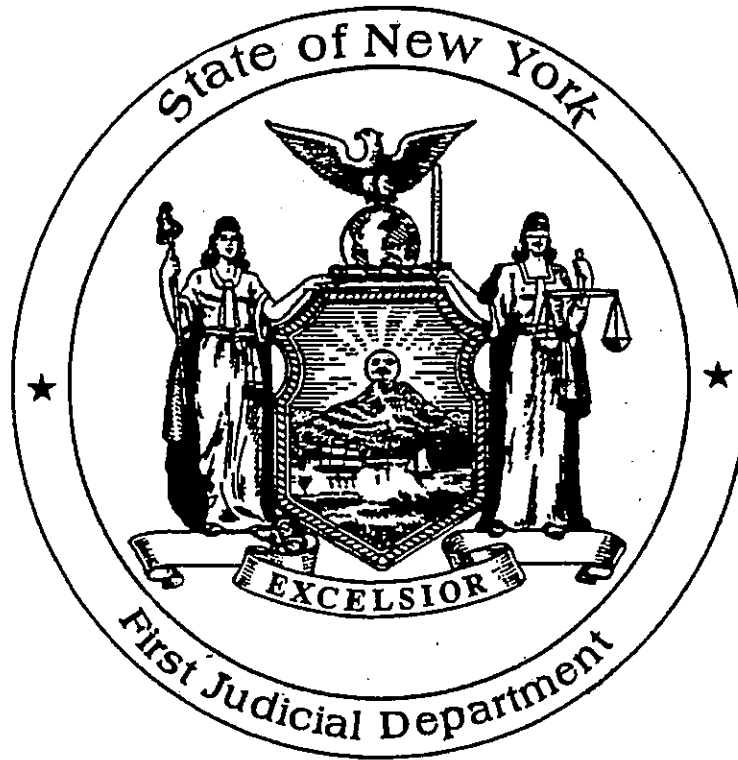


# 2004 ANNUAL REPORT



**The Departmental Disciplinary Committee  
of the Appellate Division of  
the Supreme Court of  
the State of New York,  
First Judicial Department**

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of the Appellate Division  
of the Supreme Court  
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SUPREME COURT, APPELLATE DIVISION  
FIRST JUDICIAL DEPARTMENT  
DEPARTMENTAL DISCIPLINARY COMMITTEE

PAUL J. CURRAN, ESQ.  
CHAIRMAN

61 BROADWAY  
NEW YORK, N.Y. 10006

April 21, 2005

To the Bar and the Public:

This Report of the Committee for 2004 establishes that, just as in past years, the Committee and its Staff have been true to the Committee's mission. This two-fold mission is to protect the public from being victimized by unethical conduct of lawyers and, of equal importance, to make sure that lawyers charged with such conduct are treated fairly and with due process. This Report also reflects that the Committee has continued to reduce its caseload.

Reducing caseloads is plainly important. It cannot, however, be the sole test of the Committee's performance. Investigations that are conducted thoroughly and fairly are more important than the statistics.

The Committee's ten Hearing Panels are now fully staffed, with each Panel having five members, including one non-lawyer. The Panels have continued to perform their duties diligently and effectively.

Credit for the Committee's signal accomplishments in 2004 goes to the dedicated work of our Committee members, who are appointed by the Court and who serve without pay, and to the work of the Committee's Chief Counsel, Thomas J. Cahill, and to the talented and committed professional Staff that he supervises. This Report reflects the Committee's and the Staff's contributions.

Justice John T. Buckley, the Court's Presiding Justice and his judicial colleagues in the First Department, the Court's Liaison Committee with this Committee as well as Chief Clerk Catherine O'Hagan Wolfe and her staff all contributed meaningfully to the Committee's work in 2004.

Sincerely,

  
Paul J. Curran  
Chairman

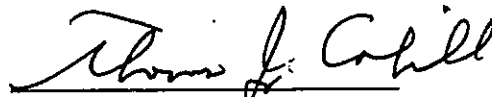
CHIEF COUNSEL'S REPORT

It is difficult to make comparison from year to year in the attorney disciplinary field because matters often take more than a year to be resolved. Important major court decisions may arrive in one year but they were several years in the making. 2004 was like that as can be seen by some of our significant decisions.

We did have a slight increase in complaints but with a full staff and the assistance of members of the Committee we were able to resolve more matters than we received and keep our overall caseload at manageable levels.

We are grateful to the members of the Committee who despite their busy schedules take the time and effort to do the necessary work of the Committee. The Chairman's thorough and prompt review of the Committee's petitions to the Court sets a standard of excellence for staff attorneys, which is much appreciated.

Again, staff and I would be remiss if we failed to acknowledge the constant support of the members of the Court, particularly the justices on the Liaison Committee and Presiding Justice John T. Buckley.



Thomas J. Cahill  
Chief Counsel

### COMMITTEE MEMBERS

Committee members are unpaid volunteers appointed by the Court who fulfill both adjudicative and executive functions. Most significantly, they decide, after appropriate investigation by the staff, whether formal charges should be brought against an attorney, whether a private admonition should be issued, or whether the complaint should be dismissed. If it is decided to formally charge an attorney with misconduct, a Referee will be appointed by the Court to hear evidence, determine whether the attorney violated the Lawyer's Code of Professional Responsibility, and make a recommendation as to sanction. Committee Hearing Panels then review the Referee's report and recommendation, hear argument by the parties on the issues, and make an independent determination to the Court as to liability and sanction.

In 2004, forty-nine Committee members served on ten different Hearing Panels of five members each, usually four lawyers and one non-lawyer.

Eleven other members of the Committee, three non-lawyers, served on the Policy Committee, which reviews proposed admonitions and recommendations to file formal charges. The Policy Committee also considers a wide variety of other matters,

including possible rule changes, setting priorities and administrative issues. Included on the Policy Committee, as Special Counsel appointed by the Court, are Hon. Thomas B. Galligan, Haliburton Fales, 2d, Esq., Denis McInerney, Esq., Stephen L. Weiner, Esq., Martin R. Gold, Esq., and Roy L. Reardon, Esq.

This year's Committee consists of 49 members of the New York Bar, drawn from all areas of the profession and law firms of varying sizes, plus 13 non-lawyer members. The latter, including business executives, a banker, a psychotherapist, an engineer, writers, philanthropists, and former educators served the Committee with dedication and energy. Below are brief biographies of all Committee members, highlighting their diverse accomplishments:

Paul J. Curran (Chairman)

Mr. Curran is Special Counsel with the firm of Kaye Scholer, LLP. He graduated from Georgetown University and Fordham University Law School (LL.B.). He has an honorary L.L.D. from New York Law School. He has served as United States Attorney, Southern District of New York; Special Counsel, U.S. Department of Justice; Chairman, Mayor's Advisory Committee on



the Judiciary and is a fellow of the American College of Trial Lawyers.

Lawrence J. Banks

Mr. Banks is a life member of the California Alumni Association, University of California. He is a graduate of New York University. He served as president of the Military Reserve Officers Association of US - Brooklyn Chapter. He also served on the Board of Governors at Brooklyn Children's Museum; Kiwanis International - International Committee, and the American Institute of Parliamentarians - Long Island Chapter as President/Treasurer.

Eugene F. Bannigan

Mr. Bannigan graduated from Brooklyn Law School. He is a member of the firm of Morgan, Lewis & Bockius LLP. Mr. Bannigan served as an Assistant United States Attorney, Southern District of New York and Chief of the Narcotics and Dangerous Drugs Section. Mr. Bannigan's practice concentrates on complex business litigation and securities and insurance law. He is a member of the Association of the Bar of the City of New York and the American Bar Association.

Sally W. Berg

Ms. Berg is a founder of the Catalog For Giving. She is a graduate of Wheaton College. Ms. Berg has done volunteer work at New York Cornell Hospital - Westchester Division, and was hired as a mental health counselor. While there, she founded the Friends of New York-Cornell. She was the Associate Director of Service and Rehabilitation for the American Cancer Society. To draw attention to the issue of breast cancer, she planned an Outward Bound course for women with breast cancer and arranged for CBS's "Sixty Minutes" to cover the trip. She received a Courage Award from President Reagan for this project. Ms. Berg joined SHARE, a non-profit organization offering emotional and educational support for women with breast and ovarian cancer. She soon became co-director.

Jane Eisner Bram, PhD

Doctor Bram is in private practice as a psychoanalytic psychotherapist, specializing in adults and couples. She is a graduate of New York University and received her doctorate from the New York University School of Social Work. She serves on the New York University Board of Trustees and is an executive of the Alumni Council.

Douglas W. Brandrup

Mr. Brandrup is a senior partner in the firm of Griggs, Baldwin & Baldwin. He graduated from Boston University Law School. He has served on private charitable organizations, such as The Baldwin Foundation and is the current president of the Metropolitan Club of New York. Mr. Brandrup is a member of the American and New York State Bar Associations.

Ann J. Charters

Ms. Charters is an economic and political writer. She graduated from the University of Illinois (M.A. Political Science Major). Her areas of expertise involve covering presidential elections, major economic policy shifts, political upheavals and corporate activities. Ms. Charters served as Venezuelan correspondent for the international edition of Business Week, and as correspondent for Financial Times, among others.

Lisa D. Correll

Ms. Correll is a graduate of Tulane University and received a Masters Degree in Education from New York University. She served as the administrator, office manager and paralegal for the Law Offices of P. Kent Correll from 1993 to 2004. Prior to this position, she worked as a teacher at Montessori Schools.

Denis F. Cronin

Mr. Cronin is a partner with the firm of Cronin & Vris. He graduated from Fordham University School of Law. Mr. Cronin is currently a member of Colgate University Board of Trustees and past Chairman of the National Special Gifts Committee; Chairman, Board of Trustees, Buckley Country Day School and former Chairman of its Capital Campaign; President (2002-2004) of Fordham Law Alumni Association and Trustee of Fordham Law School Alumni Association.

Cheryl Davis

Ms. Davis is Vice President and Counsel to AXA Financial Inc. She is a graduate of Bard College and of Yale Law School. She serves on the New York State Bar Association Committee on Lawyer Alcoholism and Substance Abuse and on the ABCNY Committee on Lawyer Alcoholism.

Telesforo Del Valle, Jr.

Mr. Del Valle is a sole practitioner in New York County, primarily involved in criminal trial practice. He is a graduate of Fordham University and New York Law School and a member of its Alumni Board of Directors. He is the president of the Puerto Rican Bar Association of the State of New York, and the former

president for the northeast region of the Hispanic National Bar Association. He is also a member of the Judiciary Committee of the Association of the Bar of the City of New York, and a former member of the Mayor's Committee on the Judiciary for the City of New York (1991-1994). He is a member of the Advisory Council of the New York State Franklin H. Williams Judicial Commission on Minorities. He is a member of the United States Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts. He is also Vice President of the New York State Association of Criminal Defense Lawyers.

Paul F. Doyle

Mr. Doyle is a graduate of the College of the Holy Cross and New York University School of Law. He is a member of the firm of Kelley Drye & Warren. He is an instructor for the National Institute of Trial Advocacy, a Master of the New York County Lawyers' Association American Inn of Court, a member of the President's Council of the College of the Holy Cross, and former referee for the Departmental Disciplinary Committee.

Haliburton Fales, 2d (Special Counsel to the Policy Committee)

Mr. Fales is a retired partner of the law firm of White & Case. He is a graduate of Columbia Law School where he was on

the Board of Editors of the Law Review. From 1991 to 1996, Mr. Fales was Chairman of the Departmental Disciplinary Committee. In 1983-84 he was President of the New York State Bar Association, and in 1977-78 Vice President of the Association of the Bar of the City of New York. He serves as a Special Master at the Appellate Division, First Department, and is a Fellow of the American College of Trial Lawyers.

Patricia Farren

Ms. Farren is a member of the firm of Cahill Gordon & Reindel. She graduated from Fordham University School of Law, where she was Editor of the Fordham Law Review. She is a member of the Board of Directors, the Legal Aid Society of New York; member, Executive Board, New York County Lawyers' Association, and American Inns of Court.

Steven N. Feinman

Mr. Feinman graduated from Fordham University School of Law. He is a sole practitioner in the Law Offices of Steven N. Feinman, practicing real estate, estate litigation and appellate litigation. He served as law assistant in the Supreme Court, Appellate Division, First Department for three years.

Charlotte Moses Fischman

Ms. Fischman is a litigation partner at Kramer Levin Naftalis & Frankel LLP. She is a graduate of Brandeis University and the Columbia Law School, where she was a member of the Columbia Law Review. She has served on the boards of the Legal Aid Society, the New York Community Trust, the September 11<sup>th</sup> Fund, and the Mexican American Legal Defense Fund, and was a Commissioner of the Ethics Commission for the Unified Court System. She is presently President of the National Alliance for the Mentally Ill - NYC Metro. As an active member of the Association of the Bar of the City of New York, she has been a member of the Executive Committee, Judiciary Committee and Committee on Professional and Judicial Ethics. In addition, she served as an Adjunct Professor of Law at Columbia Law School in the field of ethics and is presently on its Board of Visitors. She is a member of the American Law Institute.

Thomas Fitzpatrick

Mr. Fitzpatrick is in private practice in his own firm, specializing in white collar criminal defense. He is a graduate of Fordham Law School. He served as an Assistant United States Attorney in the Southern District of New York and as Chief of its Criminal Division. He is a member of the New York Council of

Defense Lawyers and a fellow of the American College of Trial Lawyers.

Maranda E. Fritz

Ms. Fritz is a partner in the firm of Fritz & Miller, practicing in white-collar and complex criminal and civil litigation. She graduated from Tulane University School of Law, New Orleans, Louisiana. She served as Senior Investigative Counsel, Bureau of Frauds, New York County District Attorney's Office. She is currently a member of the American Bar Association, American Inns of Court, New York State Bar Association, New York Council of Defense Lawyers and Women Criminal Defense Lawyers.

Thomas B. Galligan (Special Counsel to the Policy Committee)

Judge Galligan retired in 1994 after serving since 1977 as an Acting Supreme Court Justice for New York County. He is a past member of the Board of Advisors of Marist College, and currently a member of the Board of Trustees of Daytop Village and of the New York Foundling Hospital. He is also a member of the First Department Screening Panel for Capital Defenders and serves on the Indigent Defense Organization Oversight Committee for the First Department.



William A. Gallina

Mr. Gallina graduated from St. John's University Law School. He is currently a sole practitioner whose practice is in the exclusive area of personal injury, medical malpractice and products liability. He has been a long-standing member of the American Bar Association, New York State Bar Association, American Trial Lawyers Association and Bronx County Bar Association.

Paul G. Gardephe

Mr. Gardephe is a member of the firm of Patterson, Belknap, Webb & Tyler, LLP, with a focus on white collar criminal defense, internal corporate investigations, and appeals. Previously he served as Vice President and Deputy General Counsel of Time, Inc. He is a graduate of the University of Pennsylvania and Columbia University School of Law where he was a Harlan Fiske Stone Scholar. He served as an Assistant United States Attorney in the Southern District of New York where he was Chief of the Appeals Unit of the Criminal Division. He has also served as Special Counsel to the Department of Justice on sensitive investigations.

Joseph Steven Genova

Mr. Genova is a graduate of Dartmouth College (1974) and Yale Law School (1977). He has served, and chaired, numerous committees of the Association of the Bar of the City of New York, New York State Bar Association and Federal Bar Council. They include the City Bar's Judiciary Committee (1988-1991, Vice Chair 1990-1991, frequent interim), the State Bar President's Committee on Access to Justice (Co-chair 1990-2000), and the Federal Bar Council Public Service Committee (1991-, Chair 1994-2000). Since 1986 he has been a mediator in the Eastern District of New York and an arbitrator in the Southern District of New York since 1992. He has been a litigation partner of Milbank, Tweed, Hadley & McCloy LLP since 1986 and serves as the firm's Director of Public Service (pro bono programs). He has written and lectured on ethical issues involving attorney trust accounts.

Alfred G. Gerosa

Mr. Gerosa earned a Bachelor's degree in Civil Engineering from the University of Virginia. He is Chairman of the New York College of Podiatric Medicine and the Executive Committee of the Building Trades Employers' Association. Mr. Gerosa also serves on the following trust funds as employer representative: Local 780 Cement Masons, Local No. 46 Metal Furring and Lathing, the

Cement & Concrete Workers and the Operating Engineers Local 14. He is President of the New York Concrete Construction Institute, Inc. and the Concrete Alliance and he is Chairman of the Executive Committee of the Cement League.

Martin R. Gold (Special Counsel to the Policy Committee)

Mr. Gold is a partner in the firm of Sonnenschein Nath & Rosenthal. From 1965 to 1968 he was an Assistant United States Attorney in the Southern District of New York. Mr. Gold has been an adjunct Professor of Law at Cardozo Law School and is a member of the boards of the Lawyers' Committee for Civil Rights Under Law and New York Lawyers for the Public Interest.

Robert L. Haig

Mr. Haig is a partner at the law firm of Kelley Drye & Warren. He was the President of the New York County Lawyers' Association from 1992 to 1994. Mr. Haig was the Chair of the Committee on the Judiciary of the Association of the Bar of the City of New York from 1989 to 1992 and currently chairs that Association's Council on Judicial Administration. He was a member of the New York State Bar Association's Executive Committee from 1991 to 1994, was the founder and first Chair of that association's Commercial and Federal Litigation Section, and

also chaired its Committee on Federal Courts. Mr. Haig is the Co-Chair of the Commercial Courts Task Force established by Chief Judge Judith S. Kaye to create the Commercial Division of the New York State Supreme Court. He is the Editor-in-Chief of a three volume book, published by West Publishing Company in 1995, entitled Commercial Litigation in New York State Courts.

William E. Hammond

Mr. Hammond is with the firm of Warshaw Bernstein Cohen Schlesinger & Kuh LLP where he is engaged in corporate law. He is a graduate of Yale University, Columbia University Business School, and the Benjamin N. Cardozo School of Law. He is a member of the Association of the Bar of the City of New York where he serves as Chairman of the Committee on Alcoholism and Substance Abuse and is a member of the New York State Bar Association Committee on Lawyer Alcoholism and Drug Abuse.

Patricia Hatry

Ms. Hatry, a partner in the law firm of Davis & Gilbert, is a graduate of Wellesley College and Columbia Law School. She has served as a Civil Court Small Claims Arbitrator, on various committees of the Association of the Bar of the City of New York,

and as a member of the boards of various charitable organizations.

Patricia M. Hynes

Ms. Hynes is a trial lawyer and Of Counsel to Milberg Weiss Bershad & Schulman LLP where she specializes in complex securities and commercial litigation. She received her law degree from Fordham Law School where she was a member of the Law Review. Ms. Hynes served as law clerk to Joseph C. Zavatt, Chief Judge of the United States District Court for the Eastern District of New York, and was an Assistant United States Attorney in the Southern District of New York from 1967 to 1982 where she held several executive positions, including Executive Assistant United States Attorney.

A Fellow of the American College of Trial Lawyers, Ms. Hynes has been included in the list of Best Lawyers in America since 1993 and has been included in the National Law Journal's Profile of America's Top 50 Women Litigators (December 17, 2001) and its Survey of The Fifty Most Influential Women Lawyers in America (March 30, 1988).

Presently, Ms. Hynes chairs the Merit Selection Panel for Magistrate Judges for the Southern District of New York, and since December 2003 has been Chair of the Board of Directors of

the Legal Aid Society. Ms. Hynes also has served as Chair of the American Bar Association's Standing Committee on the Federal Judiciary from July 2000 to August 2001, having previously served as the Second Circuit Representative on that Committee from 1995 to June 2000.

Susan M. Karten

Ms. Karten graduated from Brooklyn Law School, and is President of the Brooklyn Law School Alumni Association. She is a partner in the firm of Castro & Karten, where she practices in the areas of personal injury and medical malpractice litigation. She served on a Blue Ribbon Panel established by Chief Judge Judith S. Kaye of the State of New York, and as Executive Assistant in the New York State Court of Appeals. She currently serves on the Executive Board of the New York State Trial Lawyers Association.

John J. Kenney

Mr. Kenney graduated from Fordham University School of Law. He is a member of the firm of Simpson, Thacher & Bartlett. Mr. Kenney served as an Assistant United States Attorney, Southern District of New York and Executive Assistant United States Attorney. He is a member of the Association of the Bar of

the City of New York, New York State and the American Bar Associations, and the New York County Lawyers' Association.

David G. Keyko

Mr. Keyko is a partner in the firm of Pillsbury Winthrop Shaw Pittmann where he practices in the areas of antitrust law and related litigation. He is a graduate of Yale University and received his law degree from New York University. He is a member of the board of directors of MFY Legal Services, Inc.

Myron Kirschbaum

Mr. Kirschbaum is a partner in the firm of Kaye Scholer, LLP where he is engaged in complex business litigation and securities and insurance law. He received his law degree from Harvard University where he was editor of the Harvard Law Review. After graduation, he served as a law clerk in the United States Court of Appeals for the Second Circuit. He is a member of the Policy Committee.

Lenore Kramer

Ms. Kramer is a partner in the firm of Kramer & DeVries where she practices plaintiffs' personal injury and medical malpractice litigation. She graduated from Boston University

School of Law. She is a past president of the Women's Bar Association of the State of New York, the Bronx County Bar Association and the Metropolitan Women's Bar Association. She is the immediate past president of the New York State Trial Lawyers Association and has been a member of the board of directors for many years. She is a past chair of the Committee on Tort Litigation of the Association of the Bar of the City of New York. Ms. Kramer is a Commissioner on the Franklin H. Williams Judicial Commission on Minorities and a member of the Office of Court Administration Advisory Committee on Civil Practice, Committee on Case Management and Task Forces and Professionalism and Conduct. She previously served as a member of the Mayor's Committee on the Judiciary.

William Francis Kuntz, II

Dr. Kuntz is Of Counsel to the firm of Constantine Cannon. He is a graduate of Harvard Law School and holds a Ph.D. in History from Harvard as well. He is a member of the Executive Committee of the Association of the Bar of the City of New York, and is a member of the New York County Lawyers' Association, the New York State Bar Association, the American Bar Association, the Metropolitan Black Bar Association and the Brooklyn Bar Association. He is a Commissioner and Past Chairman of the



Civilian Complaint Review Board of the City of New York. He is involved in pro bono activities as a member of the Board of Directors of the Legal Aid Society of the City of New York, and the Brooklyn Hospital Corporation and Advisory Committee on Civil Practice in the State of New York. He is director of the Federal Bar Foundation for the Second Circuit, and a trustee of the Practising Law Institute.

Andrew M. Lawler

Mr. Lawler has his own law firm specializing in representing clients in federal and criminal regulatory investigations, trials and appeals as well as corporate internal investigations. He is a graduate of Fordham College and Fordham Law School. He is a member of the American College of Trial Lawyers, New York, and National Association of Defense Lawyers, Federal Bar Council, American Bar Association and the Association of the Bar of the City of New York.

Marvin Leffler

Mr. Leffler has been president of Town Hall Foundation for the past 20 years. His principal activities and positions include: trustee associate, New York University; member of Mayor's Midtown Citizens Committee; Panelist, American

Arbitration Association; President (retired), Flexible Fabricators, Inc.; member, New York Regional Board Anti-Defamation League; former Chairman of the Board, National Council of Sales Organizations; past Co-Chair and Director, NYU Alumni Association; author of Sales Books published by Prentice Hall and Lecturer; listed in Who's Who in the East.

Burton N. Lipshie

Mr. Lipshie is a member of the firm of Stroock & Stroock & Lavan, LLP. He graduated from Columbia University School of Law. He is currently an Adjunct Professor of Law, Cardozo School of Law. He served as Law Secretary, New York State Supreme Court and as Assistant District Attorney, New York County. He is a member of the bars of the State of New York, Supreme Court of the United States, the U.S. District Courts for Southern and Eastern Districts of New York, the U.S. Court of Appeals for the Second Circuit, and the Tax Court of the United States. He is also a member of the New York State Courts Advisory Committee on Civil Practice; Special Committee on Supreme Court Law Clerks; Arbitration Panel, United States District Court for the Eastern District of New York, and Committee on Civil Practice Law and Rules, New York State Bar Association. He was a Special Master,

Supreme Court, New York County, and a member of the Mayor's Committee on the Judiciary, City of New York.

Frank J. Loverro

Mr. Loverro is in private practice with a focus on criminal and housing law. He is a graduate of Bernard Baruch College and New York Law School. He is currently the Chairman of the Board of the Bronx County Bar Association where he is Chairman of the Housing Committee and a member of the Criminal Courts Committee. He is also a member of the Columbian Lawyers, Black Bar Association of Bronx County, and Metropolitan Women's Bar Association.

Henrietta Lyle

Ms. Lyle is director of the Sister City Program of the City of New York, Inc. She graduated from Fordham University, New York. Ms. Lyle served as special assistant to ambassadors, United Nations Mission to the United Nations.

Mary B. Maguire

Ms. Maguire is a partner in the firm Ebusinessware, Inc. She is graduate of Yale University and St. John's University, M.B.A. (Finance), and has also received honorary degrees from St.

John's University and Marymount University. Her affiliations include: member, Vatican Delegation to the United Nations; Trustee, St. John's University; member, Financial Advisory Committee, Carmelite Sisters Healthcare Network, and member, Ireland-American Economic Advisory Board.

Douglass B. Maynard

Mr. Maynard is a graduate of Yale University and New York University Law School. He is a partner in the firm of Akin Gump Strauss Hauer & Feld. His practice focuses on libel and media cases, complex civil litigation and white collar defense matters. He served as Assistant United States Attorney, United States Attorney's office, Southern District of New York.

Charles C. Marino

Mr. Marino is a licensed Professional Engineer and president and owner of AMCC Corporation, which is involved in large public works construction projects. He has a Civil Engineering degree from Lehigh University and an M.A. from the University of Missouri.

John W. McConnell

John W. McConnell is a graduate of Harvard College and Harvard Law School. He served as an assistant in the Office of the Secretary of the Governor of New York, as an Assistant Attorney General and Deputy Solicitor General in the Office of the New York State Attorney General, and as an Executive Assistant to the Presiding Justice of the Appellate Division, First Department. He is currently a solo practitioner, primarily engaged in commercial litigation and appellate practice. He is a member of the Association of the Bar of the City of New York.

Lawrence D. McGovern

Mr. McGovern is an administrative law judge and arbitrator with the City of New York and dispute resolution organizations. He graduated from Fordham University School of Law, LL.B. and New York University School of Law, LL.M. He is a member of the American Bar Association where he served as Chairman and Vice-Chairman, Professional Issues Committee, Tort and Insurance Practice Section, among others; a member of the New York State Bar Association, and Association of the Bar of the City of New York.

Denis McInerney (Special Counsel to the Policy Committee)

Mr. McInerney was the Chairman of the Departmental Disciplinary Committee from 1997 until 2002. He was the senior litigation partner at the law firm of Cahill Gordon & Reindel until 1991, when he took senior counsel status. He graduated from Fordham Law School, where he was editor of the Law Review; president of the New York County Lawyers' Association from 1982-84; Vice Chair of the Committee on Character and Fitness for admission to the Bar of the State of New York, First Judicial Department, from 1980 to 1996, and trustee of Fordham University from 1988 to 1994. At the request of the New York State Bar Association, he co-chaired (with Associate Justice G. Robert Witmer of the Appellate Division, Fourth Department) a committee that produced "Practitioners' Handbooks" on Appeals to the Appellate Divisions and the Court of Appeals of the State of New York, published by the State Bar Association in 1979 and 1981 respectively. He currently serves as Chairman of Fordham Law School's Board of Visitors; President of the New York County Lawyers' Association American Inn of Court; a director of Volunteers of Legal Service, Inc. and other charitable organizations, and a member of the Mayor's Advisory Committee on the Judiciary. He is a Fellow of the American College of Trial Lawyers and a member of the American Law Institute.

Mathias E. Mone

Mr. Mone is a graduate of Villanova University and Fordham Law School. He is senior counsel in the firm Cahill Gordon & Reindel. His practice was devoted almost entirely to civil litigation in both the state and federal courts. Since taking senior counsel status, he acts as volunteer arbitrator with the National Association of Security Dealers.

Lynn K. Neuner

Ms. Neuner is a member of the firm of Simpson Thacher & Bartlett LLP. She practices in the areas of insurance coverage, securities, false advertising and complex commercial litigation. She graduated from Yale Law School, where she is a member of the Board of Directors of the Yale Law School Alumni Fund. She is a member of the Association of the Bar of the City of New York, where she is a member of the Federal Courts Committee, the New York State Bar Association, and the American Bar Association, where she is Co-Chair of the Property Insurance Sub-Committee of the Insurance Coverage Litigation Committee.

Mercedes A. Nesfield

Ms. Nesfield is the retired Director of the Office of Equal Opportunity of the New York City Board of Education. She holds a

B.A. from Brooklyn College and a Masters Degree in Educational Administration from Baruch College. She has served as the Executive Assistant to the President of the Board of Education of the City of New York and as Executive Director and Executive Assistant to the Chairman of the New York City Commission on Human Rights.

Jane W. Parver

Ms. Parver is a partner at the law firm of Kaye Scholer LLP. She has served as an Assistant United States Attorney for the Southern District of New York; member, New York City Conflicts of Interest Board appointed by former Mayor Rudolph W. Guiliani; and Referee, New York State Commission on Judicial Conduct. She established and now oversees the Susan Price Carr Scholarship Committee, and serves on the New York Council of Defense Lawyers, Federal Bar Council.

Anthony M. Radice

Mr. Radice is a member of the firm of Morrison & Foerster, LLP, where he practices litigation in the area of intellectual property. He is a graduate of Cornell University and Cornell Law School. He is a mediator in the Southern District of New York



Mediation Program and a former trustee of the Federal Bar Council.

Roy L. Reardon (Special Counsel to the Policy Committee)

Mr. Reardon is a partner at the law firm of Simpson Thacher & Bartlett. His professional affiliations include the American Bar Association, the New York State Bar Association and the Association of the Bar of the City of New York. He serves as a Special Master at the Appellate Division, First Department, and is a Fellow of the American College of Trial Lawyers.

Andrew W. Regan

Mr. Regan is a partner in the firm of Shearman & Sterling where he represents both domestic and international clients in a broad range of estate planning and tax matters. He is a graduate of the College of St. Columba, and Dublin University, Trinity College, Dublin, Ireland and received his law degree from Fordham University School of Law. He is a member of the American Bar Association, New York State Bar Association, and the Society of Trust and Estates Practitioners.

Timothy G. Reynolds

Mr. Reynolds is a partner in the firm of Skadden Arps Slate Meagher & Flom LLP. He graduated from Fordham University School of Law. His practice includes matters involving insurance and reinsurance as well as insurance coverage litigation and arbitration. Additionally, Mr. Reynolds has worked on the successful constitutional challenge in the United States Supreme Court to Connecticut's and New Mexico's beer price regulations and statutes. He has also written many articles which include, "The Speedy Trial Acts, An Empirical Study," Fordham Law Review; and "Punitive Damages in Florida Product Liability Action: A Reexamination," Florida Trial Advocate Quarterly.

Michael J. Rosenberg

Mr. Rosenberg graduated from New York University (M.B.A.), where he completed all his studies for a Ph.D. He was involved in private practice as an account executive for several years. Mr. Rosenberg held various offices at NYU where he received a Meritorious Service Award. He served as president of the New York University Club, chairman of the NYU Partners Committee (GBA), and former president of NYU, GBA Alumni Associations.

Mr. Rosenberg served for three years as an officer in the U.S. Army, including one year in Korea. He received the Silver Star, Bronze Star, Combat Medical Badge and various other awards.

Martin S. Rothman

Mr. Rothman is a graduate of Cornell University and received his J.D. degree from New York University. He is a partner in the firm of Seligson, Rothman & Rothman. He has lectured in New York Practice, Appellate Practice and tort law.

Augustin J. San Filippo

Mr. San Filippo graduated from New York University School of Law. He is currently in private practice in the firm of Augustin J. San Filippo, P.C. His extracurricular activities for the bar include: Chair, Joint Conference Committee on Court Congestion and Related Problems; Medical Malpractice Panel, First Department; Moot Court Judge, New York University School of Law; Secretary, New York State Bar Association Judicial Administration Committee and many committees of the Association of the Bar of the City of New York.

Samuel W. Seymour

Mr. Seymour is a partner in the firm of Sullivan & Cromwell where he practices in the area of complex litigation. He received his law degree from Columbia University and served as an Assistant United States Attorney in the Southern District of New York.

Daniel E. Siff

Mr. Siff graduated from New York Law School. He is currently affiliated with the firm of Ledy-Gurren & Blumenstock, L.L.P. His pro bono activities include being a member of the board of directors and past president of Goddard-Riverside Community Center.

John S. Siffert

Mr. Siffert graduated from Amherst College cum laude and Columbia Law School. Mr. Siffert was law clerk to Hon. Murray I. Gurfein, United States District Judge for the Southern District of New York, and served as an Assistant United States Attorney in the Southern District of New York. He is a fellow of the American College of Trial Lawyers and is Chair of its New York Downstate Committee. He is Chair of the Federal Legislation Committee of the Association of the Bar of the City of New York.

He is Secretary to the New York Lawyers for Public Interest and serves on the Board of the New York Council of Defense Lawyers. He is a mediator for the United States District Court for the Southern District of New York and a Special Master for the First Department. Mr. Siffert has been on the adjunct faculty of New York University Law School since 1979 and currently holds the academic appointment of Adjunct Professor. Mr. Siffert has co-authored Business Crime (Matthew Bender 1981), Modern Federal Jury Instructions - Criminal (Matthew Bender), and Modern Federal Jury Instructions - Civil (Matthew Bender).

Eugene P. Souther

Mr. Souther is senior counsel to the firm Seward & Kissel. He received an LL.B from Fordham University School of Law. Mr. Souther is a Fellow of the American College of Trial Lawyers and served on the New York Downstate Committee of the College. He was president of the New York County Lawyers' Association; served in the House of Delegates of the New York State Bar Association and a delegate to the House of Delegates of the American Bar Association and Vice Chairman of the International Bar Association.

Eric J. Warner

Mr. Warner is a litigator for the Metropolitan Transit Authority. He is a graduate of Albany Law School. He was involved in public service as a prosecutor for over 20 years in the capacity of Senior Executive Assistant District Attorney, Bronx County; Chief, Juvenile Offense Bureau, and Assistant District Attorney. He is a member of the New York State Bar Association.

Stephen L. Weiner (Special Counsel to the Policy Committee)

Mr. Weiner is in private practice in his own firm. He is a graduate of Columbia College and also received his law degree from Columbia University. He was formerly Chairman of the New York State Commission of Investigation. He is a member of the Association of the Bar of the City of New York, New York State Bar Association, the American Bar Association and is a member of the Board of Directors of the Legal Aid Society. He serves on the Policy Committee of the Departmental Disciplinary Committee.

Susan Welsher

Ms. Welsher is a former teacher of early childhood education in Bedford Stuyvesant and English as Second Language in East Harlem. Later, she was a paralegal and administrator at the law

firms of Stroock Stroock & Lavan, Reid & Priest, and Cravath Swaine & Moore. She currently donates much of her time to a variety of civic, cultural and charitable organizations.

## A BRIEF OVERVIEW OF THE DISCIPLINARY PROCESS

### Complaints, Investigations and Dismissals

The disciplinary process commences with the filing of a complaint against an attorney, who is referred to as a "respondent." 3612 matters were opened in 2004, mostly from clients, but also from other attorneys, and members of the public at large. In a relatively few cases, the Committee opened sua sponte investigations, based on information which appeared in judicial opinions, professional journals, referrals from the judiciary or other sources.

Each complaint is date-stamped, numbered and entered into the Committee's computer system which generates a printout of the respondent's disciplinary history with the Committee as well as current information from the respondent's registration with the Office of Court Administration. The complaint is then screened by a senior staff attorney, who makes a preliminary recommendation as to whether the Committee has jurisdiction, whether it should be referred to another public agency or disciplinary committee or for mediation by a mediator on the mediation panel of either the New York County Lawyers' Association, the Association of the Bar of the City of New York or the Bronx County Bar Association.



The screening attorney may also recommend rejection of a complaint for any one of several reasons; e.g., there is no allegation of misconduct, the complaint seeks legal advice, is an attempt to collect a debt, or involves a fee dispute. In 2002, a mandatory arbitration program was instituted to resolve fee disputes in civil and matrimonial matters, where the representation began after January 1, 2002 and involves a dispute of more than \$1,000 and less than \$50,000. If the fee dispute is in a matrimonial matter where the representation began before January 1, 2002, the complainant is still referred to the mandatory fee dispute resolution for matrimonial matters.

If the complaint involves allegations which are substantially similar to those in pending litigation, the Committee may, but need not, defer the matter pending resolution of the litigation. Because the allegations may be resolved in the litigation and a judgment may be binding on the respondent, the Committee may decide to close the matter, without prejudice to reopening it after resolution of the underlying litigation. That decision must be made by a lawyer member of the Committee. Similarly, if it appears that the complaint has no merit, a lawyer member of the Committee may dismiss the matter after the initial screening.

If it appears from the complaint that serious misconduct has occurred, the matter is brought to the attention of the Chief Counsel or the First Deputy Chief Counsel for direct assignment to a staff attorney for expedited action. During the initial screening, a matter may also be directly assigned to a staff attorney investigating other complaints involving the same respondent.

Following the initial screening, a paralegal monitors the case while preliminary information is obtained from the respondent, who files an answer to the complaint, and from the complainant who is sent a copy of the respondent's answer for a reply. The paralegal then writes a summary of the allegations and defenses and refers the file to a senior staff attorney who performs a "second screening" or further evaluation of the complaint, answer and reply. The second screener may also recommend referral to mediation at this point. If the second screener recommends dismissal, that recommendation along with the paralegal's written summary and the file is then reviewed by a Committee member who is a lawyer. A matter that warrants additional investigation is forwarded to the Chief Counsel for his review and assignment to a staff attorney depending on whether the possible misconduct, if established, would warrant no

more than an admonition or whether it would merit public discipline.

The staff attorney who is assigned to the matter obtains further documentation, using subpoenas when necessary, interviews witnesses, obtains further information from the complainant and may question the respondent on the record and under oath.

When the investigation is complete, the staff attorney recommends dismissal, an admonition (which is private discipline) or formal charges. Again, all dismissal recommendations are independently considered by a Committee member, who must approve the recommendation before it is implemented. After being notified of the dismissal, the complainant has a right, within thirty days, to request that another Committee member review the dismissal of the complaint.

### Dispositions

#### Admonitions

The Committee will issue a Letter of Admonition if an investigation reveals that a lawyer has violated the Code of Professional Responsibility, but not seriously enough to warrant a more severe sanction. For example, an admonition might be issued if a lawyer neglected one legal matter but the client was not seriously injured.

Although it is private and remains confidential, an admonition is a finding of misconduct and becomes a part of the lawyer's permanent disciplinary record, and may be considered in determining the extent of discipline imposed in the event that there are future charges of misconduct (see, 22 NYCRR §605.5[b]). A staff lawyer's recommendation to issue an admonition is reviewed by a supervisor and the Chief Counsel, and must be approved by two Policy Committee members. In 2004, the Committee issued 89 Letters of Admonition covering 95 separate complaints. (An admonition may be based on more than one complaint against a respondent.)

#### Formal Proceedings

A staff lawyer's recommendation that formal charges be filed must be based on a demonstration of misconduct and approved by the staff lawyer's supervisor, the Chief Counsel and two lawyer members of the Policy Committee. When formal charges are approved, a request is made to the Court for the appointment of a Referee to hear the charges. Under the Court's rules, all hearings on formal charges are conducted by Court-appointed Referees. Respondents have the right to appear, the right to counsel, the right to cross-examine staff witnesses, and to present their own witnesses and exhibits. The proceedings before

the Referee are transcribed. When the hearing is concluded, the Referee must file a written report within sixty days containing findings of facts, conclusions of law and, if a charge has been sustained, a recommendation as to sanction.

The Chair of the Committee then refers the Referee's report to a Hearing Panel, consisting of four lawyers and a non-lawyer member of the Committee. The Hearing Panel reviews the full record of the proceedings as well as the Referee's Report and Recommendation. It then convenes to hear oral argument as to whether the charges should be sustained, and whether to affirm, disaffirm, or affirm in part the Referee's findings of fact, conclusions of law and recommendation. No additional evidence may be considered at the oral argument, which is not transcribed. The Hearing Panel is required to issue its report containing its written "Determination" within ten days after the argument, or the submission of briefs, whichever is later.

A formal hearing can result in a recommendation of disbarment, suspension, public censure, private reprimand, or dismissal. The first three, which are public discipline, may be imposed only by the Court; a private reprimand may be imposed by the Committee on its own or by referral from the Court (22 NYCRR §605.5[a]).

In some cases where the Court has determined that a lawyer has been convicted of a crime which is not a felony, but is a "serious crime" under New York law, or when a lawyer who has been suspended or disbarred applies for reinstatement, the Court may assign the case to a Referee or directly to a Hearing Panel. In the latter case, the Hearing Panel itself takes testimony, receives evidence and renders a recommendation as to what action should be taken by the Court.

#### Application to the Appellate Division

In all disciplinary matters requiring action by the Court, the Committee notifies the Appellate Division in a petition which includes the record before the Referee, describes the prior proceedings in the matter, and the Court action requested. When the Court decides the matter, it issues an order, which is usually published in the New York Law Journal, unless the Court determines that the decision should remain unpublished.

The Committee files petitions with the Court to confirm a Referee's Report and Recommendation and a Hearing Panel's Determination. Staff, with permission of the Chairman, may also file a motion to disaffirm a Hearing Panel's determination. In addition, the Committee, in certain cases, files petitions with the Court to initiate disciplinary action, rather than to confirm

or disaffirm action taken by referees and hearing panels. For example, the Committee may seek a court order applying the doctrine of collateral estoppel and finding a lawyer guilty of violating the Code on the basis of prior civil or criminal court decisions. The petition may be granted where the issues in the prior action and the disciplinary matter are identical to the potential charges against a respondent who has had a full and fair opportunity to litigate in the prior proceeding.

Certain other matters are also filed directly with the Court. For example, when a lawyer fails to cooperate with a Committee investigation or when a lawyer's conduct poses an immediate threat to the public, the Committee may file a request for an interim suspension pending a hearing under 22 NYCRR §603.4(e).

In addition, the Committee files a petition directly with the Court when an attorney has been convicted of a felony in New York or the equivalent of a New York felony in another jurisdiction (see, Judiciary Law §90[4]). Similar Committee applications are made if an attorney has been convicted of a "serious crime" as defined in §90(4)(d) of the Judiciary Law (see, 22 NYCRR §603.12); if an attorney has been found guilty of an ethical infraction in another jurisdiction and "reciprocal discipline" is warranted (see, 22 NYCRR §603.3); if an attorney

has violated a court-ordered suspension; or has become incapacitated due to a mental or physical infirmity (see, 22 NYCRR §603.16).

Hearings before Referees and Hearing Panels are normally closed to the public, but they are otherwise conducted like trials in that testimony is taken and exhibits are received with a transcript made of the entire proceeding. A respondent may waive confidentiality and request a public hearing. If the Court eventually imposes public discipline, the entire record is available for public inspection at the First Department Committee on Character and Fitness of Applicants for Admission to the Bar.



### REPRESENTATIVE CASES

In 2004, the Appellate Division, First Judicial Department, publicly disciplined 59 lawyers as follows: 23 disbarments, five resignations from attorneys facing charges, 24 suspensions and seven public censures. The Court issued two private reprimands. Some of the cases prosecuted by Committee staff lawyers that have become a matter of public record in 2004 are reviewed below:

#### Matter of Jonathan A. Weinstein, 4 AD3d 29 (1<sup>st</sup> Dep't 2004)

Jonathan A. Weinstein was disbarred for his misconduct in three separate guardianship, kinship and estate matters. The Court found that he made recklessly inaccurate and knowingly false statements in affidavits he drafted, adjourned a hearing without notifying opposing counsel, converted a client's funds by double-billing him for expenses, improperly attempted to solicit a client, submitted misleading affidavits of legal services to the Surrogate's Court, charged and collected excessive fees and filed numerous misleading submissions with the Committee in the course of its investigation. (Staff Counsel Garber)

#### Matter of Kenneth Heller, 9 AD3d 221 (1<sup>st</sup> Dep't 2004)

Mr. Heller was disbarred on the basis of disciplinary charges of improper communication with jurors in his personal

injury suit; his outrageous threatening and disruptive conduct during depositions and in Court; his discourtesy toward witnesses, opposing counsel, a Court-appointed Referee, and a Supreme Court Justice; his refusal to accept adverse rulings; and his abuse of a *pro se* litigant. Notably, the Court sustained all charges, reversing the findings below regarding false testimony to the Committee and in an affirmation concerning his conduct with the jury. In imposing disbarment, the Court considered not only his intolerable conduct as reflected in the charges, but also Mr. Heller's long history of similar conduct in various litigated matters which resulted in sanctions and sharp criticism in written opinions. The Court found that Mr. Heller's consistent, reprehensible, unprofessional behavior, disrupting and thwarting proper legal process through both physical and verbal aggression, required disbarment. The Court of Appeals denied Mr. Heller's motion for leave to appeal (3 NY3d 607), and applications to extend time to file a petition for certiorari with the U.S. Supreme Court have been denied. (Staff Counsel Edelstein)

Matter of Richard L. Wertis, 10 AD3d 141 (1<sup>st</sup> Dep't 2004)

Wertis intentionally converted approximately \$6,600 in his capacity as the trustee of a trust fund created for the benefit

of a baby girl kidnapped from Harlem Hospital. Wertis converted the funds in two withdrawals, one for \$5,000, and another for \$1,600. The kidnapping took place in 1997 when the child was just two and one-half weeks old and she has not been found to date. Wertis represented the child's parents in a lawsuit against the New York City Health and Hospitals Corporation and obtained a \$750,000 settlement, part of which went into the aforementioned trust. Wertis was disbarred despite his unblemished disciplinary record, his remorse, evidence of "his generally good character," and his repayment of the funds, because he converted the funds on more than one occasion and engaged in deceit to conceal his misconduct. The Court also noted the added factor that the "victim" was a kidnapped child. (Staff Counsel Lipkansky)

Matter of The Law Firm of Wilens and Baker and Lawrence Wilens, 9 AD 3<sup>rd</sup> 213 (1<sup>st</sup> Dep't 2004)

The Court imposed public discipline (censure) on a law firm for the first time since the Code was amended in 1996 to apply to law firms as well as individual attorneys. The misconduct at issue was a pattern of rude and demeaning treatment by the firm's attorneys, particularly Mr. Wilens, to vulnerable non-English speaking aliens in immigration matters, as well as a failure to

provide adequate information about the status of their clients' matters. In most cases the firm, which is known to many by virtue of their subway advertisements offering payment plans, demanded that the clients pay fees owed under the payment plan before any attorney would agree to speak with them. In the disciplinary proceeding all facts and charges were stipulated. In imposing public censure, the Court considered numerous factors in mitigation including, among others, significant steps taken by the firm and Mr. Wilens to improve firm practices and procedures, and refunds of fees to each of the complainants. Rejecting respondents' argument that public discipline was not warranted, the Court noted both the "deterrent and punitive functions" of disciplinary sanctions. (First Deputy Chief Counsel Cohen)

Matter of Melinda Lowell, 14 AD3d 41 (1<sup>st</sup> Dep't 2004)

In a reciprocal discipline proceeding, the Court disbarred an attorney for an egregious pattern of violating legal and ethical obligations. This case presents a rare departure from the usual practice of imposing the same discipline imposed by a foreign jurisdiction. Lowell was suspended for three years in New Jersey, but the Court found that disbarment was warranted in New York under its own precedents for similar patterns of misconduct.

The misconduct included creating fraudulent documents, which respondent then submitted to a court; counseling her client to lie in a certification and to disobey a court order; directing an employee to work on a client's case after the client had discharged respondent; eliciting false testimony from a witness during a trial; making misrepresentations to clients, the court and third parties; failing to refund the unearned portion of a retainer; failing to file a motion as requested by a client; failing to notify her adversary of the submission of an order and of an insertion made to a stipulation; directing a paralegal in her employ, who formerly worked for respondent's adversary in a pending case, to work on that case and even questioning that paralegal about her adversary's litigation strategy on that case; and billing clients for work done by paralegals at the higher rate charged for attorneys. (Staff Counsel Shed)

Matter of Fredric J. Roth, 14 AD3d 29 (1<sup>st</sup> Dep't 2004)

The Court struck the name of Fredric J. Roth from the roll of attorneys and counselors-at-law on the basis of his affidavit of resignation in which he acknowledged that he could not successfully defend himself against charges that he engaged in an egregious conflict of interest and significant over-reaching with respect to a wealthy client of his firm. Specifically,

Mr. Roth entered into several partnerships with the client without advising the client that the firm, which was also representing the partnerships, was not protecting the client, whose interests were greatly compromised when the partnerships later suffered reversals. In addition, when Mr. Roth became personally insolvent, and was indebted to the client, he attempted to improperly transfer ownership of his house out of his name to protect his asset. Finally, when the client was forced to sue him, Mr. Roth did everything to impede the suit. (Staff Counsel Goldstein)

Matter of Thomas Zichettello, 12 AD3d 128 (1<sup>st</sup> Dep't 2004)

This case is significant because the Court declined to set a precedent when it denied an attorney's motion for an order of disbarment nunc pro tunc. The Committee filed a motion to strike respondent's name from the roll of attorneys when it learned of his seven year old felony conviction. Respondent, who admittedly failed to notify the Committee of his conviction, cross-moved to have his disbarment applied retroactively to the date of his conviction on the grounds that he was directed by counsel not to report his conviction because it would be reported automatically and because he "instituted a self-imposed disbarment" and ceased practicing law. The Court rejected respondent's argument

explaining that if he were granted such relief, "he will have succeeded in avoiding compliance with statutory provisions and rules to which all other disbarred attorneys have been subject and of which all attorneys are charged with knowledge." Further, the Court held that by his failure to report his conviction, respondent "effectively shielded himself from the discipline of this Court, which, as much as the conduct of an attorney subject thereto, guides the public in its perception of the Bar." The Court ordered respondent disbarred as of the date of Staff's petition. (Staff Counsel Vallejo)

Matter of James L. Hubbert, 10 AD3d 32 (1<sup>st</sup> Dept 2004)

Respondent was suspended in 2002 for neglect of two legal matters, failure to return unearned fees and failure to cooperate with the Committee. Respondent failed to file an affidavit of compliance with the order of suspension and continued to practice law in violation of the order of suspension. On the Committee's motion, the Court disbarred him. (Deputy Chief Counsel Bratton)

Matter of Michael Bressler, 5 AD3d 47 (1<sup>st</sup> Dept. 2004)

The Court interimly suspended Attorney Bressler based upon substantial admissions under oath that he committed professional discipline threatening the public interest, including: neglect of

client matters in four separate matters, and thereafter intentionally misleading the clients as to the status of their cases, including one where a federal action was dismissed but respondent did not inform his client of the dismissal; and failing to maintain client funds in a special account. The Court also noted that respondent had a prior Letter of Admonition for neglecting a client matter.

Following service of formal charges predicated upon the misconduct found in the suspension decision as well as additional instances of neglect and misrepresentations to clients, respondent submitted his resignation, acknowledging that he could not successfully defend himself on the merits. Such a resignation has the same practical effect as a disbarment in that reinstatement cannot be sought for seven years. (Staff Counsel Shed)

Matter of Chak Y. Lee, 14 AD3d 98 (1<sup>st</sup> Dep't 2004)

Respondent was suspended for failing to cooperate with a disciplinary investigation concerning the complaints of two clients who alleged that he absconded with real estate deposits he was holding in escrow pending the closings. Respondent failed to respond to numerous letters from the Committee seeking answers to these complaints, and his records on those matters.



Respondent also failed to comply with a subpoena issued by the Court directing his appearance at a deposition before the Committee. The suspension was also predicated upon uncontested proof from bank records that he did not maintain these real estate deposits intact in his escrow account. (Staff Counsel Shed)

Matter of Glen J. Gentile, 7 AD3d 37 (1<sup>st</sup> Dep't 2004)

Glen J. Gentile was suspended from the practice of law for two years for a pattern of misconduct involving neglect, failure to promptly refund unearned fees, failure to render an accounting, failure to transfer files, failure to satisfy an arbitration award and judgments, and engaging in conduct prejudicial to the administration of justice. Mr. Gentile frequently accepted retainer fees from people with modest means and then he would do little or no work on the matters over extended periods of time, causing serious and permanent harm to his clients' cases. The Court rejected Mr. Gentile's mitigation argument because he failed to explain how his psychological symptoms were related to his misconduct. (Staff Counsel Lee)

Matter of Sara Goldman, 11 AD3d 178 (1<sup>st</sup> Dep't 2004)

By order dated October 26, 2004, the Court imposed a three-year suspension on Sara Goldman, because, for over a period of seven years, she submitted fraudulent and inflated compensation vouchers seeking legal fees for work she did not actually perform as an 18-B attorney under the First Department's Assigned Counsel Plan ("ACP"). One year, for example, Ms. Goldman billed for 362 days, often for 11 or 12 hour shifts, even though she admitted that her actual work hours were 9 a.m. to 5 p.m. and she did not work on weekends. Ms. Goldman acknowledged the misconduct but also cited the low billing rates for 18-B lawyers. The Hearing Panel had recommended a six-month suspension after taking into consideration in mitigation the significant personal problems Ms. Goldman had endured during the period in question and the two letters of reference she offered into evidence. In departing significantly from the recommended sanction, the Court cited to the duration and scope of the misconduct and to the fact that Ms. Goldman's fraudulent billing cost the ACP, and ultimately the taxpayers, thousands of dollars. (Staff Counsel Goldstein)

Matter of Mitchell L. Singer, 12 AD3d 151 (1<sup>st</sup> Dep't 2004)

The Court granted the Committee's motion to suspend respondent based upon his non-cooperation with a Committee

investigation, uncontested evidence of professional misconduct, and his failure to pay a judgment. The motion was based on the allegation that respondent wrote approximately 30 dishonored checks on his attorney trust account and that he failed to repay debts owed to clients and other individuals, including a debt reduced to a judgment. 301 AD2d 336 (2002). Respondent subsequently pleaded guilty to Grand Larceny in the Third Degree, a class D felony, for stealing funds from clients' escrow accounts. As a result, the Court granted the Committee's motion to strike respondent's name from the roll of attorneys. (Staff Counsel Vallejo)

Matter of Jaime V. Delio, 9 AD3d 160 (1<sup>st</sup> Dep't 2004)

Mr. Delio was interrimly suspended on the Committee's motion, based upon his failure to comply with Court-ordered child support and his failure to transfer shares of a cooperative apartment to his ex-wife, resulting in its sale in foreclosure. In addition, Mr. Delio's ex-law partner reported that he removed funds from the partnership's escrow account without her consent and failed to return the funds or account for them. Mr. Delio failed to appear at a deposition before the Committee and did not produce required financial records. He was immediately suspended from practice. (Staff Counsel Edelstein)

Matter of Lee M. Mager, 7 AD3d 27 (1<sup>st</sup> Dep't 2004)

The Appellate Division accepted the resignation of Mr. Mager after a motion was made by the Committee to disbar him based on his failure to comply with the Court's earlier order of suspension directing cooperation. Mr. Mager admitted that he could not successfully defend himself against charges that he neglected matters, failed to pay taxes on an estate although funds had been provided, failed to account for settlement proceeds, and had written a dishonored IOLA check. The Court ordered that Mr. Mager reimburse the Lawyers' Fund for Client Protection for an award it had made and will make as any awards to be made in the future. (Staff Counsel Edelstein)

## SUMMARY OF OTHER REPRESENTATIVE CASES

### Disbarments after Formal Charges

The Court disbarred three lawyers following formal charges. They are: Matter of Jonathan A. Weinstein, 4 AD3d 29; Matter of Kenneth Heller, 9 AD3d 221 and Matter of Richard L. Wertis, 10 AD3d 141 and their misconduct is described earlier in this report.

### Felony Disbarments

In 2004 the First Department granted thirteen motions to strike the names of attorneys convicted of felonies: Matter of John T. Hug, 10 AD3d 126; Matter of Andrew S. Marks, 4 AD3d 11; Matter of Ronald F. Harnisch, 7 AD3d 58; Matter of Matthew Weissman, 5 AD3d 28; Matter of Silverio Ramirez, 7 AD3d 52; Matter of Jennifer M. Hampton, 6 AD3d 82; Matter of Thomas Zichettello, 12 AD3d 128; Matter of James W. Treffinger, 11 AD3d 185; Matter of Bruce H. Roswick, 11 AD3d 166; Matter of Guy J. Velella, 11 AD3d 50; Matter of Sanford I. Freeman, 11 AD3d 172, Matter of Mitchell L. Singer, 12 AD3d 15, and Matter of Larry E. Feingold, 12 AD3d 55.

### Resignations

The Court permits an attorney to resign from the Bar during an investigation by the Committee or after the filing of charges if the attorney submits an affidavit in compliance with 22 NYCRR §603.11, acknowledging that the attorney knows the nature of potential charges and cannot defend against them. In 2004, the First Department accepted resignations under 22 NYCRR §603.11 from five attorneys and ordered their names stricken from the roll of attorneys: Matter of Michael R. Bressler, 5 AD3d 47; Matter of Lee M. Mager, 7 AD3d 27; Matter of Toritsefe O. Nanna, 9 AD3d 230; Matter of Frederick J. Roth, 14 AD3d 29, and Matter of Kirill Percy, 14 AD3d 26.

### Disbarments after Interim Suspension

Under Court Rule 22 NYCRR 603.4(g), an attorney who is suspended by the Court for misconduct, including willful failure to cooperate with a Committee investigation, can be disbarred if the attorney who is suspended has not appeared or applied in writing for a hearing or reinstatement within six months of the date of the order of suspension. In 2004, the First Department invoked 22 NYCRR §603.4(g) to disbar three attorneys: Matter of Anand Gujral, 4 AD3d 43; Matter of Bruce H. Hest, 7 AD3d 1, and Matter of Christopher Schulze, 10 AD3d 135.

### Other Disbarments

The Court also disbarred Grosvenor Anschell, 11 AD3d 56, as reciprocal discipline and Lenore L. Gill, 3 AD3d 109, for practicing law while suspended.

### Suspension

#### Suspension as Discipline

A suspension can be ordered by the Court as discipline and also to protect the public on an interim basis. The Court imposes suspension for conviction of "serious crimes," as defined in the Judiciary Law §90(4)(d), for reciprocal discipline and for other misconduct. In 2004 the Court imposed suspensions for misconduct on nine attorneys for periods ranging from three months to three years: Matter of Glen J. Gentile, 7 AD3d 37; Matter of John H. Teschner, 7 AD3d 46; Matter of Earl S. David, 3 AD3d 174; Matter of Scott L. Wiss, 3 AD3d 182; Matter of Joseph Burden, 5 AD3d 1; Matter of Peter D. Hirschl, 10 AD3d 164; Matter of Arthur L. Goldstein, 10 AD3d 174; Matter of Sara Goldman, 10 AD3d 178, and Matter of Alexander B. Dranov, --- AD3d ---, 787 NYS2d 271 (1<sup>st</sup> Dep't 2004). Under Rule 22 NYCRR §603.14, an attorney suspended for less than six months shall be reinstated at the end of the period of suspension if certain requirements are met. An attorney suspended for more than six months may

petition for reinstatement, but must establish by clear and convincing evidence that: (1) there has been full compliance with the order of suspension; (2) the petitioner possesses the requisite character and general fitness to practice law; and (3) the petitioner has taken and passed the Multistate Professional Responsibility Examination.

#### Interim Suspensions - Threat to Public Interest

The Court also imposes interim suspensions where an attorney's misconduct constitutes a threat to the public based upon failure to answer a disciplinary complaint or comply with a lawful demand in an investigation by the Committee (22 NYCRR §603.4[e][1][i]), or upon a finding that an attorney is guilty of misconduct immediately threatening the public interest based upon an admission or uncontested evidence of serious misconduct (22 NYCRR 603.4[e][1][ii] and [iii]). During 2004, the First Department interimly suspended 15 attorneys for those reasons: Matter of Michael Bressler, 3 AD3d 71; Matter of Robert J. Pape, Jr., 10 AD3d 40; Matter of Zaffar Bugtti, 7 AD3d 15; Matter of Michael J. Goldman, 7 AD3d 18; Matter of Kirill Percy, 10 AD3d 65; Matter of Jaime V. Delio, 9 AD3d 160; Matter of Stanley J. Szaro, 10 AD3d 81; Matter of Huma H. Kamgar, 7 AD3d 114; Matter of William J. Lazaroni, 12 AD3d 17, Matter of Armando A.



Crescenzi, 12 AD3d 74; Matter of Larry Johnson, 12 AD3d 62; Matter of Kemakolam Comas, 14 AD3d 89; Matter of Chak Y. Lee, 14 AD3d 98; Matter of Dominick A. Fusco, 14 AD3d 94, and Matter of Karene Freeman, 4 AD3d 1.

### Public Censures

The least severe form of public discipline that the Court may impose is a censure (22 NYCRR §605.5[a][3]). In 2004, the First Department issued public censures in seven cases based on formal charges of misconduct: Matter of Lawrence Wilens 9 AD3d 131; Matter of Wilens & Baker, 9 AD3d 131; Matter of Frederick C. Hayes, 7 AD3d 108; Matter of Henry William Hodges, III, 11 AD3d 32; Matter of Joel S. Cohen, 12 AD3d 29; Matter of Harold M. Weiner, 10 AD3d 92, and Matter of Thomas O'Toole, 12 AD3d 1.

### Reprimands and Admonitions

The Court may also direct the Committee to issue to a respondent a Reprimand, which is private discipline imposed by the Committee after a hearing. In 2004, the Court directed the issuance of four private reprimands in seven matters. Where there is no serious injury, either to a client or a court, and where there is a minor violation of a Disciplinary Rule or decisional law, the Committee itself may also issue an

Admonition, which is private discipline, to an attorney under 22 NYCRR §605.5(a)(5). As noted earlier, in 2004, the Committee issued 89 admonitions in 95 matters.

### Reinstatements

Section 90 of the Judiciary Law and Court Rule 22 NYCRR §603.14 permit attorneys to be reinstated to the practice of law after a period of exclusion. Attorneys who are suspended for six months or less may be reinstated at the end of the period of suspension by filing with the Court and serving upon the Chief Counsel's office an affidavit stating that the attorney has met certain requirements (22 NYCRR §603.14). An attorney who has been suspended for a period of more than six months is entitled to petition the Court for reinstatement upon the expiration of the period of suspension (Id). An attorney who has been disbarred or stricken from the roll of attorneys may not petition for reinstatement until the expiration of seven years from the effective date of disbarment (Id). In 2004, the First Department granted ten applications for reinstatement and denied applications in seven other cases.

Appendix A: Committee Assignments

Paul J. Curran  
Chair

Policy Committee

Charlotte Moses Fischman	Haliburton Fales 2d (Special Counsel)
Alfred G. Gerosa*	Thomas B. Galligan (Special Counsel)
Robert L. Haig	Martin R. Gold (Special Counsel)
Myron Kirschbaum	Denis McInerney (Special Counsel)
Marvin Leffler*	Roy L. Reardon (Special Counsel)
Mercedes A. Nesfield*	Stephen L. Weiner (Special Counsel)

Hearing Panel Members

Panel I

John J. Kenney, Chair  
Ann J. Charters\*  
Cheryl Davis  
Martin S. Rothman  
John Siffert

Panel II

William Francis Kuntz, II, Chair  
William A. Gallina  
Lynn K. Neuner  
Timothy G. Reynolds  
Susan Welsher\*

Panel III

Patricia Farren, Chair  
Dr. Jane Eisner Bram\*  
Maranda E. Fritz  
Andrew M. Lawler  
Augustin J. San Filippo

Panel IV

Samuel W. Seymour, Chair  
David G. Keyko  
Patricia M. Hynes  
Henrietta Lyle\*  
Douglass B. Maynard

Panel V

Burton N. Lipshie, Chair  
Sally W. Berg\*  
Thomas Fitzpatrick  
Susan M. Karten  
Lawrence D. McGovern

Panel VI

Eugene P. Souther, Chair  
Lisa D. Correll\*  
Paul G. Gardephe  
Patricia Hatry  
Daniel E. Siff

\*Public Member

Panel VII

Mathias E. Mone, Chair  
Joseph Steven Genova  
Telesforo Del Valle, Jr.  
Steven N. Feinman  
Charles C. Marino\*

Panel VIII

Paul F. Doyle, Chair  
Lawrence J. Banks\*  
Eugene F. Bannigan  
Andrew W. Regan  
John W. McConnell

Panel IX

Jane W. Parver, Chair  
Douglas W. Brandrup  
William E. Hammond  
Mary B. Maguire\*  
Eric J. Warner

Panel X

Denis F. Cronin, Chair  
Lenore Kramer  
Frank J. Loverro  
Anthony M. Radice  
Michael J. Rosenberg\*

\*Public Member

Appendix B: Chief Counsel's Office: Attorneys

Thomas J. Cahill  
Chief Counsel

Sherry K. Cohen  
First Deputy Chief Counsel

Andral N. Bratton  
Deputy Chief Counsel

Christine C. Anderson  
Angela Christmas  
Nicole Corrado  
Kevin Culley  
Jorge Dopico  
Mady J. Edelstein  
Jeremy S. Garber  
Naomi F. Goldstein  
Joseph J. Hester  
Roberta N. Kolar  
Jun H. Lee  
Vitaly Lipkansky  
Stephen P. McGoldrick  
Kevin E. F. O'Sullivan  
James T. Shed  
Eileen J. Shields  
Judith N. Stein  
Raymond Vallejo  
La Trisha A. Wilson

Appendix C: Chief Counsel's Office: Staff

Investigators

Vincent C. Raniere, Chief  
George Cebisch  
Virgil Cruz  
John Puglise  
Martin Schwinger  
Michael Vega  
Leonard Zarrillo

Paralegals

Rebeca V. Taub, Chief  
Donna Killian  
Hermine Otto  
Joel Peterson  
Orlando Reyes  
Marcy Sterling

Computer Personnel

Michelle Y. Wang  
Charles A. Sauer

Office Manager

Carol Scheuer

Secretaries

Anna Abbate  
Francine N. L. Ali  
Nancy K. De Leon  
Eartha Hobot  
Monique Hudson  
Tennille Millhouse  
Gloria Rodriguez  
Maria L. Vera

Receptionist

Romya Serra

Appendix D: Bar Mediators

Association of the Bar of the City of New York

Bruce D. Angiolillo, Esq.  
Mark S. Arisohn, Esq.  
Vivian Berger, Esq.  
Joseph Calderon, Esq.  
David Douglas, Esq.  
Professor Martin Fogelman  
Gerard E. Harper, Esq.  
Chris Stern Hyman, Esq.  
Thomas W. Jackson, Esq.  
Andrew D. Kaiser, Esq.  
Hal R. Lieberman, Esq.

John Madden Jr., Esq.  
K. Ann McDonald, Esq.  
W. Cullen McDonald, Esq.  
T. Gorman Reilly, Esq.  
David Rubin, Esq.  
Eileen Caufield Schwab, Esq.  
Briscoe R. Smith, Esq.  
Harvey A. Strickon, Esq.  
Edward G. Williams, Esq.  
Melvin F. Williams, Jr., Esq.

Bronx County Bar Association

Daniel Chavez, Esq.  
Richard M. Copland, Esq.  
Norma Giffords, Esq.

Jeffrey Pogrow, Esq.  
Frederick B. Potack, Esq.  
Cary M. Tanzman, Esq.

New York County Lawyers' Association

Madeline Balk, Esq.  
David A. Botwinik, Esq.  
David N. Brainin, Esq.  
John A. Cannistraci, Esq.  
Faith Colish, Esq.  
Klaus Eppler, Esq.

Alan J. Goldberg, Esq.  
M. Robert Goldstein, Esq.  
Hon. Millard L. Midonick  
Edward E. Morris, Jr., Esq.  
Joseph B. Russell, Esq.

Appendix E: Annual Report to OCA



**ATTORNEY DISCIPLINE ACTIVITIES**PERIOD COVERED - ANNUAL 2004

FIRST JUDICIAL DISTRICT

FIRST DEPARTMENT

**I. MATTERS PROCESSED:\***

A. Matters Pending at Start of Period	<u>1346</u>	
B. New Matters During Period	<u>3612</u>	
C. Closed Matters Reactivated During Period	<u>58</u>	
D. Total Matters to be Processed During Period (A+B+C)		<u>5016</u>
E. Total Matters Disposed of During Period		<u>3778</u>
F. Matters Pending at End of Period		<u>1238</u>

**II. MATTERS DISPOSED OF BY COMMITTEE:**

	Cases**	Matters
A. Rejected as Failing to State a Complaint	<u>831</u>	<u>876</u>
B. Referred to Other Disciplinary Committees	<u>400</u>	<u>403</u>
C. Referred to Other Agencies	<u>61</u>	<u>62</u>
D. Dismissed or Withdrawn	<u>2041</u>	<u>2095</u>
E. Dismissed through Mediation	<u>22</u>	<u>22</u>
F. Letter of Caution	<u>n/a</u>	<u>n/a</u>
G. Letter of Admonition	<u>89</u>	<u>95</u>
H. Admonition (or Reprimand)	<u>4</u>	<u>7</u>
I. Referred to Appellate Division (Disc. Proc.)	<u>104</u>	<u>218</u>
Total Disposed of During Period (same as I.E above.)	<u>3552</u>	<u>3778</u>

**III. CASES PROCESSED IN ALL COURTS:**

A. Cases Pending at Start of Period		<u>29</u>
1. Disciplinary Proceedings	<u>24</u>	
2. Other	<u>5</u>	
B. Cases Received During Period		<u>131</u>
1. Disciplinary Proceedings	<u>79</u>	
2. Other	<u>52</u>	
C. Total to be Processed During Period		<u>160</u>

**ATTORNEY DISCIPLINE ACTIVITIES** (2004)

D.	Cases Closed		
	1. Disbarred	23	
	2. <b>Disciplinary Resignations</b>	5	
	3. Suspended***	24	
	4. Censured	7	
	5. Privately Censured	2	
	6. Remanded to Disciplinary Committee	11	
	7. Discontinued	5	
	8. Dismissed	1	
	9. Reinstatements Granted	10	
	10. Reinstatements Denied	7	
	11. <b>Non-Disciplinary Resignations</b>	0	
	12. All Other Dispositions	27	
	13. Total Closed		122
E.	Total Cases Pending at End of Period		38
	1. Disciplinary Proceedings	28	
	2. Other	10	

For the purposes of this report, the term "Matter" includes the following;

1. Complaints
2. Inquiries (**Excluding telephone inquiries**)
3. Sua Sponte investigations

\* In the First Dept., "matters" does not include inquiries.

\*\*Cases refers to the number of respondent/attorneys. As some attorneys are the subject of multiple complaints, the number of matters may exceed the number of cases.

\*\*\*Includes definite (9), interim (15) and indefinite suspensions (0).

Appendix F: Budget for Fiscal Year 2004-2005

Departmental Disciplinary Committee Budget  
Fiscal Year 2004-2005

Appendix F: Budget for Fiscal Year 2004-2005

Departmental Disciplinary Committee Budget  
Fiscal Year 2004-2005

<u>Item</u>	<u>Allocation</u>
Personal Service Total	\$3,343,062
Office Supplies	50,572
EDP Supplies	2,895
Legal Reference - General	16,291
Travel-General	6,187
Rentals of Equipment	3,912
Repairs of Equipment	11,479
Postage and Shipping	41,712
Printing - General	14,995
Telephones	35,347
Professional Services - General	66,624
Professional Services - Interpreters	3,000
Transcript Costs - General	60,000
Computer Assisted Legal Research	3,000
Equipment New - General	<u>30,000</u>
TOTAL	\$ 3,689,076

Appendix G: Sample Complaint

SUPREME COURT, APPELLATE DIVISION  
FIRST JUDICIAL DEPARTMENT  
DEPARTMENTAL DISCIPLINARY COMMITTEE  
61 BROADWAY, 2<sup>ND</sup> FLOOR  
NEW YORK, NEW YORK 10006

212/401-0800

Thomas J. Cahill  
Chief Counsel

DATE: \_\_\_\_\_

Complainant(s):

Mr. ( ) Ms. ( ) Mrs. ( ) \_\_\_\_\_  
Last First Initial

Address: \_\_\_\_\_ Apt. \_\_\_\_\_

City State Zip Code

Telephone: Home \_\_\_\_\_ Business \_\_\_\_\_

Attorney Complained of:

Mr. ( ) Ms. ( ) Mrs. ( ) \_\_\_\_\_  
Last First Initial

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City State Zip Code Suite/Floor

Telephone: \_\_\_\_\_

\*\*\*\*\*

Complaints to other agencies:

Have you filed a complaint concerning this matter with another Bar Association, District Attorney's Office or any other agency:

If so, name of agency: \_\_\_\_\_

Action taken by agency: \_\_\_\_\_

\*\*\*\*\*

Court action against attorney complained of:

Have you brought a civil or criminal action against this attorney?

If so, name of court: \_\_\_\_\_ Index No. \_\_\_\_\_

Statute: \_\_\_\_\_

\*\*\*\*\*

Details of Complaint PLEASE PRINT LEGIBLY OR TYPE IN ENGLISH

Start from the beginning and be sure to tell why you went to the attorney, when you had contact with the attorney, what happened each time you contacted the attorney and what it was that the attorney did wrong. Please send this office copies of all papers that you received from the attorney with this form.

