

NEW YORK STATE – FEDERAL JUDICIAL COUNCIL ADVISORY GROUP
SECOND CIRCUIT CLE PROGRAM

“WHICH COURT? SELECTING STATE OR FEDERAL COURT -
DIFFERENCES AND CONSIDERATIONS”

2 HR. CLE CREDITS

MATERIALS

1. Discovery
 - (a) General Rules and Discovery Limits:
 - (i) Fed. R. Civ. P. 26, 30, 33
 - (ii) CPLR 3101-3104, 3106, 3130, 3131, 3214
 - (b) Experts:
 - (i) Fed. P. Civ. P. 26; Fed. R. Evid. 701-705
 - (ii) CPLR 3101, 4515
 - (c) Third-Party Discovery:
 - (i) Fed. R. Civ. P. 45
 - (ii) CPLR 3120
2. Claim Selection
 - (a) Jurisdiction and Removal: 28 U.S.C. §§ 1331, 1332, 1367, 1441, 1445, 1446, 1447
 - (b) MDL: 28 U.S.C. § 1407
 - (c) Class Actions: Fed. R. Civ. P. 23; 28 U.S.C. § 1453
3. Motion Practice
 - (a) Motions to Dismiss and Stay of Discovery:
 - (i) Fed. R. Civ. P. 12
 - (ii) CPLR 3211
 - (b) Summary Judgment:
 - (i) Fed. R. Civ. P. 56
 - (ii) CPLR 3212

(c) Special Proceedings (state court): CPLR 403, 403, 408

(d) Ex Parte Relief: CPLR 1335, 2212, 6313

4. Trial Practice

(a) Pretrial Order:

(i) Fed. R. Civ. P. 16

(ii) CPLR 3402 (note of issue)

(b) Jury Selection, Alternates, Unanimity:

(i) Fed. R. Civ. P. 47, 48, 49; 28 U.S.C. § 1870

(ii) CPLR 4104, 4106, 4107, 4108, 4109, 4110, 4113

(c) Evidence (Business Records):

(i) Fed. R. Evid. 803, 804, 902; 28 U.S.C. § 1732

(ii) CPLR 3122-a, 4518

5. Appeals

(a) Federal - Final Judgment and Limited Interlocutory Review: Fed. R. App. Proc. 4; 28 U.S.C. §§ 1291, 1292

(b) State - Interlocutory Appeals: CPLR 5501, 5519, 5701

(c) Stays:

(i) Fed. R. Civ. P. 62; Fed. R. App. P. 8, 31

(ii) CPLR 5519

6. Individual Judges' Rules

(a) Hon. Kevin Castel

(b) Hon. Eileen Bransten

7. Other Judicial Officers

(a) U.S. Magistrates: Fed. R. Civ. P. 72, 73; 28 U.S.C. § 636

(b) State JHOs: CPLR 3104

8. Commercial Division Materials

(a) Task Force on Commercial Litigation

(b) Commercial Division Rules (22 NYCRR 202.70)

- (c) Justice Bransten Part Rules
- (d) Administrative Order on Accelerated Adjudication AO-77-14
- (e) Proposed Rule on Accelerated Adjudication (Adopted on 4-17-14)
- (f) Administrative Order on Interrogatories AO-78-14
- (g) Proposed Rule on Interrogatories (Adopted on 4-24-14)
- (h) Proposed Preliminary Conference Order (Awaiting signature on administrative order)
- (i) Justice Bransten Preliminary Conference Order
- (j) Proposed Rule on Staggered Court Appearances (Comment period ends on 5-30-14)
- (k) Proposed Amendment on Settlement-Related Disclosure (Comment period ends on 5-28-14)
- (l) Proposed Nonparty Electronically Stored Information Rule (Comment period ends on 5-28-14)
- (m) Proposed Privilege Log Rule (Comment period ends on 6-2-14)