REPORT AND RECOMMENDATIONS

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COMMITTEE TO REVIEW THE PROCEDURES

OF THE

COMMITTEES ON CHARACTER AND FITNESS

AND THE

GRIEVANCE COMMITTEES

OF THE

APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

* * *

Chaired by:

HON. GABRIEL M. KRAUSMAN

July 30, 2004

COMMITTEE MEMBERSHIP

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Prof. John Q. Barrett (Admission)
Dr. Renay Bevins (Reinstatement)
Fred A. Bodoff (Reinstatement; Admission)
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Gary L. Casella (Discipline)
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Staff Liaison:
Robert Margolin, Principal Law Clerk to Presiding Justice (Committee of the Whole)
James Edward Pelzer, Clerk of the Court (Admission)
Donna Sosna, Principal Appellate Court Attorney (Discipline)
Joan Hannon, Principal Appellate Court Attorney (Reinstatement)

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PREFACE BY THE CHAIR

I had the pleasure and honor of chairing the Committee to Review the Procedures of the Committees on Character and Fitness and the Grievance Committees of the Appellate Division, Second Judicial Department. The task was a pleasure and an honor for two reasons. First, the members of the committee were as dedicated and passionate about the work at hand as any group of people with whom I have ever worked. And second, the areas examined by the committee—admission, discipline, and reinstatement—are of great importance to the legal profession and the public.

The committee was comprised of 30 members drawn from a wide spectrum of professions and interests, including judges, lawyers, academicians, and lay people. Their dedication and hard work resulted in this report and recommendations. They have my most sincere appreciation for their efforts.

The committee and I wish to express our gratitude to the staff of the Appellate Division, Second Judicial Department, for their invaluable assistance.

Hon. Gabriel M. Krausman

Chair

MISSION STATEMENT

The task of the committee is to undertake an analysis of the procedures currently employed in the Second Judicial Department for the admission, discipline, and reinstatement of attorneys. Judiciary Law § 90 empowers the Appellate Division to handle these very important functions. Inherent in that mandate is the obligation to periodically update the court's practices and procedures in order to ensure that its dispositions are as expeditious, fair, and internally consistent as possible.

INTRODUCTION

Judiciary Law § 90 confers upon the Appellate Division of the Supreme Court the authority to determine if applicants for admission to practice possess the requisite "character and general fitness . . . for an attorney and counselor-at-law" (Judiciary Law § 90[1][a]). Accordingly, after an applicant has passed the bar examination and complied with the pertinent rules of the Court of Appeals and those of the Department of the Appellate Division to which the applicant has been certified, the latter court must determine if the applicant is fit to practice law.

With respect to persons who have been admitted to the bar, Judiciary Law § 90 also authorizes the Appellate Division to:

> "censure, suspend from practice or remove from office any attorney and counselor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice; and . . . to revoke such admission for any misrepresentation or suppression of any information in connection with the application for admission to practice" (Judiciary Law § 90[2]).

This same section provides that the Appellate Division "may impose such discipline as it deems proper" (Judiciary Law § 90[4][h]) and confers the authority upon that court to consider applications for reinstatement (Judiciary Law § 90[5][c]).

The Second Judicial Department contains 10 counties within four judicial districts and over half of the state's population. The Appellate Division in that department has established three departmental Grievance Committees, one for the Second and Eleventh Judicial Districts (Richmond, Kings, and Queens Counties); one for the Ninth Judicial District (Westchester, Dutchess, Orange, Rockland, and Putnam Counties); and one for the Tenth Judicial District (Nassau and Suffolk Counties). It has also established two Committees on Character and Fitness, one for the Second, Tenth, and Eleventh Judicial Districts, and one for the Ninth Judicial District.

Given this structure, it is possible that similar cases may occasionally receive dissimilar treatment, and that similar applications or proceedings might occasionally have different outcomes. The question that arises is whether a lack of strict uniformity results in any unfairness, real or perceived, and if so, what corrections are possible. For this reason, among others, the procedures and practices of the various Grievance Committees should be examined periodically, and updated or amended, if necessary. Such a review should be conducted with a thorough understanding of the practices and innovations, if any, in other jurisdictions.

With this in mind, Presiding Justice A. Gail Prudenti formed the Committee to Review the Procedures of the Committees on Character and Fitness and the Grievance Committees, and appointed the Honorable Gabriel M. Krausman as its Chair. The mission of the committee was to review the procedures of the Committees on Character and Fitness and the Grievance Committees within the Second Judicial Department to determine whether changes are necessary to ensure that dispositions are as fair, expeditious, and internally consistent as possible. In the course of its work, the committee also reviewed the court's own rules and internal procedures governing admission, discipline, and reinstatement.

At its initial meeting, the Committee of the Whole adopted a mission statement and created three subcommittees, the Admission Subcommittee, the Disciplinary Subcommittee, and the Reinstatement Subcommittee. Each subcommittee was co-chaired by an Associate Justice of the Appellate Division and one other member. Subcommittee members were assigned to research and review areas of consideration. Follow-up meetings were held and further research was undertaken where necessary. Ultimately, each subcommittee issued a report with its findings and recommendations to the Committee of the Whole.

The Committee of the Whole then met to consider the subcommittee reports and recommendations, and to obtain a consensus as to the recommendations to be adopted for presentation to the court. Such a consensus was obtained for most of the recommendations and proposals. In addition, to facilitate a fully-informed exploration by the court, this report includes a discussion of issues upon which the Committee of the Whole could not reach a consensus. For the same reason, dissenting or minority views are included.

This report is divided into three main sections, corresponding to the work and recommendations of each of the three subcommittees. It concludes with a summary of the recommendations and proposals considered by the Committee of the Whole.

I. THE ADMISSION SUBCOMMITTEE

Subcommittee Membership

Hon. Barry A. Cozier, Co-Chair
Hon. Charles J. Hynes, Co-Chair

Prof. John Q. Barrett	Paul Gianelli
Fred A. Bodoff	Peter J. Johnson, Jr.
Jeffrey Cohen	Dr. Greta Rainsford
James Edward Pelzer, Staff Liaison	

Standards for the Review of Applicants for Admission

A discussion at the initial meeting of the Admission Subcommittee concerned the possibility that different procedures and standards of review in the various departments might lead to inequities. The issue was not addressed in depth as it was determined to be outside the subcommittee's scope of examination. It was noted, however, that differences among the four departments were probably not significant.

Delays in the Admission Process

At its initial meeting, the subcommittee examined in detail the steps in the present admission process to determine which, if any, might reasonably be eliminated or altered to shorten the period between passing the bar examination and admission to the bar. Various possibilities were discussed, and it was determined that Co-Chair Hynes would investigate and report.

At a later meeting, Co-Chair Hynes reported to the subcommittee on, inter alia, the method and policy of a sister state that does not conduct personal interviews and in which admissions of new attorneys occur approximately six weeks after they pass the bar examination. It was recognized, however, that many of the practices of some states which result in a shorter admission process cannot be implemented here. For example, it was noted that some jurisdictions have a fixed date for the release of bar examination results, which New York does not have. Additionally, bar admission materials are sent to applicants along with the forms and materials necessary to take the bar examination. This means that the admission process is already well underway by the time the examination results are known. In New York, the State Board of Law Examiners, the Office of Court Administration, and the Committees on Character and Fitness are all involved in the examination and admission process. The coordination of the materials sent to the applicants, as well as the various fees to be paid, are not exclusively within the court's ability to control.

The possible elimination of personal interviews of applicants for admission to the bar was the subject of extensive discussion. It was noted that the investigation of the

character and fitness of applicants for admission is required by law (*see* CPLR article 94). The discussion centered around the question of whether a personal interview was essential to the investigatory process. The perceived benefit of a briefer time period between passing the bar examination and admission to the bar was weighed against the important goals of the applicant interview. At a one-to-one interview, the serious nature of the practice of law and the great responsibilities attached to the privilege of practice can be personally impressed upon the applicant by a respected member of the bar. Similarly, the applicant is made aware in a very significant way of the fact that present members of the bar have a lively and serious interest in the conduct and management of the profession. Additionally, the Committee on Character and Fitness can obtain an impression of the applicant that can never be gleaned from forms and paper applications. The subcommittee also believed that personal questioning can elicit responses that may indicate potential problems.

Alternatives to the interviewing of all applicants were discussed. There was a suggestion that personal interviews be utilized only for those cases where an application raised a question concerning the character of the applicant or indicated some other problem that warranted further examination. Eventually, the subcommittee rejected the proposal of fewer interviews. It concluded that the attempt to select which applicants would be called for interviews would be too problematic and subjective in nature to be useful or appropriate.

The members of the subcommittee acknowledged that the personal interview of each and every applicant for admission to the bar by a member of the Committee on Character and Fitness may result in an admission process that takes somewhat longer than other jurisdictions. Nevertheless, the value of the personal interview, to the applicant, the Committee on Character and Fitness, and the bar, is such that it should not be eliminated, despite the time that its retention may necessitate in the overall admission process. The personal interview sends a signal to the applicant that other members of the bar seek to maintain the integrity of the profession, and provides the Committee on Character and Fitness with a screening mechanism for applicants that can uncover dishonest responses, or other problems in applications, that would otherwise escape detection.

Having unanimously determined that the personal applicant interview should be retained, the subcommittee then turned to examine how the applicant interview might be strengthened or altered.

Committee on Character and Fitness Issues

Changes to the Applicant Interview Process

CPLR 9401 provides that members of the Committees on Character and Fitness shall serve until death, resignation, or the appointment of a successor. Presently, members of the Committees on Character and Fitness are appointed for two, de facto, four-year terms, after which they may serve additional terms upon the recommendation of the Executive Secretary of the Departmental Committees on Character and Fitness. All Committee on Character and Fitness members are provided with written guidelines concerning the conduct of the interviews.

Following discussion, the subcommittee recommended that a training program be established for the benefit of the members of the Committees on Character and Fitness, who conduct the interviews, in addition to the written materials presently provided. The subcommittee also recommended that term limits be imposed upon those members, after which a successor must be appointed consistent with CPLR 9401. The use of a term limit would work to ensure a diverse panel.

Subcommittee member Fred Bodoff, the Executive Secretary of the Departmental Committees on Character and Fitness, dissented from these recommendations on the ground that there had been no complaints about the present composition and functioning of the Committees on Character and Fitness, which presently are and have been composed of outstanding, mature, and seasoned attorneys with little or no need for training on how to conduct applicant interviews. In his opinion, the present interview process has worked well and additional training of the members of the Committees on Character and Fitness who conduct the interviews is not needed because the present written advisory guidelines are sufficient. Further, Mr. Bodoff believes that the de facto term limits presently in place have worked well and should be retained.

Delays Due to Voting Practices

The subject of Committee on Character and Fitness voting practices was raised at the first subcommittee meeting. Mr. Bodoff prepared a report, which was submitted to the subcommittee for discussion at a subsequent meeting and which explained those procedures and their potential for delay.

The voting practices of the Committee on Character and Fitness for the Second, Tenth, and Eleventh Judicial Districts differ slightly from the practices followed by the Committee for the Ninth Judicial District, and the difference clearly results in a delay in processing applications from the Second, Tenth, and Eleventh Judicial Districts.

In both Committees, new applications for admission that appear to raise difficulties, reinstatement applications, applications for admission to the bar on motion, and applications to be licensed as legal consultants are first submitted to a subcommittee

of two members of the Committee on Character and Fitness for a hearing at which stenographic minutes are taken. A written report and recommendation is then prepared. In the Ninth Judicial District, each of the 10 members of the Committee on Character and Fitness are sent voting "slips" or ballots, on which they record their votes on the recommendation attached to the report. The votes are mailed in, and compiled in the central office of the Committees on Character and Fitness. However, the Committee on Character and Fitness for the Second, Tenth, and Eleventh Judicial Districts does not vote by mail. Instead, applications are discussed and voted upon in person at that Committee's meetings. Those meetings, however, take place only about three times a year.

The subcommittee discussed a number of possible solutions to cure the delay inherent in holding only a limited number of meetings, including instituting paper ballot voting similar to the Ninth Judicial District, particularly for applications for admission to the bar on motion and applications to be licensed as legal consultants. As to those types of applications, the subcommittee agreed, there was no need for consideration by the full Committee on Character and Fitness at a meeting. It was also suggested that the Committee on Character and Fitness for the Second, Tenth, and Eleventh Judicial Districts meet more frequently, or conduct some business by teleconference. No final recommendation was adopted.

Non-Unanimous Approvals

The subcommittee discussed at length the practice of forwarding problem applications to the Appellate Division, Second Department. Presently, in addition to applications for admission that are not approved, a Committee on Character and Fitness forwards to the court applications for admission that are approved by the majority of its members, but as to which one or more members dissents, i.e., non-unanimous approvals. A related issue, concerning whether or not the dissenting member or members of a Committee on Character and Fitness should provide a statement of the reasons for a dissent from the recommendation, was also raised and discussed.

The subcommittee recognized that a reference to the court by a Committee on Character and Fitness of any application, for whatever reason, will engender a delay in the admission process. It was noted that in the First Judicial Department only applications that are disapproved are referred to the Appellate Division. Following discussion of the merits of changing the procedure so as to bring it into accord with the practice in the First Department, the subcommittee concluded that the issue involved policy considerations that should be referred to the Presiding Justice for determination. The subcommittee determined, however, that a dissent from a Committee on Character and Fitness recommendation should be accompanied by a statement of reasons. It was noted that § 690.15 of the rules of this court (see 22 NYCRR 690.15) requires such a statement to be included in any report of a Committee on Character and Fitness that recommends the disapproval or deferral of an application.

Rejected Applicants for Admission

The subcommittee also considered the present treatment of applications referred to the Appellate Division, Second Department, by the Committee on Character and Fitness. When the court determines to deny the application, its determination is issued without a detailed statement of reasons. The rejected applicant is not informed of the specific obstacle that he or she must address and overcome in any future application. The subcommittee recommended that this practice be altered, and that the rejected applicant be given a specific reason for the denial of his or her application for admission to the bar.

Criminal Background Checks of Applicants

The subcommittee considered the fact that criminal background checks are no longer conducted of applicants for admission to the bar and determined that the reinstatement of such checks was desirable. Co-Chair Hynes investigated and reported to the subcommittee on the feasibility and manner of conducting such checks.

The subcommittee discussed conducting criminal background checks based upon self-reported information by the applicant; that is, using the applicant's name and social security number to run a check through the Division of Criminal Justice Services. The second, and more accurate and thorough type of check that could be conducted would involve a fingerprint submission by each applicant.

The subcommittee determined that a recommendation should be made to the statewide Advisory Committee on Bar Admissions that criminal background checks be reinstituted. It was recognized that the adoption of a rule to this effect might be necessary (cf. 22 NYCRR 520.12[c]).

Orientation Program for Applicants to the Bar

The subcommittee discussed the fact that the Appellate Division, First Department, has instituted an orientation program for applicants prior to their admission to the bar. Subcommittee member Peter J. Johnson, Jr., obtained the program syllabus from the First Department, which he provided to the subcommittee.

The subcommittee recommended that the court institute an orientation program for applicants to the bar and agreed with the importance of the topics covered by the First Department syllabus, which concern professional ethics and professional behavior. Following discussion, the subcommittee determined that such an orientation program should be conducted and should cover: (1) a code of civility for lawyers, (2) the pro bono obligation, (3) common disciplinary issues, (4) available resources to deal with alcohol and other substance-abuse problems, and (5) the significance of the oath taken by an attorney upon his or her admission to the bar.

The subcommittee also directed its attention to the more practical concerns involved in the staging of such a program. It was noted, for example, that the First Department's program is mandatory and the subject of a court rule. As no such rule exists in this department, one would need to be drafted, particularly if attendance were made a requirement of admission. Additionally, this department is far larger, geographically, and admits far more attorneys, than the First Department.

The subcommittee recognized that many of the administrative difficulties that would be encountered in the planning and mounting of such a program were not matters that it could resolve. It did, however, make a number of suggestions and list some observations, including that the program should be run by the Appellate Division, Second Department, rather than by a bar association, and that it should be conducted in Brooklyn. Although the small size of the courtroom in the Appellate Division building on Monroe Place made that an unlikely place in which to hold the type of program envisioned, it was noted that there were many other potential spaces also in Brooklyn Heights, including the central jury room in the Supreme Court building, or the ceremonial courtroom in the Brooklyn Borough Hall. The frequency and the scheduling of such programs were administrative issues that would need to be resolved by the Presiding Justice, as would be the issue of staffing. It was thought that the program would need to be presented on approximately a monthly basis, given the large number of attorneys admitted by this department.

II. THE DISCIPLINE SUBCOMMITTEE

Subcommittee Membership

Hon. Nancy E. Smith, Co-Chair
Barry Kamins, Co-Chair

Hon. Milton Mollen	John L. Kase
Gary L. Casella	Diana M. Kearse
Antoinette D'Orazio	John Z. Marangos
Frederick C. Johs	Grace Moran
Jerome Karp	Stephen J. Singer

Donna M. Sosna, Staff Liaison

Overview

At its initial meeting the Discipline Subcommittee reviewed suggested areas of consideration and determined that the bulk of its efforts would be directed toward the two major areas of sanctions and interim suspensions. To be considered under the broad category of "sanctions" were suspensions of less than one year, the use of combinations of sanctions, reasonable alternatives to suspension, plea-bargaining or discipline on consent, and the input of Special Referees in determining an appropriate sanction. Members of the subcommittee reviewed the rules of all four Departments of the Appellate Division, as well as those of sister states, the rules of the United States District Court for the Southern and the Eastern Districts of New York, and the American Bar Association model rules. In addition, submissions by other interested groups and individuals were considered. The Discipline Subcommittee construed its mandate as a search for ways in which to improve the existing system. At no time was a wholesale revision of the current rules of the Second Department governing attorney discipline considered.

Sanctions

Length of Suspension and Speedy Reinstatement

The Appellate Division, Second Department, has heretofore refrained from imposing the sanction of a suspension from practice of less than one year's duration as a final measure of discipline. The subcommittee considered the desirability of utilizing suspensions of less than one year in order to afford the court a greater variety of appropriate sanctions for misconduct that would enable it to protect the public without being unnecessarily harsh to the respondent attorney. The practical implications of imposing a suspension for a term as short as three months were considered. The consensus of the subcommittee was that requiring an attorney to close his or her practice and send out the appropriate notifications for a term as short as three months would be

unduly onerous. Misconduct which would warrant a suspension of such limited duration would necessarily be minor in nature and, at present, would most likely warrant only a censure. Accordingly, the subcommittee recommended that the court not impose any suspension of less than six months duration.

The consensus was that a suspension of six months or more, but less than one year, would constitute an effective form of discipline while still being practical. Key factors considered were the lengthy delays currently involved in reinstatement after short periods of suspension, attributable, in part, to requiring the applicant to pass the Multistate Professional Responsibility Examination (MPRE) and to be interviewed by a Committee on Character and Fitness.

For suspensions of less than one year, the subcommittee recommended that taking and passing the MPRE not be a prerequisite to reinstatement. For suspensions of one year, it recommended affording applicants for reinstatement the option of taking either the MPRE or six credits of Continuing Legal Education (CLE) in the field of attorney ethics. In addition, the subcommittee recommended eliminating the involvement of the Committees on Character and Fitness on reinstatements after suspensions of one year or less. All suspended attorneys who apply for reinstatement would still be required to prove that they had complied with 22 NYCRR 691.10(f) by timely filing an affidavit of compliance.

Both the Grievance Committees and the Lawyers' Fund for Client Protection should be directed to make especially prompt responses to reinstatement applications where the suspension was for one year or less.

Reinstatements after suspensions of one year or less should be automatic but not self-executing. A court order directing reinstatement should remain a requirement in all cases.

Alternatives to Suspension

The subcommittee considered and rejected alternatives to suspension, such as probation and court-sponsored mentoring. Probation would entail problems of supervision for an already overburdened system. In lieu of probation, the subcommittee cited the availability of committee-level tools, such as letters of caution, admonitions, and reprimands, as well as the seldom-used court sanction of a private censure.

The problem envisioned with court-sponsored mentoring is that the court would be perceived as holding out as competent to practice law an attorney who suffers from clinical depression or who is a substance abuser when, in fact, there is some doubt as to that attorney's competence. The consensus was that mentoring is a very valuable tool which should be encouraged through bar associations but which should not be court-sponsored or administered by the Grievance Committees.

Combining Sanctions

The subcommittee recommended the use of a combination of sanctions for certain minor ethical violations, such as failure to register with the Office of Court Administration and minor tax offenses. It was suggested that, in appropriate cases, censures can be combined with CLE, community service, or pro bono representation.

Plea Bargaining

The subcommittee proposed a procedure whereby a respondent attorney could invoke the procedure of plea bargaining. The use of plea bargaining between a respondent attorney and grievance counsel and/or discipline upon the consent of both the respondent and grievance counsel would be highly effective in efficiently and fairly disposing of many cases without the necessity of extended proceedings or a hearing. Any such agreement must be presented to the Grievance Committee for its approval and would be subject to the ultimate approval of the court.

Special Referees

Currently, Special Referees are appointed to conduct hearings and to report their findings to the court without making recommendations as to sanctions. The consensus among subcommittee members was that the Special Referee who conducts a disciplinary hearing is in a unique position to assess the credibility of witnesses and ultimately to make recommendations to the court with respect to sanctions. Accordingly, the subcommittee recommended that the Special Referee who conducts a disciplinary hearing be required to recommend an appropriate sanction to the court. The final determination with respect to the appropriate sanction to be imposed necessarily rests with the court in all cases.

Interim Suspensions

Failure to Cooperate

When the Grievance Committee commences an investigation upon receipt of a signed, written complaint, it sends the attorney a copy of the complaint by regular mail together with a letter requesting an answer within 10 days of the attorney's receipt of the complaint. If no answer is received, a second request is sent to the attorney by regular mail and by certified mail, return receipt requested. The Grievance Committee again encloses a copy of the complaint and directs the attorney to submit an answer within 10 days. The Grievance Committee's letter typically warns the attorney that a continuing failure to cooperate constitutes professional misconduct independent of the merits of the complaint and could result in a motion for the attorney's interim suspension.

If the attorney persists in failing to answer, the Grievance Committee makes an effort to determine whether the attorney actually received notice of the complaint, either

by attempting to contact the attorney via telephone or sending its investigator to verify the address. At times, the investigation reveals that the attorney is deceased, is hospitalized or incapacitated, or has moved his or her office location.

These extra efforts are undertaken to ensure that the Grievance Committee has established a solid case of the attorney's failure to cooperate before moving for that attorney's interim suspension. Motions for interim suspensions on the ground of failure to cooperate are made only with the approval of the chair of the Grievance Committee.

For failure to cooperate as a basis for an interim suspension (*see* 22 NYCRR 691.4[*l*][1][i]), the subcommittee agreed that it would be inappropriate to have a hard and fast rule for the number of attempts a Grievance Committee must make to secure an attorney's cooperation before moving for that attorney's interim suspension. Because cases are unique, each one should be considered on its individual merits.

Substantial Admission Under Oath

Motions for interim suspensions based on substantial admissions under oath pursuant to 22 NYCRR 691.4(*l*)(1)(ii) are not made as frequently as those for failure to cooperate. The admissions are generally made during an investigative appearance by the attorney at the Grievance Committee's office. The attorney has the right to counsel during that appearance and is asked to bring all relevant files and documents. The attorney is free to invoke his or her Fifth Amendment privilege against self-incrimination.

The admitted misconduct must be of such severity as to warrant the Grievance Committee's belief that the court would authorize a disciplinary proceeding against that attorney with a view towards public discipline. Authorizations to proceed with a motion for an interim suspension on the basis of substantial admissions under oath are presented to the full Grievance Committee along with a recommendation that authorization to commence and prosecute a formal disciplinary proceeding be sought from the court.

A great deal of concern was expressed about the use of an attorney's admissions under oath as a ground for an interim suspension. A number of subcommittee members expressed the fear that this ground for interim suspension could effectively penalize an attorney for truthfulness under oath. The subcommittee felt that it was important to encourage the candor, truthfulness, and cooperation of respondent attorneys by not permitting the use of admissions made under oath during the course of an investigation as the sole basis for an interim suspension and by requiring that independent evidence exist to substantiate any such admission before applying for an interim suspension.

Uncontroverted Evidence

Motions pursuant to 22 NYCRR 691.4(*l*)(1)(iii) for interim suspensions based upon uncontroverted evidence are generally based upon bank records establishing conversion. Motions predicated on this ground are made in conjunction with a request

for authorization to institute and prosecute a disciplinary proceeding against the attorney and with the approval of the full Grievance Committee.

All three grounds for interim suspension motions pursuant to 22 NYCRR 691.4(*l*)(1) are predicated upon a prima facie showing that the respondent attorney constitutes an immediate threat to the public interest.

Credit for Time Spent Under an Interim Suspension

The subcommittee recommended that, in appropriate cases, the court should, in imposing a final sanction, accord a respondent attorney credit for time spent under an interim suspension.

Notification by District Attorney

The subcommittee proposed creating an affirmative obligation on the part of District Attorneys within the Second Department to notify respective Grievance Committees of convictions, arrests, and indictments of attorneys, and, if possible, of ongoing investigations, provided that such notification does not compromise the District Attorney's investigation. Such notification would enable the court to promptly investigate and determine whether a conviction was for a "serious crime" within the meaning of Judiciary Law § 90(4)(d) or 22 NYCRR 691.7(b), such that the attorney's interim suspension is warranted pursuant to Judiciary Law § 90(4)(f).

Special Referees

The subcommittee concluded that the disciplinary hearing process could be expedited by increasing the current pool of eligible Special Referees and by imposing time limits for the issuance of their reports. Expediting the process would have the concomitant effect of bolstering confidence in the system. The subcommittee considered imposing term limits on the tenure of Special Referees. However, the consensus was that at the current time the available pool of active Special Referees is too small to impose term limits.

The subcommittee recommended that the court undertake a recruitment effort to expand the number of eligible and competent Special Referees. Such recruitment should not be limited to former Judges but should include former Committee members and other experienced members of the bar. The subcommittee further recommended a requirement that Special Referees submit their reports within 60 days after the conclusion of the disciplinary hearing or the submission of post-hearing memoranda by all parties and that all Special Referees be provided with copies of court rules.

Disciplinary Hearings

Due Process Considerations

The subcommittee considered the merits of affording attorneys the opportunity to appear before the full Grievance Committee or a designated subcommittee prior to the authorization of a disciplinary proceeding. The consensus was that this is not workable in the Second Department due to the high volume of complaints.

The subcommittee explored the possibility of affording every respondent attorney the opportunity to review the submissions made by counsel to the Grievance Committee. While it was agreed that respondents should not have access to the confidential memoranda and recommendations submitted to the Grievance Committee, the consensus was that the Grievance Committee members should be provided with a copy of the respondent's answer to every complaint on which the staff is recommending either the issuance of a letter of caution, an admonition, or the authorization of a disciplinary proceeding. A reasonable page limit should be imposed on the answer.

Discovery

The subcommittee recommended the adoption of a rule similar to § 605.17 of the rules of the Appellate Division, First Department (22 NYCRR 605.17), which addresses subpoenas, depositions, and motions.

With respect to psychological and medical evidence to be used in mitigation at a hearing, the subcommittee recommended that the court consider a rule requiring respondent attorneys who plan to offer such evidence to give advance notice to the Grievance Committee and to execute a waiver so that records could be viewed in advance of a hearing and appropriate questions could be prepared for use thereat. It also recommended allowing respondents and grievance counsel access to reports prepared by court-appointed medical experts pursuant to 22 NYCRR 691.13.

Statute of Limitations

The consensus of the subcommittee was that no statute of limitations should be imposed because to do so would create the impression that attorney misconduct was being protected in some way, thereby further eroding public confidence in the profession. It was suggested, however, that the court take into consideration remoteness in time in assessing credibility.

Costs

The subcommittee concluded that the process of computing and imposing costs and attempting to collect them would likely involve straining already limited resources with little tangible benefit.

Deceased or Incapacitated Attorneys

The consensus of the subcommittee was that most of the difficulties that arise in this regard would be resolved if DR 9-102(g) (22 NYCRR 1200.46[g]) was expanded to require the designation of successor signatories on attorney escrow accounts. In addition, it was agreed that grievance counsel should not be required to provide legal counsel to attorneys seeking advice in these matters.

Practice Limitations on Former Grievance Counsel and Committee Members

The subcommittee recommended that former counsel and former committee members be prohibited from representing a respondent attorney on any matter which was pending before the Grievance Committee during counsel's employment or during the committee member's term of service. The consensus was that prohibition against representation for a fixed amount of time would not solve the problem of potential conflicts and would prevent these attorneys from earning a living.

Registration and CLE Requirements for Suspended Attorneys

The subcommittee recommended that a suspended attorney be required to fulfill all biennial registration and CLE requirements during the entire term of the suspension and that the issue of compliance with those requirements should be considered upon any future application for reinstatement.

Additional Recommendations

The subcommittee also recommended: (1) consolidating the informational pamphlets of the three Grievance Committees into one uniform pamphlet, (2) that the Administrative Board take up with the Office of Court Administration the accuracy of the information in the attorney registration database before the latter sends the names of allegedly delinquent attorneys to Grievance Committees for disciplinary action, and (3) providing notices to respondent attorneys of court decisions and orders and opinions before they appear in the *New York Law Journal*, either via telephone calls or electronic transmission.

III. THE REINSTATEMENT SUBCOMMITTEE

Subcommittee Membership

Hon. Sandra J. Feuerstein (Co-Chair [resigned upon appointment to Federal bench])
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Overview

The Reinstatement Subcommittee was divided into four groups to consider (1) the conduct and employment of suspended or disbarred attorneys, (2) reinstatement after a period of suspension, (3) reinstatement after a disbarment, and (4) reinstatement after a voluntary resignation.

Conduct and Employment of Suspended or Disbarred Attorneys

The dividing line between the practice of law and other activities that relate to legal matters has remained obscure. The definition of the practice of law has been and remains elusive, particularly in this electronic age and with the acceptance by the public and the legal profession of the role of paralegals.

The dichotomy between practicing law and other activities is particularly important to suspended and disbarred attorneys and their employers. Judiciary Law § 90(2) prohibits suspended and disbarred attorneys from practicing law in any form as principal, agent, clerk, or employee of another. Judiciary Law § 486 makes it a misdemeanor to do so.

The Reinstatement Subcommittee recognized that the activities of suspended and disbarred attorneys are minutely scrutinized by the Appellate Division and the Committees on Character and Fitness when those attorneys apply for reinstatement. The subcommittee also recognized that the employment of such persons, during the period of their suspension or disbarment, poses particular hazards to the lawyers and law firms that hire them. The subcommittee, therefore, recommended the adoption of a procedure authorizing the issuance of an advisory opinion, similar to those issued by the Advisory Committee on Judicial Ethics (*see* 22 NYCRR part 101), by which disbarred and suspended attorneys, and their prospective employers, may apply to the Appellate Division, to the Committee on Character and Fitness, or to the Grievance Committee for advice on whether proposed employment would involve the practice of law. Such an advisory opinion could be used upon an application for reinstatement as prima facie

evidence that the disciplined attorney was not unlawfully practicing law. It could also be used as a prima facie defense to any disciplinary charges against the employing attorney. The prima facie proof could, of course, be overcome by a showing that the facts upon which the advance ruling was based were incomplete or distorted or that the activities the disciplined attorney actually engaged in following his or her receipt of the advisory opinion went beyond those described in the application therefor.

Reinstatement Applications in General

The subcommittee considered the model rule on the reinstatement of attorneys proposed by the Committee on Professional Discipline of the New York State Bar Association and recommended that the court consider the adoption of that model rule.

As a way of expediting the reinstatement process, the subcommittee recommended incorporating the reinstatement questionnaire, petition, or application in § 691.11 of the court's rules (22 NYCRR 691.11), as is done in the First and Fourth Departments (*see* 22 NYCRR 603.14[m]; 1022.28).

The subcommittee recommended that, as in the Fourth Department (*see* 22 NYCRR 1022.28[a][2]), all interested parties, including the complainants and other victims of the disbarred attorney's misconduct, receive notice of applications for reinstatement.

To reduce delays in resolving all applications for reinstatement, the subcommittee also recommended that the Committees on Character and Fitness, to which applications are referred, be authorized to confer and vote by telephone conference call, be directed to meet more frequently, and be served with copies of the applications before or contemporaneously with their filing in the court.

The subcommittee recommended that the order determining an application for reinstatement recite the papers on which the court relied in reaching its determination. However, the subcommittee rejected the idea that the court detail in its decision the reason for denying reinstatement.

In the cases of *Matter of Anonymous* (97 NY2d 332) and *Matter of Citrin* (94 NY2d 459), the Court of Appeals held that the papers relied upon by the Appellate Division in denying an application for admission or reinstatement should be made available to the applicant. In light of those cases, the subcommittee recommended that the applicant be advised of any information in the court's possession that played a significant role in deciding the application for reinstatement, with appropriate redactions.

Reinstatement after Suspension

One of the pervasive problems in the Appellate Division, Second Department, relating to reinstatement after a suspension is the protracted procedure and time it takes to

determine the application. While suspension orders typically allow respondent attorneys to apply for reinstatement six months before the suspension period expires, the process often takes longer than six months. Part of the problem is that applicants for reinstatement do not learn in advance of the need to fill out the lengthy questionnaire required by the court. Another problem stems from the court's long-term policy of not imposing a suspension of less than one year in duration. Although it was beyond the scope of the Reinstatement Subcommittee's responsibility to recommend a return to the practice of shorter suspensions, the subcommittee noted that it would be appropriate in some cases and that it would afford the court greater options than presently exist in the choice of either a censure or a one-year suspension.

The subcommittee recommended the adoption of a procedure for reinstatement on affidavit for short suspensions. Such a procedure would allow for immediate, automatic reinstatement upon the expiration of one year or less, if the court adopts the recommendation of the Discipline Subcommittee in that regard. The application would be made 30 days before the expiration of the period of suspension, and the relevant Grievance Committee would be given notice and an opportunity to be heard. Moreover, the court would retain the option of referring the application to the Committee on Character and Fitness with a deadline to report its recommendations back to the court within 90 days.

The subcommittee recommended that the period of any interim suspension be credited against the period of suspension imposed as discipline, unless the court orders otherwise in a particular case.

The subcommittee considered the question of whether suspended attorneys should be required to continue to register with the Office of Court Administration, pay the biennial registration fee, and comply with CLE requirements during the period of their suspension. It recommended that (1) suspended attorneys not be required to pay their biennial registration fees during the period of suspension unless the suspension was imposed for failing to pay such fees in the past, and (2) attorneys suspended for more than two years must successfully complete 24 credits of CLE.

The so-called "Bellacosa Rule," which is similar to a rule recently adopted by the Appellate Division, Fourth Department (*see* 22 NYCRR 1022.20[d][3]), was considered by the subcommittee and recommended for adoption. It would allow a disciplinary proceeding or investigation to be deferred, in certain instances, to allow the respondent attorney to enroll in a monitoring program if he or she claims disability due to alcohol or substance abuse. Upon successful completion of the program, the court could dismiss the proceeding or investigation.

Reinstatement after Disbarment

The present rule on reinstatement (*see* 22 NYCRR 691.11), provides that applications for reinstatement of suspended attorneys be made at such intervals as the court may direct in the order of suspension or in any modification thereof. Multiple applications for reinstatement of disbarred attorneys, on the other hand, are presently unregulated. While the Reinstatement Subcommittee did not suggest any modification of the rule insofar as it applies to suspended attorneys, it recommended the adoption of a provision specifying that there be a minimum interval of one year between the denial of an application for reinstatement of a disbarred attorney and the next application (*cf*. 22 NYCRR 603.14[j] specifying that the minimum interval in the First Department is two years).

Judiciary Law § 90(5)(b) provides that the court shall have the power to reinstate an attorney who is disbarred for a felony conviction after a period of seven years. Section 691.11 of this court's rules (22 NYCRR 691.11) imposes the same seven-year period for disbarments for all other reasons. The Reinstatement Subcommittee recommended no change in these provisions.

The subcommittee recognized that seven years is a substantial period of time for an individual to be isolated from legal developments and still keep his or her legal knowledge current. While § 691.11(b)(2) of this court's rules (22 NYCRR 691.11[b][2]) provides that an applicant for reinstatement attain a passing score on the MPRE, the court does not require applicants for reinstatement to pass the bar examination as a condition to reinstatement as may the Fourth Department (*see* 22 NYCRR 1022.28[b][1]; [d][1]). It is questionable whether the Appellate Division has the authority to require applicants for reinstatement to retake the bar examination since the determination of general legal knowledge is the exclusive province of the Court of Appeals (*see Matter of Anonymous*, 78 NY2d 227; *Matter of Shaikh*, 39 NY2d 676). Therefore, to avoid any conflict, the subcommittee did not recommend adding a requirement that applicants for reinstatement retake the bar examination. However, it suggested that, as a condition of reinstatement, disbarred attorneys provide proof of their successful completion of at least 24 credits of CLE.

A subject of debate was the consequence of referring the reinstatement application of a disbarred attorney to the Committee on Character and Fitness to hear and report. Section 691.11(b)(2) of the court's rules (22 NYCRR 691.11[b][2])provides that the "court will refer such application" to the Committee on Character and Fitness before granting it. The subcommittee recommended the addition of language to the effect that the recommendation of the Committee on Character and Fitness shall be given substantial consideration by the court in determining the application, but that it shall not preclude the court from denying the application.

Reinstatement after Voluntary Resignation

The Reinstatement Subcommittee was impressed with the Fourth Department's treatment of voluntary resignees, attorneys who resign from the bar without any disciplinary proceeding or investigation pending against them (see, 22 NYCRR 1022.28[d]). The Fourth Department is unique among the four Departments of the Appellate Division in according separate consideration to the reinstatement of such attorneys. The subcommittee recommended adopting such a separate rule for the reinstatement of voluntary resignees and requiring them to explain the circumstances of their resignation, the reason for applying for reinstatement, and whether they have been the subject of disciplinary proceedings elsewhere during the period of resignation. The subcommittee also recommended that they be required to successfully complete at least 24 credits of CLE if they have been removed from the roll of attorneys for more than two years and that they pay a modest fee of perhaps $100. All biennial registration fees that would have been paid during the period of removal from the roll of attorneys, however, would be waived.

CONCLUSIONS OF THE COMMITTEE OF THE WHOLE

In its concluding session the entire committee met and jointly discussed the recommendations made by the three subcommittees. Its conclusions were as follows:

Recommendations of the Subcommittee on Admission

Speeding the Admission Process

1. Retain the personal applicant interview by a member of the Committees on Character and Fitness. *Approved*.

Committee on Character and Fitness Issues

2. Impose term limits on the service of members of the Committees on Character and Fitness. *Approved*. Fred Bodoff dissented for reasons stated *supra*.

3. Improve the selection of members of the Committees on Character and Fitness and institute a training program for such members on how to conduct the applicant interview. *Approved*. Fred Bodoff dissented for reasons stated *supra*.

4. Require that a dissent from the recommendation of a Committee on Character and Fitness to approve a candidate be accompanied by a statement of the reasons therefor. *Approved*

5. When the court denies an application for admission to the bar referred to it by the Committees on Character and Fitness, provide the rejected applicant with the specific reason or reasons for that denial. *Approved*.

Criminal Background Checks

6. Recommend to the statewide Committee on Bar Admissions that criminal background checks be conducted for all applicants for admission to the bar. *Approved*.

Orientation Program for Applicants

7. Adopt an orientation program for applicants for admission to the bar modeled on the program currently conducted by the Appellate Division, First Department. *Approved*.

Issues Referred to the Court without Recommendation

8. Should the practice of referring to the court the applications of candidates that did not receive the unanimous approval of a Committee on Character and Fitness be continued?

9. Should the progress of applications for admission and reinstatement before the Committee on Character and Fitness for the Second, Tenth, and Eleventh Judicial

Districts be expedited by increasing the number of its meetings and/or introducing voting by mail?

Recommendations of the Subcommittee on Discipline

Suspension from Practice

10. Adopt a policy permitting the use of a suspension from practice for a period shorter than one year but not less than six months as a sanction for professional misconduct. *Approved*.

11. In the case of a suspension from practice for one year or less, expedite and simplify the reinstatement process and make it virtually automatic upon the filing of a completed application, by:

    a. Not requiring that an attorney suspended for less than one year take and pass the MPRE;

    b. Requiring that an attorney suspended for one year either take and pass the MPRE or take six credits of CLE in the field of attorney ethics;

    c. Eliminating Committee on Character and Fitness review of the applicant; and,

    d. Directing that the Grievance Committees and the Lawyers' Fund for Client Protection make especially prompt responses to reinstatement applications where the term of the suspension is one year or less.

    Approved in part and disapproved in part. The Committee of the Whole agreed that the reinstatement of attorneys suspended for one year or less should be virtually automatic and that passage of the MPRE was not necessary in all such cases. However, it did not agree that complete elimination of the role of the Committee on Character and Fitness from the reinstatement process was desirable and recommended that the court require an interview by one member of the Committee on Character and Fitness on a reinstatement application following a suspension of one year or less.

12. Retain the requirement that an attorney suspended for one year or less:

    a. Serve and file a timely affidavit of compliance pursuant to 22 NYCRR 691.10(f); and

    b. Serve and file a completed application for reinstatement leading to a court order of reinstatement. *Approved.*

Combining Sanctions

13. Utilize a combination of sanctions for certain minor violations (such as failure to register with the Office of Court Administration and certain minor tax offenses), by, e.g., combining censure with a requirement that the attorney take a stated number of hours of CLE, provide community service, or undertake pro bono representation. *Approved*.

Recommendation as to Appropriate Sanction

14. Require a Special Referee who hears a disciplinary proceeding to make a recommendation to the court as to an appropriate sanction.

    No position; referred to the court. The Committee of the Whole was divided on this point. Some members opposed this recommendation while others felt that the matter of recommending sanctions to the court warrants greater input and that in addition to the Special Referee, grievance counsel, and the respondent attorney also should be heard on the issue of an appropriate sanction.

Plea Bargaining and Discipline on Consent

15. Authorize counsel to a Grievance Committee to engage in plea bargaining for discipline on consent, with the agreement to be subject to approval by the Grievance Committee itself and thereafter by the court. *Approved*.

Interim Suspensions

16. Do not require a minimum number of attempts by the Grievance Committee to secure the cooperation of an uncooperative attorney who is the subject of a complaint before it may move for that attorney's interim suspension from practice under 22 NYCRR 691.4(*l*)(1)(i). *Approved*.

17. Require the existence of independent evidence to corroborate any admission under oath made by a cooperative attorney who is the subject of a complaint before the Grievance Committee may move for the attorney's interim suspension from practice under 22 NYCRR 691.4(*l*)(1)(ii). *Approved*.

18. Accord the respondent attorney credit for time spent under an interim suspension against any period of suspension imposed by the court at the conclusion of a disciplinary proceeding.

    Approved in part. With regard to credit for interim suspensions, rather than recommending that there *must* be credit given, the Committee of the Whole recommended that the current policy against such credit merely be dropped resulting in the court having the flexibility—rather than the obligation—to provide for such a credit.

19. Impose an affirmative duty on District Attorneys in the Second Judicial Department to notify the appropriate Grievance Committee of convictions, arrests, and indictments of attorneys and, if possible, of ongoing investigations, to enable the court to determine whether an interim suspension of the attorney is warranted under Judiciary Law § 90(4)(f).

Approved in part and disapproved in part. The Committee of the Whole agreed with the recommendation of the subcommittee only insofar as it pertained to convictions, arrests, and indictments, but it disapproved of requiring District Attorneys to notify the Grievance Committee of ongoing investigations.

Special Referees

20. Undertake a recruitment initiative, not limited to retired members of the judiciary, to increase the number of eligible and competent Special Referees. *Approved.*

21. Require Special Referees to complete and submit their reports to the court within 60 days after the conclusion of a disciplinary hearing or the submission of post-hearing memoranda by all parties. *Approved*.

22. Provide a Special Referee with a copy of court's rules when assigned to hear a disciplinary proceeding. *Approved*.

Disciplinary Hearings

23. Provide members of the Grievance Committee with a copy of the respondent attorney's answer to any complaint on which the staff recommends the issuance of a letter of caution or admonition, or the authorization to seek leave to commence a formal disciplinary proceeding, and impose a reasonable page limit on that answer.

No position; referred to the court. Conflicting views on this point were voiced at the meeting of the Committee of the Whole and a consensus was not reached on the issue. Some members felt that providing a copy of the respondent attorney's answer was not practical and if his or her answer is to be provided to the Grievance Committee, complainants should be afforded the opportunity to present their views directly rather than rely upon staff counsel to that committee. Others felt it was a simple matter of fairness to allow the respondent's views to be presented at that stage of the process. Some who were opposed to providing the Grievance Committee members with the respondent's answer pointed out that he or she would always have the opportunity to present a defense at a full and fair hearing (*see, e.g.*, 22 NYCRR 691.6[a]; Judiciary Law § 90[6]).

Discovery

24. Adopt a rule codifying the substance of § 605.17 of the rules of the Appellate Division, First Department, regarding subpoenas, depositions, and motions (22 NYCRR 605.17). *Approved*.

25. Require advance notice to grievance counsel if the respondent attorney wishes to offer psychological or medical evidence in mitigation at the hearing and require the execution of any applicable waiver. *Approved*.

26. Allow respondent attorneys and grievance counsel access to medical reports prepared by court-appointed medical experts pursuant to 22 NYCRR 691.13. *Approved*.

Statute of Limitations

27. Do not adopt a rule effectively imposing a statute of limitations for the making of a complaint against an attorney. *Approved*.

Costs

28. Do not impose the costs of a disciplinary proceeding on a respondent attorney. *Approved*.

Deceased or Incapacitated Attorneys

29. Amend DR 9-102(g) of the Code of Professional Responsibility (22 NYCRR 1200.46[g]) to require the designation of a successor signatory on an attorney trust account. *Approved*.

30. Do not require grievance counsel to provide legal counsel to persons seeking advice concerning the affairs of deceased or incapacitated attorneys. *Approved*.

Practice Limitations on Former Grievance Counsel and Committee Members

31. Bar former staff counsel and former Grievance Committee members from representing a respondent attorney on any matter which was pending during the period of the former staff member's or committee member's term of service. *Approved*.

Registration and CLE Requirements for Suspended Attorneys

32. Require suspended attorneys to continue to fulfill all biennial registration requirements, including the payment of the required fee, and to take the requisite amount of CLE during the period of suspension.

    Approved. The Committee of the Whole endorsed this recommendation but believed that these requirements, as currently in effect, are not clearly understood by suspended attorneys. Accordingly, the Committee of the Whole further

recommended that the requirements of fulfilling the biennial registration, paying the registration fee, and taking required courses should be included in orders of suspension as well as set forth on the attorney registration form.

Additional Recommendations

33. Consolidate informational pamphlets of the three Grievance Committees into one uniform pamphlet. *Approved*.

34. Improve the accuracy of the data in the attorney registration database maintained by the Office of Court Administration before the names of delinquent attorneys are sent to the Grievance Committees for disciplinary action. *Approved*.

35. Notify respondent attorneys by telephone or electronic transmission of court decisions regarding disciplinary proceedings against them before those decisions appear in the *New York Law Journal*. *Approved*.

Recommendations of the Subcommittee on Reinstatement

Conduct and Employment of Suspended or Disbarred Attorneys

36. Adopt a rule authorizing the court to issue an advisory opinion as to whether proposed employment by a suspended or disbarred attorney would constitute the practice of law.

    Referred to the Court without Recommendation. This was an area where the subcommittee and the Committee of the Whole had differing and opposite views that made it impractical to make a unified recommendation to the court. The Committee, therefore, decided that it should be brought to the attention of the court without any specific recommendation, but that the court should consider the following:

    a. Whether a procedure should be adopted for applying for an advance ruling on the propriety of proposed employment of disbarred and suspended attorneys;

    b. Whether criteria should be set forth for such employment;

    c. Whether a definition of the term "practicing law" should be drafted; and,

    d. Whether higher standards should be applied to suspended attorneys, who are still members or the bar, as opposed to disbarred attorneys, who are not.

Reinstatement Applications in General

37. Adopt the model rule on the reinstatement of attorneys proposed by the Committee on Professional Discipline of the New York State Bar Association. *Disapproved.*

38. Incorporate the reinstatement questionnaire, petition, or application into § 691.11 of the court's rules (22 NYCRR 691.11).

    Approved in part and disapproved in part. The Committee of the Whole adopted this recommendation to the extent that the court's rules should refer to the questionnaire, petition, or application and direct applicants for reinstatement to the court's website for a copy thereof.

39. Adopt a rule requiring that all interested parties, including the complainants and other victims of a suspended or disbarred attorney's misconduct, receive notice of an application for reinstatement. *Approved*.

40. Expedite reinstatement applications by authorizing the Committees on Character and Fitness to confer and vote by telephone conference call, by directing those committees to meet more frequently, and by requiring that the Committees on Character and Fitness be served with a copy of the reinstatement application before or contemporaneously with its filing with the court. *Approved*.

41. Recite the papers read on an application for reinstatement in the order that determines that application. *Approved.*

42. Advise the applicant of any information in the court's possession that played a significant role in deciding the application for reinstatement, with appropriate redactions. *Disapproved.*

Reinstatement after Suspension

43. Adopt a procedure for the automatic reinstatement of attorneys suspended from practice for one year or less. *Approved*.

44. Credit the period of any interim suspension against the period of suspension imposed as discipline unless the court orders otherwise in a particular case. The court might also consider whether credit for a period of interim suspension should be given on an application for reinstatement after disbarment. *Approved.*

45. Excuse suspended attorneys from the duty to pay the biennial registration fee during the period of suspension and require that attorneys suspended for more than two years successfully complete 24 credits of CLE.

    Disapproved. Instead, the Committee endorsed the recommendation of the Attorney Discipline Subcommittee that suspended attorneys be required to fulfill all registration and CLE requirements during the period of suspension.

46. Adopt the "Bellacosa Rule" authorizing the deferral of a disciplinary investigation or proceeding to enable the attorney to enter a monitoring program if he or she claims a disability due to alcohol or substance abuse. *Disapproved*.

47. Amend § 691.11 of the court's rules (22 NYCRR 691.11) to specify that there be a minimum interval of one year between the denial of an application for reinstatement of a disbarred attorney and the next application. *Approved.*

Reinstatement after Disbarment

48. Require disbarred attorneys, as a condition of reinstatement, to submit proof of their successful completion of at least 24 credits of CLE. *Approved*.

49. Amend § 691.11 of the court's rules (22 NYCRR 691.11) to provide that the recommendation of a Committee on Character and Fitness made on an order referring an application for reinstatement to it for consideration shall be given substantial consideration but shall not be binding on the court in ultimately determining the application. *Approved*.

Reinstatement after Voluntary Resignation

50. Adopt a rule regarding the reinstatement of voluntary resignees requiring them to explain the circumstances of their resignation, the reason for applying for reinstatement, and whether they have been the subject of disciplinary proceedings elsewhere during the period of resignation, to successfully complete at least 24 credits of CLE if they have been removed from the roll of attorneys for more than two years, and to pay a modest fee. All biennial registration fees that would have been paid during the period of removal from the roll of attorneys would be waived. *Approved*.