

# 2005 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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SUPREME COURT, APPELLATE DIVISION  
FIRST JUDICIAL DEPARTMENT  
DEPARTMENTAL DISCIPLINARY COMMITTEE

PAUL J. CURRAN, Esq.  
CHAIRMAN

61 BROADWAY  
NEW YORK, N.Y. 10006

May 2, 2006

To the Bar and the Public:

This Annual Report for 2005 establishes that the Committee and its Staff have continued to carry out the Committee's mission fairly, effectively, and in the interest of both lawyers and their clients. The Committee serves both to protect the public from unethical lawyers and to see to it that charges of misconduct on the part of lawyers are investigated fully and acted upon fairly. The Committee's goal is to secure justice for both the accuser and the accused. At the same time the Committee continues to strive to reduce its caseload and did so, albeit slightly, in 2005. While reducing the caseload is surely important, the Committee's commitment to investigating complaints thoroughly and fairly is even more important than any 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 2005 goes to the dedicated work of our Committee members, who are appointed by the Court and who serve without pay, and to the effective 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 2005.

Sincerely,



Paul J. Curran  
Chairman

## CHIEF COUNSEL'S REPORT

The Committee's goal is to resolve complaints against attorneys in a fair, thorough and expeditious manner. It is at times difficult to be both thorough and expeditious, particularly where a matter is complex or involves a series of separate clients and matters, but the staff attorneys have demonstrated the ability to handle such matters in what I believe is a satisfactory manner. This has the desired effect of building the confidence of the public and the members of the bar in the Committee's performance of its duties.

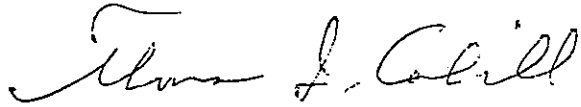
We would not have been able to achieve this result without the continued support of the lawyer members of the Committee who approved the dismissal of almost 2000 matters, reviewed requests for reconsideration and otherwise made themselves available to serve.

The staff appreciates the Chairman's thorough and prompt review of the Committee's various petitions to the Court which sets a standard of excellence for staff attorneys.

Again, staff and I wish to acknowledge the constant support of the members of the Court, particularly the justices on the Liaison Committee and Presiding Justice John T. Buckley.

On a final note, since the close of 2005, Staff lost one of its most experienced and respected attorneys, LaTrisha N. Wilson,

who continued working during a lengthy illness but recently passed away. We miss Trish and she will be difficult to replace.

A handwritten signature in cursive script that reads "Thomas J. Cahill". The signature is written in dark ink and is positioned above a horizontal line.

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, the Court appoints a Referee to conduct a hearing and prepare a written report stating the Referee's findings of fact and conclusions of law and a recommendation for 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 2005, 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, including 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 Haliburton Fales, 2d, Esq., Martin R. Gold, Esq., William Francis Kuntz, II, Esq., Roy L. Reardon, Esq., and Stephen L. Weiner.

This year's Committee consists of 50 lawyers, drawn from all areas of the profession and law firms of varying sizes, plus 12 non-lawyer members. The latter, including business executives, a banker, a psychotherapist, an engineer, writers, philanthropists, and former educators serve 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.

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.

Jane Eisner Bram, Ph.D

Dr. 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.

Christopher E. Chang

Mr. Chang is in private practice in his own firm. He was an Assistant District Attorney in New York County from 1978 to 1982. He is a graduate of New York University and Cornell Law School. He served as a member of the Chief Judge's Committee on the Profession and the Courts ("The Craco Commission") from 1993 through 1995. He is a member of the Board of Directors of the Legal Aid Society, the New York County Lawyers' Association and the New York State Bar Association.

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's 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 Committee on

Lawyer Alcoholism for the Association of the Bar of the City of New York.

Jean E. Davis

Ms. Davis is a graduate of Hunter College (B.S., Nursing), and received a Master's Degree from Teachers College, Columbia University and a Juris Doctor from the University of Wisconsin Law School. After a multifaceted career in nursing, she served as counsel for interpretations and advice in the Office of the Solicitor/Civil Rights Division, U.S. Department of Labor; Advisor to the President, Drexel University; Director of Affirmative Action, and later Chief of Staff to the President at Brooklyn College, City University of New York (CUNY); and as Special Assistant to the Chief Operating Officer at City College, CUNY. Retired from her dual careers, she currently engages in a number of volunteer activities including serving as a volunteer officer of the Harlem Hospital Center Community Advisory Board.

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 Inn 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 (A member of the Policy Committee)

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, engaging 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.

William A. Gallina

Mr. Gallina graduated from St. John's University Law School. He is currently a sole practitioner who practices exclusively in the 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 and Yale Law School. 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. He is a member of the Policy Committee.

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 Dye & 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. He is a member of the Policy Committee.

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 Handal

Mrs. Handal has a B.A. from Barat College in Lake Forest, Illinois. She has taught in both Ohio and New York. For nearly twenty years she was employed by Victor B. Handal, Inc., a children's apparel company, and served on the company's board. Mrs. Handal has been active in a variety of community organizations involving children, the homeless, the elderly and the Catholic Church. Currently she is a member of the Board and Executive Committee of the Mary Manning Walsh Home, a nursing home, and is the President of The Floating Hospital, a century-old organization dedicated to caring for children.

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 engages 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.

Stephen E. Kaufman

Mr. Kaufman is in private practice in his own firm, where he engages in general civil and criminal litigation. He received his law degree from Columbia University. He served as an Assistant United States Attorney, Southern District of New York; and Chief of the Criminal Division, U.S. Attorney's Office, Southern District. He is a member of the Association of the Bar of the City of New York; American Bar Association, and Fellow, American College of Trial Lawyers.

John J. Kenney

Mr. Kenney graduated from Fordham University School of Law. He is a partner with the firm of Engel McCarney & Kenney. 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 Pittman 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.

William Francis Kuntz, II (Special Counsel to the Policy Committee)

Dr. Kuntz is a member of the firm of Baker & Hostetler LLP. 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 focusing on 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.

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.

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 sole 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 with the City of New York and a securities arbitrator. 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 Board of Governors of the New York State Attorney-Client Fee Dispute Resolution Program and a member of the Association of the Bar of the City of New York where he served on the Administrative Law and the Alternative Dispute Resolution Committees.

Harold F. McGuire, Jr.

Mr. McGuire is a member of the firm of Entwistle & Cappucci. He graduated from Princeton University (A.B.), and received his law degree from Columbia University. He served as Assistant U.S. Attorney, Southern District of New York; Special Agent to Report to U. S. District Court, District of Columbia, on International Systems and Controls Corporation. 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 Federal Bar Council.

Fitzgerald Miller

Mr. Miller is a financial adviser with the firm of Merrill Lynch. He holds a B.A. from Bernard Baruch College. He has

served as a financial consultant at AXA Advisors, LLC, and Prudential Securities and as principal of Fitzgerald Miller, DBA Global Visions where he developed business and marketing plans to help small businesses raise funding and improve operations. He also authored and independently published, Your Complete and Comprehensive Guide to the SBA Guaranteed Loan Program.

Charles G. Moerdler

Mr. Moerdler is a member of the firm of Stroock & Stroock & Lavan, LLP. He graduated from Fordham University Law School where he was an Editor of the Law Review. He is a member and former Chairman of the Committee on Character and Fitness in the First Department. He is a member of the Association of the Bar of the City of New York, the New York State Bar Association and the American Bar Association.

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.

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. She is a member of the Policy Committee.

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.

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. Giuliani; 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.

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.

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.

Reuben Samuel

Mr. Samuel is a partner in the firm of Calotta Levine & Samuel in New York City. He is a graduate of Brooklyn Law School and is a member of the New York County Lawyers' Association and the New York State Trial Lawyers Association.

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 a member of 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).

Marian E. Silber

Ms. Silber is a member of the firm of Gordon & Silber, P.C. focusing on issues of professional liability, construction law products liability and toxic torts. She graduated from Connecticut College and received her law degree from Fordham University School of Law. She is a member of the Association of

the Bar of the City of New York as well as many other bar associations.

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 as a delegate to the House of Delegates of the American Bar Association and Vice Chairman of the International Bar Association.

Christine Collins Tomas

Ms. Tomas is a vice president of Goldman Sachs & Co. where she is engaged in U.S. international equity sales. She is a 1992 graduate of Harvard University and received a Masters of Business Administration in 1997 from the MIT Sloan School of Management.

John L. Warden

Mr. Warden is a member of the firm of Sullivan & Cromwell. He is a graduate of Harvard University and the University of

Virginia Law School. He is a member of the American Law Institute and a Fellow of the American College of Trial Lawyers.

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." 3371 matters were opened in 2005, 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, or whether it should be referred to another public agency or disciplinary committee. If it appears that there is no substantial misconduct, but there has been a breakdown of communication between the lawyer and the client, staff may refer the matter for mediation by the mediation panel of 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 mediation program was instituted to deal with 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 will be decided in pending litigation, the Committee may, but need not, defer the matter pending resolution of the litigation. Because the allegations may be decided 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 on its face 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 screening attorney brings the matter 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, a lawyer member of the Committee reviews that recommendation along with the paralegal's written summary. A matter that warrants additional investigation is forwarded to the Chief Counsel for review and assignment to a staff attorney.

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. The closing letter to the complainant informs him/her of the right to request reconsideration of the dismissal within thirty days.

#### Dispositions

##### Admonitions

The Committee issues a Letter of Admonition when 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. Admonitions are not given without admissible proof of misconduct because if an attorney refuses to accept the admonition, he or she may request that formal charges be brought. In that case, staff must be able to prove the misconduct before a Referee and a Hearing Panel. In 2005, the Committee issued 73 Letters of Admonition covering 78 separate complaints. (An admonition may be based on more than one complaint against a respondent.)

#### Proceedings on Formal Charges

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, the Chief Counsel requests the Court to appoint 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, and are conducted in two parts, liability and sanction. 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 Chairman of the Committee then refers the Referee's report to a Hearing Panel, usually 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]).

### Serious Crimes

In 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 for purposes of sanction only. In the latter case, the Hearing Panel itself takes testimony, which is transcribed 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 and a written opinion 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 violation 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 except in those rare cases when a respondent waives confidentiality. The Referees conduct hearings like trials in that testimony is taken and exhibits are received with a transcript made of the entire proceeding. 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 2005, the Appellate Division, First Judicial Department, publicly disciplined 61 lawyers as follows: 21 disbarments, 8 resignations from attorneys facing charges, 26 suspensions and 6 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 2005 are reviewed below:

Matter of Mac Truong, 22 A.D.3d 64 (2005)

This matter began with a petition filed by the Committee seeking an order from the Appellate Division giving collateral estoppel effect to a forgery finding against the respondent made by a trial court and affirmed on appeal. Specifically, the trial court had found that during the course of litigation with the landlord of his law office, respondent submitted a forged version of a lease into evidence and testified falsely in support of it. The Court granted the Committee's petition and immediately suspended respondent based on uncontested evidence of serious professional misconduct.

This matter is noteworthy because, prior to the sanction hearing required by the Appellate Division's collateral estoppel order, respondent removed the disciplinary proceeding to the U.S. Bankruptcy Court for the District of New Jersey. In response,



the Committee filed a motion with the bankruptcy court seeking an order remanding the matter to the Appellate Division. The bankruptcy court promptly remanded the disciplinary proceeding back to the Appellate Division.

During the sanction hearing before the referee, the Committee introduced as evidence in aggravation respondent's conduct in litigation unrelated to the collateral estoppel finding, which included respondent's removal of the disciplinary proceeding to the bankruptcy court. The referee, reviewing hearing panel, and the Appellate Division all found that respondent's misconduct, as set forth in the prior collateral estoppel order, taken in conjunction with the extensive evidence in aggravation, warranted his disbarment. (Staff Counsel Stephen P. McGoldrick)

Matter of Allan L. Blumstein, 22 A.D.3d 163 (2005)

Mr. Blumstein, a former partner at a major firm, was disbarred on September 27, 2005. He was found to have intentionally converted \$517,750 from his aged aunt's trust, of which he was co-trustee. He secretly invaded his aunt's funds by regular withdrawals over the course of two years, and failed to pay her nursing home bills, which amounted to \$195,818 by the time the charges were brought. Mr. Blumstein admitted his theft

of funds and that he used the money to maintain the affluent lifestyle he could not sustain after his retirement. He restored the funds to the trust by taking an advance on his retirement benefits, and argued for a sanction short of disbarment, based on his alcoholism, his marital problems, his lack of prior discipline, and his *pro bono* service. The Appellate Division found that disbarment is the appropriate remedy, stating "rarely, if ever, will extenuating circumstances be found in situations involving repeated misappropriations over a lengthy period of time," and noting that respondent failed to establish any link between his alcoholism and the misconduct or any emergency to explain his larcenous conduct. Finally, the Court stated:

As we have previously stated, a sanction less than disbarment in these circumstances would send the wrong message to the Bar, namely, that the intentional conversion of clients' assets due to financial stress will not result in the most severe punishment.

We are loathe to send such a message. (Staff Counsel Mady J. Edelstein)

Matter of Samuel A. Abady, 22 A.D.3d 71 (2005)

The Court suspended respondent for five years, stating that it was "the most lenient of sanctions" under the circumstances, based on respondent's 17 disciplinary violations in five different matters over a period of twelve years. Respondent

neglected client matters causing default judgments and dismissals of the actions, made misrepresentations to his clients and to the courts, and repeatedly failed to comply with court orders in state and federal courts. The decision described his conduct as demonstrating an "astonishing insensitivity to his legal and ethical obligations. . . . [that] most assuredly caused untold frustration and inconvenience to his clients, opposing counsel and the courts." The Court explicitly adopted the Committee's argument that the referee had the power and authority to rule on a pre-hearing motion for collateral estoppel sustaining several charges of misconduct. Further, the Court held that collateral estoppel may be properly applied to default judgments where the party against whom preclusion is sought appears in the prior action, yet willfully and deliberately refuses to participate in those litigation proceedings, or abandons them, despite a full and fair opportunity to do so. (Staff Counsels Eileen J. Shields and Joseph J. Hester)

Matter of Steven F. Goldman, 17 A.D.3d 62 (2005)

This case, which resulted in the respondent's resignation, stemmed from a lengthy investigation into the respondent's gross misuse of client funds and failure to keep required account records. The Committee was ultimately able to obtain

respondent's financial records from various financial institutions and reconstruct the transactions at issue. Respondent submitted his resignation just prior to the Committee's filing of a motion seeking respondent's immediate suspension based on uncontested evidence of misconduct.

The Goldman matter is also noteworthy because the Appellate Division sanctioned respondent twice by unpublished order for a total of \$2,000 for frivolous motion practice, which included several motions to quash subpoenas requiring respondent to produce his escrow account records. (Staff Counsel Stephen P. McGoldrick)

Matter of Chak Y. Lee, 25 A.D.3d 51 (2005)

In late 2004, respondent, a sole practitioner concentrating in real estate and immigration matters, was suspended on an interim basis for noncooperation with a Committee investigation, and upon uncontested evidence that he converted escrowed real estate funds.

In 2005, the Court granted the DDC's petition to strike his name from the roll of attorneys predicated upon respondent's 2005 plea to one count of a multicount indictment, including a felony count of Grand Larceny in the Second Degree, which alleged that respondent stole property from a real estate client in a value

exceeding \$50,000. Respondent was sentenced to an indeterminate prison term of from one to three years, with restitution of \$774,840 ordered. The Court also granted the DDC's petition to appoint an attorney to take charge of respondent's files.

The Lawyers' Fund for Client Protection approved ten awards to respondent's former clients, totaling some \$818,840. (Staff Counsel James T. Shed)

Matter of George R. Osborne, 17 A.D.3d 8 (2005)

George R. Osborne has had a unique history here. From 1969 through 1971, he served as the Chief Counsel to the Committee's Bar Association predecessor, the Co-ordinating Committee on Discipline. Sometime during his salaried tenure, he accepted money from a complainant to investigate allegations of professional misconduct by four attorneys. The Court was appalled by the gravity of Osborne's misconduct and was inclined to disbar him, but in deference to the recommendation of the Referee who conducted a hearing, the Court suspended Osborne for three years instead. Matter of Osborne, 45 A.D.2d 113 (1974) Thirty years later, however, by order dated March 15, 2005, the Court did strike his name from the roll of attorneys when Osborne tendered his resignation, finally acknowledging that he could not defend himself against allegations of more egregious conduct.

Matter of Osborne, 17 A.D.3d 8 (2005) The more recent flagrant misconduct involved practicing law during the period of a second suspension. After his three-year suspension and reinstatement, Osborne was again suspended, by order dated October 23, 2003, this time for six months, on the basis of a pattern of defying court orders in several civil matters. Matter of Osborne, 1 A.D.3d 31 (2003) In April 2004, Osborne sought to be reinstated. In his affidavit in support of his request, Osborne swore that he had complied with the requirements of the order of suspension. As it happens, about the same time as Osborne was filing for reinstatement, staff was reviewing evidence that Osborne continued to represent clients in court in Dutchess County throughout his suspension. Staff opposed Osborne's application and cross-moved to have Osborne disbarred. Osborne filed blistering papers in reply, denying the allegations and accusing Staff of persecuting him. In October 2004, the Court referred the matter to a referee to evaluate the evidence of Osborne's unauthorized practice of law. On the eve of the hearing in January 2005, confronted with Dutchess County court records and the anticipated testimony of at least one client, Osborne tendered his resignation, admitting at last that he had continued to represent clients who were unaware of his suspension. As noted, in March 2005, the Court accepted his resignation and his

name was removed from the roll of attorneys. (Staff Counsel Naomi F. Goldstein)

Matter of Donald J. Goldman, 20 A.D.3d 90 (2005)

In another family-related matter, Mr. Goldman was suspended for one year by the Appellate Division for serious professional misconduct based on findings of courts in New York and New Jersey in litigation over entitlement to the proceeds of his mother's estate, that he had committed intentional fraudulent conveyances, perjured himself at depositions, and flouted a series of court orders to pay the disputed money (\$382,504) into court. The Court rejected the Committee's recommendation that Mr. Goldman be disbarred, finding that although the misconduct was serious, it was aberrational, unconnected to respondent's legal practice, not indicative of his likely behavior in other situations, and mitigated by an unblemished 40-year record, character evidence, contrition, and the heavy costs respondent has borne in legal fees and costs in the underlying litigation. (Staff Counsel Mady J. Edelstein)

Matter of Robert A. Kahn, 16 A.D.3d 7 (2005)

Kahn was found to have engaged in a pattern of misconduct involving sexually oriented or other offensive comments directed

at female attorneys that obviously reflected on his fitness as a lawyer. The Court found his misconduct "not limited to isolated incidents" and found that "such persistent behavior" warrants more than a minimum sanction and suspended him for six months. (Staff Counsel Naomi F. Goldstein)

Matter of Robert M. Kuhnreich, 21 A.D.3d 1 (2005)

This respondent neglected four client matters, failed to return unearned fees and abandoned his law practice for a period of fourteen months without notifying his clients. Although he cooperated with the Committee and expressed remorse for his misconduct, because of his disciplinary history of three admonitions, the Court suspended him from the practice of law for two years. (Staff Counsel Roberta N. Kolar)

David J. Rodkin, 21 A.D.3d 111 (2005)

This matter involved a recurring problem having to do with the unauthorized practice of law by so-called "travel agencies" who purportedly assisted immigrants from China seeking political asylum in the United States. The agencies prepare and file documents with the immigration authorities, are paid by the immigrants and bring in attorneys to "front" for them at agency hearings. Rodkin was charged with aiding the unauthorized



practice of law in violation of DR 3-101(A) and violations of other disciplinary rules. The Court adopted the conclusion of the Hearing Panel: "[B]y facilitating the provision of legal advice by agencies that are not constrained by the ethical rules that govern the legal profession, and by making no effort to discredit, attempt to cure or even discover the agencies' errors, respondent became part of the problem the rule was designed to address." The Court imposed a six-month suspension. (First Deputy Chief Counsel Sherry K. Cohen)

Matter of Jay R. Kolmar, 15 A.D.3d 81 (2005)

Kolmar was a partner in a major law firm who self reported his professional misconduct in seeking reimbursement from his firm for falsely claimed client related expenses over a ten-year period. He admitted that the total amount of improper charges received was \$161,833. The Court accepted his resignation from the bar. (First Deputy Chief Counsel Sherry K. Cohen)

Matter of Michael Larry Goldman, 24 A.D.3d 29 (2005)

In 2004, respondent was suspended on an interim basis from the practice of law (7 A.D. 3d 18) because of his repeated thwarting of the Committee's investigation into six disciplinary complaints, his continued failure to comply with the Committee's

directives to submit records relevant to his attorney escrow accounts held at several banking institutions, and his willful failure to comply with Court-issued subpoenas for the production of relevant documents. Further, the suspension order was based upon other uncontested evidence of misconduct which immediately threatened the public interest, predicated upon his mishandling, misappropriating, or misusing client or third party funds.

In 2005, the Committee then moved for an order disbarring respondent for his failure to comply with the order of suspension, his willful engagement in the unauthorized practice of law, his persistent failure to cooperate with the Committee's investigation, and his failure to appear or apply in writing to the Committee or the Court for a hearing or reinstatement within six months of the date of suspension. The Committee's investigation revealed indisputable evidence that respondent engaged in the unauthorized practice of law with respect to at least one legal matter as well as several other instances where respondent held himself out as an attorney in good standing. The Court concluded that "practicing law while under an order of suspension is unlawful and warrants immediate disbarment."

(Staff Counsel Nicole Corrado)

Matter of Gaetenalla Molinini-Rivera, 24 A.D.3d 36 (2005)

The Committee charged Gaetanella Molinini-Rivera ("Molinini") with intentional conversion of client funds and other serious misconduct. The intentional conversion involved a \$5,000 settlement in a personal injury matter. Molinini had not informed her client that she had received the \$5,000 settlement check. When the Committee inquired about the funds, she paid her client \$1,835 but withheld \$1,500 for a doctor's lien. Molinini falsely told the Committee that she had satisfied the lien when in fact she had not done so. The Referee found that Molinini violated DR 1-102(A)(4) and intentionally converted client funds from her IOLA account and engaged in other misconduct. Other charges related to another matter where Molinini refused to refund money demanded by her client and he brought a Small Claims Court action. In defense of that action Molinini submitted an altered INS filing receipt to show that she had filed an application on behalf of her client. However, that receipt was for another client matter and Molinini acted deceitfully in submitting the receipt. In mitigation Molinini presented extremely unusual mitigating circumstances that were found to have been causally connected to her misconduct. The Court then found that Molinini's mitigation is one of those rare exceptional cases which justified departure from the usual sanction of

disbarment in intentional conversion cases. The Court suspended Molinini for five years. (Staff Counsel Jun H. Lee)

Matter of Samuel Tannenbaum, 17 A.D.3d 44 (2005)

Committee staff investigated allegations that from 2001 through 2003, respondent, as an attorney and executor of an Estate, converted to his own use \$320,056 of Estate funds. The Committee moved for and obtained respondent's interim suspension based upon uncontested evidence of misconduct. Matter of Tannenbaum, 16 A.D.3d 66 (2005). After respondent was served with a notice and statement of charges, he resigned from the bar and admitted the charges to the extent of converting \$303,164.50. The Appellate Division accepted his resignation and directed that his name be stricken from the roll of attorneys and ordered him to make restitution to the victim and to the Lawyers' Fund. (Deputy Chief Counsel Andral N. Bratton)

### SUMMARY OF OTHER REPRESENTATIVE CASES

To those interested in the work of the Committee it may appear that it is primarily engaged in bringing formal charges of misconduct and conducting hearings on those charges. Those are obviously important functions of the Committee but only a part of the picture. Most of the Committee's work is done completely in private, such as the investigation and resolution of the majority of the complaints filed with the Committee, but a large portion of what the Committee does in a confidential manner eventually does become public when the Court acts on motions made by the Committee. Interim suspensions are one such area.

#### Disbarments after Interim Suspension

The Court's rules provide that an attorney may be suspended from the practice of law pending consideration of charges against the attorney for (1) a default in responding to pending charges of professional misconduct or to comply with lawful demands made in connection with an investigation; (2) a substantial admission under oath that the attorney has committed an act of professional misconduct; (3) other uncontested evidence of professional misconduct; or (4) willful failure to pay money owed to a client evidenced by a judgment or other clear and convincing evidence.

The most serious misconduct the Committee deals with involves the theft or misappropriation of money from clients or held as a fiduciary. The First Department has made it quite clear that the intentional conversion of money held as a fiduciary or for a client requires disbarment except in very exceptional mitigating circumstances which are very rarely found. Because such misconduct immediately threatens the public interest the Committee's staff will seek an immediate suspension for such misconduct if it has the evidence to justify the motion. In 2005, the Court suspended nine lawyers on an interim basis pending resolution of the charges against them in the following cases: Matter of Barry W. Horowitz, 14 A.D.3d 191; Matter of Samuel J. Tannenbaum, 16 A.D.3d 66; Matter of Leslie S. Kohn, 18 A.D.3d 96; Matter of Baird Cuber, 19 A.D.3d 58; Matter of Joseph J. Pierini, 21 A.D.3d 42; Matter of Michael A. Szegda, 22 A.D.3d 103; Matter of Bertram Brown, 23 A.D.3d 56; Matter of Maurice B. Melman, 25 A.D.3d 38, and Matter of Jeremiah J. Sheehan, --- A.D.3d ---, 806 NYS2d 501 Lexis 14876.

The Court also has a rule unique to the First Department (Rule 603.4(g)) that a motion to suspend may also include a notice to the attorney that if the attorney is suspended and fails to appear or apply in writing to the Court requesting a hearing or reinstatement within six (6) months the attorney may

be disbarred. In 2005, the First Department invoked 22 NYCRR §603.4(g) to disbar nine attorneys: Matter of Karene A. Freeman, 14 A.D.3d 210; Matter of Zaffar Bugtti, 15 A.D.3d 70; Matter of Humar H. Kamgar, 16 A.D.3d 23; Matter of Stanley J. Szaro, 17 A.D.3d 50; Matter of Jamie V. Delio, 17 A.D.3d 69; Matter of Larry Johnson, 22 A.D.3d 106; Matter of Barry W. Horowitz, 23 A.D.3d 15; Matter of Ronald Richard, 23 A.D.3d 97, and Matter of Michael L. Goldman, 24 A.D.3d 29.

#### Felony Disbarments

In 2005, the First Department granted ten motions to strike the names of attorneys convicted of felonies: Matter of Michael S. Wantuck, 14 A.D.3d 178; Matter of Steven F. Miller, 15 A.D.3d 88; Matter of Lawrence Dicker, 18 A.D.3d 90; Matter of Anthony Ferrandino, 18 A.D.3d 116; Matter of Scott H. Sessler, 20 A.D.3d 23; Matter of Daniel S. Chilewich, 20 A.D.3d 109; Matter of Richard T. Roberts, 21 A.D.3d 108; Matter of Dmitry Shubov, 25 A.D.3d 33; Matter of Chak Y. Lee, 25 A.D.3d 51, and Matter of Valerie S. Amsterdam, --- A.D.3d ---, 806 NYS2d 50.

#### 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 2005, the First Department accepted resignations under 22 NYCRR §603.11 from eight attorneys and ordered their names stricken from the roll of attorneys: Matter of Jay R. Kolmar, 15 A.D.3d 8; Matter of George R. Osborne, 17 A.D.3d 8; Matter of Samuel Tannenbaum, 17 A.D.3d 44; Matter of Steven F. Goldman, 17 A.D.3d 64; Matter of Lester Yudenfriend, 23 A.D.3d 4; Matter of Sophia A. Sedlis, 23 A.D.3d 1; Matter of Daniel S. Lieberman, 23 A.D.3d 91, and Matter of Alan J. Harris, 25 A.D.3d 209.

### 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 2005, the Court imposed suspensions for misconduct on 14 attorneys for periods ranging from three months to five years: Matter of Chaim Howard Berglas, 16 A.D.3d 1; Matter of Robert A. Kahn, 16 A.D.3d 7; Matter of Wayne A. Hagendorf, 17 A.D.3d 25; Matter of Howard Gotbetter, 19 A.D.3d 1;



Matter of Donald J. Goldman, 20 A.D.3d 90; Matter of Annaise Alviar, 21 A.D.3d 50; Matter of Robert M. Kuhnreich, 21 A.D.3d 1; Matter of Samuel A. Abady, 22 A.D.3d 71; Matter of David J. Rodkin, 21 A.D.3d 111; Matter of Claude Henry Kleefield, 22 A.D.3d 94; Matter of Anthony M. Supino, 23 A.D.3d 11; Matter of Avrohom Becker, 24 A.D.3d 32; Matter of Gaetanella Molinini-Rivera, 24 A.D.3d 36, and Matter of Joseph G. O'Shea, 25 A.D.3d 203.

#### Public Censures

The least severe form of public discipline that the Court may impose is a censure (22 NYCRR §605.5[a][3]). In 2005, the First Department issued public censures in six cases based on formal charges of misconduct: Matter of Max Marcus Katz, 15 A.D.3d 1; Matter of John A. R. Dalley, 16 A.D.3d 90; Matter of Andrew F. Plasse, 17 A.D.3d 33; Matter of Zoran Najdovski, 18 A.D.3d 27; Matter of Richard B. Becker, 22 A.D.3d 29, and Matter of Leo L. Wong, 805 NYS2d 69.

#### 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 2005, the Court directed the

issuance of two private reprimands. 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 2005, the Committee issued 73 admonitions in 78 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 2005, the First Department granted nine petitions for reinstatement and denied one.

Appendix A: Committee Assignments

Paul J. Curran  
Chair

Policy Committee

Charlotte Moses Fischman  
Alfred G. Gerosa\*  
Robert L. Haig  
Myron Kirschbaum  
Marvin Leffler  
Mercedes A. Nesfield\*

Haliburton Fales 2d (Special Counsel)  
Martin R. Gold (Special Counsel)  
William Francis Kuntz, II (Special  
Counsel)  
Roy L. Reardon (Special Counsel)  
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

Christopher E. Chang, Chair  
William A. Gallina  
Lynn K. Neuner  
Timothy G. Reynolds  
Susan Welsher\*

Panel III

Patricia Farren, Chair  
Dr. Jane Eisner Bram\*  
Andrew M. Lawler  
Harold F. McGuire, Jr.  
Charles G. Moerdler

Panel IV

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

Panel V

John L. Warden  
Thomas Fitzpatrick  
Susan M. Karten  
Lawrence D. McGovern  
Reuben Samuel  
Christine Collins Tomas\*

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

Panel IX

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

\*Public Member

Panel VIII

Paul F. Doyle, Chair  
Eugene F. Bannigan  
Jean E. Davis\*  
Stephen E. Kaufman  
John W. McConnell

Panel X

Denis F. Cronin, Chair  
Frank J. Loverro  
Fitzgerald Miller\*  
Anthony M. Radice  
Marian E. Silber

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  
LaTrisha 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  
Robin Green  
Celina Nelson  
Hermine Otto  
Joel Peterson  
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.  
Chris Stern Hyman, Esq.  
Andrew D. Kaiser, Esq.  
Hal R. Lieberman, Esq.

John Madden Jr., Esq.  
K. Ann 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 2005

FIRST JUDICIAL DISTRICT

FIRST DEPARTMENT

**I. MATTERS PROCESSED:\***

A. Matters Pending at Start of Period	<u>1238</u>	
B. New Matters During Period	<u>3371</u>	
C. Closed Matters Reactivated During Period	<u>43</u>	
D. Total Matters to be Processed During Period (A+B+C)		<u>4652</u>
E. Total Matters Disposed of During Period		<u>3422</u>
F. Matters Pending at End of Period		<u>1230</u>

**II MATTERS DISPOSED OF BY COMMITTEE:**

	Cases**	Matters
A. Rejected as Failing to State a Complaint	<u>713</u>	<u>737</u>
B. Referred to Other Disciplinary Committees	<u>379</u>	<u>380</u>
C. Referred to Other Agencies	<u>39</u>	<u>40</u>
D. Dismissed or Withdrawn	<u>1912</u>	<u>1957</u>
E. Dismissed through Mediation	<u>17</u>	<u>17</u>
F. Letter of Caution	<u>n/a</u>	<u>n/a</u>
G. Letter of Admonition	<u>73</u>	<u>78</u>
H. Admonition (or Reprimand)	<u>0</u>	<u>0</u>
I. Referred to Appellate Division (Disc. Proc.)	<u>115</u>	<u>213</u>
Total Disposed of During Period (same as I.E above.)	<u>3248</u>	<u>3422</u>

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

A. Cases Pending at Start of Period		<u>38</u>
1. Disciplinary Proceedings	<u>28</u>	
2. Other	<u>10</u>	
B. Cases Received During Period		<u>123</u>
1. Disciplinary Proceedings	<u>79</u>	
2. Other	<u>44</u>	
C. Total to be Processed During Period		<u>161</u>

**ATTORNEY DISCIPLINE ACTIVITIES** (2005)

D.	Cases Closed		
	1. Disbarred	21	
	2. <b>Disciplinary Resignations</b>	8	
	3. Suspended***	26	
	4. Censured	6	
	5. Privately Censured	2	
	6. Remanded to Disciplinary Committee	7	
	7. Discontinued	4	
	8. Dismissed	0	
	9. Reinstatements Granted	9	
	10. Reinstatements Denied	1	
	11. <b>Non-Disciplinary Resignations</b>	0	
	12. All Other Dispositions	32	
	13. Total Closed		116
E.	Total Cases Pending at End of Period		45
	1. Disciplinary Proceedings	32	
	2. Other	13	

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 (15), interim (9) and indefinite suspensions (2).

Appendix F: Budget for Fiscal Year 2005-2006

Departmental Disciplinary Committee Budget  
Fiscal Year 2005-2006

Appendix F: Budget for Fiscal Year 2005-2006

Departmental Disciplinary Committee Budget  
Fiscal Year 2005-2006

<u>Item</u>	<u>Allocation</u>
Personal Service Total	\$ 3,518,246
Office Supplies	51,432
EDP Supplies	2,950
Legal Reference - General	16,291
Travel-General	6,323
Rentals of Equipment	4,002
Repairs of Equipment	11,479
Postage and Shipping	41,712
Printing - General	10,130
Telephones	35,347
Professional Services - General	50,624
Professional Services - Expert Witnesses	4,000
Professional Services - Interpreters	3,000
Transcript Costs - General	60,000
Computer Assisted Legal Research	1,000
Equipment New - General	<u>31,000</u>
TOTAL	\$ 3,847,536

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: \_\_\_\_\_ Suite/Floor \_\_\_\_\_

City State Zip Code

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.

