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GRIEVANCE COMMITTEE



NEW YORK STATE BAR ASSOCIATION

**Committee on
Professional Discipline**

**The State of Discipline
in New York State**

Annual Report for the Year 1981

One Elk Street, Albany, NY 12207



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**New York State Bar Association
Committee on Professional Discipline**

1981 - 1982

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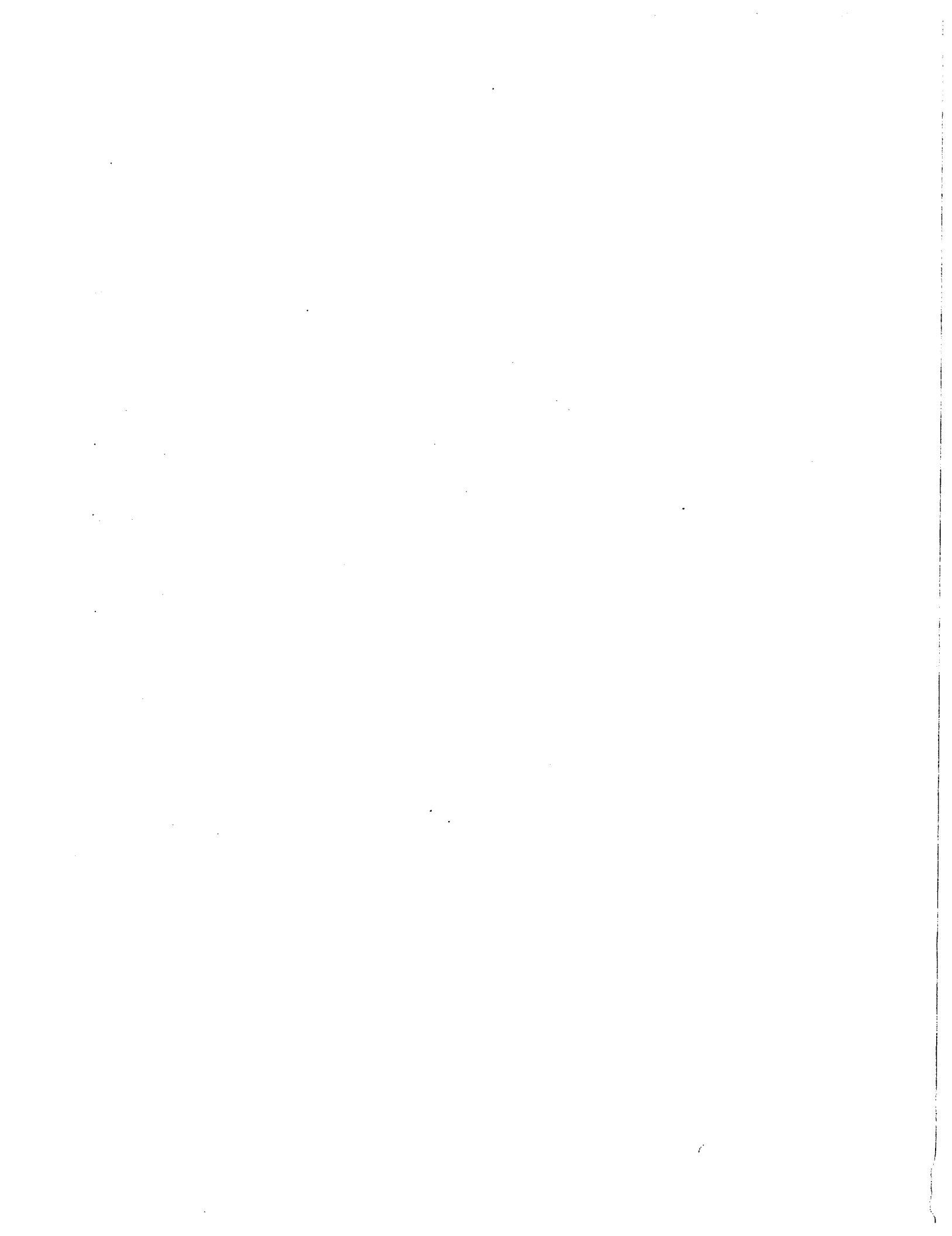
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Preface

This report is not merely that of the Committee on Professional Discipline of the New York State Bar Association, but is equally that of the chief counsel and staff of the eight departmental disciplinary committees who have compiled so much of the information contained herein. If this report is of value and interest to those who read it, the credit must go to those dedicated people, not only for their willing assistance in its compilation, but also because what has been assembled is a testament to their labors and their substantial contribution to our profession.

Introduction

This Committee continually reviews the state of professional discipline in New York State. We desire to do everything possible to promote and maintain an effective and equitable system.

In our annual report for the year 1980, we referred to a recommendation made by our Committee to each of the four departments of the Appellate Division to amend the rules governing the conduct of attorneys so as to require that copies of otherwise unpublished advertisements of legal services be filed with the appropriate grievance committee. Such filing would provide a repository for the unpublished advertisements permitting careful screening and policing which would encourage the avoidance of dissemination of misleading materials. This recommendation followed the decision in *Matter of Koffler*, 51 N.Y. 2d 140 (1980), where the Court indicated that such advertising, while not proscribed, could be regulated. We are pleased to report that each of the four departments of the Appellate Division has adopted the rule proposed by our Committee.

In our last report, we also indicated that the Committee was submitting comments to the Court of Appeals, at its request, with regard to a suggestion that there be incorporated in the Court's rules for the admission of attorneys and counselors at law, a requirement that

candidates for admission to the Bar pass a multi-state professional responsibility examination administered by the National Conference of Bar Examiners. Again, consistent with the view expressed by our Committee, the Court has adopted a rule containing such requirement.

During the past year, our Committee prepared a report, approved for circulation by the Association's Executive Committee, with regard to the present structure of the system for lawyer discipline in New York State. The report concluded that the present state-wide system works well. The Committee believed that no advantage would be gained by removing jurisdiction for disciplining lawyers from the four departments of the Appellate Division where it is now placed by Section 90 of the Judiciary Law. Noting a high degree of coordination among the various departments, our Committee expressed the view that there was no need to pull the present system up by its roots, and encouraged retention of the present structure. The introduction to that report, which expresses the Committee's views and which is reprinted here, was submitted to the American Bar Association, which is currently studying the New York State system of discipline.

Our continuing process of self-examination will enable us to reach our ideal of the best possible disciplinary mechanism.

HAROLD HALPERN, Chairman

Current Status of State-wide Disciplinary System

The ABA's Standing Committee on Professional Discipline has been invited to conduct a review of the disciplinary system in New York State. We offer this report as an expression of our thoughts on the matter, to aid the Standing Committee in its study.

A 1970 ABA study of discipline throughout the country (called the "Clark Report") found wide-spread public dissatisfaction with lawyers' disciplinary procedures. It recommended that "disciplinary agencies within a state be centralized into a single unit." At the same time, the report cited with approval the system in New York of having disciplinary jurisdiction of its courts divided among the four departments.

As a result of the Clark Report, the so-called Christ Committee was appointed in New York State. Its 1972 report accepted many of the Clark Report's recommendations but rejected the idea of having disciplinary matters in New York centralized in the highest court. The committee said it "sees no significant advantage to be gained by removing this jurisdiction from the four Appellate Divisions where Section 90 of the Judiciary Law now places it, particularly so if the Committee's proposed uniform rules and its recommendations for inter-departmental coordination and communication in the areas of procedure and policy are implemented."

Our committee agrees entirely with the foregoing statement of the Christ Committee. The present system should be retained and the process of increasing the degree of uniformity of procedural rules and coordination and communication among the four Departments should be continued.

New York does in fact have a state-wide grievance system — albeit not centralized. The system divides its disciplinary jurisdiction among the four Departments of the Appellate Division and further subdivides that jurisdiction into eight geographic areas each represented by its own disciplinary agency. This makes good sense because it permits recognition of local attitudes and the great difference in the kinds of practice engaged in by lawyers in different areas.

Moreover, New York's state-wide system works well. The courts in New York were in the vanguard of the effort to improve lawyer discipline. Since the time of the Christ Committee they have made great progress in promoting uniformity of procedures and inter-departmental coordination. The presiding justices meet regularly and many coordinated steps have been taken in the field of discipline. Each Department has a paid disciplinary staff and large numbers of volunteers who work under direct and active observation of the courts. The system is working well administratively and its four Department aspect permits it to perform efficiently and provide ready access to the public and respondent attorneys, while reflecting local conditions. It can, of course, be improved, but improvement should be accomplished by making desirable changes, rather than by adopting a radically new system which would put at risk much of the good work now being done.

Our Committee is in accord with the view that changes in the present grievance process in New York State should be made, but it believes that a new single grievance agency for the entire State is a more drastic remedy than is justified and would be undesirable. One of the arguments advanced in favor of a state-wide grievance agency is that most of the states have adopted that approach. But New York State probably has greater variety among its areas than most states. Also, there is nothing to indicate that the centralized grievance agencies in other states have produced better results than the four department system in New York.

It has been observed that each Department of the Appellate Division appoints its own Chief Counsel, as well as his staff, and all members of the disciplinary committees. This, it is argued, involves an inherent conflict of interest. We believe that the suggested conflict is theoretical rather than real. In practice, although the courts appoint the personnel, the committees are left free to handle the case load as they see fit. We have never seen a situation where the court has interfered with the prosecutorial function of the staff or the adjudicative function of a hearing panel. The prosecutors, in practice, act like district attorneys representing the public and the hearing panels act like judges. Neither attempts to control or influence the function of the other.

We would suggest that those who fear this theoretical conflict might be content with a system under which each Department of the Appellate Division delegates the appointment of the prosecutor and his staff, as well as the appointment of committee members, to a voluntary independent board composed of lawyers and prominent citizens, leaving the final adjudicative function to the court. This would not be very different from the state-wide grievance system as now proposed, except that the board would be voluntary and there would be one in each Department, thereby accommodating the differences among the various areas of the State. A superseding state-wide agency replacing the present system would probably also use volunteers but its managers and staff would have to be paid substantial salaries and office space and services would have to be provided. This could amount to a considerable sum of money which would be a new layer on top of the present expense of prosecutors and their staffs and the expenses of hearings conducted by committees and hearing panels. Also, it has been our observation that state-wide agencies, even those in the judicial system, often become top-heavy, inefficient, bureaucratic and remote, sometimes concerned more with completing forms and reports that justify their existence than performing their basic functions. Empire building is a natural disease of bureaucratic agencies. Also, paid positions in the agency would tend to become political plums and nothing could be more destructive to the integrity and public image of the disciplinary system than that.

Our Committee therefore proposes the following:

1. That the four department system be retained.
2. That the Chief Judge appoint a special committee to
 - (i) investigate the existing disciplinary procedures employed in each Department of the Appellate Division,
 - (ii) devise a uniform state-wide set of procedures in

consultation with the presiding justices of the Appellate Division, (iii) review existing practices among the presiding justices for inter-departmental coordination and communication on grievance matters and recommend improvements, and (iv) consider any suggestions of the ABA Standing Committee on Professional Discipline with a view to incorporating such of them as seem desirable.

3. Ask each Department of the Appellate Division to adopt the uniform procedural rules.

4. Ask each Department of the Appellate Division to appoint a voluntary, independent board of lawyers and prominent lay citizens to which the court will delegate the power to appoint grievance prosecutors, staff and committee members.

The chief advantages of the plan we propose are (i) any perceived conflict of interest problem would be largely eliminated, (ii) the four department system which recognizes geographical differences and is responsive to local concerns would be preserved, (iii) the voluntary participation of committee and panel members would be

continued without disruption, (iv) continuity of operations would be preserved while the system is adjusting to the new uniform procedural rules, (v) the huge expense of an overriding bureaucracy would be avoided, and (vi) a greater degree of acceptance and cooperation could be expected from the bar and the bench than would be so if the existing system were scrapped.

When changes are under consideration, some cannot resist the urge to pull the old system up by the roots, destroy it and plant something radically different in its place. We believe the present system is working well and that desirable changes can be accomplished while continuing as much of the existing system as is reasonably possible and also continuing to use volunteers who, according to past experience, perform their duties conscientiously and industriously with a high degree of integrity, dedication and professional skill.

Committee on Professional Discipline
New York State Bar Association

March 1982

Explanation of Disciplinary Statistics for the Year 1981

In maintaining records of professional discipline in this state the practice has been to consider each complaint as an "inquiry." When it appears that the "inquiry" does not allege conduct which, even if true, would constitute professional misconduct, it is "Rejected as Failing to State a Complaint;" otherwise, it is a "matter" which is then investigated. Frequently several "matters" will involve the same attorney and all matters involving that attorney are considered one "case." The committees record each "matter" separately. However, when the committees receive several "matters" against the same attorney and, with the approval of the court, commence a disciplinary proceeding against that attorney based upon the several "matters," it is then recorded as a single "case." Thus, a "case" may involve multiple "matters" or complaints.

A proper appreciation of the workload of the disciplinary committees can be had only if the total number of "matters pending" is added to the total number of "cases pending." The "cases," which are fully litigated proceedings, sometimes complex and often furiously contested, are a very large part of the work of the professional staff.

The multiplicity of disciplinary committees results in each committee receiving a substantial number of complaints which fall within the jurisdiction of other committees and which must then be referred to the proper committee. This is especially so in the Second Department where many "minor" complaints are processed by the

grievance committees of the local bar associations and a number of complaints are referred from one to the other; that is, they are transferred internally within the district. In those instances the same complaint is reported twice, once when it is received by the first committee and the second time when received by the second committee on referral from the first. Such duplication can be eliminated by subtracting from the "new matters received" and from the "total disposed of" the total number of cases "referred to other committees and agencies." Since referred matters are reported in this manner in the Fourth Department, no adjustment is necessary.

The statistics of the First and Second Departments reported below are the totals of the reports of the court appointed district committees in each department and of the reports of the grievance committees of the local bar associations. The reports of the district committees and of each of the local bar association's grievance committees are separately reproduced. However, in the Tenth Judicial District the grievance committees of the Nassau and Suffolk County Bar Association only investigate the minor complaints and then report them to the district committee which then makes the disposition, and the cases processed by them are incorporated in the report of the Tenth District Grievance Committee. In the Fourth Department a substantial number of minor complaints are processed by local bar associations and in the Third Department a much lesser number are processed locally but no separate reports are available for the local activity.

Table 1
Appellate Divisions
(1/1/81-12/31/81)

	1st Dept.	2nd Dept.	3rd Dept.	4th Dept.	TOTAL
MATTERS PROCESSED:¹					
Pending at start of period	973	1,405	214	420	3,012
New matters received ²	2,257	2,856	764	1,375	7,252
Matters disposed of	2,439	2,667	758	1,367	7,231
Pending at end of period	791	1,594	220	428	3,033
COMMITTEE DISPOSITIONS:					
Rejected for failing to state complaint	527	383	368	280	1,558
Referred to other agencies ³	263	619	57	34	973
Dismissed	1,374	1,201	223	973	3,771
Letters of caution	64	125	59	22	270
Letters of admonition	103	80	8	11	202
Admonition or reprimand	3	4	4	0	11
Referred to court	105	255	39	47	446
TOTAL DISPOSED OF:	2,439	2,667	758	1,367	7,231
CASES PROCESSED IN COURTS:					
Cases pending at start of period ⁴	42	131	15	9	197
Cases received	54	76	32	29	191
TOTAL TO BE PROCESSED	96	207	47	38	388
CASES CLOSED:					
Disbarred	12	12	1	2	27
Resigned	1	7	1	2	11
Suspended	15	19	9	7	50
Censured	1	22	3	1	27
Censured privately	0	1	0	0	1
Reinstatements granted	6	1	3	6	16
Reinstatements denied	9	7	0	2	18
Dismissed	0	2	2	1	5
All other dispositions	34	35	9	3	81
TOTAL CLOSED	78	106	28	24	236
TOTAL PENDING	18	101	19	14	152

¹"MATTERS" refers to number of complaints, not of attorneys.

²This includes complaints received and reactivated.

³This includes matters referred to other disciplinary committees and other agencies.

⁴Number of attorneys, not number of complaints.

Table 2

	New Matters*	Matters Closed	Disciplinary Action by Committees	Disciplinary Action by Court
1st Department				
1976	1,954	2,307	95	34
1977	2,547	1,399	78	24
1978	2,040	2,425	200	29
1979	2,170	2,890	184	39
1980	2,197	2,436	145	16
1981	1,994	2,176	170	29
2nd Department				
1976	2,163	1,844	177	28
1977	1,967	2,089	242	46
1978	1,961	1,814	219	53
1979	1,953	1,976	174	47
1980	1,735	1,853	157	19
1981	2,237	2,048	209	61
3rd Department				
1976	797	748	71	5
1977	646	782	98	16
1978	613	608	55	6
1979	576	633	73	11
1980	638	614	65	12
1981	679	701	71	14
4th Department				
1976	1,128	1,202	32	10
1977	978	910	77	7
1978	985	1,098	115	12
1979	924	958	21	10
1980	1,236	1,226	22	13
1981	1,341	1,333	33	12
Statewide				
1976	6,042	6,101	375	78
1977	6,138	5,180	495	93
1978	5,599	5,945	589	100
1979	5,623	6,457	452	107
1980	5,806	6,129	389	60
1981	6,251	6,258	483	116

*These figures are reduced by the number of complaints referred to other committees for action.

Statistical Reports of Disciplinary Committees

Departmental Disciplinary Committee for the First Department

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981	973	
B. New Matters Received During Period	2257	
C. Closed Matters Reactivated During Period	0	3230
D. Total Matters To Be Processed During Period		2439
E. Total Matters Disposed of During Period		791
F. Matters Pending on Dec. 31, 1981		

CASES:*

MATTERS:

II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	527	527
B. Referred to Other Disciplinary Committees	263	263
C. Referred to Other Agencies	0	0
D. Dismissed or Withdrawn	1374	1374
E. Letter of Caution (or Education)	60	64
F. Letter of Admonition	91	103
G. Admonition (or Reprimand)	3	3
H. Referred to Appellate Division	41	105
I. Total Disposed of During Period	2359	2439

III. Cases Processed In All Courts:

A. Cases pending on Jan. 1, 1981		42
1. Disciplinary Proceedings	31	
2. Other	11	54
B. Cases Received During Period	23	
1. Disciplinary Proceedings	31	96
2. Other		
C. Total To Be Processed During Period		12
D. Cases Closed		1
1. Disbarred		15
2. Resignation		1
3. Suspended**		0
4. Censured		6
5. Private Censure		1
6. Remanded to Grievance Committee		0
7. Discontinued		6
8. Dismissed		9
9. Reinstatements Granted		27
10. Reinstatements Denied		78
11. All Other Dispositions		18
12. Total Closed		
E. Total Cases Pending at End of Period	18	
A. Disciplinary Proceedings	0	
B. Other		

*For purposes of this Report, "MATTERS" represents the number of complaints, telephone calls which initiate an investigation, inquiries and *sua sponte* investigations, while "CASES" refers to the number of respondent-attorneys against whom proceedings have been instituted. As some attorneys are the subject of multiple complaints, the number of matters exceed the number of cases.

**Six of the above reported suspensions are interim suspensions.

Grievance Committee for the Second and Eleventh Judicial Districts of the Second Department

I. Matters Processed:			
A. Matters Pending on Jan. 1, 1981	235*		
B. New Matters Received During Period	747		
C. Closed Matters Reactivated During Period	0		
D. Total Matters To Be Processed During Period			982
E. Total Matters Disposed of During Period			713
F. Matters Pending on Dec. 31, 1981			269**
II. Matters Disposed of by Committee:			
A. Rejected as Failing to State a Complaint			151
B. Referred to Other Disciplinary Committees			203
C. Referred to Other Agencies			18
D. Dismissed or Withdrawn			176
E. Letter of Caution (or Education)			14
F. Letter of Admonition			24
G. Admonition (or Reprimand)			3
H. Referred to Appellate Division			124
I. Total Disposed of During Period			713
III. Cases Processed In All Courts:			
A. Cases pending on Jan. 1, 1981			64
1. Disciplinary Proceedings			—
2. Other			—
B. Cases Received During Period			43
1. Disciplinary Proceedings			43
2. Other			0
C. Total To Be Processed During Period			107
D. Cases Closed			
1. Disbarred			5
2. Resignation			6
3. Suspended			8
4. Censured			5
5. Private Censure			1
6. Remanded to Grievance Committee			3
7. Discontinued			2
8. Dismissed			0
9. Reinstatements Granted			1
10. Reinstatements Denied			3
11. All Other Dispositions			26
12. Total Closed			60
E. Total Cases Pending at End of Period			47
A. Disciplinary Proceedings			
B. Other			

*Figure does not include 176 matters of 64 disciplinary cases pending in all courts as of December 31, 1980.

**Figure does not include 170 matters of 47 disciplinary cases pending in all courts as of December 31, 1981.

Second Department, Second & Eleventh Judicial Districts
Local Bar Association Grievance Committees
 (Brooklyn, Queens, Richmond Bar Association)
 January 1, 1981 to December 31, 1981

	Brooklyn	Queens	Richmond	Combined
Pending at start of year	15	141	7	163
Matters received	82	100	25	207
Closed matters reactivated	0	1	0	1
	-----	-----	-----	-----
Total	97	242	32	371
Rejected	46	0	3	49
Referred to other committee	4	3	3	10
Referred to other agencies	0	0	0	0
Dismissed	18	54	8	80
Letter of caution	1	5	0	6
Letters of admonition	0	2	0	2
Admonition	0	0	0	0
Withdrawn	5	7	4	16
	-----	-----	-----	-----
Total closed	74	71	18	163
	-----	-----	-----	-----
Total pending	23	171	14	208

**Grievance Committee for the Ninth Judicial District of the
Second Department (Figures do not include statistics from Dutchess, Orange,
Rockland, Westchester and Putnam County Committees)**

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981	208	
B. New Matters Received During Period	600	
C. Closed Matters Reactivated During Period	16	
D. Total Matters To Be Processed During Period		824
E. Total Matters Disposed of During Period		533
F. Matters Pending on Dec. 31, 1981		291

CASES:

MATTERS:

II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint		118
B. Referred to Other Disciplinary Committees		123
C. Referred to Other Agencies		7
D. Dismissed or Withdrawn		142
E. Letter of Caution (or Education)		38
F. Letter of Admonition		25
G. Admonition (or Reprimand)		0
H. Referred to Appellate Division	14	80
I. Total Disposed of During Period		533

III. Cases Processed In All Courts:

A. Cases pending on Jan. 1, 1981		35
1. Disciplinary Proceedings	35	
2. Other	0	
B. Cases Received During Period		14
1. Disciplinary Proceedings	11	
2. Other	3	
C. Total To Be Processed During Period		49
D. Cases Closed		
1. Disbarred		4
2. Resignation		1
3. Suspended		7
4. Censured		6
5. Private Censure		0
6. Remanded to Grievance Committee		1
7. Discontinued		0
8. Dismissed		2
9. Reinstatements Granted		0
10. Reinstatements Denied		1
11. All Other Dispositions		1
12. Total Closed		23
E. Total Cases Pending at End of Period		26
A. Disciplinary Proceedings	25	
B. Other	1	

Dutchess County Bar Association Grievance Committee
Appellate Division, Second Department, Ninth Judicial District

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981	8
B. New Matters Received During Period	47
C. Closed Matters Reactivated During Period	0
D. Total Matters To Be Processed During Period	55
E. Total Matters Disposed of During Period	40
F. Matters Pending on Dec. 31, 1981	15

II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	
B. Referred to Other Disciplinary Committees	0
C. Referred to Other Agencies	8
D. Dismissed	0
E. Dismissal with Cautionary Language	29
F. Letter of Caution	3
G. Letter of Admonition	0
H. Admonition	0
I. Total Disposed of During Period	40

Orange County Bar Association Grievance Committee
Appellate Division, Second Department, Ninth Judicial District

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981	6
B. New Matters Received During Period	35
C. Closed Matters Reactivated During Period	0
D. Total Matters To Be Processed During Period	41
E. Total Matters Disposed of During Period	21
F. Matters Pending on Dec. 31, 1981	20

II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	2
B. Referred to Other Disciplinary Committees	8
C. Referred to Other Agencies	1
D. Dismissed	9
E. Dismissal with Cautionary Language	0
F. Letter of Caution	0
G. Letter of Admonition	0
H. Admonition	1
I. Total Disposed of During Period	21

**Rockland County Bar Association Grievance Committee
Appellate Division, Second Department, Ninth Judicial District**

I. Matters Processed:	
A. Matters Pending on Jan. 1, 1981	9
B. New Matters Received During Period	43
C. Closed Matters Reactivated During Period	0
D. Total Matters To Be Processed During Period	52
E. Total Matters Disposed of During Period	44
F. Matters Pending on Dec. 31, 1981	8
II. Matters Disposed of by Committee:	
A. Rejected as Failing to State a Complaint	1
B. Referred to Other Disciplinary Committees	30
C. Referred to Other Agencies	0
D. Dismissed	10
E. Dismissal with Cautionary Language	3
F. Letter of Caution	0
G. Letter of Admonition	0
H. Admonition	0
I. Total Disposed of During Period	44

**Westchester County Bar Association Grievance Committee
Appellate Division, Second Department, Ninth Judicial District**

I. Matters Processed:	
A. Matters Pending on Jan. 1, 1981	38
B. New Matters Received During Period	212
C. Closed Matters Reactivated During Period	3
D. Total Matters To Be Processed During Period	253
E. Total Matters Disposed of During Period	198
F. Matters Pending on Dec. 31, 1981	55
II. Matters Disposed of by Committee:	
A. Rejected as Failing to State a Complaint	0
B. Referred to Other Disciplinary Committees	57
C. Referred to Other Agencies	21
D. Dismissed	119
E. Dismissal with Cautionary Language	1
F. Letter of Caution	0
G. Letter of Admonition	0
H. Admonition	0
I. Total Disposed of During Period	198

**Putnam County Bar Association Grievance Committee
Appellate Division, Second Department, Ninth Judicial District**

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981	1
B. New Matters During Period	1
C. Closed Matters Reactivated During Period	0
D. Total Matters To Be Processed During Period	2
E. Total Matters Disposed of During Period	1
F. Matters Pending on Dec. 31, 1981	1

II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	0
B. Referred to Other Disciplinary Committees	0
C. Referred to Other Agencies	0
D. Dismissed	1
E. Dismissal with Cautionary Language	0
F. Letter of Caution	0
G. Letter of Admonition	0
H. Admonition	0
I. Total Disposed of During Period	1

Grievance Committee for Tenth Judicial District, Second Department
(Figures include cases process by Nassau & Suffolk County Bar Grievance Committees)

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981	737	
B. New Matters Received During Period	944	
C. Closed Matters Reactivated During Period	0	
D. Total Matters To Be Processed During Period		1,681
E. Total Matters Disposed of During Period		954
F. Matters Pending on Dec. 31, 1981		727
	CASES:	MATTERS:

II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	62	62
B. Referred to Other Disciplinary Committees	32	32
C. Referred to Other Agencies	101	101
D. Dismissed or Withdrawn	591	615
E. Letter of Caution (or Education)	55	64
F. Letter of Admonition	27	29
G. Admonition (or Reprimand)	0	0
H. Referred to Appellate Division	18	51
I. Total Disposed of During Period	886	954

III. Cases Processed In All Courts:

A. Cases pending on Jan. 1, 1981		32
1. Disciplinary Proceedings	29	
2. Other	3	
B. Cases Received During Period		19
1. Disciplinary Proceedings	15	
2. Other	4	
C. Total To Be Processed During Period		51
D. Cases Closed		
1. Disbarred		3
2. Resignation		0
3. Suspended		4
4. Censured		11
5. Private Censure		0
6. Remanded to Grievance Committee		0
7. Discontinued		1
8. Dismissed		0
9. Reinstatements Granted		0
10. Reinstatements Denied		3
11. All Other Dispositions		1
12. Total Closed		23
E. Total Cases Pending at End of Period		28
A. Disciplinary Proceedings	24	
B. Other	4	

Committee on Professional Standards, Third Department (Third, Fourth and Sixth Judicial Districts)

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981	214	
B. New Matters Received During Period	736	
C. Closed Matters Reactivated During Period	28	
D. Total Matters To Be Processed During Period		978
E. Total Matters Disposed of During Period		758
F. Matters Pending on Dec. 31, 1981		220

CASES: MATTERS:

II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	357	368
B. Referred to Other Disciplinary Committees	53	53
C. Referred to Other Agencies	4	4
D. Dismissed or Withdrawn	221	223
E. Letter of Caution (or Education)	50	59
F. Letter of Admonition	7	8
G. Admonition (or Reprimand)	4	4
H. Referred to Appellate Division	33	39
I. Total Disposed of During Period	729	758

III. Cases Processed In All Courts:

A. Cases pending on Jan. 1, 1981		15
1. Disciplinary Proceedings	14	
2. Other	1	
B. Cases Received During Period		32
1. Disciplinary Proceedings	28	
2. Other	4	
C. Total To Be Processed During Period		47
D. Cases Closed		
1. Disbarred		1
2. Resignation		1
3. Suspended		9
4. Censured		3
5. Private Censure		0
6. Remanded to Grievance Committee		8
7. Discontinued		0
8. Dismissed		2
9. Reinstatements Granted		3
10. Reinstatements Denied		0
11. All Other Dispositions		1
12. Total Closed		28
E. Total Cases Pending at End of Period		19
A. Disciplinary Proceedings	18	
B. Other	1	

**Grievance Committee, Fourth Department
(Fifth Judicial District)**

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981		
B. New Matters Received During Period	118	
C. Closed Matters Reactivated During Period	254	
D. Total Matters To Be Processed During Period	5	
E. Total Matters Disposed of During Period		377
F. Matters Pending on Dec. 31, 1981		266

II. Matters Disposed of by Committee:

	CASES:	MATTERS:
A. Rejected as Failing to State a Complaint	136	139
B. Referred to Other Disciplinary Committees	10	10
C. Referred to Other Agencies	0	0
D. Dismissed or Withdrawn	107	108
E. Letter of Caution (or Education)	3	3
F. Letter of Admonition	2	2
G. Admonition (or Reprimand)	n/a	n/a
H. Referred to Appellate Division	4	4
I. Total Disposed of During Period	262	266

III. Cases Processed In All Courts:

A. Cases pending on Jan. 1, 1981		
1. Disciplinary Proceedings		5
2. Other	5	
B. Cases Received During Period	0	
1. Disciplinary Proceedings		4
2. Other	2	
C. Total To Be Processed During Period	2	
D. Cases Closed		9
1. Disbarred		0
2. Resignation		1
3. Suspended		1
4. Censured		1
5. Private Censure		0
6. Remanded to Grievance Committee		0
7. Discontinued		0
8. Dismissed		0
9. Reinstatements Granted		1
10. Reinstatements Denied		0
11. All Other Dispositions		0
12. Total Closed		1
E. Total Cases Pending at End of Period		5
A. Disciplinary Proceedings		4
B. Other	4	
	0	

**Grievance Committee, Fourth Department
(Seventh Judicial District)**

I. Matters Processed:

A. Matters Pending on Jan. 1, 1981	38	
B. New Matters Received During Period	341	
C. Closed Matters Reactivated During Period	16	395
D. Total Matters To Be Processed During Period		334
E. Total Matters Disposed of During Period		61
F. Matters Pending on Dec. 31, 1981		

CASES:

MATTERS:

II. Matters Disposed of by Committee:

A. Rejected as Failing to State a Complaint	11	11
B. Referred to Other Disciplinary Committees	6	6
C. Referred to Other Agencies	1	1
D. Dismissed or Withdrawn	276	291
E. Letter of Caution (or Education)	7	8
F. Letter of Admonition	1	1
G. Admonition (or Reprimand)	n/a	n/a
H. Referred to Appellate Division	12	16
I. Total Disposed of During Period	314	334

III. Cases Processed In All Courts:

A. Cases pending on Jan. 1, 1981		3
1. Disciplinary Proceedings	2	
2. Other	1	12
B. Cases Received During Period	11	
1. Disciplinary Proceedings	1	
2. Other		15
C. Total To Be Processed During Period		
D. Cases Closed		2
1. Disbarred		1
2. Resignation		3
3. Suspended		0
4. Censured		0
5. Private Censure		0
6. Remanded to Grievance Committee		0
7. Discontinued		0
8. Dismissed		3
9. Reinstatements Granted		1
10. Reinstatements Denied		0
11. All Other Dispositions		10
12. Total Closed		5
E. Total Cases Pending at End of Period	5	
A. Disciplinary Proceedings	0	
B. Other		

**Disciplinary Decisions Reported by Appellate Divisions
in 1981**

**Disciplinary Cases Reported by Appellate Divisions in 1981
Table of Citations
First Department**

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Matter of Mydanik 78 A.D. 2d 339	Stricken	Federal Felony Conviction [18 U.S.C. 1001] with corresponding New York State Felony [Penal Law 175.35]
Matter of Bruno 79 A.D. 2d 235	Indefinite Suspension	22 NYCRR 603.16(b) mental incapacity
Matter of Field 79 A.D. 2d 198	Disbarred	1-102(A) (4) (dishonesty, fraud or misrepresentation); 9-102(A) (conversion); 6-101(A) (3) (neglect)
Matter of Stanton —A.D. 2d—	Stricken by Consent	6-101(A) (3) (neglect)
Matter of Sorkin 80 A.D. 2d 31	Six Month Suspension	26 U.S.C. 7206 False tax return
Matter of Nitsberg 79 A.D. 2d 489	Disbarred	Judiciary Law §90 (2) — practicing law while under suspension
Matter of Stone 80 A.D. 2d 93	Stricken	Federal Felony Conviction (18 U.S.C. 1621) with corresponding New York State felony [Penal law 210.15]
Matter of Genzer 80 A.D. 2d 114	Disbarred	9-102, 9-102(A)(4) (commingling and conversion); 1-102(A)(5) (failure to cooperate with Disciplinary Committee)
Matter of Leifer 80 A.D. 2d 272	Three Year Suspension effective 7/13/78	18 U.S.C. 371 — conspiring to make false statements to the Immigration and Naturalization Service
Matter of Norwood 80 A.D. 2d 278	Censure	1-102(A)(4) (misrepresentation)
Matter of Hopfl 81 A.D. 2d 787	Three Year Suspension effective 5/4/78	15 U.S.C. 645(a) false filing
Matter of Rawlins 81 A.D. 2d 193	Interim Suspension pending further Order of the Court	1-102(A)(4) (conversion); 9-102 (commingling); 6-101(A)(3) (neglect)
Matter of Hall 82 A.D. 2d 754	Interim Suspension pending further Order of the Court	15 U.S.C. 785(b) & 77FF (false filing), CRF §240. 10b-5 (Insider trading on securities)
Matter of Bronston 82 A.D. 2d 771	Interim Suspension pending further Order of the Court	18 U.S.C. 1341 (mail fraud)
Matter of Landau 82 A.D. 2d 771	Interim Suspension pending further Order of the Court	15 U.S.C. 78FF (false filing)
Matter of Brown 81 A.D. 2d 333	Disbarred	6-101(A)(3) (neglect); 1-102(A)(4) (dishonesty, fraud); 2-103(D) (practicing law under a trade name without authorization)
Matter of Greely 83 A.D. 2d 512	Indefinite Suspension	22 NYCRR 603.16(b)(1) Mental incapacity

First Department (continued)

ATTORNEY

Matter of Lowell
83 A.D. 2d 524

Matter of Beitler
82 A.D. 2d 276

Matter of Root
82 A.D. 2d 290

Matter of Rossbach
82 A.D. 2d 292

Matter of Teplin
82 A.D. 2d 296

Matter of Gotkin
83 A.D. 2d 342

Matter of DeCesare
82 A.D. 2d 716

Matter of Nussbaum
82 A.D. 2d 719

Matter of Groban
84 A.D. 2d 521

Matter of Coven
83 A.D. 2d 152

Matter of Levine
—A.D. 2d—

Matter of Fanning
83 A.D. 2d 377

Matter of Levine
—A.D. 2d—

DISCIPLINE IMPOSED

Interim Suspension
pending further
Order of the Court

Stricken

Eighteen Month
Suspension-effective
2/24/81

Stricken

Disbarred

Stricken

Disbarred

Indefinite Suspension

Interim Suspension pending
further Order of the Court

Stricken

Indefinite Suspension

Three year Suspension

Stricken

DISCIPLINARY RULES INVOLVED

18 U.S.C. 371 conspiracy to defraud

Federal Felony Conviction (18 U.S.C. 1001) corresponding New York State Felony [Penal law 173.35]

New York State misdemeanor conviction-Conspiracy in the fourth degree, perjury in the third degree

Federal Felony Conviction (18 U.S.C. 2314) corresponding New York State Felony [Penal Law 165.50]

Judiciary Law §90(2) — practicing law while under suspension

New York State Felony Conviction [Penal Law 155.35]

New York State misdemeanor conviction [Penal Law 165.15]

22 NYCRR 603.16(b)
physical incapacity

Federal misdemeanor 26 U.S.C. 7203

Federal Felony (18 U.S.C. 1623) corresponding New York State Felony [Penal law 210.15]

Judiciary Law §90(2) failure to cooperate with Disciplinary Committee

1-102(A)(4) (misrepresentation);
6-101(A)(3) (neglect)

Sister State Felony Conviction, Article 27, Section 562 of the annotated Code of Maryland — corresponding New York State Felony [Penal Law 155.30(6).or 110.00 & 135.35]

**Second Department
(Second and Eleventh Judicial Districts)**

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Matter of Anonymous (D.P. 47-79) (Unpublished)	Discontinued (Deceased)	
Matter of Anonymous (D.P. 36-79) (Unpublished)	Private Admonition (Committee)	
Matter of Anonymous (D.P. 23-80) (Unpublished)	Discontinued (Deceased)	
Matter of Anonymous (D.P. 22-79) (Unpublished)	Private Censure (App. Div.)	
Matter of Anonymous (D.P. 23-81) (Unpublished)	Private Admonition (Committee)	
Matter of Anonymous (D.P. 26-75) (Unpublished)	Private Admonition (Committee)	
Matter of Addison —A.D. 2d—	Resigned	
Matter of Alderman 80 A.D. 2d 184	Suspended One Year	Misdemeanor conviction and subornation of perjury
Matter of Barbara —A.D. 2d—	Suspended Three Years	
Matter of Belorin 82 A.D. 2d 278	Censured	Neglect; failed to keep records as required by Code of Professional Responsibility
Matter of Colin 82 A.D. 2d 449	Censured	Conviction of attempting to evade income tax
Matter of Dallacasa 80 A.D. 2d 906	Disbarred	9-102(B) (converted escrow funds); 6-101(A)(3) (neglect of an estate); 1-102(A)(5) (failure to cooperate with Grievance Committee)
Matter of D'Antonio —A.D. 2d—	Suspended Indefinitely	
Matter of Davidson 80 A.D. 2d 426	Suspended Five Years	Neglect; delaying trial to harass former client; failing to satisfy judgment; failure to cooperate with grievance committee; handling a matter not competent to handle
Matter of Feit 81 A.D. 2d 432	Suspended One Year	out-of-state misdemeanor conviction
Matter of Fitzpatrick 82 A.D. 2d 451	Censured	Conviction of misdemeanors
Matter of Fleishman 82 A.D. 2d 282	Suspended One Year	Conversion; neglect
Matter of Gelman 82 A.D. 2d 842 82 A.D. 2d—	Suspended Pending Hearing; Resigned	Neglect; conversion; failure to cooperate with grievance committee; arranging unlawful payment to persons in connection with placing out of children for adoption

**Second Department
(Second and Eleventh Judicial Districts)
(continued)**

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Matter of Gesten 82 A.D. 2d 455	Censured	Convicted of conspiracy in 4th degree
Matter of Gritz 82 A.D. 2d 814 —A.D. 2d—	Suspended Pending Hearing	Conviction of serious crime
Matter of Horowitz 82 A.D. 2d 843	Resigned	Misrepresentations to client; failure to cooperate with grievance committee; failure to pursue matter entrusted to him
Matter of Martino 82 A.D. 2d 600	Censured	Conviction in other state of unauthorized practice of the law
Matter of McKeller 80 A.D. 2d 424	Suspended Five Years	9-102(B)(4) (conversion); 6-101(A)(3) (neglect); 1-102(A)(5) (failure to cooperate with Grievance Committee)
Matter of Minieri 80 A.D. 2d 365	Disbarred	Conversion; failure to maintain separate escrow account; misrepresenting & deceiving clients; neglect; failure to cooperate with Grievance Committee
Matter of Pistone 81 A.D. 2d 116	Suspended Three Years	Neglect; fraud, deceit and misrepresentation
Matter of Prince 81 A.D. 2d 61	Disbarred	Conduct involving fraud, deceit, dishonesty and conflict of interest; conversion; commingling; failure to cooperate with Grievance Committee
Matter of Schlossman —A.D. 2d—	Resigned	
Matter of Shiffman 81 A.D. 2d 114	Disbarred	Conduct involving moral turpitude; conduct involving dishonesty, fraud, deceit and misrepresentation
Matter of Siegel 80 A.D. 2d 145	Disbarred	Conspired to influence Judge not to incarcerate client; shared legal fee with bailbondsman as an inducement for the bailbondsman to refer clients to attorney
Matter of Smith (Richard K.) —A.D. 2d—	Resigned	

(Ninth Judicial District)

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Matter of Chalon 80 A.D. 2d 326	Disbarred	9-102 (violation of escrow agreement, conversion, commingling, bad check, perjury)
Matter of Cobb 82 A.D. 2d 280	One-Year Suspension	6-101(A)(3) (neglect); 22 NYCRR 696.1 (failure to file attorney registration); 1-102(A)(6) (engaged in conduct adversely reflecting on fitness to practice)
Matter of Dreyfuss —A.D. 2d—	Resignation	Violation of Judiciary Law §750 (failure to comply with Judicial Subpoena Duces Tecum); 1-102(A)(5) (non-cooperation with Grievance Committee); 9-102 (conversion)
Matter of Goldberg 82 A.D. 2d 572	Censured	6-102 (attempted to exonerate himself from or limit liability to client for personal malpractice by payment of sum in return for general release and withdrawal of complaint)
Matter of Goldman 82 A.D. 2d 574	Censured	2-106(A) (excessive fee); 9-102 (commingling, failure to maintain escrow account)
Matter of Goldman 80 A.D. 2d 96	Censured	1-102(A)(4) (engaged in conduct involving dishonesty, deceit, misrepresentation)
Matter of Greene —A.D. 2d—	Suspended Indefinitely	691.13 incompetency proceeding
Matter of Greene 82 A.D. 2d 286	One-Year Suspension	6-101(A)(3) (neglect); 1-102(A)(4) (misrepresentation); 22 NYCRR 691.20 (failure to file retainer statement); 1-102(A)(5) (noncooperation with Grievance Committee); 22 NYCRR 696.1 (failure to file attorney registration statement)
Matter of Hayden 82 A.D. 2d 459	Censured	6-101(A)(3) (neglect)
Matter of Kahn 80 A.D. 2d 98	Censured	1-102(A)(4) (deceit, misrepresentation)
Matter of Kaplan 81 A.D. 2d 599	Disbarred	9-102 (conversion); Violation of Judiciary Law §750 (failure to comply with Judicial Subpoena Duces Tecum); 6-101(A)(3) (neglect); 1-102(A)(5) (noncooperation with Grievance Committee)
Matter of Kirschner 79 A.D. 2d 67	One-Year Suspension	9-102 (failed to account for escrow funds); 1-102(A)(5) (noncooperation with Grievance Committee); Violation of Judiciary Law §750 (failed to comply with Judicial Subpoena Duces Tecum)
Matter of Markowitz 80 A.D. 2d 422	Three-Year Suspension	1-102(A)(3) and (4) (forgery and perjury); 9-102 (conversion and commingling)

Ninth Judicial District (continued)

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Matter of Rukeyser 82 A.D. 2d 589	Censured	9-102(A) (failure to place funds in escrow account, commingling) 22 NYCRR 696.1 (failure to file attorney registration statement)
Matter of St. John 81 A.D. 2d 250	Disbarred	1-102(A)(4) (practicing while under suspension, failure to inform Character and Fitness Committee that he was practicing law); 9-102 (conversion from escrow account, withdrawing monies from estate account, commingling, failure to maintain proper records); 1-102(A)(4) (counselled client to sign 10 blank sheets of paper and subsequently filled them out as consent for the allowance of attorney's fees)
Matter of Spence 82 A.D. 2d 294	Three-Year Suspension	6-101(A)(3) (neglect); 9-102 (conversion, failed to maintain escrow records); 1-102(A)(5) (noncooperation with Grievance Committee); 22 NYCRR 696.1 (failed to file attorney registration statement)
Matter of Taylor 81 A.D. 2d 59	One-Year Suspension	6-101(A)(1) and (3) (neglect and incompetence)
Matter of Tuttle 81 A.D. 2d 248	Disbarred	1-102(A)(4) (deceit and misrepresentation); 6-101(A)(3) (neglect)
Matter of Vecchiarello —A.D. 2d—	Resignation Appl. for Reinstatement	Application denied

(Tenth Judicial District)

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Matter of Claybrook 82 A.D. 2d 447	Censured	1-102(A)(5) (failure to file federal income tax returns)
Matter of Director 82 A.D. 2d 606	Censured	Misdemeanor conviction (criminal sale of marijuana)
Matter of Dunbar 82 A.D. 2d 604	Censured	Misdemeanor conviction (criminal sale of marijuana)
Matter of Fremont 82 A.D. 2d 543	Censured	6-101(A)(3) (neglect of clients legal matters); 9-102 (noncompliance with escrow agreement, failure to deliver funds)
Matter of Ginocchio 82 A.D. 2d 284	Suspended for one year (reduced to censure)	6-101(A)(3) (neglect of clients matters); 9-102(A)(B) (commingling clients funds)
Matter of Goerlich 82 A.D. 2d 608	Censured	1-101(A)(5) (failure to cooperate with committee)
Matter of Goldstein 82 A.D. 2d 457	Censured	1-102(A)(3)(4)(5) (payment of gratuities to county ABC board)

**Tenth Judicial District
(continued)**

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Matter of Higgins 79 A.D. 2d 145	Suspended two years	1-102(A)(3)(4)(5) (as sitting judge solicited sexual favors from parties to litigation)
Matter of Leibowitz 82 A.D. 2d 646	Censured	6-101(A)(3) (neglect of clients matters); 1-101(A)(5) (failure to cooperate with committee)
Matter of Lilli 82 A.D. 2d 602	Censured	1-101(A)(5) (failure to cooperate with committee)
Matter of Ripton 82 A.D. 2d 288	Censured	6-101(A)(3) (neglect of clients matters); 1-102(A)(5) (failure to cooperate with committee)
Matter of Rosenberg 83 A.D. 2d 375	Disbarred	Federal felony conviction (bribery of IRS agent)
Matter of Rosenstein 82 A.D. 2d 461	Censured	1-102(A)(3)(4)(5) (violation of adoption statutes)
Matter of Roth 81 A.D. 2d 323	Suspended three years	Federal felony (unlawful payments to FHA employees)
Matter of Scharf 81 A.D. 2d 331	Suspended two years	1-102(A)(4) (conversion of client's funds)
Matter of Stember 80 A.D. 2d 367	Disbarred	Felony conviction (larceny third degree)
Matter of Stubenhaus 81 A.D. 2d 140	Disbarred	Felony conviction (larceny second degree)
Matter of Wolfson 82 A.D. 2d 587	Censured	Misdemeanor conviction (criminal sale of marijuana)

Third Department

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Cyrus B. Adler 79 A.D. 2d 741	Suspended, Three Months	DR 1-102(A) (4) & (5) (disposing of personal property pledged as collateral for a loan contrary to the term of a security agreement)
Stephen A. Blum 78 A.D. 2d 716	Suspended, Two Years	DR 1-102(A) (4) (5) & (6) (misleading and deceiving committee in its investigation of inquiry filed by client; commingling funds; misleading client as to status of her claim)
Patrick J. Brophy 83 A.D. 2d 975	Censured	DR 1-102(A) (3) (4) (5) & (6) (conviction in the U.S. District Court for the Western District of New York of misdemeanor of willfully depriving an individual of rights secured to him by U.S. Constitution)
Kenneth H. Cohn 84 A.D. 2d 882	Suspended, Four Months	DR 6-101(A) (3) (neglect of two legal matters); DR 1-102(A) (4) & (6) (misleading and deceiving client and Broome County Bar Association Grievance Committee; DR 1-102(A) (5) & (6) (failure to cooperate with counsel subsequent retained by your client); DR 9-102(B) (4) (failure to promptly pay to client funds which client was entitled to receive) DR 1-102(A) (5) & (6) (failure to cooperate with Committee in its investigation of inquiries filed against him)
Barbara Friend —A.D. 2d—	Suspended, Two Years	DR 1-102(A) (3) (4) (5) & (6) (taking without permission, a sealed Grand Jury Report from the Chambers of the County Court Judge by whom she was employed)
Joseph Gold —A.D. 2d—	Censured	DR 1-102(A) (4) (filing of false affidavit in Judgment of Confession and thereafter assigning said judgment to a third party for virtual full value)
Norman L. Hess	Reinstatement	
Jerome H. Kane 82 A.D. 2d 970	Disbarred	DR 1-102(A) (5) (failure to comply with suspension order); DR 9-102(B) (4) and DR 1-102(A) (3) (4) & (5) (failure to pay to client funds which client was entitled to receive)
George T. Martin 83 A.D. 2d 913	Suspended Indefinitely	DR 1-102(A) (4) (5) & (6) (failure to comply with order of court directing him to appear for examination at Committee's office in regard to inquiries filed against him)

**Third Department
(continued)**

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Peter E. Murphy 82 A.D. 2d 957	Suspended, One Year	DR 6-101(A) (3) (neglect of matter entrusted him by five clients); DR 9-102(B) (4) (failed to pay promptly funds due two clients); DR 2-110(A) (3) (failed to refund promptly unearned fees to two clients); DR 1-102(A) (4) (5) & (6) (failed to deliver promptly to a third party funds entrusted to him by his client)
William J. Murphy 80 A.D. 2d 981	Suspended, Three Months	DR 1-102(A) (3) (5) & (6) (conviction for failure to file federal income tax return)
William J. Murphy Gerald Orseck 81 A.D. 2d 962	Reinstatement Suspended, Six Months	DR 6-101(A) (3) (neglect of legal matter); DR 1-102(A) (4) & (5) (misleading and deceiving client); DR 1-102(A) (4) & (5) (misleading and deceiving Committee)
Louis N. Picciano 81 A.D. 2d 1000	Censured	DR 1-102(A) (3) & (4) (misuse of notary public); DR 9-102(B) disbursing funds contrary to terms of a written agreement); DR 1-102(A) (5) & (6) (failure to cooperate with opposing counsel and engaging in conduct prejudicial to administration of justice); DR 1-102(A) (5) & (6) (failure to cooperate with committee in its investigation of two inquiries filed against him)
Armand R. Riccio Susan A. Stafford 84 A.D. 2d 602	Reinstatement Suspended, Indefinitely	DR 9-102(B) (failure to account for client's funds in real estate transaction)
Alvin D. Weinsoff 81 A.D. 2d 724	Resigned	DR 1-102(A) (3) (4) (5) & (6), DR 5-104(A) (overreaching and manipulating the attorney-client relationship to obtain personal loans from 3 clients); DR 1-102(A) (3) (4) (5) & (6) (overreached and manipulated the attorney-client relationship to involve 2 clients in questionable financial investments); DR 1-102(A) (4) & (5) (testified falsely under oath at a preliminary hearing); DR 9-102(B) (1) & (4) (failed to notify clients promptly of receipt of their funds and to pay or deliver the funds promptly to the clients); DR 1-102(A) (4) & (5) (misled and deceived his clients as to the status of their case); DR 1-102(A) (4) (caused to be made a purported endorsement of his clients' signatures to a negotiable instrument without their knowledge or consent and negotiated said instrument)

**Fourth Department
(Fifth Judicial District)**

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Robert James Bennison 85 A.D. 2d 929	Resignation (Voluntary)	Felony Charges still pending; embezzled clients' funds; DR1-102(A); DR9-102(A) (B)
Richard W. Marriott 83 A.D. 2d 288	Censured	DR1-102(A) (conduct involving fraud, dishonesty, deceit or misrepresentation); DR9-102(A) (failed to properly identify and preserve funds of client); DR9-102(B) (failed to maintain records and properties of clients and failed to render appropriate accounts to his clients); 22 NYCRR 1022.5(a) (commingling and converting clients' funds); 22 NYCRR 1022.5(b) (failed to maintain true and correct records of clients' fiduciary accounts and withdrawing said account monies for his own compensation); DR7-102(A) (making a false statement of law or fact knowingly)
Aaron Mark Zimmerman 83 A.D. 2nd 796	Censured	DR2-101(A) (conduct involving dishonesty, fraud, deceit, and misrepresentation); 22 NYCRR 1022.16(a) (used statements that were deceptive, misleading)
Order Granting Leave to Appeal	(denied by Appellate Division)	
Order Granting Leave to Appeal 54 N.Y. 2d 606	(denied by Court of Appeals)	

(Seventh Judicial District)

ATTORNEY	DISCIPLINE IMPOSED	DISCIPLINARY RULES INVOLVED
Joseph V. Abbate 80 A.D. 2d 750	Application for Reinstatement Granted	
Dennis J. Livadas 80 A.D. 2d 20	Suspension	DR6-101 (neglect of estates); DR2-110 (failed to deliver to his client as requested estate file).
Gerald L. Dorsey 82 A.D. 2d 641	Disbarred	DR9-102 (conversion of estate funds); DR1-102 (conduct involving dishonesty, fraud, deceit and misrepresentation).
Carl R. Scacchetti, Jr. 81 A.D. 2d 1042	Suspended	Serious crime convictions pursuant to §90(4) (f) of the Judiciary Law.
Ronald J. Pilittere 81 A.D. 2d 1043	Suspended Indefinitely	Disability proceedings pursuant to 22 NYCRR 1022.23

**(Seventh Judicial District)
(continued)**

ATTORNEY

Paul E. Dow
83 A.D. 2d 793

George R. LaCava
83 A.D. 2d 775

Barrett Hess
83 A.D. 2d 987

Jacob Sklover
83 A.D. 2d 993

James L. Kemp
84 A.D. 2d 966

George R. LaCava
84 A.D. 2d —

Donald L. Crowley
79 A.D. 2d 1114

DISCIPLINE IMPOSED

Disbarred

Application for Reinstatement
Denied

Application for Reinstatement
Granted

Application for Reinstatement
Granted

Resignation

Application for Reinstatement
Denied

Application for Reinstatement
Granted

**DISCIPLINARY RULES
INVOLVED**

Felony Conviction
(18 U.S.C. 1001, 8 U.S.C.
1324[a][4], 18 U.S.C. 2)

DR9-102 (conversion of client's funds);
DR1-102 (conduct involving dis-
honesty, fraud, deceit and mis-
representation); DR6-101(3) (neglect
of legal matters).

(Eighth Judicial District)

ATTORNEY

Sanford L. Church
80 A.D. 2d 477

Sanford L. Church
85 A.D. 2d 929

Richard S. Gorecki
81 A.D. 2d 1043

Robert J. Schutrum
84 A.D. 2d 966

Robert J. Salomon
83 A.D. 2d 763

Thomas Lippes
83 A.D. 2d 993

DISCIPLINE IMPOSED

Suspension
(Six Months)

Application for Reinstatement
Granted

Suspension

Application for Reinstatement
Granted

Application for Reinstatement
Granted

Application for Reinstatement
Denied

**DISCIPLINARY RULES
INVOLVED**

DR1-102 (conduct involving dis-
honesty, fraud, deceit and
misrepresentation)

Disability proceedings pursuant
to 22NYCRR 1022.23

Advertising Decisions

DECISIONS INVOLVING IMPROPER ADVERTISING

FIRST DEPARTMENT

No decisions reported for 1981

SECOND DEPARTMENT

9th Judicial District

Improper Advertising

Discipline Imposed

"Specializing in Malpractice, Real Estate, Wills & Estates"

Dismissal with cautionary language

"Debt Relief. Keep Your House, Keep Your Car, Stop All Collection Attempts, Lower Your Monthly Payment, Debt Relief \$375.00 All Fees Included"

Caution

"Specializing in Settlement of Inheritances, Taxes, Disputed Properties, Civil, International, Family & Business Law in Greece"

Dismissal with cautionary language

"Collection of Judgments our Speciality"

Dismissal with cautionary language

"Why travel to Manhattan for quality legal counsel? In response to a need for more specialized legal representation in Northern Westchester our staff of attorneys provides a full range of legal services tailored to your business & personal needs."

Dismissal with cautionary language

10th Judicial District

No decisions reported for 1981

2d & 11th Judicial Districts

No decisions reported for 1981

THIRD DEPARTMENT

No decisions reported for 1981

FOURTH DEPARTMENT

No decisions reported for 1981

OTHER DECISIONS

Not reflected above, but nevertheless of great moment in the realm of advertising decisions in 1981, was the October 29 Court of Appeals decision in *Matter of Greene*. In *Matter of Greene* (54 NY 2d 118) the Court of Appeals confirmed the Appellate Division's finding that the direct mail advertising respondent sent to real estate brokers was direct solicitation of the brokers to refer clients to respondent and, thus, was indirect solicitation of clients by respondent. As such, the mailing is prohibited by DR 2-103 (A) of the Code of Professional Responsibility and Section 479 of the Judiciary Law.

The text of the Court's ruling follows.

IN THE MATTER OF ALAN I. GREENE, AN ATTORNEY.

The Grievance Committee for the Ninth Judicial District, respondent, v. Alan I. Greene, appellant.

Meyer, J. — To the extent that Judiciary Law, Section 479, and DR 2-103(A) of the Code of Professional Responsibility proscribe advertising of attorneys' services by direct mail addressed to real estate brokers, those provisions regulate the manner rather than the content of commercial speech and, the regulations being reasonable and the State having a substantial interest in the protection of clients against potential conflict of interest, are constitutional regulations of such speech. Thus, we answer so much of the question left open in *Matter of Koffler* (51 NY2d 140, 145, *cert den* 68 L Ed 2d 221) concerning third-person mailings as relates to mailings addressed to real estate brokers by holding regulations proscribing such mailings constitutional. The order of the Appellate Division should, therefore, be affirmed, without costs.

Respondent Greene was admitted to the practice of law in New York in 1960. He admitted in his answer to the disciplinary proceeding brought against him by the Grievance Committee for the Ninth Judicial District that "in or about August, 1978 and October, 1978, respondents caused to be prepared and caused to be mailed approximately 1,000 direct mail fliers to real estate brokers in Westchester County and portions of Putnam County" and concedes in his brief before us that he was "hoping by his mailings to move the recipients to remember his availability should the occasion arise when a buyer or seller sought a reference to an attorney in a real estate transaction." The flier read impertinent part:

"ALAN I. GREENE offers your client full legal representation on any and all property transactions for just \$335. Legal coverage begins with contract and continues through to closing. With 18 years experience, the office of ALAN I. GREENE is fully prepared to expedite all closings and offer competent advice to the buyer and/or seller. Your real estate office will be afforded our full cooperation. With just two hours notice, a contract and all legal documents can be prepared.

"By recommending the services of ALAN I. GREENE, you, the realtor, will save your client time

and money.— one of the main reasons they called on you!"

Testifying before the Referee, respondent stated that he got no business from the brokers to whom the flier was sent, indeed, that he had gotten a negative response from them.

The Referee, treating the issue as one of law to be decided on the basis of the undisputed facts, found respondent in violation of Judiciary Law, Section 479, and DR 2-103(A) of the Code of Professional Responsibility, but noted in his report that the fliers had been sent prior to the Appellate Division's decision in *Matter of Koffler* (70 AD2d 252) and were mailed in reliance on *Bates v. State Bar of Arizona* (433 US 45), and that in *Koffler* the Appellate Division had imposed no sanction.

Petitioner moved for confirmation of the Referee's report and the disciplining of respondent. Respondent likewise moved "for an order confirming and adopting the report" but asked that he, as had been the attorneys in *Koffler*, be exonerated. The Appellate Division, noting our reversal in *Koffler* and reservation of the third-party mailing question, found that the fliers "directly solicited the real estate brokers to refer individuals to the respondent to use the respondent's legal services in connection with the sale or purchase of real property" as alleged in the petition, and held such a mailing proscribed and not constitutionally protected, but imposed no sanction. The appeal is before us on constitutional grounds (CPLR 5601, subd [b], par [1]).

As we noted in *Koffler* (51 NY2d at p 143, n 1), the absence of sanction does not affect respondent's right of appeal from the confirmed finding of a violation. Petitioner argues, however, that the appeal should be dismissed as moot because respondent was on April 9, 1981 suspended from the practice of law, on the basis of incapacity, and for lack of grievement in view of respondent's motion to confirm. Respondent suggests that the record is not appropriate for decision, that the state interest sought to be protected is not sufficiently defined, and that his mailing is not in-person solicitation such as was condemned by the Supreme Court in *Ohrlick v. Ohio State Bar Assn.* (436 US 447). In an *amici* brief filed on behalf of four attorneys against whom similar charges are pending in the Third Department, it is argued that what is regulated in this instance is not man-

ner of distribution but content. We affirm, though upon somewhat different reasoning than that of the Appellate Division.

I

The arguments for dismissal require little comment. For the same reason that the absence of sanction does not foreclose appeal from the finding of violation, it cannot be said that respondent was not aggrieved by the Appellate Division's order. Though his motion paper could have been more carefully worded, it clearly asked for "exoneration," which is inconsistent with the legal conclusion suggested by the Referee. The reference was to hear and report and the facts being undisputed, we construe the motion paper to have requested confirmation of the factual conclusions of the Referee, but not of his conclusion of law.

Nor does respondent's suspension for incapacity after the Appellate Division decision moot the question, for that suspension, though indefinite in time, was made because of respondent's inability to participate in a formal disciplinary hearing. Though no sanction has been imposed in the instant proceeding, the finding of violation is a professional stigma that may be considered in determining the discipline to be imposed after formal hearing on the new charges should respondent recover from his incapacity and the result of such a hearing be against him. Even if that were not so, the pendency of four other similar proceedings against *amici* suggests that the controversy is of a recurring character and should be considered by us rather than dismissed for mootness.

II

The proscriptions, the constitutionality of which is in issue, are found in Section 479 of the Judiciary Law and Section DR 2-103(A) of the Code of Professional Responsibility. The former reads:

"It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services, or to make it a business so to solicit or procure such business, retainers or agreement."

The latter, as amended on April 29, 1978, provides:

"A lawyer shall not solicit employment as a private practitioner of himself or herself, a partner or an associate to [sic] a person who has not sought advice regarding employment of a lawyer in violation of any statute or court rule. Actions permitted by DR 2-104 and advertising in accordance with DR 2-101 shall not be deemed solicitation in violation of this provision."

DR 2-104 (subd. c) permits a lawyer to "accept employment which results from participation in activities designed to educate the public to recognize legal problems, to make intelligent selection of counsel or to utilize available legal services," but the section is not otherwise germane.

The effect of our *Koffler* decision and of the Supreme Court decisions referred to in that opinion and in this is to leave the rule declared by the Legislature in Judiciary Law, Section 479 free to operate in areas not affecting constitutionally free speech (*Belli v. State Bar of California*, 10 Cal 3d 824, app for stay den 416 US 965). Though amendment of the section might clarify the intention of the Legislature as a source, coordinately with the judiciary, of the public policy governing the conduct of lawyers, the absence of such amendment leaves no vacuum. The section remains effective except as constitutionally proscribed.

The Code of Professional Responsibility is, however, an enactment of the New York State Bar Association rather than the Legislature or any court. Its provisions have been incorporated by reference in the rule defining professional misconduct (22 NYCRR Secs. 603.2, 691.2, 806.2, 102-2.17) adopted by each of the Appellate Divisions pursuant to statute (former Section 216 of the Judiciary Law) and continued in effect by Section 13 of chapter 158 of the Laws of 1978. The specific provisions of the Code dealing with advertising have also been adopted as a rule by each of the Appellate Divisions, with the minor change referred to in footnote 2 above (22 NYCRR Secs. 603.22, 691.22, 806.15, 1022.16). But the Code cannot, either directly or through incorporation in a court rule, amend or limit a statute adopted by the Legislature (*People v. La Carruba*, 46 NY2d 658, 663; see *Matter of Weinstock*, 40 NY2d 1, 6). Thus, even if DR 2-104 were broad enough in language to be deemed to authorize third-party direct mail generally (which, in our view, it is not), it would not limit the

effect of Judiciary Law, Section 479 as a bar to such advertising. In light of that fact and of the limiting phrase ("in violation of any statute or court rule") in the first sentence of DR 2-103(A), the questions before us are, therefore, reduced to whether as a matter of statutory construction Judiciary Law, Section 479 proscribes third-party mailings and, if so, whether such a proscription is constitutionally permissible.

The statutory construction question is answered, in essence, by our holding in *Koffler* that "[n]ot all solicitation is advertising, though all advertising either implicitly or explicitly involves solicitation" and by the words "directly or indirectly" contained in Section 479. Direct mail advertising addressed to real estate brokers is, as respondent conceded and the Appellate Division found, direct solicitation of the brokers to refer clients to respondent, and, thus, indirect solicitation of clients by respondent.

III

Because overbreadth analysis does not apply to commercial speech (*People v. Mobil Oil Corp.*, 48 NY2d 192, 199) and because laws regulating the time, place or manner of speech stand on a different footing from laws restricting speech because of its subject matter or content (*Linmark Associates v. Willingboro*, 431 US 85, 93; *Police Department of Chicago v. Mosley*, 408 US 92, 95), we turn first to consideration of respondent's flier.

Our conclusion is that it is the manner rather than the content of the speech in issue which brings it into conflict with the statute. While its last paragraph specifically asks that respondent be recommended to clients of the brokers receiving the flier, the necessary implication of the transmittal to the brokers of the information contained in the first quoted paragraph is that respondent seeks by sending the flier to the broker to have clients of the broker referred to him for legal work. This is conceded by respondent's brief and would, in any event, necessarily follow from the fact that a real estate broker is one "who, for another and for a fee * * * sells * * * exchanges, buys or rents * * * an estate or interest in real estate" (Real Property Law, Sec. 440; see Executive Law, Sec. 292, subd [14]). In short, were the fourth sentence of the first quoted paragraph and the last paragraph of the flier omitted, the statute would

proscribe it nevertheless. It is, thus, the manner of advertising the service to respondent's potential clients rather than the fact that the flier explicitly asks for recommendations that runs it afoul of the statute (see *Eaton v. Supreme Court of Arkansas*, 607 SW2d 55 [Ark], cert den 101 Sup Ct 148).

Nor can it be said, as was held in *Linmark*, supra, that though as applied to respondent it restricts but one method of communication, the restriction is nonetheless related to content. *Linmark's* conclusion was based upon the ineffectiveness of alternatives to a "For Sale" sign, the absence of a prohibition of lawn signs bearing other messages, and the lack of a detrimental secondary effect on society. Here, respondent concedes that his letter to brokers, like the newspaper advertisement in *Koffler*, was ineffective,² whereas direct mail to clients, permitted under *Koffler* and shown in that case to be productive, is the more fruitful option. Here also, though under familiar principles of jurisprudence we limit our ruling to third-party mailings to brokers, the statutory language prohibits all third-party mailings, not just mailings to brokers. Finally, there is, as hereafter demonstrated, a detriment to society in the potential conflict of interest that may be generated when these in need of legal services are approached indirectly through a broker. The restriction imposed upon respondent neither is, nor should it be construed to be, one upon content. And as a regulation of the manner of speech, control of which in light of the governmental interest to be served, the lack of effectiveness of the medium and the more effective available alternatives, must be deemed reasonable, the statute as applied to respondent is constitutional (*Matter of Koffler*, supra, at p 150; *Consolidated Edison v. Public Serv. Comm.*, 447 US 530, 535-536; *Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 US 748, 771).

But if we were to construe the statute as addressed to content, our conclusion would be no different. As we noted in *Koffler* (51 NY2d at p 147), *Central Hudson Gas v. Public Serv. Comm.* (447 US 557, 566) establishes four criteria: (1) Is the speech misleading or related to unlawful activity? (2) Is the governmental interest sought to be protected substantial? (3) How directly does the regulation advance

that interest? (4) Is there a less restrictive alternative?

The Grievance Committee makes no contention that the filer is misleading. And though Section 479 has its genesis in Section 270-a of the Penal Law of 1909, it is not speech as activity but the activity to which the speech relates (here, legal services in relation to the purchase or sale of a house) with which this portion of the criteria is concerned. Neither deception nor unlawfulness can sustain application of the statute to respondent's filer, therefore.

There is, however, a substantial governmental interest in preventing conflicts of interest in attorney-client relationships which the statute directly protects and for which there is no adequately protective less restrictive alternative. The Supreme Court has many times recognized as a proper and substantial governmental interest the prevention of conflicts of interest (*In re Primus*, 436 US 412, 436 ["serious likelihood of conflict of interest"]; *Ohrlick v. Ohio State Bar Assn.*, *supra*, p 461, n 19 ["we cannot say that the pecuniary motivation of the lawyer who solicits a particular representation does not create special problems of conflict of interest"] and see *id* p 464, n 22; *NAACP v. BUTTON*, 371 US 415, 443 ["serious danger * * * of professionally reprehensible conflicts of interest which rules against solicitation frequently seek to prevent"]; see also *Mine Workers v. Illinois Bar Assn.*, 389 US 217, 223-224). Though the potential for conflict played a part in sustaining the speech limitation only in *Ohrlick*, the reason it was held insufficiently present in other cases was the absence of monetary stakes for the union or other community group, whose collective activity was undertaken to assure meaningful access to the courts.

Not only is there an absence of associational activity in the instant case, but also there are present the pecuniary interests of both the attorney and the broker. Moreover, since the broker is in direct contact with his prospect (the lawyer's potential client), there is present also the in-person solicitation element which *Ohrlick* found sufficient to sustain regulation against constitutional attack. Of importance in *Ohrlick's* determination were the lack of sophistication of the usual client, the pecuniary interest of the solicitor, the difficulty or impossibility of obtaining reliable proof of what occurred in such an encounter

(436 US at pp 464-466). Those factors made permissible "prophylactic measure whose objective is the prevention of harm before it occurs" (*id*, 464). The same presumed lack of sophistication, pecuniary interest and difficulty of proof are present here. Moreover, in-person solicitation discourages the comparison shopping which is the very heart of the concept behind dissemination of information concerning legal services: to assure "informed and reliable decisionmaking" (*Bates v. State of Arizona*, 433 US 350, 364, *supra*; see Reich, *Preventing Deception In Commercial Speech*, 34 NYU L Rev 775, 801, 804; *Worsham Solicitation By Attorneys: A Prediction And A Recommendation*, 16 Houston I Rev 452, 468-471).

Nor, as *Ohrlick* makes clear (and *Primus* confirms [436 US at p 434]), it is required that there be "actual proved harm to the individual (436 US at p 464). "[T]he absence of explicit proof or findings of harm or injury is immaterial" (*id*, 468); "the potential for overreaching * * * inherent * * * in-person solicitation" (*id*) is enough to justify such a regulation (see NOTE, *Attorney Solicitation*, 7 Hofstra L Rev 755, 773-774).

Measuring against that background, we conclude that even as content regulation Section 479 should be held constitutional. The possibility that the lawyer's view of marketability of title may be colored by his knowledge that the referring broker normally will receive no commission unless title closes, the improbability that the attorney will negotiate to the lowest possible level the commission to be paid to the broker who is an important source of business for him (or suggest to the client that he do so), the probability that the lawyer will not examine with the same independence that he otherwise would the puffery that the broker has indulged in to bring about the sale are examples of the conflict potential to be protected against. Nor can we agree with the Supreme Court of Kentucky (*Kentucky Bar Association v. Stuart*, 568 SW2d 933 [Ky]) that the filing with the overseeing agency of a lawyer's solicitation letter to brokers, adequate though it may be to protect against any evils of direct mail addressed to clients (*Matter of Koffler*, 51 NY2d at p 150, *supra*), is adequate protection against the conflict of interest problems involved in attorney mailings to brokers. It is one thing for a

disciplinary system to police the language in client direct mail advertising and quite another to expect that anything approaching proper oversight can be accomplished simply by the filing of a copy of a broker letter when the client relationship results not from the letter but from the intermediation of the broker.

For the foregoing reasons, the order of the Appellate Division should be affirmed, without costs.

(1) As originally adopted by the New York State Bar Association, DR 2-103(A) used the word "recommend" rather than "solicit" in its first line. Moreover, it did not include the present second sentence or the last eight words of the first sentence.

(2) The petition refers also to the Rules of the Appellate Division without specific reference to any rule. Rule 691.22 (22 NYCRR 691.22) deals with "Advertising and publicity by attorneys," but is not considered further because not referred to by either court below and not otherwise germane to the discussion which follows. DR 2-101, referred to in DR 2-103(A), is, except for the substitution of "lawyer" for "attorney," identical with Rule 691.22.

(3) The brief of amici states that their experience was the same.

(4) Accord: *Allison v. Louisiana State Bar Assn.* (362 So2d 489 [La] [solicitation through employer of employee participants in a prepaid legal services plan]). Contra: *Matter of State Bar Grievance Administrator v. Jaques* (407 Mich 26 [solicitation of tort claims through union agent]); *Kentucky Bar Assn. v. Stuart* (568 SW2d 933 [Ky] [attorney's letter to real estate broker]); and see *Flga. Lawyer Solicitation Today And Under The Proposed Model Rules of Professional Conduct*, 52 Colo L Rev 393, 404). It is questionable whether Jaques would be applied to a situation such as the present (see *Woll v. Attorney General*, 409 Mich 500, 550). Both Jaques and Stuart may be distinguished on the ground that neither discussed potential conflict of interest, but to the extent that they cannot be so distinguished we decline to follow them.

Order affirmed, without costs. Opinion by *Meyer, J.* All concur except *Fuchsberg, J.*, who dissents and votes to reverse in an opinion in which *Cooke, Ch.J.*, concurs.

Fuchsberg, J. (dissenting) — The petition of the Grievance Committee, respondent on this appeal, should be dismissed.

Whatever the prescription of professional "etiquette" and institutional preferences may have been in the past, the Supreme Court, final arbiter of First Amendment issues, has declared that the constitutional protection accorded commercial speech will no longer abide unreasonable restrictions on the advertising of information calculated to serve "individual and societal interests in assuring informed and reliable decisionmaking" concerning the price and availability of at least "routine legal services" (*Bates v. State Bar of Arizona*, 433 US 350, 364, 374; *Virginia Pharmacy Board v. Virginia Consumer Council*, 425 US 748). Essentially on this basis, in *Matter of Koffler*, sweeping aside the Appellate Division's "artificial dis-

inction between solicitation and advertising," and undeterred by section 479 of our Judiciary Law,² we upheld a lawyer's mail solicitation of potential clients (51 NY2d 140, 143). Now, abandoning this high road, the majority, hypothesizing excesses and ignoring less restrictive means by which these may be avoided, upholds a total ban on a lawyer's mailings to realtors. In my view, on the analysis which follows, this absolute prohibition must be regarded as so unreasonable a restraint on communication as to constitute an abridgment of First Amendment rights.

Preliminarily, to move most quickly to the heart of the matter, it may be well to point to three considerations with which the majority perforce has had to agree. One is that the Code of Professional Responsibility is subordinate to the provisions of Section 479 of the Judiciary Law and that this statute, in turn, must defer to our Constitutions, State and Federal. A second is that, since *Bates*, lawyer advertising, though it "implicitly or explicitly involves solicitation," may no longer be proscribed *per se* (*Koffler, supra*, at p. 146); rather, in *Koeffler*, in the course of upholding the validity of direct mail advertising of the nature and price of legal services offered to homeowners as prospective clients, we recognized the validity of this postulate.³ A third, this time factual, is that the contents of the appellant Alan I. Greene's fliers were not false, deceptive or misleading in any way.

These noted, we express disagreement with the majority's reading of *Ohralik v. Ohio State Bar Assn.* (436 US 447) as an out-and-out "condemnation" of all in-person solicitation (maj. slip opn at p 3). True, it held that State Bar could constitutionally discipline a lawyer for soliciting clients: "in person, for pecuniary gain, under circumstances likely to pose dangers that the State has a right to prevent" (*Ohralik, supra*, at p 4490). It is a mistake, however, to assume from this general language that the limitation was a wide-ranging one. For *Ohralik's* words are self-limiting and, significantly, were uttered in the context of a congerie of facts surrounding an extreme episode of oppressive and overreaching importuning of the hospitalized victim of an accident. That the Court intended no blunderbuss declaration ruling out all direct solicitation, whether essayed in person or by mail, becomes apparent

too from its concurrent determination in *In re Primus* (436 US 412). Handed down with *Ohralik*, *Primus* held a solicitation letter dispatched by an attorney employed by the American Civil Liberties Union sheltered by the First Amendment. So deciding, the Court did more than comment that the ACLU litigates both "as a vehicle for effective political expression and association, as well as a means of communicating useful information to the public" (*Primus, supra*, at p 431). It also made the point, relevant here, that, if anything, "the fact that there was a written communication lessens substantially the difficulty of policing solicitation practices that do offend valid rules of professional conduct" (*Primus, supra*, at p 435-436).

In *Koffler*, we emphasized that interdiction of letters addressed to potential clients would cut across the "strong societal and individual interest in the free dissemination of truthful price information *** in our free enterprise system" (*Koffler, supra*, at p 146).⁴ Oddly, the majority now recoils from this reasoning when letters are addressed to real estate brokers whom, after all, buyers or sellers of real property conceivably may be expected to consult on the choice of a lawyer. Absent any record data, empirical or otherwise, to warrant this departure from the spirit of our earlier declaration, it offers no more than direful speculation, which, I respectfully suggest, reflects perhaps unconscious, but nevertheless impermissible, obeisance to the tastes and traditions of a pre-*Bates* yesteryear. (See *Kentucky Bar Assn. v. Stuart, supra* [letters to real estate agencies merely stating the price of routine-legal services and the qualifications of the attorneys not in-person solicitation].)

It cannot be gainsaid that a mailing to third parties contemplates interaction between their recipients and potential clients.⁵ But, in principle, what Greene sought by resort to this more targeted, and presumably more cost-efficient, mail medium was simply to heighten the chances that the concededly fair and truthful message he wished to convey would come to the attention of those to whom it would be most useful, a perfectly sensible and acceptable, even "indispensable," objective (*Bates, supra*, at p 364).⁶

Needless to say, any referral system is highly dependent upon the availability of information about an attorney. Moreover, a paramount reason for the Supreme Court's sup-

port of a lawyer's right to advertise was its recognition that, in a time when mobility and urbanization had become an integral part of our social climate, pre-*Bates* referral practices, attuned as they were to the far more fixed fashions of an essentially "small-town society," in which "reputational information" could be expected to be common knowledge, no longer was adequate (*Bates, supra*, in 30, pp 374-375; see Cheatham, Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar, 12 UCLA L Rev 438, 440; Meserve, Our Forgotten Client: The Average American, 57 A.B.A. J. 1092; cf. *Zaldivin v. Concord Hotel*, 48 NY2d 107,112).

Consequently, I find it difficult to understand how the majority, in face of our prior acceptance of the right to advertise by direct mail, can equate Greene's restrained use of that medium with the vexatious in-person solicitation at which *Ohralik* strikes (see maj slip opn, at p. 10). For, at its worst, Greene's conduct, even if we were to disregard its salutary candor and written form, cannot be said to have differed in spirit and intent, for instance, from the exposure to potential clients and potential recommenders that many lawyers, with full propriety, attempt to achieve by carefully structuring their social and community associations (see *Bates, supra*, at p 371).⁷ Nor can it be said that Greene's mode of communication suffers by comparison, in morality or accountability, with the far more amorphous collection of contracts with the coterie of friends, relatives, business or social acquaintances and former clients who constitute the main source to which most lawyers engaged in private practice look for referrals.

Surely, whether a third party's recommendation of a lawyer to a consumer of legal services has been generated by personal cultivation of or a chance acquaintance with the recommender or whether the recommender's awareness of the lawyer's availability stemmed from the lawyer's correct employment of contemporary mail or media channels, common sense teaches that there is no basis for attributing greater risks of the occasional unprofessionalism or overcommercialization, which in this imperfect world will at times occur in any quarter, to the latter rather than the former. Little wonder then that the Supreme Court has dubbed arguments which focus on fears

of this character too "dubious" to survive constitutional scrutiny (see *Bates, supra*, at pp 369-379).

Specifically, to recite them verbatim, the suppositions on which alone we are asked to conclude that the demons of conflict of interest will be let loose are that "the lawyer's view of marketability of title may be colored by his knowledge that the referring broker normally will receive no commission unless title closes" or that the lawyer "will not make efforts to negotiate to the lowest possible level the commission to be paid to the broker" or that "the lawyer will not examine with the same independence that he otherwise would the puffery that the broker has indulged in to bring about the sale" (maj slip opn, at p 11).⁵ But, even if these cynical conjectures reflected anything more than occasional vagaries, it would be outlandish for the fears the Committee entertains to form the predicate for punishing facially innocent mail communications with brokers while ignoring the fact that, if the fears were founded, they would be at least as pertinent to lawyers who, enjoying personal or professional relationships with brokers, are far, far, more likely to become the beneficiaries of such referrals and the inheritors of the hobgoblins of client betrayal which, so unaccountably and so unevenly, appear to concern the Committee.⁶ Artificial distinctions of this sort are not only indefensible, but are just the sort of things which unwarrantably sap public confidence in the legal system.

The nature of Greene's alleged assault on the ethical standards now seen in fuller perspective, we proceed to match the mailing of his fliers against the criteria so lately set out by the United States Supreme Court in *Central Hudson Gas v. Public Serv. Comm.* (447 US 557, 564-566). Reiterating the Court's position that commercial speech is subject to a State's reasonable time, place and manner regulation (*Consolidated Edison Co. v. Public Serv. Comm.*, 447 US 530, 536), the case erected a four-part analysis for testing whether a particular State regulation goes too far.

Applying the test, initially we must say whether the speech in question is misleading or related to an unlawful activity, for then it is entitled to no protection. This hurdle it easily overcomes. As indicated earlier, it is agreed that the speech here did not offend either requirement.

Secondly, we must decide whether the regulation generally is in

furtherance of a substantial State interest. This too need not detain us. Since the possibility of deceptive or unethical conduct always exists in the abstract at least, a legitimate State interest may be said to exist.

This brings us to the third level of inquiry, i.e., evaluation of "the directness of relation of regulation to purpose" (*Koffler, supra*, at p 148). For the reasons more fully detailed above, the regulation here did not measure up. Greene's mailings involved no professional trespass. Not all lawyer mailings invite the ethical departures the Committee envisaged. Such departures certainly are not the inevitable result of all direct mail advertising. The one before us only concerned information about price and availability and, as such, was in accord with Ethical Consideration 2-8 of the Code of Professional Responsibility of the American Bar Association (see also New York's Code of Professional Responsibility EC 2-8 in McKinney's Vol 29, Sec. 500 to end, pocket part [1980-1981], p 45). Disseminating this information serves a useful rather than a harmful individual and societal function. The Supreme Court has "declined to uphold regulations that only indirectly advance the state interest involved" (*Central Hudson Gas v. Public Service Comm.*, *supra*, at p 564). The regulation here, therefore, was unreasonable, and, consequently, must fall on that account.

Finally, we determine whether less restrictive measures were available to the State. For the regulatory technique may not be disproportionate to the interest served. Obviously, since the communication here was not a transitory oral one, but made by mail, a filing requirement or one that calls for an appropriate disclaimer might have been an available and practical alternative (see *Bates, supra*, at p 384; *Koffler, supra*, at p 150; *Kentucky Bar Assn. v. Stuart, supra*, at p 934; ABA Proposed Draft of Model Rules, *supra*, rule 7.2 subd b and comment).⁷ Yet, the Committee offered no adequate explanation for failing to engage these or other lesser methods by which to assure that the regulatory scheme was not more extensive than necessary to serve the governmental interest at stake. Instead, imposing an unwarranted absolute prohibition, it chose a means unreasonably and insufficiently related to the purpose to be served.

It follows that the order of the Appellate Division should be reversed and the petition dismissed.

(1) "[S]uch speech should not be withdrawn from protection merely because it purposed a mundane commercial transaction The listener's interest is substantial: the consumer's concern for the free flow of commercial speech often may be far keener than his concern for urgent political dialogue" (*Bates, supra*, pt p 364; cf. Fuchsberg, *Commercial Speech: Where It's At*, 46 *Brooklyn L Rev* 389, 391).

(2) *Judiciary Law sec. 479, effective September 1, 1967*, antedated *Bates* by ten years and has not been amended in the intervening years.

(3) Earlier, a similar conclusion was reached by the New York State Bar Association Committee on Professional Ethics in its Opinion No. 507: "[I]t seems clear to us in this era of direct-mail advertising that an advertisement . . . does not become an improper solicitation merely because it is placed in the recipient's mail box by a postman rather than a newsboy."

(4) Seen generally, *Kentucky Bar Assn. v. Stuart*, 568 *SW2d* 933 [Ky]; *Bishop v. Committee on Prof. Ethics and Conduct of the Iowa State Bar Assn.* - F Supp - [a Iowa] [decided 8-20-81]; L. Andrews, *Birth of a Salesman: Lawyer Advertising and Solicitation* 61-68; R. Broshnan and L. Andrews, *Regulation of Attorney Advertising: In the Public Interest?* 46 *Brooklyn L Rev* 423; Comment, *Three Years Later: State Court Interpretation of the Attorney's Right to Advertise and the Public's Right to Information*, 45 *Mo L Rev* 562.

(5) *Koffler's* recognition of this characteristic (*supra*, n 2 at p 145) did not suggest a preordained result (compare our footnote with footnote 25 in *Virginia Pharmacy*, 425 *US* 748, 773, and the Supreme Court's ensuing holding in *Bates*).

(6) Greene's fliers were mailed to all brokers in a circumscribed area - Westchester County, where he resided and practiced, and portions of adjoining Putnam County. It was no more than logical for him to reason that an untargeted mailing to the adult members of a population of well over a million would not only have been wasteful but prohibitively expensive.

(7) The venerability of referrals as a source of clients has been recognized also in *Ohrlik, supra*, n 24, at p. 465; the New York Code of Professional Responsibility, EC2-8, and the American Bar Association's Proposed Draft of Model Rules of Professional Conduct, Rule 7.2, subd c.

(8) In the same vein, the Grievance Committee, to justify its condemnation of the attorney, goes so far as to find cause for complaint in the argument that the respondent, whose fliers did not indicate the slightest inclination to split fees, would also "deceive the realtor, who will believe if a person is referred to the attorney, he, the realtor, will obtain something in return for the referral, when in fact he will not." To this, of course, the short answer is that frustration of any real estate agent (or any other referer of a client) who may entertain such an expectation would be a testimonial to the unswerving probity and ethics of the lawyer, who in any event, is held to Disciplinary Rule 2-103, which specifically states: "A lawyer shall not compensate or give anything of value to a person . . . as a reward for having made a recommendation resulting in employment by a client." It may not be remiss to add that even the realtors seem to be too freely belabored, since the record establishes that none of the recipients of the defendant's flier responded at all, much less improperly.

(9) Since, from the record here, mail communications may not be very productive of referrals, the fears may be academic as well as groundless. Greene received no referrals in response to his flier. The four amici, from another part of the State, fared no better.

(10) This is not intended as an enforcement of the procedures mentioned, either in isolation or in preference to other methods. Rather, mention is made of these measures merely to demonstrate that less restrictive regulatory means are available or can be developed.

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and
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**Denotes non-lawyer members.*

**Attorney Discipline Budget Appropriations
(Fiscal 1981 - 1982)**

and

**Salaries of Disciplinary Staff
(Fiscal 1981 - 1982)**

Attorney Discipline Budget Appropriations (Fiscal 1981 - 1982)

First Department

Personal Service	\$516,574
Temporary Service	4,000
Total PS	520,574
Nonpersonal Service	
Supplies & Materials	20,000
Travel	5,000
Contractual Services	166,768
Special Contractual Services	109,000
Equipment	5,000
Total NPS	305,768
Total Appropriation	826,342

Second Department

Personal Service	520,379
Temporary Service	10,000
Total PS	530,379
Nonpersonal Service	
Supplies & Materials	28,000
Travel	8,000
Contractual Services	80,000
Special Contractual Services	65,799
Equipment	3,000
Total NPS	184,799
Total Appropriation	715,178

Third Department

Personal Service	\$168,684
Total PS	168,684
Nonpersonal Service	
Supplies and Materials	4,700
Travel	9,000
Contractual Services	13,400
Special Contractual Services	8,500
Equipment	700
Total NPS	36,300
Total Appropriation	204,984

Fourth Department

Personal Service	272,474
Total PS	272,474
Nonpersonal Service	
Supplies and Materials	4,620
Travel	7,400
Contractual Services	43,530
Special Contractual Services	18,000
Equipment	2,080
Total NPS	75,630
Total Appropriation	348,104

**Salaries of Disciplinary Staff — New York State
(Fiscal 1981-1982)**

Attorneys	1st Dept.	2nd Dept.	3rd Dept.	4th Dept.
Chief Attorneys	\$48,364(1)	\$42,973(1) 40,512(1) 40,366(1)	\$44,160(1)	\$39,556(1)
1st Level Attorney	35,934(1) 34,125(2)	36,505(1) 36,037(1)	37,076(1) 24,586(1)	38,885(3)
2nd Level Attorney	31,033(1) 29,224(1)	29,224(1)		
3rd Level Attorney	26,307(5)	20,964(4) 27,297(1) 26,307(2)		
4th Level Attorney	22,432(1)	23,310(1) 22,432(3)	22,432(1)	
Support Staff				
Investigators	21,376(1)	19,999(1) 17,890(1)	18,988(1)	17,890(2) 17,187(2) 12,272(1)
Paralegal Assistants	17,797(1) 17,456(1)			
Clerical	18,453(1) 15,146(1) 14,533(9) 12,862(1) 10,333(1) 3,504(2)	15,759(1) 15,389(2) 15,146(1) 14,533(3) 11,958(1)	16,073(1) 11,416(1) 10,922(1)	15,201(1) 15,146(2) 11,416(1) 8,604(1)

It should be noted that certain secretarial and clerical titles were grouped together in the interest of conciseness.

