Bar Association as "a model of a specialized court devoted to the resolution of business disputes."

The success of the Commercial Division is evident from the data. For example, in New York County, Commercial Division Judges have made great progress in reducing the average time it takes to resolve contract cases. Prior to the creation of the Commercial Division, the average time from RJI to disposition was 648 days. Today, it takes an average of 396 days to resolve a contract action in New York County's Commercial Division, a reduction of 39%. Once the Note of Issue is filed, the results

are even more impressive. Prior to the Commercial Division, contract cases remained on the trial calendar an average of 382 days before disposition. Now, these cases are resolved an average of 195 days after a Note of Issue is filed, a reduction of 49%.

Recommendation:

- **The adoption of uniform rules for the Commercial Divisions should be considered.**

The Commercial Division of the Supreme Court clearly has emerged as a valuable addition to the court system and a resource for New York's business community. What little criticism there has been often centers on a lack of uniformity and predictability among the different Commercial Division courts. Each of the counties within the Division has issued guidelines and rules defining which cases will be accepted for filing and the procedures to be followed after filing. While these rules often share common characteristics, Judges and practitioners have discussed the need for greater consistency in this area of practice.

Accordingly, a set of model rules for all Commercial Divisions has been drafted for consideration. A copy of the Rules is attached as Exhibit B. These rules, which were developed by a group of Judges and commercial practitioners, are issued for comment and consideration.

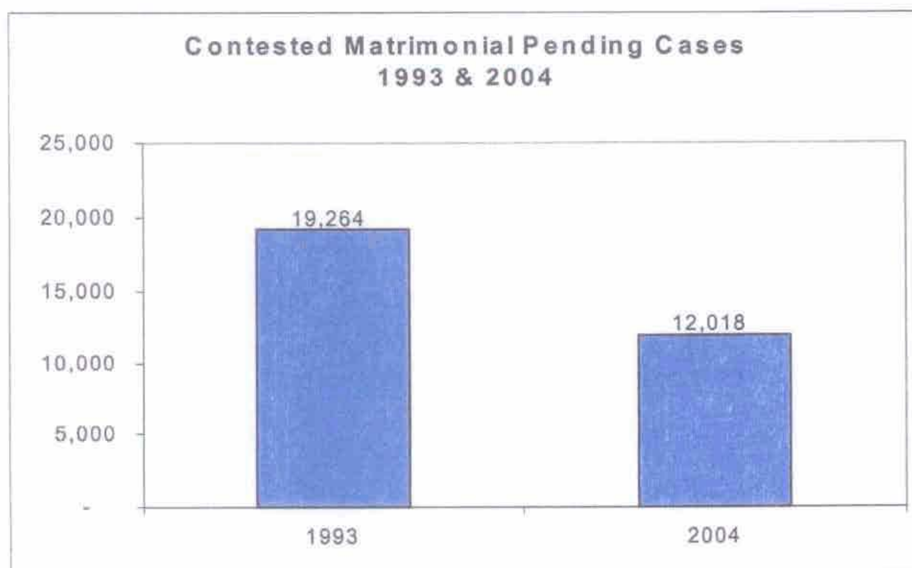
The Commercial and Federal Litigation Section of the New York State Bar Association is also looking for methods to resolve commercial litigation more effectively and at reduced cost. To that end, they are currently soliciting the views of their membership on issues affecting practice in the Commercial Division. A copy of the survey appears as Appendix C.

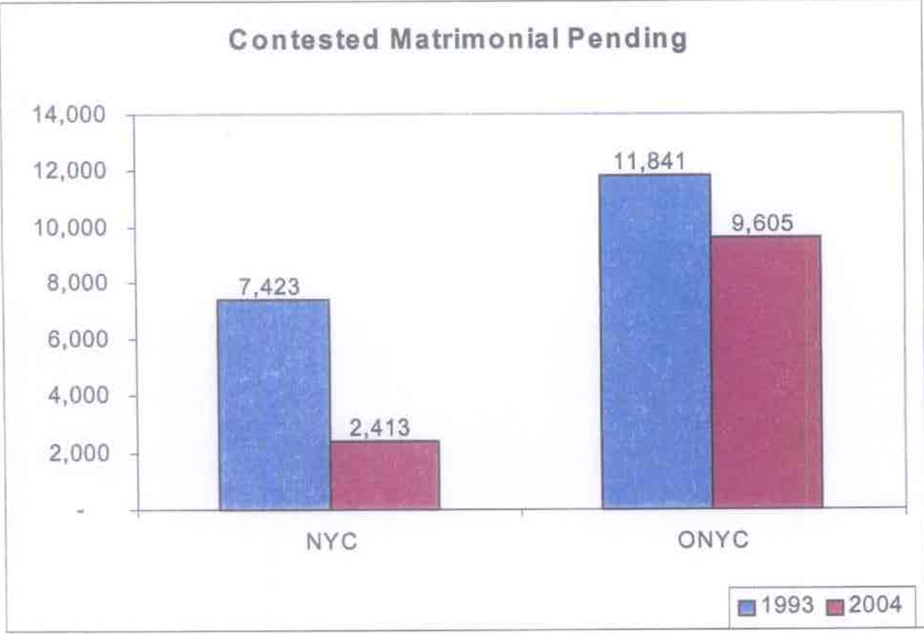
2. <u>Matrimonial Cases</u>

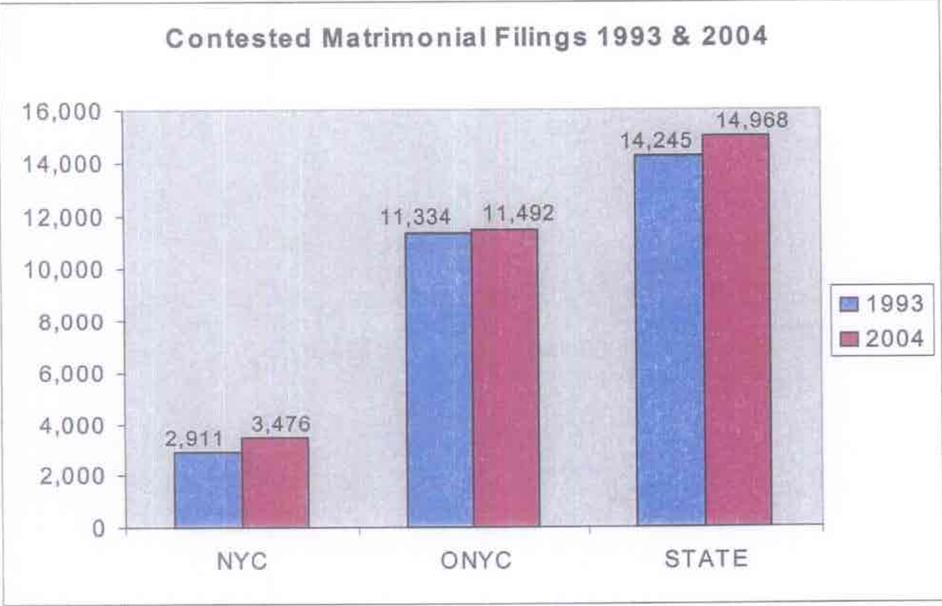
Matrimonial cases first received specialized treatment in 1993, when dedicated matrimonial parts were created in New York City. These sensitive cases required both the individual attention of a Judge with expertise in this area and the consistency of treatment that specialization fosters.

A Statewide Administrative Judge for Matrimonial Matters, Hon. Jacqueline W. Silbermann, was named in 1997. Under her leadership, a training program for Judges handling matrimonial cases and their staff has been created, specialized training for Judges newly assigned to handle matrimonials has been implemented, and the sharing of successful strategies and new ideas across the State has thrived. Today, dedicated matrimonial parts exist in many locations throughout the State.

The improvement in pending matrimonial caseload figures since 1993, which also coincides with the year the matrimonial rules were introduced, is remarkable. During this period, the number of pending contested matrimonial actions decreased by 37% statewide. In New York City, the improvement is even more striking with a reduction of 67%. Notably, over the same period, contested filings actually increased by 21% statewide.




Contested Matrimonial Pending
14,000
12,000
10,000
8,000
6,000
4,000
2,000
-
7,423
2,413
11,841
9,605
NYC
ONYC
1993
2004


Contested Matrimonial Filings 1993 & 2004
16,000
14,000
12,000
10,000
8,000
6,000
4,000
2,000
0
2,911
3,476
11,334
11,492
14,245
14,968
NYC
ONYC
STATE
1993
2004

The specialized approach to matrimonial cases has allowed many jurisdictions to provide additional support for families in crisis. In Erie County, an Expedited Matrimonial Part was created to resolve matrimonial lawsuits in an efficient, less costly manner. For example, after financial information has been exchanged, the parties or their attorneys propose dispositions that allow the court to narrow or resolve the issues. If there are parenting custody issues, the Court may refer the parties for additional assistance from a trained professional. The parties may also agree to send the case, in whole or in part, to mediation or arbitration.

Judge Silbermann also has developed a proposed parenting plan form to limit litigation when custody and visitation are at issue.[4] By completing the form, the parties are required to develop a plan for their parenting goals. Often, the completed forms will reveal that the parents' ideas about raising their children are not far apart. The form encourages early settlement and can eliminate the need for costly forensics by defining the issues. The Court can then build on areas of agreement to resolve other issues.

Recommendation:

- **For contested matrimonial matters a child-centered custody part should be developed to promote the resolution of custody disputes with minimal negative impact on children.**

A non-adversarial approach to custody matters will be explored this year through a pilot project in New York County that focuses on a "Children Come First" model. This Part will use every resource available to ensure that children caught in custody disputes are not subjected to the stresses usually associated with adversarial litigation. The model Part will break this mold by using tools such as mediation and counseling.

[4] A copy of the Proposed Parenting Plan form is attached as Appendix D.

All individuals assigned to the Part–from the Judge to the court officers–will receive special training concerning issues related to custody, with an eye towards minimizing the impact of the litigation on children. The model will be child friendly in every sense–not just in philosophy but physically as well. An environment will be created where a child will feel safe and at ease, reinforcing the message that the culture of confrontation will no longer be the way business is conducted.

3. Fiduciary Matters/Guardianship Proceedings

Civil proceedings can involve the naming of a fiduciary–an individual appointed by a Judge to assist the Court and serve litigants in a variety of situations. Fiduciaries, who often are attorneys, may represent children in contested custody matters or serve as guardians under Article 81 of the Mental Hygiene Law. Fiduciaries also may be named to manage or sell property that is involved in litigation or is the subject of foreclosure.

In 2000, Chief Judge Kaye began significant reform of the process by which fiduciaries are appointed and of the court's oversight of their duties. As a result of those efforts, Part 36 of the Rules of the Chief Judge, which governs fiduciary appointments, was completely revised.

Under the revised rule, specific fiduciary appointments must be made from a qualified list established by the Chief Administrative Judge. Morever, compensation based limitations were placed on appointments, a process was established for the approval of compensation, and all fiduciary appointments and compensation are published and available to the public. With regard to eligibility for appointment, specific criteria were established and a registration process for those eligible to receive appointments was created. Finally, a procedure was established to remove a fiduciary from the list for specific reasons or for engaging in conduct inconsistent with fiduciary

responsibilities.[5]

To assist Judges in fulfilling the requirements of Part 36, a fully automated fiduciary database was created. The database, which can be searched publicly and by Judges and court staff, contains information on all eligible fiduciaries, appointments made, and compensation approved. It may be searched in many categories, including by fiduciary, by Judge, by type of appointment, and by court. Beyond the database, designated Fiduciary Clerks were provided in each Judicial District to ensure that all of the necessary documentation is completed and sent to the central office for inclusion in the database.

To complement these efforts, ongoing training has been given for non-judicial court staff and for Judges on Part 36, with particular focus on the roles of guardians and court examiners in guardianship cases and of law guardians in matrimonial matters. Daily support for the courts also is provided by the newly established Office of Fiduciary and Guardianship Services, which consists of very experienced attorneys who answer questions, provide on-site training and address policy issues in this area.[6]

Like matrimonial matters, proceedings brought pursuant to Article 81 of the Mental Hygiene Law regarding an individual's capacity and the need for a guardian are particularly sensitive cases that directly effect the quality of life of an individual. Too often, the individuals who are the subject of guardianship proceedings have no family or assets, and the Judge must look to the community to find support when the individual is determined to be in need of a guardian.

Guardianship cases receive specialized treatment in many locations, particularly in the downstate area. As with commercial and matrimonial matters, specialization provides a focused approach to guardianship cases, affords the Judge the opportunity to

---

[5] Under Part 36, an applicant to be on the fiduciary list must attend training and must re-register every two years. A copy of Part 36 is attached as Appendix E.

[6] The Office of Inspector General now includes an Inspector General for Fiduciary Matters.

become familiar with available community resources–which can be a critical factor– and allows a Judge in-depth exposure to this area of the law.

To support the work of the guardianship Judges within the First and Second Judicial Departments, a new title of Court Examiner Specialist has been created. This new title will be responsible for overseeing the work of the court examiners to ensure that accountings by guardians are submitted timely and are thoroughly reviewed by the Court Examiners.[7]

Recommendations:

- **Guardianship proceedings should be enhanced with the creation of a statewide case management system.**

At present, the court system's ability to oversee the entire life of a guardianship proceeding is limited because of the absence of an automated case management system that is tailored to the unique characteristics of these cases. The existing civil case management system tracks guardianship proceedings only to the point of the judicial determination as to capacity.

A new system is being developed for statewide application in Spring 2005. The automated system is designed to track guardianship cases from the initial stage through the hearing and continue to provide monitoring with regard to the initial and annual accountings required under Article 81. It will continue to identify a case as pending until a final accounting is submitted by the guardian. Of particular importance, the new case management system will enable the Court to take appropriate corrective action and ensure that the court-appointed guardians and court examiners are fulfilling their

[7]Court Examiners review the annual reports filed by guardians to determine the condition,care, and the finances of the incapacitated person, and the manner in which the guardian has carried out his/her duties, and exercised his/her powers.

statutory responsibilities.

- **A model guardianship part should be established to address in a comprehensive way the issues affecting the incapacitated individual.**

The establishment of a model guardianship part would provide the courts with the tools to address in one forum the multiple and often complex issues faced by individuals found to be incapacitated. Thus, issues involving housing and foreclosures, allegations concerning possible abuse–particularly elder abuse–and any other related proceedings could be addressed in a comprehensive way by a single Judge. The model part will have established relationships with the District Attorney's Office and with local social services agencies. At the same time, mediation will be available to resolve the internal family disputes that often arise in guardianship cases and interfere with the well-being of the incapacitated individual. Finally, a significant component of the model part will be the inclusion of new volunteers who will visit the incapacitated individual and ensure that their needs are being met. The volunteers will report to the Court on a regular basis so that the Court, as necessary, can take corrective action. It is anticipated that the model part will first be established in Suffolk County this year.

- **The use of not-for-profit institutions to serve as guardians should be increased.**

One of the most difficult challenges facing Judges who conduct guardianship proceedings is to identify potential guardians for individuals who are found to be incapacitated but have no financial resources. There often is no family member available to serve as guardian and no assets to pay the expenses of a non-family guardian. One way to address this growing problem is with community-based, not-for-profit

organizations that accept guardianship assignments where the incapacitated person has resources and where there are no financial resources. By accepting so called "pay cases", the not-for-profit organization is able to fund the program itself.

This approach has worked successfully in Westchester County, where the Family Services Society of Yonkers has been assigned as the guardian in cases since 1997. More must be done, and a similar program will begin in Kings County in early 2005 using the Vera Institute of Justice as the institutional guardian. The court system will continue to actively work with not-for-profit organizations to expand the use of institutional guardians as broadly as possible throughout the State.

4. Medical Malpractice

As the specialized treatment of cases has developed and expanded, complex cases involving medical malpractice have been included for such treatment in a number of courts. The advantages of specialization for medical malpractice cases are the same as for commercial, matrimonial and guardianship cases–development of in-depth knowledge of a discrete area of the law by a Judge, consistency of treatment during both discovery and trial, and experience in a specific case type which enhances negotiation and resolution by the Judge.

Courts that have developed specialized medical malpractice parts have used different models. Some courts have maintained an IAS approach, with dedicated medical malpractice Judges handling the cases from RJI through disposition. Other courts assign medical malpractice cases to all Judges, introducing specialization only when the case is ready for trial. Still other courts have added a specialized trial assignment part for medical malpractice cases, concluding that these cases have a different tempo from many other civil cases and that the more deliberate pace is best addressed with a separate assignment part.

The statistics on medical malpractice cases, the majority of which are assigned to the complex DCM track, support the conclusion that the cases in these specialized parts are managed more efficiently and resolved earlier than without specialization. Without specialization, the average age of a pending case is 787 days and the average time to disposition is 1,233 days. When specialization is applied throughout, the average age of a pending case is 598 days and the average time to disposition is 810 days.[8]

Recommendations:

- **The tailored treatment of guardianship, matrimonial and medical malpractice cases should continue.**

The specialized approach to guardianship, matrimonial and medical malpractice cases–each with its own characteristics and case management needs–has worked extremely well, and it is recommended that the court system continue this approach. Where judicial resources are sufficient to do so, medical malpractice actions should receive specialized assignment throughout the life of a case from initial RJI to the trial assignment part (where an experienced Judge will promote settlement and identify scheduling issues).

- **Practice Groups for Judges should be established.**

In an effort to provide Judges with ongoing support as they assume new responsibilities and become more experienced in managing cases, it is recommended that the court system create a mechanism for Judges, both those who specialize and those who have broad inventories, to share best practices and experiences. These Judges would

[8]This analysis is based on a limited sampling of CCIS Counties.

develop best practice manuals for use statewide, develop targeted educational programs, and create newsletters–all to provide Judges with ongoing information and opportunities for discussion in their area. In anticipation of the creation of Practice Groups, committees of Judges in the areas of matrimonial and guardianship proceedings have been designated to begin working on best practices manuals in those areas.

5. Complex Litigation

New York has assumed a leadership role in managing complex civil litigation efficiently and effectively.[9] While extremely complex cases represent a small percentage of New York's caseload, they require exceptional judicial management.

Unlike other civil cases, discovery and negotiation in a complex case often proceeds in a circular rather than linear fashion. Initial discovery determines all parties and claims, then negotiation narrows the scope of claims and defenses. Progress is measured by decreasing the number of parties and disputed claims.[10]

Trials in complex litigation can function as either an interim or final disposition. In class action and mass tort cases, bifurcating trials is a useful technique for determining liability of the respective defendants or gauging the potential range of damage awards. This information can then be used in subsequent settlement negotiations.

Before 2002, the court system attempted to address the management of complex litigation through an informal system that depended on lawyers to identify similar cases and contact Administrative Judges to coordinate their assignment. With an increasing number of complex cases being brought in various Districts, this informal practice was no longer satisfactory. Accordingly, the Administrative Board adopted Rule 202.69 in January 2002. This rule established a procedure for complex lawsuits filed in different Judicial Districts to be coordinated for pretrial proceedings, and in some instances for trial, before a single Judge. The Rule established a Litigation Coordinating Panel, consisting of one Justice from each Judicial Department, which could direct coordination. The development of a uniform approach to multi-district litigation is a significant step in addressing issues that arise in mass tort and complex litigation. As

---

[9]A complex case usually involves protracted discovery, numerous parties and cross claims. Complex cases include mass tort actions, products liability cases and commercial litigation.

[10]Evaluation of the Centers for Complex Civil Litigation Pilot Program, National Center for State Courts/California Administrative Office of the Courts, June 30, 2003.

more potential cases against pharmaceutical companies and manufacturers are reported each day, the court system must continue to develop improved methods to deal with this litigation.

Even today, the number of complex cases pending in New York County is increasing. There are currently 2,364 asbestos cases, 1,460 products liability cases, 189 breast implant and 21 Fen-phen cases pending.

<u>Recommendation:</u>

- **A Center For Complex Litigation should be established for non-commercial complex cases and for mass torts.**

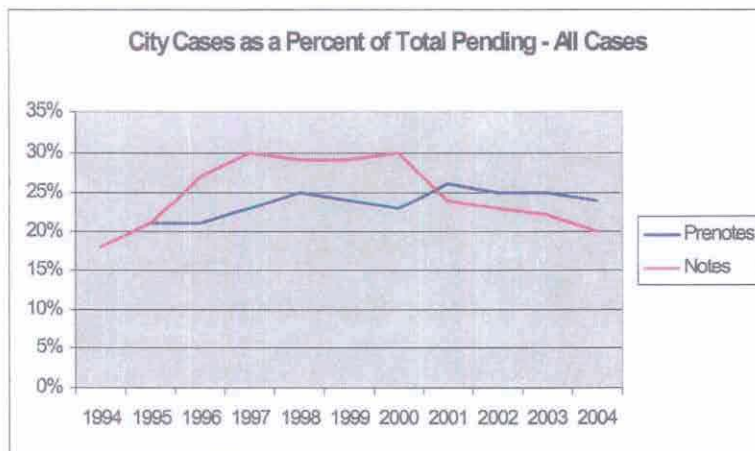
A number of states have successfully introduced a specialized approach to extremely large and complex civil cases using groups of Judges specially designated to manage this challenging caseload to ensure that complex litigation proceeds in a timely fashion. It is recommended that New York State, with its sizable and increasing complex caseload, establish a Center for Complex Litigation. The Center would include several Judges each with their own inventories, who would be available to provide trial back-up for the other Judges in the Center.

This approach has worked successfully in high-volume jurisdictions, such as California. There, significant improvements in the resolution of complex litigation occurred when caseloads were distributed to permit intensive judicial case management. Manageable caseloads resulted in a higher number of interim dispositions and closer supervision of case progress. This specialized approach will permit the Judges assigned to the Center to engage in substantial supervision of pre-trial case management and negotiation activities as well.

It is envisioned that educational workshops and training for Judges and staff assigned to the Center will be offered on a regular basis. Case management technology will be developed so that Judges and their staffs can monitor case progress more accurately, organize documents coherently, and communicate with multiple attorneys. Criteria to identify cases appropriate for this approach and the creation of rules/procedures should take place as part of the Center's development with the Judges and staff assigned to these parts.

6. New York City Cases

Within the Supreme Courts in New York City, the single largest institutional civil defendant is the City of New York. Over the last decade, the percentage of civil cases against New York City (City cases) has been approximately 25% of the total pending caseload of the courts in New York City. Pending Notes of Issue in City cases peaked at about 30% in 2000 and have been declining steadily.



The combination of large numbers of cases involving a single defendant and the limited number of attorneys representing New York City results in inevitable delays in the case process.[11] Accordingly, courts have increasingly developed special approaches to manage City cases.

Following the adoption of CCJP, the Torts Division of the NYC Corporation Counsel and the Office of Court Administration undertook an extensive effort to match the case inventories of the Courts and of Corporation Counsel to make sure that cases were being identified and counted as City cases in a uniform manner. Following that very successful initiative, the Chief Clerks of the Supreme Courts were asked to review each Court's City case inventory and to ensure that each case was an active, ongoing matter.

With an updated listing of viable City cases, a "Last Clear Chance" program was commenced city-wide that was designed to address the backlog locally and in age-order. The program provided the oldest City cases with a final settlement conference approximately two weeks before trial. Cases that did not settle were assigned a firm trial date with adjournments granted only in extenuating circumstances. The City, in turn, guaranteed a fixed number of attorneys each week, per County to try these cases.[12]

The "Last Clear Chance" program has resulted in a steady reduction in City cases awaiting trial for more than 15 months–from 2,570 in 2001, to 2,069 in 2003, to 1,398 as of 2004. In the last year, the number of trial-ready tort cases pending beyond the post-Note standards and goals has been markedly reduced in three counties–from 336 to 255 in Manhattan, 418 to 94 in Queens, and 967 to 708 in the Bronx. (Kings and

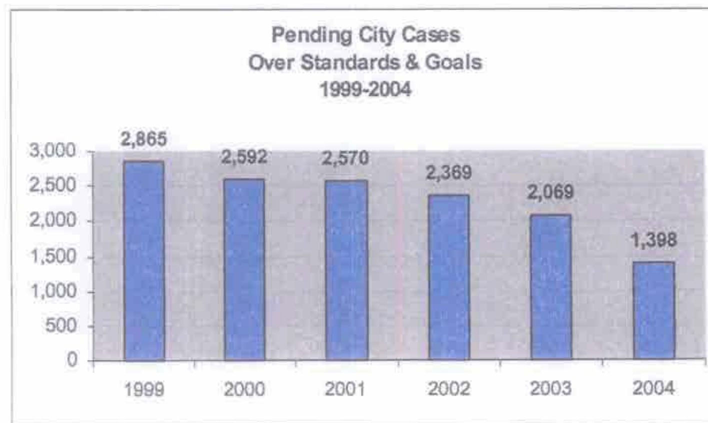
---

[11]The Tort Division of the New York City Law Department represents the City, its Department of Education and its Health and Hospitals Corporation in all tort claims. The Comptroller has statutory responsibility to approve all settlements in tort cases.

[12]Currently, eight trial attorneys from the Tort Division are assigned to Kings County, five to Queens, five to the Bronx, nine to New York County and one to Richmond. There are also trial lawyers who rotate through the counties as needed.

Richmond have held steady.) While successful, the "Last Clear Chance" program targets only a limited number of the oldest cases.

To supplement "Last Clear Chance," Kings County introduced a program to conference City cases earlier in the post-Note process. The theory was that given the inordinate delay in proceeding to trial, all parties would welcome *bona fide* settlement discussions earlier in the case. This program proved successful and has since expanded to Manhattan and the Bronx. Over the last fiscal year, a total of 902 cases settled in these programs: 350 in Kings, 426 in Manhattan, and 125 in the Bronx, where the majority occur in a special Sidewalk Project.[13]



As a result of these combined efforts, the number of City tort cases with Notes of Issue pending over standards and goals has been reduced by 51% over the past five years. In fact, if the present rate of decline continues, particularly in Queens and New York Counties, it is not unreasonable to envision a time in the near future when post-Note City cases pending over standards and goals will be the exception rather than the rule.

[13]The Sidewalk Project targets post-Note of Issue "trip and fall" cases in which the City of New York is the defendant.

While this trend is certainly encouraging, it must also be acknowledged that, when it comes to pre-Note processing time, there is a tremendous disparity between City and non-City cases. Fifty-eight percent of all pre-Note cases in which the City of New York is a defendant are pending beyond standards and goals. Undoubtedly, much of this delay is attributable to the sheer volume of motion practice and discovery demands to which the City must respond. The chart below breaks down the pre-Note of Issue data by county:

City Cases Pre-Note Report

Motor Vehicle and Other Tort Cases

County	Pre-Note Pending	Pre-Note Over S&G	% Over S&G
New York	2,085	959	46%
Bronx	3,465	2,396	69%
Kings	3,726	2,554	69%
Queens	885	32	4%
Richmond	351	192	55%

There is a clear contrast between Queens and the other counties. Most New York City Supreme Courts concentrate City cases in dedicated parts where the preliminary conference is held, motions are argued, and compliance issues are addressed. Queens is the only county that treats City cases like all others and processes them through its Intake and Centralized Compliance Parts. While the volume of City cases in Queens is relatively small, the Queens experience proves that it is possible to move City cases through the discovery process within DCM standards.

Queens County City Cases
Motor Vehicle and other Torts

Total Pending	Pre-Note Pending	Pre-Note over S & G	Note Pending	Notes Over S&G
1,909	885	32 (4%)	1024	94 (9%)

Recommendations:

- **City cases should be included in the DCM program.**

It is recommended that the court system's DCM program include all City cases. While the adoption of standards and goals that run from RJI to disposition may make this task somewhat easier, the daunting volume of pending cases in some counties must also be recognized. Accordingly, the absorption of City cases into the DCM process should be done incrementally.

Queens County, having already incorporated City cases into their DCM program, should continue their success throughout the coming year. In the future, DCM milestones should be applied to City cases based on the volume of tort cases currently pending in each County. Thus, New York County (2,425 cases) and Richmond County (375 cases) should be added to the program in 2006, Kings County (4,787 cases) in 2007 and Bronx County (5,835 cases) in 2008.

- **Motion practice in City tort cases should be streamlined.**

One way to expedite pre-trial matters is to reduce motion practice. It is recommended that Judges assigned to City tort cases strictly enforce a rule that a discovery motion may not be filed without first requesting a conference, either by telephone or in person. Any order that results from a telephone conference should be faxed to the attorneys.

For substantive motions, the concept of an essentially paperless motion should be explored. Under this concept, the volume of paper would be restricted to a one or two page synopsis of the facts, necessary legal citations and legally required attachments. The City would respond in a similar manner. Such practices will benefit both litigants

and the Court. With fewer motions to answer, the City should respond in a more timely manner and discovery disputes can be addressed expeditiously. The "paperless motion" concept will be tested in Kings County this year.

- **City case mangers should be identified specifically to expedite the processing of City cases during the discovery stage.**

City cases, perhaps more than any others, need to be actively managed to ensure that they move from RJI to disposition in a timely fashion. The value of providing a Judge with adequate non-judicial staff to assist in case management has previously been demonstrated. As City cases are included in the DCM process, the need to provide City Part Judges with adequate support staff will increase. To that end, it is recommended that City Case Managers be assigned to high-volume City Parts to assist the Judges in monitoring case progress through DCM pre-Note milestones.

- **Meaningful post-Note settlement programs for City cases should be instituted in each court.**

After the Note of Issue is filed, procedures should be implemented to ensure that meaningful settlement conferences occur long before a City case is eligible for the "Last Clear Chance" program. Here too, non-judicial staff can assist in the process. The Neutral Evaluation Program in New York County has generated a substantial number of dispositions in City cases. As the courts actively move more City cases to trial status, enlisting talented staff with the necessary settlement skills to conference City Cases would be an effective use of the Court's resources.[14] To that end, it is recommended

---

[14]Former litigators for the Corporation Counsel's Office would certainly possess the required skills.

that neutral evaluator positions be established in each county within New York City to conduct meaningful post-Note settlement conferences on City cases.

There is no magic formula as to when and how these conferences should be conducted. Bronx County has recently made great progress with a program in which "sidewalk" cases are conferenced by the Administrative Judge. To date, this program has resulted in the settlement of 67% of the cases actually conferenced. As the experiment in the Bronx has proved, actively managed settlement programs designed for City cases work, and each Court in New York City should ensure that there is such a program in place.

III. Civil Jury Selection

In June 2004, the Commission on the Jury issued an Interim Report to the Chief Judge. Two of the main issues identified by the Commission were the involvement of Judicial Officers in civil *voir dire* and the use of jurors as settlement tools.

New York is the only State that does not require a Judicial Officer to supervise *voir dire* in a civil case. Although the Uniform Rules for Trial Courts (22 NYCRR 202.33) require some judicial involvement in the selection process, in high-volume courts, this responsibility has often been delegated to Judicial Hearing Officers (JHO).[15] In fact, the courts with the heaviest inventories often assign the case to a trial Judge only after jury selection is completed. Although some counties make efforts to assign the trial back to the original IAS Judge, the identity of the trial Judge is not usually known until jury selection is complete, leaving the JHO as the only judicial presence during jury selection.

The Commission also noted the "deeply ingrained practice on the part of many trial lawyers not to discuss settlement seriously until they are up against the wall of trial."[16] In 2003, 4% of the cases assigned to select juries settled during *voir dire*, while another 25% settled after the jury had been selected but before the trial began. In all likelihood, a settlement conference had been conducted before the start of jury selection, yet as the numbers show, many cases are resolved only after the jurors enter the picture. As the Commission observed, the question is not whether the judicial system is failing to provide a pre-*voir dire* settlement forum, but how to create a forum in which the

---

[15]Section 202.33 requires that a Judge undertake the following during civil jury selection: (1) meet with counsel before the selection starts to try to settle the case; (2) direct the method of jury selection to be used; (3) establish time limits for the questioning of prospective jurors; (4) preside at the commencement of *voir dire* and open the *voir dire* proceeding and (5) in his/her discretion preside over part or all of the remainder of the *voir dire*.

[16]Interim Report of the Commission on the Jury to the Chief Judge of the State of New York, p.64.

greatest opportunity for resolution exists.

Recommendations:

- **For high-volume courts, a pilot program should be developed to test whether sending the attorneys for a conference with the trial Judge before the commencement of jury selection is an effective settlement tool that avoids involving jurors in the settlement process.**

The court system must continue to explore different methods to maximize the settlement of civil cases before the commencement of jury selection and to minimize the use of jurors in the settlement process. To that end, it is recommended that a pilot project in Bronx County test the theory that a settlement conference before the designated trial Judge will both expedite settlement and conserve juror resources. Judges designated to participate in the project will receive cases from the calendar control part that are marked ready to select. Rather than report to the empaneling room, attorneys will report directly to the trial Judge who will conduct an intensive settlement conference. Jury selection on cases that do not settle will then proceed under that Judge's supervision.

- **Explore the feasibility of involving Judges more directly in the supervision of civil jury selection.**

To improve compliance with Rule 202.33, a pilot project is recommended involving the designation of a Judge on a rotational basis to welcome jurors and to supervise civil jury selection in the empaneling rooms, augmented by the existing corps of Judicial Hearing Officers. The supervision of *voir dire* is as much a dignified part of

the judicial function as the trial itself, and the presence of a Judge, in his or her robe, communicates this to jurors. The assigned Judge would welcome jurors, open *voir dire*, monitor the progress of jury selection, be available for juror questions, and rule on challenges. JHOs would continue to supplement the Judge but would not be sole judicial presence in the empaneling room.

IV. Alternative Dispute Resolution

The CCJP recognized the significant benefits that Alternative Dispute Resolution (ADR) offers to litigants: the possibility of an agreed-upon settlement with less time, expense, inconvenience and acrimony. The principal forms of ADR include neutral evaluation, arbitration and mediation.

1. Neutral Evaluation

The use of neutral evaluation is a prime example of a program tailored to the needs of individual courts. In New York, Monroe and Erie Counties, programs have been established for tort and other appropriate civil cases to be sent to a non-judicial member of the court staff for neutral evaluation. These court employees are experts in valuing cases and have gained the trust and respect of both the plaintiff and defense bars. As a result, the advisory evaluation of the case given by the neutral evaluator often results in a resolution prior to trial. These programs have met with great success. Over the last two years, neutral evaluators in New York County settled 3,352 cases. During 2004, the neutral evaluators in Erie county resolved 621 cases. In Nassau County, neutral evaluation is conducted in the courthouse by volunteer attorneys provided by the Nassau County Bar Association. Approximately 120 cases are referred per term and the settlement rate is approximately 20%.

2. Commercial Division Mediation Program

Mediation is a confidential, informal procedure in which a third person helps parties in disagreement negotiate with each other. With the assistance of a mediator, parties identify issues, clarify perceptions, and explore options for a mutually agreeable

outcome. Mediation has proven effective in a wide variety of cases, including commercial and family matters.

Mediation is particularly appropriate in complex commercial cases, as it provides the opportunity for creative, expedited solutions tailored to the specific business needs of the parties. Mediation programs have been developed in the Commercial parts in New York, Erie, Nassau and Westchester Counties. Each of these programs has developed local court rules governing the operation of the program and utilizes a roster of trained mediators, most of whom are attorneys with substantial experience in complex commercial litigation. In general, selected cases are referred to mediation after a preliminary conference or at any other time deemed appropriate by the Judge.

The New York County program accepts cases referred from the Justices of the Commercial Division, as well as those outside of the Commercial Division. The Program also offers arbitration and neutral evaluation and will provide any form of ADR the parties wish. Absent a choice by the parties, mediation is the default process.[17] The ADR Rules for the Commercial Divisions in New York and Nassau Counties, along with the rosters of neutrals in these two programs, can be found on the UCS website.

3. Summary Jury Trials

A Summary Jury Trial is an adversarial proceeding in which jurors are asked to render a non-binding verdict after an expedited trial. (Alternatively, the verdict may be binding on consent.) In most cases, the trial is completed in one day. Limits are placed on both the time each side has to present their case and the number of live witnesses called to testify. Testimony may also be presented through deposition transcripts or sworn affidavits. Key to the savings of time and expense is the submission of medical

---

[17] In 2004, 274 Commercial cases were referred to mediation in New York County. Of these, 192 cases completed the process, with a favorable resolution occurring in 104 cases (54%).

evidence through the reports of providers, rather than through live testimony. Once the presentation of evidence is complete, the parties immediately deliver closing arguments. The jury is then charged and retires to deliberate. [18] The goal of the advisory verdict is to provide litigants with a realistic prediction of the likely court outcome in an effort to promote settlement.

In recent years, summary jury trials have been used extensively in the Eighth Judicial District. During the period 2002-2004, one-day summary jury trials in Chautauqua County resulted in resolution of 100% of the cases scheduled, saving litigants, jurors and the court system time and money. The program has since expanded to Niagara and Erie Counties, and is being used by Judges in a number of upstate courts.

4. New York County Custody Mediation Pilot Program

In September 2004, the New York County Supreme Court launched an innovative pilot program to resolve custody and visitation disputes through mediation. All mediators in the pilot project have successfully completed a minimum of 60 hours of family mediation training, have at least four years of family mediation experience, including 250 hours of face-to-face mediation with clients, and have mediated a minimum of 25 cases involving issues of custody and visitation. [19]

Mediation is particularly appropriate for resolution of child custody and visitation disputes because it offers parents a safe, structured forum in which to discuss directly with one another issues that effect the parents' relationship with their children. Parties may be referred to the program on the initiative of the assigned Judge or at their

---

[18] New York State Supreme Court, Eighth Judicial District, Summary Jury Trial Program, *Program Manual,* May 27, 2004.

[19] The roster is available on the New York County Supreme Court, Civil Branch, website (www.courts.state.ny.us/supctmanh).

own request. Each case is screened to determine if it is appropriate for mediation. Cases involving child abuse, neglect, domestic violence or severe power imbalance between the parties are excluded from the program.

Parties and their counsel may be required to attend an initial 90-minute mediation session, after which they may choose to schedule additional sessions or return to court. Parties are under no obligation to reach an agreement and all communications are confidential. If the parties agree to a parenting plan that resolves the issues of custody and visitation, that agreement is returned to the referring Judge for review and approval. If approved, it may be incorporated into the Court's Order or Judgement of Divorce.

5. Multi-Option ADR

In recent years, several courts have developed multi-option ADR programs. Instead of referring litigants to one specific ADR process such as mediation, parties are offered a variety of dispute resolution processes through which to resolve their disputes.

Multi-option ADR programs are available in the Supreme Courts of New York, Erie, and Orange Counties. The program in Orange County focuses specifically on matrimonial cases, while the programs in New York and Erie Counties are open to cases on the general civil calendar. The Erie County Supreme Court offers mediation, neutral evaluation, arbitration and summary jury trials. During 2004, a total of 1,000 cases were resolved through the Erie County Multi-Option program with a resolution rate of 72%.

Recommendations:

- **Summary Jury Trials, used with great success upstate, should be expanded and tested in downstate jurisdictions as well.**

The summary jury trial is a potent tool for resolving cases. Upstate, insurance carriers and plaintiffs' attorneys have grown to recognize its potential for resolving cases with limited insurance coverage. This initiative should be expanded throughout the State and specifically tested in downstate jurisdictions that have a high volume of cases that fit this profile. Accordingly, summary jury projects should be commenced this year in the Fourth Judicial District and in Bronx and Kings Counties as an additional means of addressing their substantial motor vehicle inventories.

- **The value of mediation in custody cases should continue to be explored.**

In the near future, a Supreme and Family Courts mediation program will begin in the Eighth Judicial District. This model will incorporate early triage and screening of cases, with the provision of services tailored to whether the case involves a high or low degree of conflict. Whenever possible, future programs should incorporate early triage and screening of cases, with careful tailored provisions of services. For those counties that do not have formal programs in place, rosters of trained mediators should be available in every District.

- **Neutral Evaluation Programs for Tort Cases should be expanded.**

Neutral evaluation is a prime example of court administrators creating programs that resolve cases while conserving judicial resources. Ideally, at least one neutral

evaluator should be on staff in each Civil Term in the largest counties to address the tort inventory. To make this a reality, local Administrative Judges should try to identify talented Court Attorneys to be trained to fill these positions. Administrative Judges may also consider utilizing a roster of experienced private attorneys to conduct neutral evaluations as is done in Nassau County.

- **Commercial Parts throughout the State should expand their use of mediation.**

Mediation has been used successfully to resolve commercial disputes by a number of counties in the Commercial Division. Commercial parts not yet offering mediation should develop rosters of mediators and protocols similar to those in the existing Commercial Part ADR program.

V. Foreclosure Proceedings

Foreclosure actions continue to represent a significant number of filings in the Supreme Courts throughout the State. Some representative numbers are listed below:

County	Foreclosure Filings 2004
Erie	2,464
Monroe	1,836
Onondaga	1,170
Queens	1,838
Suffolk	1,943

Foreclosure cases by their nature are not susceptible to the principles of DCM. They normally enter the system through an *ex parte* application for a default judgment or a motion for summary judgment. It is not uncommon for the action to thereafter be delayed by bankruptcy filings and motions based on jurisdictional defects. This procedural posturing will often only delay the inevitable result–a court direction that the premises, which is often the defendant's home, be sold at auction.

Concerns have been expressed that unsophisticated homeowners may not receive sufficient notice that they are about to lose their homes, particularly since foreclosure actions often are commenced by an ex parte application. To remedy this, the Office of Court Administration is proposing legislation that would create a new section of RPAPL §1320 which would require that the summons in private residence mortgage foreclosure actions must contain a bold face notice that if the defendant does not answer or come to court, his or her home could be lost. This proposal also seeks to amend CPLR §3215(g)(3)(iii) to extend the requirement that there be a second notice to a defaulting defendant in a residential mortgage foreclosure proceeding before a default judgment can

can be issued.[20]

The goal of this proposal is to ensure that when a foreclosure action ultimately proceeds to judgement, the defendant/homeowner has been afforded every opportunity to defend the action. Once the action proceeds to judgment, the court should ensure that the sale of the property proceeds in an orderly, predictable manner.

In Kings and Queens Counties, foreclosure sales have been moved from the courthouse steps into the courthouse where they are supervised by court personnel.[21] The rules governing the auctions are announced at the beginning of each session, the final sale price for each property is noted by the court clerk, and officers provide a secure environment for all attending. Nassau County will soon implement similar procedures.

Recommendation:

- **Where an auction is held in or about the courthouse, the court should provide adequate security and an orderly process at the site of the auction.**

Procedures for the sale of property pursuant to RPAPL §231 vary widely throughout the state. In those instances where an auction is conducted within or near a court facility, it is recommended that Administrative Judges ensure that the sales are conducted in a dignified, orderly manner. Bidders attending the auction, often with large sums of money in their possession, should feel secure and free from intimidation.

---

[20]The proposed legislation appears in Appendix F.

[21]Judgments of Foreclosure and Sale in Kings and Queens not only direct the location of the sale but the day of the week and time that the sale must take place. In Queens, all sales take place on Friday mornings. In Kings, all sales take place on Thursday afternoons.

VI. New York City Civil Court and Nassau /Suffolk County District Courts

The court system is experiencing a dramatic rise in the number of cases filed in the New York City Civil Court and Nassau and Suffolk District Courts. This increase is the direct result of filings in two areas: first-party no-fault benefit actions and consumer credit transactions.

The charts below set forth the increases:

General Civil Filings
1998-2004

	1998	1999	2000	2001	2002	2003	2004*
New York City Civil Court	214,920	208,008	212,645	247,547	339,594	426,178	406,601
City and District Court: Nassau	26,040	23,640	25,274	26,275	49,525	44,686	41,111
City and District Court: Suffolk	25,535	26,347	27,494	28,370	30,272	38,989	40,994

*Projected

Percentage Increase in General Civil Filings: 1998-2004

New York	Bronx	Kings	Queens	Richmond	Citywide
+53%	+114%	+71%	+133%	+81%	+89%

Approximately 25% of all new Civil Court filings involve first-party no-fault benefits. The no-fault law permits policyholders and others who sustain injuries in automobile accidents to be compensated by the policyholder's insurance company for basic economic loss, i.e., lost wages and reasonable and necessary medical expenses, generally subject to monetary limits. [22] Healthcare providers accept assignments from their patients and bill insurance companies for their services. The insurance companies must pay or deny a claim within 30 days. Pursuant to Insurance Law §5106(b) and its implementing regulations, a person or provider who disputes a denial of compensation has the option to file for arbitration or commence a court action.

Before 1999, arbitration was the forum of choice. It provided a speedier resolution than the courts and petitioners stood a better chance of winning.[23] At some point, however, arbitrators began to rule against claimants with increased frequency. As this trend escalated, so did the filings in the Civil and District Courts. Plaintiffs' counsel began to use sophisticated tickler and computer systems to move for a default judgement against the insurer on the 30th day, when an answer was due.[24]

The explosion of no-fault litigation has severely taxed the ability of the courts to process and store these cases. Local Administrative and Supervising Judges have attempted to keep pace with the attendant motion practice by creating designated no-fault motion parts. These parts presently exist in Bronx, New York and Queens Counties, and motion calendars can run from 75 to 100 cases a day.

---

[22]Reimbursement for reasonable and necessary medical expenses includes examinations, treatments, tests, and medical equipment provided or ordered by properly licensed healthcare providers.

[23]Robert A. Stern, *Take the Money and Run, The Fraud Crisis in New York's No Fault System,* New York State Bar Association Journal, October 2003, p.37.

[24]*Id.*

An innovative approach to the No-fault problem has recently been developed by Nassau District Court, employing some of the case milestones used in Supreme Court. In an effort to reduce motion practice, all no-fault cases are scheduled for a mandatory preliminary conference where a discovery schedule is fixed. The case subsequently proceeds through a compliance conference to a certification conference, at which time the parties stipulate that all discovery is complete, that the case cannot be settled in its present posture and that the matter is ready for trial. The court then directs the plaintiff to file a notice of trial within 90 days under penalty of sanctions. The preliminary and compliance conferences have significantly reduced discovery related motion practice, while the certification conference has had a similar effect on motions to strike from the trial calendar. Individual Judges also have adopted innovative approaches to resolve cases prior to trial, using techniques such as scheduling settlement conferences on the same day for all cases involving the same attorney and insurance carrier.

Recommendation:

- **Improved methods to address no-fault litigation should be developed.**

While these individual initiatives are laudatory and very successful, a more global approach is needed. A special Operations Committee consisting of representative Judges and court clerks has recently been established to review existing court operations and identify ways to streamline the management of cases in the Civil and District Courts. Based on their recommendations, standardized rules and forms should be developed to address this caseload.

VII. Technology

The Comprehensive Civil Justice Program recognized that modern technology can save time and expense for litigants and the courts. Thus, over the past five years, the court system has implemented new technological initiatives which have enhanced access to case information and transformed the process by which court documents are filed.

The Future Court Appearance System provides, at no cost, access to information on open court appearances for Supreme Court civil cases in all 62 counties. The system may be searched by attorney/firm name, index number, plaintiff or defendant's name. A subscription service, Case Trac, is also available. For a minimal fee, attorneys can receive e-mail notification on changes in case status and access to Supreme Court calendars by Justice or Part.

In yet another successful attempt to supply court related information to the public, over 146,000 decisions are currently available on-line, including recent decisions of the Appellate Divisions. Also available on-line is the fiduciary database. Any member of the public can now learn who is available to receive fiduciary appointments, how many appointments a fiduciary has received, and the compensation that was awarded. Another source, the Commercial Division website, provides information on the rules and guidelines for its sub-divisions and also publishes decisions of interest.

A statewide automated civil case management system is currently in development. The goal of this long term project is to integrate and replace the various existing automation systems used by courts throughout the State to track their caseloads. When completed, the civil case system will be part of the court's Universal Case Management System and will generate reliable statistical data, speed the flow of information to the public, and provide on-line storage and retrieval of documents created by court and counsel.

Filing by Electronic Means (FBEM), a voluntary program first implemented as a pilot project in 1999, permits litigants to commence select actions and file certain papers electronically. As of June 2004, 7,000 cases have entered the system through this program. Recent legislation will expand FBEM to 11 counties and three case types.[25] A FBEM Resource Center staffed by employees with significant operational and technical experience has been established to provide support to both attorneys and court staff.

Recommendation:

- **The Unified Court System should continue to explore the use of technology to improve case processing and make its records more accessible to the public.**

In addition to the specific technological recommendations discussed above, the Unified Court System should continue to develop methods to provide access to its records electronically. Whenever possible, technology should be employed to eliminate unnecessary court appearances, exchange information and facilitate negotiations.

[25]The counties include Erie, Monroe, Albany, Westchester, Nassau, Suffolk, and all of New York City. The three case types include commercial, tax certiorari and tort claims, although not always all three in each county.

Summary of Recommendations

I. Case Management

- The distinction between pre-Note of Issue and post-Note of Issue standards and goals for civil cases should be eliminated and replaced by a standard and goal that runs from the Request for Judicial Intervention (RJI) to disposition. The current discovery periods for case tracks should be retained as firm guidelines.
- The success in reducing the time to disposition under Differentiated Case Management should be recognized by reducing the overall standards and goals for civil cases to 20 months from RJI to disposition for an expedited case, 24 months for a standard case, and 27 months for a complex case.
- An extended track for exceptionally complex cases should be established with an overall standard and goal of 32 months and a discovery milestone of 20 months.
- The tolling capacity, currently available in the criminal and family standards and goals, should be extended to civil cases. Events such as bankruptcy and appellate stays and insurance liquidations should toll the running of the standards and goals clock in civil cases.
- The role of non-judicial staff in case management should be expanded so that Judges can devote more time to substantive issues.

II. Automation

- Automation should be used to replace court appearances where appropriate. A policy of e-scheduling should be implemented that would provide for automated preliminary conferences. If successful, this concept should be extended to compliance conferences.
- Bar code technology should be tested to track the progress of orders and judgments from submission for signature to the County Clerk's Office.
- All local Court Part rules should be readily available to the bar and public on the

Court's system's website.

III. Specialized Parts/Tailored Justice

- The specialized treatment of commercial, matrimonial and guardianship cases has resulted in these cases being resolved more efficiently and should continue. Medical malpractice actions also benefit from specialized treatment and, where practicable, specialized parts should be established for these cases.
- A set of Model Rules for the Commercial Division has recently been drafted and should be considered for the standardization of practice in the Commercial Division.
- A Center for Complex Litigation should be established for the management of the most complex, non-commercial, civil cases.
- Methods to improve the handling of guardianship cases should be developed. A Model Guardianship Part in Suffolk County will soon consolidate all court proceedings concerning an incapacitated person before one Judge and incorporate the best practices developed nationwide in this area, including mediation and volunteer monitoring.
- A statewide case management system for guardianship cases will be introduced in Spring 2005. This automated system will track guardianship cases from the initial stage and monitor the filing of statutorily required reports and accountings. Most importantly, it will allow Judges to ensure that court-appointed guardians and court examiners are fulfilling their statutory responsibilities and take immediate corrective action when they are not.
- The court system should actively work with not-for-profit organizations to expand the use of institutional guardians throughout the State.
- A child-centered custody model should be developed to promote the resolution of custody disputes in a way that minimize the negative impact on children. This year, a Model Custody Part will open in New York County that focuses on a "Children

Come First" model. It will apply the best practices for custody disputes including mediation, stress management, counseling and links to appropriate services.

- Practice Groups should be established for Judges. The Practice Groups will develop best practices manuals for Judges, develop appropriate training, and provide a forum for the exchange of ideas.

III. <u>New York City Cases</u>

- Civil cases against the City of New York should be incrementally included in the differentiated case management program. Non-judicial DCM Case Managers should be assigned to high-volume City Parts to monitor compliance with DCM milestones.
- Motion practice for City tort cases should be reduced and streamlined. As part of this project, the concept of an essentially paperless motion should also be explored for City cases.
- Meaningful post-Note of Issue settlement programs for City cases should be instituted in each county in New York City. To that end, Neutral Evaluators should be designated and trained to conduct settlement conferences for post-Note City cases in other counties.

IV. <u>Alternative Dispute Resolution</u>

- The use of Summary Jury Trials, pioneered in the Eighth Judicial District as an efficient, effective tool for the disposition of civil cases, should be expanded throughout the State.
- The use of Neutral Evaluators for Tort Actions, successfully employed in New York, Erie and Monroe Counties, should be expanded to the largest counties throughout the State.
- Mediation as a means of resolving custody disputes should continue to be explored. Rosters of trained mediators should be available in every District.

V. Civil Juries

- The court system should continue to explore methods to maximize the settlement of cases before jury selection. To that end, a pilot project in Bronx County should test whether, in a high- volume jurisdiction, a mandatory conference before the assigned trial Judge, prior to jury selection, is an effective settlement tool that will reduce the need for a jury to serve as a catalyst for reaching an agreement.
- The court system should explore the feasibility of involving Judges directly in the supervision of civil jury selection. Later this year, a pilot project should be considered to designate a Judge, as part of a rotational assignment, to welcome jurors, open voir dire in the empaneling rooms, monitor the progress of jury selection, and be available for juror questions.

VI. Foreclosure Procedures

- In those -instances where foreclosure sale are conducted in a court facility, Administrative Judges should ensure that the court provide adequate security and an orderly process at the site of the auction.

APPENDIX A

DCM Models

Intake Parts – An Intake Part provides a centralized location to conduct preliminary conferences. Currently, Bronx, Kings, Nassau, Queens, Suffolk and Westchester Counties employ this strategy. Generally, an Intake Part is staffed by non-judicial personnel, either case management coordinators or court attorneys, who assist in setting a discovery schedule. Within this framework, a number of variations have developed.

In Westchester County, cases are sent to the Intake Part for a preliminary conference prior to being assigned to a Judge. A Judicial Hearing Officer presides over the Part and resolves discovery disputes. At the conclusion of the preliminary conference, the case is randomly assigned to an IAS Judge who will subsequently conduct the compliance hearing and rule on substantive motions. In the Bronx, a Supreme Court Judge is assigned to the Intake Part on a rotational assignment and performs similar duties.

In Kings, Queens, Nassau and Suffolk Counties, cases are randomly assigned to Judges prior to an appearance in the Intake Part. Non-judicial personnel are assigned to the part assist the parties in resolving discovery disputes in the first instance and, if they cannot do so, the matter is referred to the assigned Judge for a ruling.

Whatever the approach, Intake Parts are designed to insure that preliminary conferences are held within 45 days of the filing, reduce appearances by counsel, and provide consistent treatment for discovery disputes.

Centralized Compliance Parts – Most counties that have established an Intake Part to conduct preliminary conferences require that the compliance conference be held before the assigned Judge. Queens and Kings Counties are exceptions to this rule, holding compliance conferences for all cases in a single part. The Judge assigned to the

Compliance Part, assisted by court attorneys and case management coordinators, monitors the progress of discovery and resolves any outstanding issues. As with the Intake Part, appearances by counsel are reduced and cases receive uniform treatment.

Approaches to Early Settlement – A number of programs have developed throughout the State to expedite case disposition and conserve judicial resources. In New York, Erie and Monroe Counties, Neutral Evaluation Programs have been established. Experienced court attorneys evaluate and conference post-Note cases and endeavor to achieve a settlement. Cases are referred to the neutral evaluator by the assigned Judge, who, while always capable of conferencing the case in the first instance, must also allocate his/her time to trials and hearings.

Often, several conferences are required to achieve a successful outcome and the Neutral Evaluation Program provides an opportunity for the litigants to fully explore settlement opportunities without the expenditure of judicial resources. To date, these programs have met with great success. Over the last two years, the neutral evaluators in New York County have settled 3,382 cases. During 2004, the neutral evaluators in Erie County resolved 621 cases.

In Nassau County, the ADR office schedules and conducts neutral evaluation on select post-Note cases. Neutral evaluation is conducted in the courthouse by private volunteer attorneys provided by the Nassau County Bar Association. The panel is composed of both plaintiff and defense counsel, many of whom perform private mediation outside the courts. Approximately 120 cases are referred per term and the settlement rate is approximately 20%.

In Kings County, a post-Note Settlement Conference Part has been established. Here, cases are culled from the IAS inventories approximately 4-6 months after the Note of Issue has been filed. They are then assigned to the Settlement Conference Part for all purposes. The Judge assigned to the Part will attempt to settle the case and will retain

the matter as long as necessary. Failing settlement, the Judge will then resolve any outstanding discovery issues and set a date for trial. Over the last two years, the Judge assigned to this Part has disposed of over 2,424 Notes.

Albany County has retained a dual track system. Cases remain with the IAS Judge until the pre-trial settlement conference. At the pre-trial conference, the parties are afforded an opportunity to settle. If a settlement cannot be reached, a firm future trial date is set in Part 1. Twenty trial-ready cases are calendared in Part 1 each week and Judges rotate through the Part every term. The week before a Judge begins his/her assignment, all cases scheduled for the next term are called in for a settlement conference. Cases that fail to settle retain their trial date, and it is not unusual for an additional settlement conference to be held on that date as well. At a minimum, all post-Note cases in Albany County receive three settlement conferences before trial.

Impact of DCM on Two Counties

While these various approaches display how Administrative Judges have adapted the DCM program to the unique needs of their local jurisdictions, the true impact of DCM can best be illustrated by examining its effect on two jurisdictions that have experienced significant caseload reductions under the program - Nassau and Queens Counties.

Nassau County

Prior to the introduction of DCM, Nassau County, like many downstate jurisdictions, operated on a dual-track system. Upon the filing of an RJI, cases were assigned to an IAS Judge and would remain with that Judge until they were ultimately transferred to the Trial Assignment Part (TAP). Preliminary conferences were conducted

in a centralized location (Part 8A) and these conferences were routinely adjourned. On average, it took a case approximately 28 months after the filing of a Note of Issue to reach TAP, and a case would sometimes receive its first meaningful settlement conference only in TAP.

On January 30, 2000, there were 16,955 pre-Note cases pending, of which 43% were over standards and goals, and 6,973 Notes pending, of which 1,691 (24%) were pending beyond standards and goals.[1] To address this backlog, Nassau County decided to introduce DCM incrementally with four Judges participating the first year and six Judges being added each year thereafter, until all the Judges were involved in the program.

Nassau also makes extensive use of non-judicial personnel to assist Judges in monitoring case progress. Upon the filing of an RJI, a case is randomly assigned to a Judge and letters are generated directing the parties to appear in a centralized location for a preliminary conference. Motions are screened by a Court Attorney/Referee to determine which ones can be resolved at a preliminary conference. After completing the PC order, counsel meet with a Case Management Coordinator who informs them of the assigned Judge's rules and assists in setting a discovery track. The case is also evaluated for possible 325(d) assignment to the District Court. All parties are furnished with a copy of the order which contains the compliance conference date.

Compliance conferences are conducted in the IAS Parts on the date assigned in the PC Order and the case is then scheduled for a certification conference. This is essentially a CPLR §3216 conference, in which the plaintiff is directed to file a Note of Issue within 90 days. Failure to do so results in the action being deemed dismissed. Upon filing of a Note of Issue, the matter is referred for mediation (as described above)

---

[1] The discussion of Nassau County's caseload includes all cases except Contested Matrimonials and Tax Certiorari.

or set down for a pre-trial conference.

At the pre-trial conference, counsel is given an opportunity to have a settlement conference or schedule a trial date in the Calendar Control Part. Cases currently reach the Calendar Control Part approximately five months after the filing of a Note of Issue. The Calendar Control Judge makes every effort to assign the case back to the original IAS Judge for trial if possible. If that Judge is not available, however, another Judge is assigned so that the trial may proceed without delay.

DCM has had a dramatic effect on the age of Nassau County's pending caseload and the time elapsed between the filing of an RJI to Note of Issue:

Cases Pending Disposition - Nassau County
Average Age in Days

	Motor Vehicle	Med Mal	Other Torts
Year 2000	538	764	658
Year 2004	337	608	389

RJI to Note - Nassau County
Average Days

	Motor Vehicle	Med Mal	Other Torts
Year 2000	471	822	610
Year 2004	364	687	432

Today, 98% of the preliminary conferences held in Nassau County occur within the 45 days required by Rule 202.19. The pending pre-Note inventory has been reduced by 44% to 9,416 cases and, most remarkably, only 4% of post-note cases, a mere 101 cases, are pending beyond standards and goals.

Queens County

Before DCM, Queens County resembled Nassau in many ways. There was a large pre-Note inventory (22,568 cases) with over 50% of those cases pending beyond standards and goals.[2] Of their 8,730 Notes of Issue, 16% were beyond standards and goals. Like Nassau, they employed a dual-track system to move cases to trial and a centralized part to conduct preliminary conferences. Preliminary conference procedures were not uniform however, with many Judges utilizing individualized forms and procedures.

With the advent of DCM, Queens was faced with a number of challenges: eliminating a sizeable pre-Note backlog, designing a system to track new cases, and providing sufficient judicial resources to dispose of an ever increasing number of trial ready cases. Their approach was to first ascertain the true extent of their existing inventory by conducting status conferences on all pending pre-Note cases. Active cases were then monitored to insure that discovery was complete and Notes of Issue filed.

New cases continued to be scheduled in the centralized preliminary conference part. Forms were standardized and a Special Referee was assigned to the part to assist in resolving discovery disputes and track assignment. Initially, compliance conferences were scheduled before the IAS Judge. Within a year, it became apparent that requiring all Judges to conduct these conferences was depleting the County's limited trial resources,[3] so a centralized compliance conference part was established as well.

Currently, a designated Judge presides over all compliance conferences in the

---

[2] The discussion of Queens County's caseload includes all cases except Contested Matrimonials, City Cases and Tax Certiorari.

[3] Queens presently has 20 trial judges and 9,538 Notes pending. This figure includes City cases.

County. He is assisted by Case Management Coordinators and a Special Referee who try to resolve any issues that are raised at the conference in the first instance. Cases remain in the compliance part until a Note of Issue is filed, at which time they wait to be scheduled in the Trial Readiness Part. Notes reach the Trial Readiness Part approximately 12 months after filing.

The centralization of pre-Note case management functions has been extremely successful in Queens. As in Nassau, dramatic reductions have occurred in the average age of their pending caseload and the time from RJI to Note.

Cases Pending Disposition - Queens County
Average Age in Days

	Motor Vehicle	Med Mal	Other Torts
Year 2000	612	925	850
Year 2004	376	679	491

RJI to Note Queens County
Average Days

	Motor Vehicle	Med Mal	Other Torts
Year 2000	530	1009	754
Year 2004	385	683	494

The Centralized Compliance Part has been extremely effective in ensuring that cases move from RJI to note within the prescribed discovery guidelines. Today, only 16% of all standard cases pending are over standards and goals, 7% of all complex cases, and only 416 expedited cases (23% of the total) have not proceeded to Note in a timely manner.

APPENDIX B

RULES OF THE JUSTICES OF THE COMMERCIAL DIVISION

All of the following Rules are applicable in the Commercial Parts of the Supreme Court. Rules that have been adopted by an individual Justice are identified as such.

Preamble

The advent of the Commercial Division in New York State has met with great success and acceptance based up the certainty and reliability of the Commercial Division to meet the needs of commercial litigants by addressing their matters promptly and fairly. To better meet those needs, the Justices of the Commercial Division hereby promulgate these rules to assure consistency in the handling of commercial matters wherever they are litigated in the State of New York.

I - General Rules

Rule 1. Appearances by Counsel with Knowledge and Authority. Counsel who appear in the Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. Failure to comply with this rule will be regarded as a default and dealt with appropriately. See Rule 12. It is important that counsel be on time for all scheduled appearances.

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by submission of a copy of the stipulation or a letter directed to the Clerk of the Part along with notice to Chambers via telephone or e-mail. Filing a stipulation of discontinuance with the County Clerk does not suffice.

Rule 3. Alternate Dispute Resolution (ADR). At any stage of the matter, the Court may direct or counsel may seek the appointment of a mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation.

Rule 4(a) Papers and Correspondence by Fax. Commercial Division Justices do not accept papers by fax unless indicated otherwise by the Justice in advance in a particular case. Letters sent by fax should not be followed by hard copy unless requested.

(b) Papers submitted by e-mail. The Court may permit counsel to communicate with the Court and each other by e-mail. In the Court's discretion, counsel may be requested to submit memoranda of law by e-mail or on a "floppy disk" along with an original and courtesy copy.

Rule 5. Information on Cases. Information on future court appearances can be found at the court system's future appearance site (www.nycourts.gov/ecourts). Decisions can be found on the Commercial Division's Home Page of the Unified Court System's Internet Website: www.courts.state.ny.us/comdiv or in the New York Law Journal. The Clerk of the Part in question can also provide information about scheduling in the Part (trials, conferences, and arguments on motions). Where circumstances require exceptional notice, it will be furnished directly by Chambers. In Nassau County, counsel who wish to receive a copy of a decision may submit a stamped, self-addressed envelope with their motion papers (not separately).

Rule 6. ***Form of Papers.*** Motion papers shall comply with Part 130 of the Rules of the Chief Administrator, be double-spaced and contain print no smaller than twelve-point, on 8 1/2 x 11 inch paper, bearing margins no smaller than one inch. CPLR 2101; 22 NYCRR 202.5(a). The print size of footnotes shall be no smaller than nine-point.

II - Conferences

Rule 7. Preliminary Conferences; Requests. A preliminary conference will be held within 45 days of assignment of the case to a Commercial Division Justice, or as soon thereafter as is practicable under the circumstances. Except for good cause shown, no Prelimary Conference shall be adjourned more than once or for more than 30 days. Where a Request for Judicial Intervention is accompanied by a dispositive motion, the preliminary conference shall take place within 30 days following the decision of such motion (if not rendered moot) or at such earlier date as scheduled by the Justice presiding. Requests for preliminary conferences in unassigned cases should be filed in the Clerk's Office. In assigned cases, counsel should contact the Clerk of the Part if the court itself does not direct a conference in a decision or otherwise. Notice of the Preliminary Conference date will be sent by the Court at least five (5) days prior thereto.

Rule 8. Consultation Among Counsel and with their Clients Prior to Preliminary and Compliance Conferences.

(a) Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery and any other issues to be discussed at the conference; and (iii) the use of Alternate Dispute Resolution to resolve all or some issues in the litigation. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

(b) Prior to the Preliminary Conference, counsel shall confer with regard to anticipated electronic discovery issues. Such issues shall be addressed at the Preliminary Conference and shall include but not be limited to (1) implementation of a data preservation plan; (2) identification of relevant data; (3) anticipated cost of data recovery and proposed initial allocation of such cost; (4) disclosure of the programs and manner in which the data is maintained; (5) identification of computer system(s) utilized; (6) identification of the individual(s) responsible for data preservation; (7) confidentiality and privilege issues; and (8) designation of experts.

Rule 9. Familiarity with Outstanding Motions. Counsel must be prepared to discuss any motions that have been submitted and are outstanding at conference appearances.

Rule 10. Submission of Information. At the preliminary conference, counsel shall be prepared to furnish the court with the following: (i) a complete caption, including the index number; (ii) the name, address, telephone, e-mail address and fax numbers of all counsel; (iii) the dates the action was commenced and issue joined; (iv) a statement as to what motions, if any, are pending and before whom; and (v) copies of any decisions previously rendered in the case.

Rule 11. Discovery

(a) The preliminary conference will result in the issuance by the court of a Preliminary Conference Order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as (i) directions for submission to the Alternative Dispute Resolution Program; (ii) a schedule of limited-issue discovery in aid of early dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure. Unless otherwise

ordered, dispositive motions shall be made within 45 days of the filing of the Note of Issue.

(b) The order will also contain a comprehensive disclosure schedule, including dates for the completion of impleader and discovery, motion practice, a compliance conference if needed, a date for filing the note of issue, and a date for a pre-trial conference and a trial date.

(c) The Preliminary Conference Order shall provide for a limitation of interrogatories and other discovery as may be necessary to the circumstances of the case.

(d) The continuation or stay of discovery during the pendency of a dispositive motion made prior to the completion of discovery shall be addressed with the court upon scheduling such motion pursuant to Rule 24 herein.

Rule 12. Non-Appearance at a Conference. The failure of counsel to appear for a conference may result in an order directing dismissal, the striking of an answer and an inquest or direction for judgment, or other appropriate sanction. 22 N.Y.C.R.R. 130-2.1 and 202.27.

Rule 13. Adherence to Discovery Schedule.

(a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. No extensions of such deadlines shall be allowed except upon a showing of good cause. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party pursuant to CPLR 3126.

(b) If a party seeks documents as a condition precedent to a deposition and the documents are not produced by the date fixed, the party seeking disclosure may ask the Court to preclude the non-producing party from introducing such demanded documents at trial.

Rule 14. Disclosure Disputes.

(a) Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure. See 22 N.Y.C.R.R. 202.7. Except as provided in Rule 24 hereof, if counsel are unable to resolve a disclosure dispute in this

fashion, the aggrieved party shall contact the Court to arrange a conference as soon as practicable to avoid exceeding the discovery cutoff date. Counsel should request a conference by telephone if that would be more convenient and efficient than an appearance in court.

(b) In the event counsel are able to resolve their discovery disputes in variance with the Preliminary Conference Order, without affecting the discovery cutoff date, there shall be no need to involve the Court. However, if that is not possible, the Court should be notified promptly to address scheduling issues.

Rule 15. Adjournments of Conferences. Adjournments on consent are permitted for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the Preliminary Conference Order. Adjournment of a dispositive motion or conference may only be done by the Court.

III - Motions

Rule 16.

(a) **Form of Motion Papers**. So as to facilitate the framing of a decision and order, the movant shall specify, clearly and comprehensively, in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should use tabs when submitting papers containing exhibits. Copies must be legible. If a document to be annexed to an affidavit or affirmation is very voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated [CPLR 2101(b)]. Whenever reliance is placed upon a decision or other authority not readily available to this court, a copy of the case or of pertinent portions of the authority shall be submitted with the motion papers.

(b) **Proposed Orders.** When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, *pro hac vice* admissions, open commissions, etc. No proposed order should be submitted on dispositive motions.

(c) **Adjournment of Motions.** Dispositive motions may only be adjourned with the Court's consent. Non-dispositive motions may be adjourned on consent

no more than three times for a total of no more than 60 days unless permitted by the Court.

Rule 17. Length of Papers. Unless otherwise permitted by the court for good cause prior to the submission of the motion, briefs or memoranda of law are limited to 25 pages each. Reply memoranda shall be no more than 15 pages and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief. Affidavits and affirmations are limited to 25 pages each.

Rule 18. Sur-Reply and Post-Submission Papers. Counsel are reminded that the CPLR does not provide for sur-reply papers however denominated. Nor is the presentation of papers or letters to the court after submission or argument of a motion permitted. Absent express permission in advance, such materials shall not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule should not respond in kind.

Rule 19. Orders to Show Cause. Motions should be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional remedies), a stay is required or a statute mandates so proceeding. See Rule 20. Absent permission, reply papers should not be submitted on orders to show cause.

Rule 19-a. Statements of Material Facts on Motion for Summary Judgment.

(a) Upon any motion for summary judgment, other than motions made pursuant to CPLR 3213, there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for denial of the motion.

(b) The papers opposing a motion for summary judgment, other than motions made pursuant to CPLR 3213, shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party and, if necessary, additional paragraphs containing a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement [of material fact] by the movant or opponent purusant to subdivision (a) or (b) hereof, including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

Rule 20. Temporary Restraining Orders. Absent extraordinary circumstances, a temporary restraining order will not be issued unless the applicant has given notice to the opposing parties sufficient to permit them an opportunity, if so inclined, to appear and contest the application.

Rule 21. Courtesy Copies. Courtesy copies should not be submitted unless requested or as herein provided. However, courtesy copies of all motion papers and proposed orders shall be submitted in cases in the court's "Filing by Electronic Means" System.

Rule 22. Oral Argument.

(a) Either party may request oral argument on the face of their papers or in an accompanying letter. The Court will determine whether oral argument will be heard and, if so, counsel and the parties shall appear on the date selected by the Court for oral argument except, the Justices listed in subparagraph (b) require counsel to appear for oral argument and conference on the return date of all motions. At that time, counsel shall be prepared to argue the Motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing.

(b) The following Justices require appearances and oral argument for all motions: Hon. Herman Cahn; Hon. Carolyn Demarest; Hon. Bernard Fried; Hon. Helen Freedman; Hon. Richard Lowe, Hon. Karla Moskowitz; Hon. Charles Ramos; Hon. Thomas Stander (except reargument motions)

Rule 23. 60 Day Rule. If sixty days have elapsed after a motion has been finally submitted or oral argument held, whichever was later, and no decision has been issued by the court, counsel for the movant shall send the court a letter alerting it to this fact with copies to all parties to the motion.

Rule 24. Advance Notice of Motions

(a) Prior to the making or filing of <u>any</u> post-RJI motions (i.e. after the assignment of the matter to a Commercial Division Justice), counsel for the moving party shall advise the Court in writing (no more than two [2] pages) on notice to opposing counsel outlining the issue(s) in dispute and requesting a

telephone conference. If a cross-motion is contemplated, a like letter notice shall be forwarded to the Court and counsel. Such correspondence shall not be considered by the Court in reaching its decision. This rule shall not apply to motions to be relieved as counsel, for pro hac vice admission or for reargument.

(b) Upon review of the motion notice letter, the Court will schedule a telephone conference with counsel. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(c) If the matter can be resolved during the telephone conference, an order consistent with such resolution may be issued and telefaxed to counsel or counsel will be directed to forward a letter confirming the resolution to be "so ordered". At the discretion of the court, such conferences may be held on the record.

(d) If the matter cannot be resolved, the parties will set a briefing schedule for the motion which shall be approved by the Court. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(e) On the face of all post-RJI notices of motion(s) and orders to show cause, there shall be a statement that there has been compliance with this rule.

(f) Where a motion must be made within a certain time pursuant to the CPLR, such as reargument motions, the forwarding of a motion notice letter, as provided in subparagraph (b) here, within the prescribed time, shall be deemed the timely making of the motion. However, this subparagraph shall not be construed to extend any jurisdictional limitations period.

(g) Nothing here shall be construed to bar counsel from making any motion deemed appropriate to best represent a party's rights. However, in order to permit the Court the opportunity to resolve issues before motion practice ensues and to control its calendar, in the context of the discovery and trial schedule, pre-motion conferences in accordance herewith must be held. The failure of counsel to comply with this Rule may result in the motion being marked off the calendar until the Court has an opportunity to conference the matter.

IV - Trials

Rule 25. Trial Schedule. Counsel will be expected to be ready to proceed either to select a jury or to begin presentation of proof on the scheduled date. Once a trial date is set, counsel are immediately to determine the availability of witnesses. If, for any reason, counsel are not prepared to proceed on the scheduled date, the court is to be notified within ten days of the date on which counsel are given the trial date or, in extraordinary circumstances, as soon as reasonably practicable. Failure of counsel to provide such notification will be deemed a waiver of any application to adjourn the trial because of the unavailability of a witness. Witnesses are to be scheduled so that all trial time is completely utilized. Trials will commence each court day promptly at 9:30 A.M. and will proceed on a day-to-day basis from 9:30 A.M. to 4:30 P.M., on such days as the Court directs. Failure of counsel to attend the trial at the time scheduled will constitute a waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel's absence. There shall be no adjournment of a trial except for good cause shown. With respect to Commercial Division trials scheduled more than 60 days in advance, the actual engagement of trial counsel in another matter will not be recognized as an acceptable basis for an adjournment of the trial. 22 N.Y.C.R.R. 125.1(g).

Rule 26. Estimated Length of Trial. At least ten days prior to trial or such other time as the court may set, the parties, after considering the testimony of, and, if necessary, consulting with their witnesses, shall furnish the court with a realistic estimate of the length of the trial.

Rule 27. Motions in Limine. The parties shall make all motions in limine returnable not later than 10 days prior to the scheduled pre-trial conference date. Unless otherwise ordered by the court in advance, the moving and opposition papers, if any, on such motions shall be no longer than 10 pages per issue and 5 pages per issue in opposition. These papers shall comply with the limitations as to print size and margins set forth in Rule 16(a) above.

Rule 28. Pre-Marking of Exhibits. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. At the pre-trial conference date, each side shall then mark its exhibits to which no objection has been made. All exhibits not consented to shall be marked for identification only (ID). At least ten days prior to trial or such other time as the court may set, each party shall submit to the court and other counsel a list of the exhibits reflecting "in EV." or "ID only". If the trial exhibits are exceptionally voluminous, counsel shall consult the Clerk of the Part for guidance. The Court will rule upon the objections to the contested exhibits at the earliest possible time after consultation with counsel. Exhibits not

previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked. This rule shall be coordinated with Rule 31(b).

Rule 29. Identification of Deposition Testimony. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read questions and answers that are irrelevant to the point for which the testimony is offered. Each party shall prepare a list of testimony to be offered by it as to which objection has not been made and, identified separately and clearly, a list of testimony as to which objection has been made. At least ten days prior to trial or such other time as the court may set, each party shall submit its list to the court and other counsel, together with a copy of the portions of testimony as to which objection has been made. The Court will rule upon the objections at the earliest possible time after consultation with counsel.

Rule 30. Pretrial Conference. The court will set a pretrial conference. Prior to the conference, counsel shall confer in a good faith effort to identify matters not in contention, resolve all disputed questions without need for court intervention, and settle the case. At the conference, counsel shall be prepared to discuss all matters as to which there is disagreement between the parties, including those identified in Rules 27-29, and the possibility of settlement. At or before the conference, the Court may require the parties to prepare a written stipulation of undisputed facts.

Rule 31. Pre-Trial Memoranda, Exhibit Book, and Requests for Jury Instructions

(a) Counsel shall submit pre-trial memoranda at the pre-trial conference, or such other time as the Court may set. Counsel shall comply with CPLR 2103(e). A single memorandum no longer than 25 pages, with print size and margins as set forth in Rule 16 above, shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference, counsel shall submit an indexed binder or notebook of trial exhibits for the Court's use. A copy for each attorney on trial and the originals in a like binder or notebook for the witnesses shall be prepared and submitted. Plaintiff's exhibits shall be numerically tabbed and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date, provide the Court with case-specific requests to charge. Where the

requested charge is from the New York Pattern Jury Instructions - Civil, a reference to the PJI number will suffice. Counsel shall also submit proposed jury interrogatories. Submissions should be by hard copy and disk or e-mail attachment in WordPerfect 10 format as directed by the Court.

Rule 32. Scheduling of Witnesses. At the pre-trial conference, each party shall identify in writing for the court and the other parties the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony.

Rule 33. Preclusion. Except for good cause shown, no party shall present the testimony of a witness, portions of deposition testimony, or exhibits that were not identified as provided in Rules 28, 29, 31and 32 hereof and not identified during the course of disclosure in response to a relevant discovery demand of a party or an order of the court.

APPENDIX A

Guidelines For Assignment of Cases to the Commercial Parts

In general, the Commercial Division Parts of the Supreme Court, entertain complex commercial and business disputes in which a party seeks equitable relief and/or money damages totaling a sum as may be appropriate for each court. Due to caseload considerations, the Justices are empowered to transfer out of the Commercial Division cases which, in their judgment, do not fall within this category notwithstanding that a party has described the case as "commercial" on its RJI. Consistent with these guidelines, actions and proceedings which are designated to be eligible for assignment to the Commercial Division shall be reviewed by a Commercial Division Justice to determine whether the matter shall be assigned to or retained in the Commercial Division. The principles set out below will guide the exercise of this authority. Parties should adhere to these principles when designating a case type on the RJI. (See Paragraph [d] for documentation which should accompany the RJI).

(a) The monetary threshold of the Commercial Division, exclusive of interest, costs, disbursements and counsel fees, is established as follows:

1.	New York County	$100,000.00
2.	Monroe County	$25,000.00
3.	Westchester County	$100,000.00
4.	Nassau County	$75,000.00
5.	Suffolk County	$25,000.00
6.	Albany County	$25,000.00
7.	Erie County	$25,000.00
8.	Kings County	$50,000.00

(b) Actions in which the principal claims involve the following will be retained in the Commercial Division provided that the money threshold is met, except as indicated:

(1) Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation arising out of business dealings (e.g., sales of assets or securities, corporate restructuring, partnership, shareholder, joint venture, and other business agreements, trade secrets and restrictive covenants and employment agreements which are not principally claims for discriminatory practices);

(2) Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual coop units);

(3) Transactions involving commercial real property, including *Yellowstone* injunctions and excluding actions for the payment of rent only;

(4) Shareholder derivative actions – without consideration of the monetary threshold;

(5) Commercial class actions – without consideration of the monetary threshold;

(6) Commercial bank and financial institution transactions;

(7) Internal affairs of business organizations or liability to third parties or officials thereof;

(8) Malpractice by accountants or actuaries;

(9) Environmental insurance coverage litigation (except Westchester County);

(10) Commercial insurance coverage litigation (e.g. Directors and Officers and/or Errors and Omissions coverage);

(11) Dissolution of corporations, partnerships, limited liabilty companies, limited liability partnerships and joint ventures – without consideration of the monetary threshold; and

(12) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Art. 75 involving any of the foregoing enumerated commercial issues – without consideration for the monetary threshold.

(c) The following will be transferred out of or not retained in the Commercial Division even if the monetary threshold is met:

(1) Suits to collect professional fees;

(2) Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;

(3) Residential real estate disputes, including landlord-tenant matters and commercial real estate disputes involving the payment of rent only;

(4) Proceedings to enforce a judgment regardless of the nature of the underlying case;

(5) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies;

(6) Attorney malpractice actions; and

(7) Real property foreclosures (New York County).

(d) The determination as to whether a case should be retained in a Commercial Part will be made as soon as a matter is assigned to a Justice. In the discretion of the Commercial Division Justice assigned, if a matter does not fall within these guidelines for Commercial Division adjudication, it shall be transferred to a non-commerical part. For this purpose and as an aid to the Court in determining a case's Commercial Division eligibility, counsel shall annex a brief signed statement justifying the Commercial Division designation together with a copy of the pleadings to any submission accompanying an RJI. Retained cases will remain in the Commercial Part. Counsel who submit a statement justifying Commercial Division designation of special proceedings pursuant hereto shall check the "Other Commercial" box on their RJI; not the "Special Proceedings" box.

(e) An order of transfer issued by a Justice of a Commercial Part is an administrative matter. A party claiming to have been aggrieved by such an order may seek review by letter application (two pages maximum, with a copy to all parties) to the Administrative Judge within five (5) days of receipt of the designation of the case to a non-commercial part. Any such application that is not made promptly after the issuance of the transfer order will be denied as untimely. The order of the Administrative Judge is final and subject to no further review or appeal.

(f) If a case is assigned to a non-commercial part because the filing attorney did not designate the case as "Commercial", any other party to the action may apply for a transfer of the case into the Commercial Division. An application based upon the criteria herein set forth shall be made to the Administrative Judge by letter application (no more than two pages, double spaced) copied to all counsel. Any such application shall be presented promptly after the original assignment is made but prior to the first appearance of counsel in the assigned part or submission of the initial motion triggering the Court's involvement. A Justice may also direct a transfer of a case in the Commercial Division on the ground that it is related to one then pending in the Commercial Division. The Administrative Judge must approve all transfers in the Commercial Division. The determination and order of the Administrative Judge shall be final and not subject to further review or appeal.

APPENDIX C

NEW YORK STATE BAR ASSOCIATION
Commercial and Federal Litigation Section

The Commercial Division of the New York State Supreme Court formally began operations in 1995 with the overall objective of creating a forum in which business disputes can be resolved more efficiently and at reduced cost. As we approach the tenth anniversary of the Commercial Division, the NYSBA looks to its members, who practice commercial litigation, for insight, guidance, and constructive criticism which we can pass on to the Office of Court Administration, the Administrative Judges, and the Commercial Division Justices.

From the results, we will develop a more extensive survey which will focus more closely on those areas that have been successful and those that need improvement. This is a significant opportunity for the bar to participate in the development of commercial litigation practice and, therefore, we urge you to take the time to complete this preliminary questionnaire.

1. In what County(ies) do you practice? ________________________

2. What percentage of your practice involves commercial litigation? ____________.

3. Are you familiar with the rules and guidelines established for the Commercial Division ___?

   If yes, do you consider them to be clear and comprehensible?

   Yes ___
   For the most part ___
   No, not really ___
   No, not at all ___

4. If you have a choice between commencing a commercial action in New York State court (the Commercial Division) or Federal court, which would you choose (circle) and list the top 3 reasons why.

   A.________________________________
   B.________________________________
   C.________________________________

5. Please answer the following questions using a scale from 1-5, with 1 being the most positive response and 5 being the most negative.

   Are motions decided expeditiously? ___
   Do cases proceed from Note of Issue to trial expeditiously? ___
   Do you find case conferencing helpful? ___
   Are discovery disputes resolved fairly and effectively? ___
   Do you think Commercial Division Justices should
   be more active in monitoring the progress of cases? ___

6. Identify areas where you believe the Commercial Division has been successful.

____

____

____

7. Are there any substantive areas of commercial law with which you believe the Commercial Division Justices should be more familiar?

____

____

____

Please forward your response to:

New York State Bar Association
One Elk Street
Albany, New York 12207-1002
Attn: Lisa Bataille, Esq.
Fax: (518) 487-5579

THANK YOU FOR YOUR PARTICIPATION.

APPENDIX D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 50-L
--X

Plaintiff,

Index No.

-against-

PROPOSED PARENTING PLAN

Defendant.
--X

This Plan is: ❑ Proposed by Plaintiff. ❑ Proposed by Defendant.

1. INFORMATION ABOUT THE CHILD[REN]:

Full Name	Date of Birth	Gender

2. PARENTING TIME SCHEDULE:

2.1 Weekday and Weekend Schedule.

Our child[ren] will be in the care of ________________________(list days of
(name of parent)
week and times):____
____
____
____
____
____

Our child[ren] will be in the care of ________________________ (list days
(other parent's name)
of week and times):____
____
____
____
____
____

2.2 Summer Schedule.

Choose One:

❑ The schedule described above in Section 2.1 will continue throughout the summer *except that* ____
____
____
____

OR

❑ The schedule for time with our child[ren] will be different during the summer than it is in the winter (describe below):

Our child[ren] will be in the care of ____________________ (list
(name of parent)
days of the week and times):____________________________________
____
____
____

AND

Our child[ren] will be in care of ____________________ (list days
(other parent's name)
of the week and times):____
____
____
____

2.3 Holiday Schedule.

The following holiday schedule will take priority over the regular weekday, weekend, and summer schedules discussed above. If a holiday is not

specified as even, odd or every year with one parent, then our child[ren] will remain with the parent they are normally scheduled to be with.

Check One or Both:

❑ When parents are using an alternating weekend plan and the holiday schedule would result in one parent having the child[ren] for three weekends in a row, the alternating weekend pattern will restart, so neither parent will go without having the child[ren] for more than two weekends in a row.

❑ If a parent has our child[ren] on a weekend with an unspecified holiday or non-school day attached, they shall have our child[ren] for the holiday or non-school day.

Fill in the blanks below with the parent's name to indicate where the child[ren] will be for the holidays. Provide beginning and ending times.

Holidays	Even Years	Odd Years	Every Year	Beginning/Ending Times
Mother's Day	________	________	________	____________
Father's Day	________	________	________	____________
Thanksgiving	________	________	________	*For Thanksgiving, Christmas Eve, Christmas, New Year's Eve, and New Year's, PROVIDE ADDITIONAL DETAILS BELOW in SECTIONS 2.4 and 2.5*
Christmas Eve	________	________	________	
Christmas	________	________	________	
New Year's Eve	________	________	________	
New Year's	________	________	________	
Martin Luther King Day	________	________	________	____________
President's Day	________	________	________	____________
Easter	________	________	________	____________
Memorial Day	________	________	________	____________
Fourth of July	________	________	________	____________

Labor Day	________	________	________	____________
Halloween	________	________	________	____________
Veteran's Day	________	________	________	____________
Other:	________	________	________	____________
________	________	________	________	____________
________	________	________	________	____________
________	________	________	________	____________

2.4 **Thanksgiving.** Details for sharing time with the child[ren] during this holiday are:____
____
____

2.5 **Winter Break (Christmas, New Year's, and School Vacation).**

Choose One:

❑ Our child[ren] will be in the care of each parent according to the schedule described in Section 2.1.

OR

❑ Our child[ren] will spend half of Winter Break with each parent on a schedule that is consistent with the alternating holidays described above.

OR

❑ Other: Details for sharing time with the child[ren] during Christmas Eve, Christmas Day, New Year's Eve and New Year's Day and school vacation are:

____
____
____
____
____

2.6 Spring Break.

Choose One:

☐ Our child[ren] will be in the care of each parent according to the schedule described in Section 2.1.

OR

☐ Our child[ren] will alternate spending spring break with each parent *(indicate which parent).*

With ____________________ in even years.

With ____________________ in odd years.

OR

☐ Our child[ren] will spend half of spring break with each parent (provide details):____

____

____

2.7 Child[ren]'s Birthdays.

Choose One:

☐ Our child[ren] will be in the care of each parent according to the schedule described in Sections 2.1 and 2.2.

OR

☐ Our child[ren]'s birthdays will be planned so that both parents participate in the birthday celebration.

OR

☐ Our child[ren] will celebrate birthdays according to the following plan (indicate which parent has the child[ren], and any other important details.:

____

____

____

____

____

2.8 Other Holiday and Vacations. Details for sharing time with the child[ren] during other holidays or vacation are:______________________
____
____
____
____

2.9 Number of Overnights.

Our schedule for sharing time with our child[ren] results in our child[ren] spending _____ overnights in the home of _______________ *(name of one parent)* and _____ overnights in the home of ________________ *(name of other parent)*.

2.10 Primary Residence (Optional).

❑ We agree that our child[ren] shall primarily reside with ____________________ *(name of one parent)*.

❑ We agree that neither residence shall be considered the "primary" residence."

2.11 Alternate Care (Optional).

❑ We choose not to specify arrangements for alternate care.

❑ Our arrangements for alternate care are:______________________
____
____
____

2.12 Temporary Changes to the Schedule.

Any schedule for sharing time with our child[ren] may be changed as long as both parents agree to the changes ahead of time ❑ in writing **OR** ❑ verbally (choose one).

Activities scheduled during the other parent's time must be coordinated with the other parent.

Makeup and Missed Parenting Time: Only substantial medical reasons will be considered sufficient for postponement of parenting time. If a child is ill and unable to spend time with a parent, a makeup parenting time will be scheduled. If a parent fails to have the child[ren] during their scheduled parenting time for any other reason, there will be no makeup of parenting time unless the parties agree otherwise ❑ in writing.

2.13 Permanent Changes to the Schedule.

We understand that, once the judge signs the final judgment in our case and approves this Parenting Plan, any changes that we do not agree on can be made only by applying to the court and proving that there has been a "change in circumstance."

Before applying to the court, we understand that we can agree to try to resolve our dispute through mediation or other means. (See Section 10).

3. DECISION-MAKING:

3.1 Day-to-Day Decisions.

Each parent will make day-to-day decisions regarding the care and control of our child[ren] during the time they are caring for our child[ren]. This includes any emergency decisions affecting the health or safety of our child[ren].

3.2. Major Decisions.

Major decisions include, but are not limited to, decisions about our child[ren]'s education, non-emergency healthcare, religious training, and extracurricular activities, including summer camp and the need for tutoring.

Choose One:

❑ ____________________________ *(parent's name)* shall have sole decision-making authority on major decisions about our child[ren]. This arrangement is known by the courts as **Sole Custody,**

OR

❑ Both parents will share in the responsibility for making major decisions about our child[ren]. This arrangement is known by the courts as **Joint Custody.**

AND (Choose One).

❑ ___________________*(Parent's name)* shall always consult with the other parent prior to making major decisions.

❑ ___________________*(Parent's name)* shall have the option to consult with the other parent prior to making major decisions.

OR

❑ Other - - Describe how major decisions will be handled; including dividing the responsibility for major decisions between the parents according to each parent's strengths/weaknesses:

____

____

____

____

____

4. INFORMATION SHARING:

Unless there is court order stating otherwise:

Both parents are entitled to important information regarding our child[ren] including but not limited to, our child[ren]'s current address and telephone number, education, medical, governmental agency, psychological and law enforcement records.

Information about our child[ren]'s progress in school and any school activity is equally available to both parents. Both parents are encouraged to consult with school staff concerning our child[ren]'s welfare and education.

Both parents will immediately notify each other regarding any emergency circumstances or substantial changes in the health of our child[ren].

Both parents will provide each other with contact numbers and addresses and will notify each other of any change in that information within 72 hours

of such a change. If either parent takes our child[ren] from their usual place of residence, they will provide the other parent with an emergency contact phone number.

5. RELOCATION OF A PARENT:

5.1 Neither parent shall relocate outside his/her immediate vicinity without the prior permission of the other parent or an order of the court.

5.2 Other: ☐ ____
____
____
____
____

6. PARENT-CHILD COMMUNICATION:

Choose One:

☐ Both parents and child[ren] shall have the right to communicate by telephone, in writing or by e-mail during reasonable hours without interference or monitoring by the other parent.

OR

☐ Procedures for telephone, written or e-mail access (describe how access will work): ____
____
____
____
____

7. EXCHANGE OF OUR CHILD[REN]:

7.1 Choose One:

☐ Both parents will share equally in the responsibility of exchanging our child[ren] from one parent to the other while parents continue to reside in the same locale.

OR

❑ Procedures for exchanging our child[ren] (provide details):

____
____
____
____
____

7.2 Both parents shall have the child[ren] ready on time with sufficient clothing packed and ready at the agreed-upon time of the exchange.

All clothing that accompanied our child[ren] shall be returned to the other parent.

8. MUTUAL RESPECT:

Parents will not say things or knowingly allow others to say things in the presence of our child[ren] that would take away our child[ren]'s love and respect for the other parent.

9. OTHER TERMS:

Add any other items regarding the child[ren] you would like to include in your Parenting Plan. Use additional sheets, if necessary.

____
____
____
____
____
____
____
____
____
____
____
____
____
____
____
____
____

____
____
____
____
____
____
____
____

❑ Additional sheets are attached.

10. SIGNATURES:

Your signature below indicates that you have read and agree with what has been decided and written in this document.

If both parents sign this document, it is called a **Stipulated Parenting Plan.**

If only one parent signs this document, it is called a **Proposed Parenting Plan.**

Petitioner:

❑ Respondent ❑ Co-Petitioner
(Check One)

____
Signature Date

____
Signature Date

(Notarization is not required, but you may choose to have your signatures notarized.)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20___, by ______________________.

____
Notary Public/Court Clerk for State of ___________________
My commission expires:___________

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20___, by ______________________.

____
Notary Public/Court Clerk for State of ___________________
My commission expires:___________

APPENDIX E

PART 36 OF THE RULES OF THE CHIEF JUDGE

22 N.Y.C.R.R. § 36

APPOINTMENT OF GUARDIANS, GUARDIANS AD LITEM, COURT EVALUATORS, ATTORNEYS FOR INCAPACITATED PERSONS, RECEIVERS, PERSONS DESIGNATED TO PERFORM SERVICES FOR A RECEIVER, AND REFEREES

§ 36.0 Preamble

Public trust in the judicial process demands that appointments by judges be fair, impartial and beyond reproach. Accordingly, these rules are intended to ensure that appointees are selected on the basis of merit, without favoritism, nepotism, politics or other factors unrelated to the qualifications of the appointee or the requirements of the case.

The rules cannot be written in a way that foresees every situation in which they should be applied. Therefore, the appointment of trained and competent persons, and the avoidance of factors unrelated to the merit of the appointments or the value of the work performed are the fundamental objectives that should guide all appointments made, and orders issued, pursuant to this Part.

§ 36.1 Application

(a) Except as set forth in subdivision (b), this Part shall apply to the following appointments made by any judge or justice of the Unified Court System:

(1) guardians;

(2) guardians ad litem, including guardians ad litem appointed to investigate and report to the court on particular issues, and their counsel and assistants;

(3) law guardians who are not paid from public funds, in those judicial departments where their appointments are authorized;

(4) court evaluators;

(5) attorneys for alleged incapacitated persons;

(6) court examiners;

(7) supplemental needs trustees;

(8) receivers;

(9) referees (other than special masters and those otherwise performing judicial functions in a quasi-judicial capacity);

(10) the following persons or entities performing services for guardians or receivers:

(i) counsel

(ii) accountants
(iii) auctioneers
(iv) appraisers
(v) property managers
(vi) real estate brokers

(b) Except for sections 36.2(c)(6) and 36.2(c)(7), this Part shall not apply to:

(1) appointments of law guardians pursuant to section 243 of the Family Court Act, guardians ad litem pursuant to section 403-a of the Surrogate's Court Procedure Act, or the Mental Hygiene Legal Service;

(2) the appointment of, or the appointment of any persons or entities performing services for, any of the following:

(i) a guardian who is a relative of (A) the subject of the guardianship proceeding or (B) the beneficiary of a proceeding to create a supplemental needs trust; a person or entity nominated as guardian by the subject of the proceeding or proposed as guardian by a party to the proceeding; a supplemental needs trustee nominated by the beneficiary of a supplemental needs trust or proposed by a proponent of the trust; or a person or entity having a legally recognized duty or interest with respect to the subject of the proceeding;

(ii) a guardian ad litem nominated by an infant of 14 years of age or over;

(iii) a nonprofit institution performing property management or personal needs services, or acting as court evaluator;

(iv) a bank or trust company as a depository for funds or as a supplemental needs trustee;

(v) a public administrator or public official vested with the powers of an administrator;

(vi) a person or institution whose appointment is required by law;

(vii) a physician whose appointment as a guardian ad litem is necessary where emergency medical or surgical procedures are required.

(3) an appointment other than above without compensation, except that the appointee must file a notice of appointment pursuant to section 36.4(a) of this Part.

§ 36.2 Appointments

(a) Appointments by the judge. All appointments of the persons or entities set forth in section 36.1, including those persons or entities set forth in section 36.1(a)(10) who perform services for guardians or receivers, shall be made by the judge authorized by law to make the appointment. In making appointments of persons or entities to perform services for guardians or receivers, the appointing judge may consider the recommendation of the guardian or receiver.

(b) Use of lists.

(1) All appointments pursuant to this Part shall be made by the appointing judge from the appropriate list of applicants established by the Chief Administrator of the Courts pursuant to section 36.3 of this Part.

(2) An appointing judge may appoint a person or entity not on the appropriate list of applicants upon a finding of good cause, which shall be set forth in writing and shall be filed with the fiduciary clerk at the time of the making of the appointment. The appointing judge shall send a copy of such writing to the Chief Administrator. A judge may not appoint a person or entity that has been removed from a list pursuant to section 36.3(e).

(3) Appointments made from outside the lists shall remain subject to all of the requirements and limitations set forth in this Part, except that the appointing judge may waive any education and training requirements where completion of these requirements would be impractical.

(c) Disqualifications from appointment.

(1) No person shall be appointed who is a judge or housing judge of the Unified Court System of the State of New York, or who is a relative of, or related by marriage to, a judge or housing judge of the Unified Court System within the sixth degree of relationship.

(2) No person serving as a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator shall be appointed in actions or proceedings in a court in a county where he or she serves on a judicial hearing officer panel for such court.

(3) No person shall be appointed who is a full-time or part-time employee of the Unified Court System. No person who is the spouse, sibling, parent or child of an employee who holds a position at salary grade JG24 or above, or its equivalent, shall be appointed by a court within the judicial district where the employee is employed or, with respect to an employee with statewide responsibilities, by any court in the state.

(4) (i) No person who is the chair or executive director, or their equivalent, of a state or county political party, or the spouse, sibling, parent or child of that official, shall be appointed while that official serves in that position and for a period of two years after that official no longer holds that position. This prohibition shall apply to the members, associates, counsel and employees of any law firms or entities while the official is associated with that firm or entity.

(ii) No person who has served as a campaign chair, coordinator, manager, treasurer or finance chair for a candidate for judicial office, or the spouse, sibling, parent or child of that person, or anyone associated with the law firm of that person, shall be appointed by the judge for whom that service was performed for a period of two years following the judicial election. If the candidate is a sitting judge, the disqualifications shall apply as well from the time the person assumes any of the above roles during the campaign for judicial office.

(5) No former judge or housing judge of the Unified Court System, or the spouse, sibling, parent or child of such judge, shall be appointed, within two years from the date the judge left judicial office, by a court within the jurisdiction where the judge served. Jurisdiction is defined as follows:

(i) The jurisdiction of a judge of the Court of Appeals shall be statewide.

(ii) The jurisdiction of a justice of an Appellate Division shall be the judicial department within which the justice served.

(iii) The jurisdiction of a justice of the Supreme Court and a judge of the Court of Claims shall be the principal judicial district within which the justice or judge served.

(iv) With respect to all other judges, the jurisdiction shall be the principal county within which the judge served.

(6) No attorney who has been disbarred or suspended from the practice of law shall be appointed during the period of disbarment or suspension.

(7) No person convicted of a felony, or for five years following the date of sentencing after conviction of a misdemeanor (unless otherwise waived by the Chief Administrator upon application), shall be appointed unless that person receives a certificate of relief from disabilities.

(8) No receiver or guardian shall be appointed as his or her own counsel, and no person associated with a law firm of that receiver or guardian shall be appointed as counsel to that receiver or guardian, unless there is a compelling reason to do so.

(9) No attorney for an alleged incapacitated person shall be appointed as guardian to that person, or as counsel to the guardian of that person.

(10) No person serving as a court evaluator shall be appointed as guardian for the incapacitated person except under extenuating circumstances that are set forth in writing and filed with the fiduciary clerk at the time of the appointment.

(d) Limitations on appointments based upon compensation.

(1) No person or entity shall be eligible to receive more than one appointment within a calendar year for which the compensation anticipated to be awarded to the appointee in any calendar year exceeds the sum of $ 15,000.

(2) If a person or entity has been awarded more than an aggregate of $ 50,000 in compensation by all courts during any calendar year, the person or entity shall not be eligible for compensated appointments by any court during the next calendar year.

(3) For purposes of this Part, the term "compensation" shall mean awards by a court of fees, commissions, allowances or other compensation, excluding costs and disbursements.

(4) These limitations shall not apply where the appointment is necessary to maintain continuity of representation of or service to the same person or entity in further or subsequent proceedings.

§ 36.3 Procedure for appointment

(a) Application for appointment. The Chief Administrator shall provide for the application by persons or entities seeking appointments pursuant to this Part on such forms as shall be promulgated by the Chief Administrator. The forms shall contain such information as is necessary to establish that the applicant meets the qualifications for the

appointments covered by this Part and to apprise the appointing judge of the applicant's background.

(b) Qualifications for appointment. The Chief Administrator shall establish requirements of education and training for placement on the list of available applicants. These requirements shall consist, as appropriate, of substantive issues pertaining to each category of appointment -- including applicable law, procedures, and ethics -- as well as explications of the rules and procedures implementing the process established by this Part. Education and training courses and programs shall meet the requirements of these rules only if certified by the Chief Administrator. Attorney participants in these education and training courses and programs may be eligible for continuing legal education credit in accordance with the requirements of the Continuing Legal Education Board.

(c) Establishment of lists. The Chief Administrator shall establish separate lists of qualified applicants for each category of appointment, and shall make available such information as will enable the appointing judge to be apprised of the background of each applicant. The Chief Administrator may establish more than one list for the same appointment category where appropriate to apprise the appointing judge of applicants who have substantial experience in that category. Pursuant to section 81.32(b) of the Mental Hygiene Law, the Presiding Justice of the appropriate Appellate Division shall designate the qualified applicants on the lists of court examiners established by the Chief Administrator.

(d) Reregistration. The Chief Administrator shall establish a procedure requiring that each person or entity on a list reregister every two years in order to remain on the list.

(e) Removal from list. The Chief Administrator may remove any person or entity from any list for unsatisfactory performance or any conduct incompatible with appointment from that list, or if disqualified from appointment pursuant to this Part. A person or entity may not be removed except upon receipt of a written statement of reasons for the removal and an opportunity to provide an explanation and to submit facts in opposition to the removal.

§ 36.4 Procedure after appointment

(a) Notice of appointment and certification of compliance.

(1) Every person or entity appointed pursuant to this Part shall file with the fiduciary clerk of the court from which the appointment is made, within 30 days of the making of the appointment, (i) a notice of appointment and (ii) a certification of compliance with this Part, on such form as promulgated by the Chief Administrator. Copies of this form shall be made available at the office of the fiduciary clerk and shall be transmitted by that clerk to the appointee immediately after the making of the

appointment by the appointing judge. An appointee who accepts an appointment without compensation need not complete the certification of compliance portion of the form.

(2) The notice of appointment shall contain the date of the appointment and the nature of the appointment.

(3) The certification of compliance shall include: (i) a statement that the appointment is in compliance with sections 36.2(c) and (d); and(ii) a list of all appointments received, or for which compensation has been awarded, during the current calendar year and the year immediately preceding the current calendar year, which shall contain (A) the name of the judge who made each appointment, (B) the compensation awarded, and(C) where compensation remains to be awarded, (i) the compensation anticipated to be awarded and (ii) separate identification of those appointments for which compensation of $ 15,000 or more is anticipated to be awarded during any calendar year. The list shall include the appointment for which the filing is made.

(4) A person or entity who is required to complete the certification of compliance, but who is unable to certify that the appointment is in compliance with this Part, shall immediately so inform the appointing judge.

(b) Approval of compensation.

(1) Upon seeking apprival of compensation of more than $ 500, an appointee must file with the fiduciary clerk, on such form as is promulgated by the Chief Administrator, a statement of approval of compensation, which shall contain a confirmation to be signed by the fiduciary clerk that the appointee has filed the notice of appointment and certification of compliance.

(2) A judge shall not approve compensation of more than $ 500, and no compensation shall be awarded, unless the appointee has filed the notice of appointment and certification of compliance form required by this Part and the fiduciary clerk has confirmed to the appointing judge the filing of that form.

(3) Each approval of compensation of $ 5,000 or more to appointees pursuant to this section shall be accompanied by a statement, in writing, of the reasons therefor by the judge. The judge shall file a copy of the order approving compensation and the statement with the fiduciary clerk at the time of the signing of the order.

(4) Compensation to appointees shall not exceed the fair value of services rendered. Appointees who serve as counsel to a guardian or receiver shall not be compensated as counsel for services that should have been performed by the guardian or receiver.

(c) Reporting of compensation received by law firms. A law firm whose members, associates and employees have had a total of $ 50,000 or more in compensation approved in a single calendar year for appointments made pursuant to this Part shall report such amounts on a form promulgated by the Chief Administrator.

(d) Exception. The procedure set forth in this section shall not apply to the appointment of a referee to sell real property and a referee to compute whose compensation for such appointments is not anticipated to exceed $ 550.

§ 36.5 Publication of appointments

(a) All forms filed pursuant to section 36.4 shall be public records.

(b) The Chief Administrator shall arrange for the periodic publication of the names of all persons and entities appointed by each appointing judge, and the compensation approved for each appointee.

APPENDIX F

Proposal

AN ACT to amend the real property actions and proceedings law and the civil practice law and rules to eliminate abuses in residential mortgage foreclosure procedures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. A new section 1320 of the real property actions and proceedings law shall be created which shall read as follows:

§1320. Special Summons Requirement in Private Residence Cases

In an action to foreclose a mortgage on a residential property containing not more than three units, in addition to the usual requirements applicable to a summons in the court, there shall accompany the summons a notice in boldface in the following form:

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME

If you do not respond to this summons by filing an answer with the court and serving a copy on the bank/mortgagor who filed this foreclosure proceeding against you, a default judgment may be entered and you can lose your home.

Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.

Sending a payment to your mortgage company will not stop this foreclosure action.

YOU MUST RESPOND BY FILING AN ANSWER WITH THE COURT AND SERVING A COPY ON THE PLAINTIFF (BANK/MORTGAGOR)

§2. Subdivision (g)(3) of section 3215 of the CPLR, as amended by Chapter 100

of the laws of 1994, is amended to read as follows:

3. (i) When a default judgment based upon nonappearance is sought against a natural person in an action based upon nonpayment of a contractual obligation an affidavit shall be submitted that additional notice has been given by or on behalf of the plaintiff at least twenty days before the entry of such judgment, by mailing a copy of the summons by first-class mail to the defendant at his place of residence in an envelope bearing the legend "personal and confidential" and not indicating on the outside of the envelope that the communication is from an attorney or concerns an alleged debt. In the event such mailing is returned as undeliverable by the post office before the entry of a default judgment, or if the place of residence of the defendant is unknown, a copy of the summons shall then be mailed in the same manner to the defendant at the defendant's place of employment if known; if neither the place of residence nor the place of employment of the defendant is known, then the mailing shall be to the defendant at his last known residence.

(ii) The additional notice may be mailed simultaneously with or after service of the summons on the defendant. An affidavit of mailing pursuant to this

paragraph shall be executed by the person mailing the notice and shall be filed with the judgment. Where there has been compliance with the requirements of this paragraph,

failure of the defendant to receive the additional notice shall not preclude the entry of default judgment.

(iii) This requirement shall not apply to cases in the small claims part of any court, or to any summary proceeding to recover possession of real property, or to actions affecting title to real property, except residential mortgage foreclosure actions.

§3. This act shall take effect immediately.