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**Re: New York City Bar Comments on Proposed Commercial Division Rule
Relating to Applications for Temporary Restraining Orders**

Dear Mr. McConnell:

The New York City Bar Association appreciates the opportunity to provide comments¹ on the proposal by the Unified Court System's Commercial Division Advisory Council (the "Advisory Council") to amend Rule 20 of the Rules of the Commercial Division to require advocates seeking temporary restraining orders to provide adversaries with advance copies of the papers supporting the application. Although we certainly support this amendment, we believe that this same requirement should be included in 22 NYCRR 202.7(f), which governs applications for temporary injunctive relief in all courts statewide.

We applaud the Advisory Council for its ongoing efforts to devise new rules, and amend old rules, in order to enhance efficiency in the Commercial Division and maintain its status as a premier forum for the resolution of business disputes. However, we believe that it is important to bear in mind that some initiatives should have equal application outside of the Commercial Division as well. This proposed amendment to Rule 20 presents a perfect example of an instance

¹ These comments reflect the input of the City Bar's Council on Judicial Administration, Committee on State Courts of Superior Jurisdiction and Committee on Litigation.

in which a pre-existing rule concerning the same subject matter – Rule 202.7(f) – would likewise benefit from the same improvement proposed for the Commercial Division. Amending both rules would maintain consistency in state court practice and help improve the efficient operation of the court system as a whole.

Accordingly, we recommend revising the language of Rule 202.7(f) as follows:

~~“Any application for temporary injunctive relief, including but not limited to a motion for a stay or a temporary restraining order, shall contain, in addition to the other information required by this section, an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application. “Unless the moving party can demonstrate that there will be significant prejudice by reason of giving notice, an application for temporary injunctive relief, including, but not limited to, a motion for a stay or a temporary restraining order, will not be issued *ex parte*. In all other cases, the applicant must demonstrate by affirmation that a good faith effort has been made to notify the party against whom the application is sought of the time, date and place that the application will be made, and that copies of all supporting papers have been provided to such party, in a manner sufficient to permit the party an opportunity to appear in response to the application. This subdivision shall not be applicable to orders to show cause or motions in special proceedings brought under Article 7 of the Real Property Actions and Proceedings Law, nor to orders to show cause or motions requesting an order of protection under section 240 of the Domestic Relations Law, unless otherwise ordered by the court.”~~

We hope our suggestions and observations prove to be helpful. We stand ready to provide further comments upon request.

Thank you for your consideration.

Very truly yours,

Hon. Carolyn E. Demarest (Ret.)
Chair, Council on Judicial Administration

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